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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-89-104]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this final rule decreases the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1988 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

EFFECTIVE DATE: October 23, 1989.

ADDRESSES: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2610–S; P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and departmental Regulation 1512–1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This final rule decreases the amount of assessments on all imported pork and pork products subject to assessment by three-to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven-to eleven-hundredths of a cent per kilogram. Adjusting the rate of assessments on imported pork and pork products will result in an estimated reduction in assessments of $375,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected in 51 FR 36383) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule decreases the assessment on all imported pork and pork products subject to assessment as published in the **Federal Register** on April 20, 1989, and effective on May 22, 1989 (54 FR 15913). In accordance with that final rule, the assessment on imported pork and pork products is to be expressed in cents per pound and per kilogram for each type of such pork or pork products. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1988 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This decrease in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule does not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork or pork products. The end result is expressed in an amount per pound for each type of pork or pork product. In addition, as stated in the final rule published in the April 20, 1989, issue of the **Federal Register** at 54 FR 15913, to determine the amount per

kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor of 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1988, the average annual seven market price declined to $43.25, a decrease of about 15 percent of the 1987 per hundredweight price of $51.04, which results in a decrease in assessments for all Harmonized Tariff Systems (HTS) numbers listed in the table in § 1230.110 of an amount equal to three-hundredths to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven-to eleven-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products for 1988, the decreases in the assessment amounts would result in an estimated $375,000 reduction in assessments over a 12-month period.

On June 22, 1989, AMS published in the **Federal Register** (54 FR 26209) a proposed rule which would decrease the per-pound assessments on imported pork and pork products consistent with decreases in the 1988 average prices of domestic barrows and gilts to provide comparability between importer and domestic assessments. The proposed rule was published with a request for comments by July 24, 1989. The only comment received was from the National Pork Board which favored the proposed decrease because it would promote comparability between assessments on domestic hogs and imported pork and pork products and it was fair and equitable. Accordingly, this final rule establishes the per-pound assessment on imported pork and pork products as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.25 percent Customs Entered Value
0103.91.00006	0.25 percent Customs Entered Value
0103.92.00005	0.25 percent Customs Entered Value

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.00002	.15	.330690
0203.12.10009	.15	.330690
0203.12.90002	.15	.330690
0203.19.20000	.18	.396828
0203.19.40006	.15	.330690
0203.21.00000	.15	.330690
0203.22.10007	.15	.330690
0203.22.90000	.15	.330690
0203.90.20008	.18	.396828
0203.29.40004	.15	.330690
0206.30.00006	.15	.330690
0206.41.00003	.15	.330690
0206.49.00005	.15	.330690
0210.11.00003	.15	.330690
0210.12.00208	.15	.330690
0201.12.00404	.15	.330690
0201.19.00005	.18	.396828
1601.00.20007	.22	.485012
1602.41.20203	.23	.507058
1602.41.20409	.23	.507058
1602.41.90002	.15	.330690
1602.42.20202	.23	.507058
1602.42.20408	.23	.507058
1602.42.40002	.15	.330690
1602.49.20009	.22	.485012
1602.49.40005	.18	.396828

Done at Washington, DC. on September 18, 1989.

Daniel D. Haley,

Administrator.

[FR Doc. 89–22281 Filed 9–20–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–35; Amdt. 39–6337]

Airworthiness Directives; General Electric Co. (GE) CF6–6 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes ultrasonic inspection requirements for certain Stage 1 fan disks on CF6–6 series turbofan engines installed in McDonnell Douglas DC10–10 aircraft. The AD is needed to identify and remove from service Stage 1 fan disks which may have metallurgical imperfections. Such imperfections can adversely affect the service life of the disk.

DATES: Effective—October 7, 1989.

Comments for inclusion in the docket must be received on or before November 7, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: Comments on the amendment may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–ANE–35, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments must be marked: Docket No. 89–ANE–35.

Comments may be inspected at the above location in Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable General Electric Service Bulletin (CF6–6) 72–947, dated September 15, 1989, and General Electric Manufacturing and Field Quality Procedures Nos. 391, 384, 385, and 389 may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Daniel S. Kerman, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington,

Massachusetts 01803; telephone (617) 270–2410.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain Stage 1 fan disks installed in GE CF6–6 series engines may have non-homogeneous material properties. Although the investigation has not yet revealed a definitive cause of the United Airlines Flight 232, Sioux City, Iowa, accident, engine damage and containment case witness marks corroborate the engineering analysis that the most probable failure scenario was a fracture of the fan disk. As part of the investigation of the Sioux City accident, all companion disk forgings from the same melt lot have been removed from service for full metallurgical evaluation. One of these disks was found to have a grain structure anomaly. The metallurgical examination of an ultrasonic indication in one of the companion disks has determined the presence of a type 1 imperfection (alpha segregation) with evidence of micro-cracking. The FAA has also determined that the presence of type 1 imperfections in the Stage 1 fan disk may reduce the fatigue properties of the material thereby adversely affecting the service life of the disk. A further review of process records has revealed three populations of material heat lots having different susceptibility to type 1 imperfections. Although the relationship of these material imperfections to the fracture of the disk involved in the Sioux City accident has not been established, the FAA has determined that ultrasonic inspections are required to ensure that detrimental imperfections are not present.

Since this condition is likely to exist or develop on other engines of the same type design, this AD is being issued to require a contact ultrasonic inspection and an immersion ultrasonic inspection of the Stage 1 fan disk.

The investigation is continuing and this AD may be amended upon completion of the investigation.

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

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the FAA. This rule may be amended in light of comments received. Comments that provided a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in Room 311, at the Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–35. The postcard will be date/time stamped and returned to the commenter.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6–6 Series turbofan engines installed in McDonnell Douglas DC10–10 Aircraft.

Compliance is required as indicated, unless already accomplished.

To detect the existence of metallurgical imperfections in Stage 1 fan disks which could adversely affect Stage 1 fan disk service life, ultrasonic inspect all Stage 1 fan disks in accordance with Appendix I to this AD, and the following schedule:

(a) All stage 1 fan disks with those serial numbers listed in Table 1 of this AD, immersion ultrasonic inspect no later than October 27, 1989.

(b) All stage 1 fan disks identified by those serial numbers listed in Table 2 of this AD, as follows:

(1) Remove fan rotor spinner cone and contact ultrasonic inspect the installed fan disk no later than November 21, 1989.

(2) Immersion ultrasonic inspect within the next 500 cycles in service after accomplishing the contact ultrasonic inspection requirements of paragraph (b)(1) above, or at the next shop visit after October 7, 1989, or no later than April 1, 1990, whichever comes first.

(c) All stage 1 fan disks identified by serial numbers listed in Table 3 of this AD, as follows:

(1) Remove fan rotor spinner cone and contact ultrasonic inspect the installed fan disk no later than February 4, 1990, and reinspect at intervals not to exceed 500 cycles since last contact ultrasonic inspection until the immersion ultrasonic requirement of paragraph (c)(2) has been accomplished.

(2) Immersion ultrasonic inspect at the next shop visit after October 7, 1989, but no later than December 31, 1990.

Notes: (1) Disks which have been previously immersion ultrasonic inspected in accordance with General Electric

Commercial Engine Memorandum No. 98, dated August 25, 1989, are considered to be in compliance with the immersion ultrasonic inspection requirements of paragraphs (a), (b), and (c) above.

(2) For the purpose of this AD, "shop visit" is defined as the induction of the engine into the shop for any reason.

(3) Accomplishment of the immersion ultrasonic inspection requirements of paragraphs (b)(2) and (c)(2) above relieves the requirements for contact ultrasonic inspections of paragraphs (b)(1) and (c)(1) above.

(d) Remove from service, prior to further flight, fan disks inspected in accordance with paragraphs (a), (b), and (c) above which do not meet the acceptance criteria of Appendix I to this AD and replace with a serviceable part. Report inspection findings in writing within 10 days of the inspection to the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803; Telex No. 949301 FAANE BURL.

Information collection requirements contained in this regulation (§ 39.13) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedules specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Table 1

MPOO0382	MPOO0384	MPOO0387
MPOO0383	MPOO0386	MPOO0388

Table 2

MPOO0352	MPOO0375	MPOA0108
MPOO0354	MPOO0376	MPOA0109
MPOO0357	MPOO0377	MPOA0110
MPOO0358	MPOO0378	MPOA0111
MPOO0359	MPOO0379	MPOA0112
MPOO0360	MPOO0380	MPOA0113
MPOO0361	MPOO0389	MPOA0115
MPOO0362	MPOO0390	MPOA0117
MPOO0363	MPOO0393	MPOA0133
MPOO0364	MPOO0395	MPOA0136
MPOO0365	MPOO0397	MPOA0140
MPOO0368	MPOO0398	MPOA0141
MPOO0370	MPOO0399	MPOA0142
MPOO0371	MPOO0402	MPOA0143
MPOO0372	MPOO0404	MPOA0145
MPOO0373	MPOO0407	
MPOO0374	MPOO0411	

Table 3

MPOO0150	MPOO0154	MPOO0159
MPOO0151	MPOO0155	MPOO0160
MPOO0152	MPOO0156	MPOO0161
MPOO0153	MPOO0158	MPOO0162
MPOO0163	MPOO0228	MPOO0286
MPOO0168	MPOO0229	MPOO0289
MPOO0171	MPOO0230	MPOO0290
MPOO0172	MPOO0231	MPOO0291
MPOO0173	MPOO0232	MPOO0292
MPOO0175	MPOO0233	MPOO0293
MPOO0176	MPOO0234	MPOO0295
MPOO0177	MPOO0235	MPOO0297
MPOO0178	MPOO0236	MPOO0298
MPOO0179	MPOO0237	MPOO0299
MPOO0180	MPOO0238	MPOO0300
MPOO0181	MPOO0240	MPOO0302
MPOO0182	MPOO0241	MPOO0303
MPOO0184	MPOO0242	MPOO0304
MPOO0185	MPOO0243	MPOO0305
MPOO0186	MPOO0244	MPOO0308
MPOO0187	MPOO0245	MPOO0309
MPOO0188	MPOO0246	MPOO0311
MPOO0189	MPOO0247	MPOO0312
MPOO0190	MPOO0248	MPOO0313
MPOO0191	MPOO0249	MPOO0314
MPOO0193	MPOO0250	MPOO0315
MPOO0194	MPOO0251	MPOO0316
MPOO0195	MPOO0253	MPOO0317
MPOO0196	MPOO0254	MPOO0318
MPOO0197	MPOO0255	MPOO0319
MPOO0198	MPOO0257	MPOO0320
MPOO0199	MPOO0258	MPOO0321
MPOO0200	MPOO0260	MPOO0322
MPOO0204	MPOO0263	MPOO0323
MPOO0205	MPOO0264	MPOO0325
MPOO0206	MPOO0265	MPOO0326
MPOO0207	MPOO0266	MPOO0331
MPOO0208	MPOO0267	MPOO0334
MPOO0209	MPOO0268	MPOO0336
MPOO0210	MPOO0270	MPOO0337
MPOO0212	MPOO0271	MPOO0338
MPOO0213	MPOO0272	MPOO0339
MPOO0214	MPOO0273	MPOO0340
MPOO0215	MPOO0274	MPOO0341
MPOO0216	MPOO0275	MPOO0342
MPOO0217	MPOO0276	MPOO0343
MPOO0218	MPOO0277	MPOO0346
MPOO0219	MPOO0278	MPOO0347
MPOO0220	MPOO0279	MPOO0348
MPOO0221	MPOO0280	MPOO0349
MPOO0222	MPOO0281	MPOO0350
MPOO0223	MPOO0282	MPOA0137
MPOO0224	MPOO0283	MPOA0139
MPOO0225	MPOO0284	MPOA0207
MPOO0226	MPOO0285	MPOA0439

The ultrasonic inspections shall be done in accordance with Appendix I to this AD.

This amendment becomes effective on October 7, 1989.

Issued in Burlington, Massachusetts, on September 15, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Note: Appendix I is not published in the **Federal Register.** It is available from the Federal Aviation Administration New England Headquarters. See **ADDRESSES** section. This appendix contains pertinent portions of GE Service Bulletin (CF6-6) S/B 72-947, dated September 15, 1989, and the following documents.

(A) General Electric Manufacturing and Field Quality Technology Procedure No. 391, September 15, 1989.

(B) General Electric Manufacturing and Field Quality Technology Procedure No. 384, dated September 15, 1989.

(C) General Electric Manufacturing and Field Quality Technology Procedure No. 385, September 14, 1989.

(D) General Electric Manufacturing and Field Quality Technology Procedure No. 389, September 14, 1989.

[FR Doc. 89-22315 Filed 9-18-89; 2:42 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8265]

RIN 1545-AL16

Taxation of Gain or Loss From Certain Nonfunctional Currency Transactions (Section 988 Transactions)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the taxation of gain or loss from certain foreign currency transactions and applies to taxpayers engaging in such transactions. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATES: These temporary regulations are to be effective for taxable years beginning after December 31, 1986; except for § 1.267(f)-1T, which is effective for transactions entered into after September 21, 1989; § 1.988-1T(a)(2)(iii), (a)(4)(ii), and (a)(5), which are effective for certain transactions entered into after October 21, 1988; § 1.988-2T(b)(13), which is effective after September 21, 1989; § 1.988-2T(d)(2)(ii)(B), which is effective September 21, 1989; § 1.988-2T(e)(3), which is effective for transactions entered into after September 21, 1989; § 1.988-3T(b)(5), which is effective for taxable years beginning on or after September 21, 1989; § 1.988-3T(c)(2), which is effective with respect to debt instruments acquired on or after June 24, 1987; and § 1.988-5T, which is effective for transactions entered into on or after September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Dorfman or Charles T. Plambeck of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution

Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL–936–86) (202–566–6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1131. The estimated annual burden per recordkeeper varies from thirty minutes to 1 hour, depending on individual circumstances, with an estimated average of 40 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains temporary Income Tax Regulations (26 CFR part 1) under sections 267 and 988 of the Internal Revenue Code of 1986.

Need for Temporary Regulations

The proper application of section 988 is dependent upon the Internal Revenue Service's specification of the manner in which the requirements of the statute will be administered. These regulations are necessary to provide taxpayers with immediate guidance in the application of changes made by the Tax Reform Act of 1986 (Pub. L. No. 99–514, 100 Stat. 2085). Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553 (b) and (d).

Explanation of Provisions

The Tax Reform Act of 1986, Pub. L. No. 99–514, 100 Stat. 2085, enacted subpart J of the Internal Revenue Code of 1986 to replace an incomplete and sometimes contradictory body of statutory, judicial, and administrative law governing foreign currency transactions with a coherent statutory regime. The framework of subpart J, derived in part from the Treasury Department Discussion Draft on Taxing Foreign Exchange Gains and Losses, Announcement 81–4, 1981–2 I.R.B. 37, essentially provides that the tax treatment of a foreign currency denominated transaction turns on the identity of a taxpayer's functional currency, as determined under section 985. The translation of taxable income or loss, foreign taxes, earnings and profits, and other items is determined under sections 986 and 987. Exchange gain or loss is realized on a transaction-by-transaction basis in the case of transactions involving certain financial assets, liabilities, or financial products (section 988 transactions) that are denominated in, or determined by reference to, a nonfunctional currency. These temporary regulations implement section 988 of the Internal Revenue Code of 1986, which defines such financial transactions and provides rules for the timing (in certain cases), character, and source of gain or loss that generally is due to fluctuations in exchange rates. The temporary regulations also provide rules for certain integrated hedging transactions.

Section 1.988–1T defines the financial transactions (section 988 transactions) that are subject to the rules of section 988, and contains certain other definitions and rules of general application. Section 1.988–2T provides rules governing the computation of exchange gain or loss realized on a section 988 transaction. Section 1.988–3T provides rules concerning the character of exchange gain or loss realized on a section 988 transaction. Section 1.988–4T provides rules governing the source of exchange gain or loss realized on a section 988 transaction. Section 1.988–5T provides rules concerning integrated hedging transactions.

Section 1.988–1T Certain Definitions and Special Rules

Section 1.988–1T(a) defines the term "section 988 transaction" as a disposition of nonfunctional currency (the acquisition of nonfunctional currency is treated as a section 988 transaction for purposes of establishing the taxpayer's basis in such currency) and the following transactions if any amount which the taxpayer is entitled to receive or is required to pay is denominated in terms of a nonfunctional currency or is determined by reference to the value of one or more nonfunctional currencies. The transactions referred to in the preceding sentence are:

(1) Acquiring a debt instrument or becoming the obligor under a debt instrument.

(2) Accruing, or otherwise taking into account for purposes of subtitle A of the Internal Revenue Code, any item of expense or gross income or receipts which is to be paid or received after the date on which so accrued or taken into account. Section 1.988–1T(a)(2)(ii) clarifies that an accrual of foreign taxes and a payable or receivable relating to a capital expenditure or receipt are within the meaning of the preceding sentence.

(3) Entering into or acquiring any forward contract, futures contract, option, warrant, or similar financial instrument. Section 1.988–1T(a)(2)(iii)(A) describes an important limitation on the scope of section 988. This rule provides that a forward contract, futures contract, option, warrant, or similar financial instrument is within the definition of a section 988 transaction only if the underlying property to which the instrument ultimately relates is a nonfunctional currency or is otherwise described in § 1.988–1T(a)(1)(ii). Thus, a forward contract to purchase wheat denominated in a nonfunctional currency is not a section 988 transaction because the underlying property to which the contract relates is wheat, even though payments required to be made under the contract are denominated in a nonfunctional currency. On the other hand, a forward contract to purchase a nonfunctional currency is a section 988 transaction because the underlying property to which the contract relates is a nonfunctional currency. Section 1.988–1T(a)(2)(iii)(B) provides that the term "similar financial instrument" includes a notional principal contract if the payments required to be made under the contract are determined with reference to a nonfunctional currency. Adoption of this rule results in the clarification of the character and source of gain or loss realized with respect to such contracts.

Section 1.988–1T(a) (4) and (5) implement the amendments made to section 988 by section 6130 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100–647, 102 Stat. 3342. Section 1.988–1T(a)(4)(i) provides the general rule that the term "section 988 transaction" does not include any regulated futures contract or nonequity option which would be marked to market under section 1256 if held on the last day of the taxable year. However, under § 1.988–1T(a)(4)(ii), the taxpayer may elect not to have this provision apply. The time and procedure

for making this election are set forth in § 1.988–1T(a)(4) (iii) and (iv). Section 1.988–1T(a)(5) provides special rules relating to qualified funds.

Section 1.988–1T(a)(6) provides that a transaction entered into by an individual which otherwise qualifies as a section 988 transaction shall be considered a section 988 transaction only to the extent expenses properly allocable to such transaction meet the requirements of section 162 or 212 (other than the part of section 212 dealing with expenses incurred in connection with taxes).

Section 1.988–1T(a)(7) provides rules concerning intra-taxpayer transactions. The general rule is that transactions between or among branches of the same taxpayer are not section 988 transactions. Such transactions generally are governed by the rules of section 987 and the regulations thereunder. However, exchange gain or loss is realized under section 988 upon the transfer of certain third party items to another qualified business unit of the taxpayer. See section 987 concerning the treatment of any gain or loss resulting from a remittance.

Section 1.988–1T(a)(8) provides a general anti-abuse rule which allows the Commissioner to recharacterize certain transactions if their effect is to avoid section 988. For example, a taxpayer holding an asset subject to section 988 may transfer such asset to a corporation or partnership in a transaction in which gain or loss is not recognized and subsequently sell the stock of such corporation or the interest in the partnership realizing capital gain or loss. If the Commissioner concludes that the effect of such transaction is to avoid section 988, the Commissioner may recharacterize the transaction in whole or in part as a section 988 transaction. Similarly, the Commissioner may recharacterize a transaction that otherwise would be a section 988 transaction as one that is not a section 988 transaction.

Section 1.988–1T(b) sets forth the definition of spot contract. A spot contract is a contract to buy or sell nonfunctional currency on or before two business days following the date of the execution of the contract. The operative rules regarding spot contracts are provided in § 1.988–2T(d)(1)(ii).

Section 1.988–1T(c) defines the term "nonfunctional currency" as a currency (including the European Currency Unit) other than a taxpayer's functional currency. The nonrecognition rules of section 988(c)(1)(C)(ii) are set forth in § 1.988–2T(a)(1)(iii).

Section 1.988–1T(d) defines the term "spot rate", a critical term in many of the computations required under section 988. Generally, the spot rate is the rate demonstrated to the satisfaction of the District Director which represents a fair market rate of exchange available to the public for currency under a spot contract in a free market and involving representative amounts. However, if a currency has an official government established spot rate that differs from a free market rate, the spot rate is the rate which most properly reflects the taxpayer's income. Section 1.988–1T(d)(3) in conjunction with § 1.988–2T(c) allows a taxpayer to use a spot rate convention in determining exchange gain or loss with respect to payables and receivables denominated in a nonfunctional currency so long as the method is consistent with the taxpayer's financial accounting and the payables or receivables are incurred in the ordinary course of business with respect to the acquisition or sale of goods or the obtaining or performance of services. The spot rate under the convention must be determined at intervals of one month or less. Section 1.988–1T(d)(2) requires consistency with respect to the source of market rate quotations.

Section 1.988–1T(e) sets forth the definition of "exchange gain or loss." The section 988 regulations use this term in place of the statutory terms "foreign currency gain" and "foreign currency loss" to clarify that section 988 applies to transactions denominated in the U.S. dollar if the dollar is a nonfunctional currency to the taxpayer.

Section 1.988–1T(f) defines "hyperinflationary currency" by reference to § 1.985–2T(b)(2) or its successor.

Section 1.988–1T(g) requires that in determining the fair market value of any section 988 transaction (including any transaction described in § 1.988–5T) that is marked to market (i.e., treated as sold for its fair market value), the time value of money must be taken into account where relevant.

Section 1.988–2T Recognition and Computation of Exchange Gain or Loss

Nonfunctional Currency

Section 1.988–2T(a) provides rules governing the recognition and computation of exchange gain or loss with respect to dispositions of nonfunctional currency.

Section 1.988–2T(a)(1) provides the general rule that the recognition of exchange gain or loss upon the sale or other disposition of nonfunctional currency is governed by the recognition provisions of the Code which apply to the sale or disposition of property. Pursuant to section 988(c)(1)(C)(ii), § 1.988–2T(a)(1)(iii) provides certain exceptions to this general rule.

Section 1.988–2T(a)(2)(i) provides that exchange gain realized from the sale or other disposition of nonfunctional currency is the excess of the amount realized over the adjusted basis of such currency, and that exchange loss realized is the excess of the adjusted basis of such currency over the amount realized. Section 1.988–2T(a)(2)(ii)(A) provides that the amount realized is determined under section 1001(b). Section 1.988–2T(a)(2)(ii)(B) provides a special rule where nonfunctional currency is exchanged for property. An exchange of nonfunctional currency for property (other than nonfunctional currency) is treated as an exchange of the units of nonfunctional currency for units of functional currency at the spot rate on the date of the exchange and the purchase or sale of the property for such units of functional currency.

Generally, the adjusted basis of nonfunctional currency is determined under the applicable provisions of the Internal Revenue Code (*e.g.*, sections 1011 through 1024). However, § 1.988–2T(a)(2)(iii)(B) allows a taxpayer to determine the functional currency basis of nonfunctional currency withdrawn from an account with a bank or other financial institution under any reasonable method that is consistently applied from year to year to all accounts of the taxpayer.

Section 1.988–2T(a)(2)(iv) provides a special rule for purchases and sales of publicly traded stock or securities by a cash basis taxpayer. Under this rule, the amount realized with respect to the sale of such stock or securities (determined on the trade date under section 453(k)) is computed by translating the units of nonfunctional currency received into functional currency at the spot rate on the settlement date of the sale. Similarly, the basis of stock or securities purchased is determined by translating the units of nonfunctional currency paid into functional currency at the spot rate on the settlement date of the purchase. Absent this special rule, a cash basis taxpayer would have to recognize exchange gain or loss on the payable or receivable that would arise on the trade date and end on the settlement date.

Debt Instruments

Section 1.988–2T(b) provides rules regarding the translation of interest income or expense and the determination of exchange gain or loss with respect to debt instruments. Generally, these rules follow the framework set forth in the Senate Finance Committee Report to the Tax

Reform Act of 1986, S. Rep. No. 99-313, 99th Cong., 2d Sess. 461. Section 1.988-2T(b)(1) provides a rule for the administrative convenience of both taxpayers and the Service for interest income received with respect to a nonfunctional currency denominated demand account with a bank or other financial institution. Interest income received or accrued with respect to such account is translated at the spot rate on the date received or accrued or pursuant to any reasonable spot rate convention consistently applied by the taxpayer to accounts in the same financial institution. This rule applies regardless of whether the taxpayer is a cash or an accrual method taxpayer. No exchange gain or loss is realized with respect to interest income received or accrued with respect to a demand account with a bank or other financial institution. Of course, exchange gain or loss is realized under § 1.988-2T(a) when units of nonfunctional currency received as interest are disposed of.

Section 1.988-2T(b) (2) through (8) provide the general rules applicable to debt instruments. Under § 1.988-2T(b)(2)(i), these rules only apply to debt instruments where all payments are denominated in, or determined by reference to, a single nonfunctional currency (referred to in this preamble as a "section 988 debt instrument"). Further, these rules do not apply to a contingent payment debt instrument. For purposes of section 988, a debt instrument is not considered a contingent payment debt instrument merely because some or all of the payments are denominated in, or determined by reference to, a nonfunctional currency. It is anticipated that these rules will be coordinated with temporary or final regulations issued under authority of section 1275(d) which address contingent payment debt instruments when such regulations are issued.

Section 1.988-2T(b)(2)(ii)(A) provides the general rule that interest income or expense (including original issue discount) on a section 988 debt instrument is determined in units of nonfunctional currency and translated into functional currency as provided in § 1.988-2T(b)(2)(ii) (B) and (C). Thus, a section 988 debt instrument is not considered a contingent payment instrument merely because the instrument is denominated in a nonfunctional currency. Section 1.988-2T(b)(2)(ii)(A) also provides that, for purposes of sections 483, 1273(b)(5) and 1274, the nonfunctional currency in which an instrument is denominated shall be considered money. Accordingly, section 1274 does not apply merely because a debt instrument is issued for nonfunctional currency.

Under § 1.988-2T(b)(2)(ii) (B) and (C), interest income or expense that is not required to be accrued prior to receipt or payment (*e.g.*, because the taxpayer is on the cash method of accounting and the instrument does not have any original issue discount) is translated at the spot rate on the date of receipt or payment. Since the taxpayer does not accrue such payments, there is no exchange gain or loss under section 988(c)(1)(B)(ii). Interest income or expense that is required to be accrued prior to receipt or payment (*e.g.*, under section 1272, 1281, or 163(e) or because the taxpayer is on the accrual method of accounting) is translated at the average rate for the accrual period. Under § 1.988-2T(b) (3) and (4), exchange gain or loss is realized with respect to such accrued interest income or expense. Exchange gain or loss is also realized with respect to the principal amount of a section 988 debt instrument pursuant to § 1.988-2T(b) (5) and (6) regardless of whether the taxpayer is on the cash or accrual method of accounting.

Section 1.988-2T(b)(7) provides payment ordering rules. In the case of a section 988 debt instrument that is subject to the rules of sections 163(e) or 1272 through 1288, units of nonfunctional currency received or paid are treated first as a receipt or payment of periodic interest under the principles of section 1273, second as a receipt or payment of original issue discount to the extent accrued, and finally as a receipt or payment of principal. A second ordering rule is provided for the case where original issue discount has accrued for more than one accrual period and the payment is less than the total amount accrued. Under this rule, the payment is attributed to the earliest accrual period in which original issue discount has accrued and to which prior payments have not been attributed. In the case of a section 988 debt instrument that is not subject to the rules of sections 163(e) or 1272 through 1288, section 163 or other applicable section shall determine whether payments made or received shall be treated as interest.

Section 1.988-2T(b)(8) implements the statutory "netting" rule of section 988(b) (1) and (2). See, H.R. Conf. Rep. No. 99-841, 99th Cong., 2d Sess., Vol. II, pp. 663 through 664. Under the netting rule, exchange gain or loss is recognized upon disposition of a section 988 debt instrument only to the extent of the total gain or loss recognized on the disposition. For illustrations of this rule, see Examples (3), (4) and (6) of § 1.988-2T(b)(9).

Section 1.988-2T(b)(10) provides rules concerning the treatment of amortizabled bond premium with respect to a section 988 debt instrument. Amortizable bond premium is computed in the units of nonfunctional currency in which the bond is denominated. Amortizable bond premium properly taken into account under section 171 or § 1.61-12 reduces interest income or expense in units of nonfunctional currency. In addition, exchange gain or loss is recognized with respect to such bond premium by treating the portion of the premium amortized as a return of principal.

Section 1.988-2T(b)(11) provides rules concerning the treatment of market discount with respect to a section 988 debt instrument. Accrued market discount (other than market discount currently included in income pursuant to section 1278(b)(8)) is translated into functional currency at the spot rate on the date the instrument is disposed of. No exchange gain or loss is realized because such market discount is not taken into income prior to receipt. Accrued market discount currently includible in income pursuant to section 1278(b) is translated into functional currency at the average exchange rate for the accrual period. Exchange gain or loss is realized with respect to market discount currently includible in income.

Section 1.988-2T(b)(13) provides rules requiring the recognition of exchange gain or loss by both the holder and the obligor when a section 988 debt instrument is exchanged for stock, even if the exchange otherwise would be a nonrecognition transaction. Because the sale or redemption of stock is not a section 988 transaction, taxation at the time of the exchange is necessary to prevent any exchange gain or loss inherent in the debt instrument from escaping subpart J treatment.

Section 1.988-2T(b)(14), dealing with the treatment of exchange gain or loss when nonfunctional currency debt is exchanged for debt of the same obligor, is reserved. The Service is interested in receiving comments on the appropriate tax treatment of exchange gain or loss on such transactions, including correlative adjustments to prevent double counting in the computation of bond premium or discount and discharge of indebtedness income, whether or not the exchange qualifies as a recapitalization under section 368 (a)(1)(E).

Payables and Receivables

Section 1.988–2T(c) provides rules for the realization and determination of exchange gain or loss with respect to an item described in § 1.988–1T(a) (1)(ii) and (2)(ii) (*e.g.*, payables and receivables denominated in a nonfunctional currency). Generally, exchange gain or loss is determined with respect to the movements in exchange rates between the date an item is booked and the date it is paid. Section 1.988–2T(c) (2) and (3) allows taxpayers to use a spot rate convention in determining the exchange gain or loss with respect to payables and receivables.

Forwards, Futures, and Options

Section 1.988–2T(d) provides rules for the determination of exchange gain or loss with respect to forward contracts, futures contracts and option contracts described in § 1.988–1T(a) (1)(ii) and (2)(iii) (referred to in this preamble as section 988 forward, futures, and option contracts). Section 1.988–2T(d)(1)(ii) provides that a spot contract to buy or sell nonfunctional currency is not considered a forward contract or similar transaction unless the spot contract is disposed of prior to making or taking delivery. Thus, exchange gain or loss is not recognized with respect to such contract when a taxpayer makes or takes delivery of nonfunctional currency under a spot contract. Exchange gain or loss is realized under § 1.988–2T(a) on the disposition of the units of nonfunctional currency.

Section 1.988–2T(d)(2)(i) provides that exchange gain or loss with respect to a section 988 forward, futures, or option contract is realized in accordance with the applicable realization section of the Code (*e.g.*, sections 988(c)(5), 1001, 1092, and 1256). Section 1.988–2T(d)(2)(ii) clarifies the rules regarding when an offset is considered to result in a realization event. Generally, exchange gain or loss with respect to a section 988 forward, futures, or option contract is not realized solely because such contract is offset by another contract. However, under § 1.988–2T(d)(2)(ii)(B), if the taxpayer derives, by pledge or otherwise, an economic benefit from any gain inherent in the offsetting contracts, then exchange gain shall be realized. No inference is intended by § 1.988–2T (d)(2)(ii)(B) with respect to the application of prior law to offsetting contracts where the taxpayer derives an economic benefit from any gain inherent in such contracts. Exchange gain or loss is realized with respect to certain exchange traded contracts if it is the general practice of the exchange to terminate offsetting contracts.

Section 1.988–2T(d)(2)(iv) provides that an extension of the time for making or taking delivery under a section 988 forward, futures, or option contract is a realization event. Thus, historical rate rollovers result in the realization of exchange gain or loss on the rollover date.

Exchange gain or loss with respect to a section 988 forward, futures, or option contract is determined by subtracting the amount paid (or deemed paid) for or with respect to the contract from the amount received (or deemed received) for or with respect to such contract.

The treatment of an exchange of futures for physicals is reserved. The Service solicits comments with respect to the appropriate treatment of such transactions.

Currency Swaps and Notional Principal Contracts

In general, exchange gain or loss with respect to notional principal contracts is determined in accordance with the taxpayer's method of accounting, so long as that method clearly reflects income. See generally Notice 89–21, 1989–8 I.R.B. 23. Section 1.988–2T(e)(2) provides special rules for determining exchange gain or loss with respect to currency swaps. A currency swap is defined by reference to § 1.988–5T(a)(4)(ii).

The rules governing the timing and computation of currency swap income and expense adopt many of the concepts that are applicable to debt instruments. Thus, under § 1.988–2T(e)(2)(ii)(A), the timing and computation of the periodic interim payments in a currency swap are determined by treating the taxpayer as the obligor of a hypothetical debt instrument (the obligation to make payments under the currency swap contract) and the holder of a second hypothetical debt instrument (the right to receive payments under the contract). The general rules regarding the amortization of interest and the computation of exchange gain or loss on interest apply to the hypothetical interest from such hypothetical debt instruments. These rules apply to determine the appropriate timing and computation of gain or loss and not for purposes of characterizing such gain or loss.

Under § 1.988–2T(e)(2)(iii), the general rules governing debt instruments apply for purposes of determining the amount of exchange gain or loss with respect to the currency swap principal amount. Exchange gain or loss is realized on the day the units of swap principal are exchanged (except upon an equal exchange of the swap principal amount at the commencement of the agreement at a market exchange rate). The amount of exchange gain or loss is determined by subtracting the value of the units of swap principal paid from the value of the units of swap principal received. Section 1.988–2T(e)(2)(ii)(B) treats certain prepayments as loans for purposes of section 956.

Section 1.988–2T(e)(3) provides special rules regarding the amortization of currency swap premium or discount in the case of an "off-market" currency swap. A currency swap is "off-market" if (absent the swap premium or discount) the present value of the payments to be made is not equal to the present value of the payments to be received (generally as a result of interest rate or exchange rate movements). In order for the parties to agree to enter into an off-market swap, one party usually pays to another a premium or receives a discount so that the present values of the amounts exchanged are equal. Under § 1.988–2T(e)(3)(ii)(A), a taxpayer entering into or acquiring an off-market currency swap includes that part of the swap premium or discount that relates to exchange rate movements on the date the swap principal amounts are taken into account. Under § 1.988–2T(e)(3)(ii)(B), a taxpayer entering into or acquiring an off-market currency swap amortizes that part of the swap premium or discount that relates to interest rate movements in a manner consistent with the principles of economic accrual. Under § 1.988–2T(e)(3)(iii), a taxpayer disposing of a currency swap treats any gain or loss realized as exchange gain or loss.

Section 1.988–2T(f) provides for the recharacterization of transactions described in § 1.988–1T(a)(1)(ii) where necessary to accurately reflect the economic substance of the transactions. See also § 1.861–9T(b)(1).

Section 1.988–3T Character of Exchange Gain or Loss

General Rules

The character of exchange gain or loss recognized on a section 988 transaction is governed by section 988 regardless of any other section of the Code. Under section 988, exchange gain or loss is generally characterized as ordinary gain or loss.

Special Election

Under § 1.988–3T(b)(1), a taxpayer may elect to treat any gain or loss on a section 988 forward, futures, or option contract as capital gain or loss but only if the contract is a capital asset in the

hands of the taxpayer, is not part of a straddle, and is not a regulated futures contract or nonequity option with respect to which an election under section 988(c)(1)(D)(ii) is in effect. However, if such contract becomes part of a straddle after the date of the election, the election shall be invalid with respect to gains from the contract and the Commissioner may invalidate the election with respect to losses.

Section 1.988–3T(b)(3) provides that a taxpayer makes the election by clearly identifying the transaction on its books and records on the date the transaction is entered into. No specific language or account is required but the method of identification must be consistently applied by the taxpayer and must clearly identify the transaction. A taxpayer that has made an election must verify each election as provided in § 1.988–3T(b)(4) by attaching to his income tax return a statement setting forth the information specified in such section.

Exchange Gain or Loss Treated as Interest

Generally, exchange gain or loss is not treated as interest income or expense. However, exchange gain or loss is treated as interest income or expense as provided in § 1.861–9T, § 1.988–2T(e)(2)(ii)(B), § 1.988–5T and in administrative pronouncements of the Service. Further, exchange loss realized by the holder of a nonfunctional currency tax exempt bond is treated as an offset to interest income on the bond and to that extent is not recognized.

Section 1.988–4T Source of Gain or Loss Realized on a Section 988 Transaction

Section 1.988–4T(a) provides the general rule that the source of exchange gain or loss is determined by reference to the residence of the taxpayer. Section 1.988–4T(b) provides an exception to this rule in the case of an asset, liability, or item of income or expense that is properly reflected on the books of a qualified business unit. In such case, the residence of the qualified business unit, generally the country in which the principal place of business of the qualified business unit is located, controls.

Whether an asset, liability, or item of income or expense is properly reflected on the books of a qualified business unit is a question of fact. Section 1.988–4T(b)(2)(ii) requires consistency in the taxpayer's booking practices.

Section 1.988–4T(c) provides a second exception to residence based sourcing. Exchange gain or loss that under the principles of § 1.864–4(c) arises from the conduct of a United States trade or business is sourced in the United States and treated as effectively connected to the conduct of a United States trade or business for purposes of sections 871(b) and 882(a) (1).

Residence is defined in § 1.988–4T(d). Special rules are provided in the case of a partnership formed or availed of to avoid tax by altering the source of exchange gain or loss. The source of such gain or loss is determined by reference to the residence of the partners rather than the partnership.

Section 1.988–4T(e) provides rules for certain high interest related party loans. For purposes of section 904 only, such loans are marked to market annually on the earlier of the last business day of the taxable year or the date the loan matures. Any interest income earned with respect to the loan for the taxable year is U.S. source to the extent of any notional loss attributable to the loan under paragraph (e)(1) of that section. The operation of section 988(a)(3)(C) with respect to loans between related foreign subsidiaries is reserved. The Service solicits comments with regard to the application of this rule to these transactions.

Under § 1.988–4T(f), any gain or loss realized on a section 988 transaction that is treated as interest income or expense under § 1.988–3T(c)(1) is sourced or allocated and apportioned pursuant to section 861(a)(1), 862(a) (1), or 864(e), as the case may be.

Section 1.988–5T Section 988(d) Hedging Transactions

Section 1.988–5T implements section 988(d), which provides for integrated treatment of certain hedging transactions. Section 1.988–5T(a) provides for the integration of a hedge with a nonfunctional currency debt instrument. Section 1.988–5T(b) provides for the integration of a hedge with an executory contract. Section 1.988–5T(c) provides integration rules for cash basis taxpayers that hedge exchange rate exposure on stock transactions between the trade date and the settlement date.

Integrated Financial Transactions

Section 1.988–5T(a) permits integrated treatment only for a qualifying debt instrument, defined in § 1.988–5T(a) (3), and certain hedges, defined in § 1.988–5T(a)(4). A qualifying debt instrument is a debt instrument defined in § 1.988–2T(b)(2)(i) and does not include accounts payable, accounts receivable or similar items. The hedges that qualify for integrated treatment are certain spot contracts, futures contracts, forward contracts, series or combinations thereof, or a currency swap contract.

Section 1.988–5T(a) (4) requires that the hedge mature on or before the date the debt instrument matures and that the hedge permit the calculation of a yield to maturity in the currency in which the integrated debt instrument is denominated.

Section 1.988–5T(a)(4)(ii) defines a currency swap contract as a contract involving two different currencies between two or more parties to exchange periodic interim payments on or prior to maturity of the contract and to exchange the swap principal amount upon maturity of the contract. A currency swap contract may also require an exchange of the swap principal amount upon commencement of the agreement. Under § 1.988–5T (a)(4)(iii), the currency swap contract must clearly set forth certain essential terms of the contract; otherwise the Commissioner may defer any income, deduction, gain or loss with respect to the contract until its termination. A taxpayer may apply this definition of currency swap contract in lieu of the definition of swap agreement in section 2(e)(5) of Notice 87–11, 1987–1 C.B. 423, to transactions entered into after December 31, 1986.

Sections 1.988–5T(a)(2), (5), and (8) impose certain conditions on the availability of integrated treatment. Section 1.988–5T(a)(2) denies integrated treatment where the resulting synthetic asset or liability would be denominated in a currency whose interest rate is at least 20 percentage points higher than the Federal short term rate (generally, such currencies include hyperinflationary currencies) on the date the taxpayer identifies the transaction as a qualified hedging transaction.

Among other conditions imposed by § 1.988–5T(a)(5), § 1.988–5T(a)(5)(i) requires that all nonfunctional currency payments must be fully hedged. Section 1.988–5T (a)(5)(ii) requires that the hedge be entered on the date the transaction is identified as a qualified hedging transaction. None of the parties to the hedge can be related. Both the qualifyng debt instrument and the hedge must be entered into by the same individual, partnership, trust, estate, or corporation. Section 1.988–5T(a)(8)(i) requires that a taxpayer establish a separate account in which to enter certain information relating to debt instruments and hedges that are integrated.

Section 1.988–5T(a)(8)(ii) authorizes the Commissioner to treat a debt instrument and a hedge as integrated if he concludes that the debt instrument and the hedge are, in substance, a qualified hedging transaction. This

authority exists regardless of whether the requirements for integrated treatment are complied with, or whether the qualifying debt instrument and the hedge are held by the same taxpayer. At the discretion of the Commissioner, section 1.988–5T(a)(7) denies integrated treatment to a debt instrument if it is part of a straddle as defined in section 1092(c) prior to the satisfaction of the identification requirements.

Section 1.988–5T(a)(6) contains special rules for "legging in" and "legging out" of integrated treatment. Legging in occurs when the hedge is entered into after the date the debt instrument is entered into or acquired. In such case, § 1.988–5T(a)(6)(i) provides that the gain or loss inherent in the debt instrument at the time of legging in must be realized on that date and recognized on the date that the qualifying debt instrument matures or is otherwise disposed of. Legging out occurs when the debt instrument or hedge receiving integrated treatment is disposed of prior to the maturity of the synthetic debt instrument. In such case, § 1.988–5T(a)(6)(ii) provides that gain or loss on the instrument that was not disposed of is realized and recognized at the time of legging out. The spot rate on that date is used to compute exchange gain or loss on the remaining instrument upon its disposition.

The income tax effects of integrated treatment are detailed in § 1.988–5T(a)(9). If a debt instrument and a hedge qualify for integrated treatment, the two are treated as a single synthetic debt instrument that is subject to the original issue discount provisions of sections 1272 through 1288 and 163(e), to the extent applicable. Section 1.9885–T(a)(9)(ii) describes the denomination, maturity, accrual period, issue price, and stated redemption price at maturity of the synthetic debt instrument. If the synthetic debt instrument is denominated in a nonfunctional currency, exchange gain or loss is computed on the synthetic debt instrument in accordance with the general rules for debt instruments. For the period the debt instrument and the hedge are integrated, by operation of § 1.988–5T(a)(1), no exchange gain or loss is recognized independently on either the debt instrument or the hedge, and by operation of § 1.988–5T(a)(9)(i)(A) neither the debt instrument nor the hedge are subject to section 263(g), 1092 or 1256.

Under § 1.988–5T(a)(9)(iii), the source of interest income from the synthetic debt instrument is determined by reference to the source of income under sections 861(a)(1) and 862(a)(1) from the debt instrument. The character for purposes of section 904 also is determined by reference to the character of the debt instrument. Interest expense from a synthetic debt instrument is allocated and apportioned under § 1.861–8T to –12T, and, if applicable, § 1.882–5.

Hedged Executory Contracts

Section 1.988–5T(b) provides integrated treatment of an executory contract and a hedge. An executory contract is defined in § 1.988–5T(b)(2)(ii), and generally is an agreement for the purchase or sale of property or the performance or receipt of a service in the future. Section 1.988–5T(b)(2)(ii)(B) excludes section 988 transactions from the definition of an executory contract.

Section 1.988–5T(b)(2)(iii)(A) defines a hedge as a deposit of nonfunctional currency in a separate account with a bank or other financial institution, and certain forward or futures contracts, that reduce the risk of exchange rate fluctuations by reference to the taxpayer's functional currency with respect to payments made or received under an executory contract.

Integrated treatment is accorded only if the executory contract is hedged in whole or in part through the accrual date. The accrual date is the date when an item of income or expense (including a capital expenditure) that relates to an executory contract is required to be accrued under the taxpayer's method of accounting. Section 1.988–5T(b)(2)(iii)(B) permits hedging with a series of hedges, and § 1.988–5T(b)(2)(iii)(C) provides analogous rules for historical rate rollovers. Because the amount taken into account under the executory contract must be fixed on the accrual date in terms of functional currency, § 1.988–5T(b)(2)(iii)(D) provides that interest on a deposit of nonfunctional currency is considered part of a hedge only if it accrues on or before the accrual date. The definition of "hedged executory contract" in § 1.988–5T(b)(2)(i) and the identification rules in § 1.988–5T(b)(3) contain further conditions to integrated treatment that are analogous to those of § 1.988–5T(a).

Section 1.988–5T(b)(4)(i) explains that the effect of integrated treatment of an executory contract and a hedge is to treat amounts paid or received under the hedge as paid or received under the executory contract, or, if the hedge extends after the accrual date, under the subsequent account payable or receivable. No exchange gain or loss is recognized on the hedge or on a subsequent account payable or receivable for the period covered by the hedge. Section 1.988–5T(b)(4)(v) provides that sections 263(g), 1092, and 1256 do not apply to the portion of an executory contract and a hedge that receive integrated treatment. If the executory contract is partially hedged, § 1.988–5T(b)(4)(ii) applies the general rules governing exchange gain or loss to the unhedged portion of the executory contract or subsequent payable or receivable.

Under § 1.988–5T(b)(4)(iii), if the taxpayer disposes of the executory contract prior to the accrual date, the hedge is treated as sold for fair market value on such date and any gain or loss is realized. If the hedge is disposed of prior to the accrual date, any gain or loss from the hedge is not recognized and is an adjustment to the inclusion, deduction, or basis under the executory contract. Section 1.988–5T(b)(4)(iv) provides that, upon legging out of the hedge on or after the accrual date, no gain or loss is recognized on the hedge and the booking date of the payable or receivable for purposes of computing exchange gain or loss on such payable or receivable is reset to the date the hedge is disposed of.

Hedges of Period Between Trade Date and Settlement Date

Section 1.988–5T(c) offers integrated treatment roughly paralleling the above described rules in the case of a cash basis taxpayer who hedges exchange rate exposure between the trade date and the settlement date on trades of certain stocks or securities.

Mark-to-Market Method of Accounting

The Service is contemplating adoption of a mark-to-market method of accounting for dealers in nonfunctional currency denominated financial products. The Service solicits comments on the scope and methodology of such a method, and whether such method should be applicable to taxpayers other than dealers.

Treatment of Unrealized Exchange Gain or Loss in Certain Nonrecognition Transactions

The Service is studying the issue of how to account for unrealized exchange gain or loss with respect to nonfunctional currency or any section 988 transaction that loses its character as such after certain nonrecognition transactions; for example, a liquidation of a wholly-owned foreign corporation with a nondollar functional currency and with U.S. dollar denominated financial assets into its U.S. parent.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Jeffrey Dorfman with the assistance of Charles T. Plambeck in developing and drafting the rules regarding notional principal contracts and integrated hedging transactions, and of Barbara A. Felker in developing and drafting the rules regarding nonfunctional currency debt exchanged for stock or other securities. Messrs. Dorfman and Plambeck and Ms. Felker are of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861–1 Through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Income Tax Regulations

26 CFR PART 1

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

Authority: 26 U.S.C. 7805. * * * Sections 1.988–OT through 1.988–5T also issued under 26 U.S.C. 988. * * *

Par. 2. Section 1.267(f)–1T(h) is revised to read as follows:

§ 1.267(f)–1T Temporary regulation for deferring certain losses of controlled groups.

* * * * *

(h) *Treatment of a creditor with respect to a loan in nonfunctional currency.* Section 267(a)(1) and (f)(2) shall not apply to an exchange loss realized with respect to a loan of nonfunctional currency if—

(1) The loss is realized by a member with respect to nonfunctional currency loaned to another member;

(2) The loan is described in paragraph (b)(2)(i) of this section;

(3) The loan is not in a hyperinflationary currency as defined in § 1.988–1T(f); and

(4) The transaction does not have as a significant purpose the avoidance of federal income tax.

This section is effective for transactions entered into after September 21, 1989.

Par. 3. New §§ 1.988–OT through 1.988–5T are added to read as follows:

§ 1.988–OT Taxation of gain or loss from a section 988 transaction; Table of Contents (Temporary regulations).

This section lists captioned paragraphs contained in §§ 1.988–OT through 1.988–5T, temporary regulations under section 988 of the Internal Revenue Code.

§ 1.988–1T Certain definitions and special rules (Temporary regulations).

(a) Section 988 transaction.
(1) In general.
(2) Description of transactions.
(3) Examples.
(4) Special rules for regulated futures contracts and non-equity options.
(5) Special rules for qualified funds.
(6) Exception for certain transactions entered into by an individual.
(7) Intra-taxpayer transactions.
(8) Transactions having the effect of avoiding section 988.
(b) Spot contract.
(c) Nonfunctional currency.
(d) Spot rate.
(1) In general.
(2) Consistency required in valuing transactions subject to section 988.
(3) Use of certain spot rate conventions for payables and receivables denominated in nonfunctional currency.
(4) Currency where an official government established rate differs from a free market rate.
(e) Exchange gain or loss.
(f) Hyperinflationary currency.
(g) Fair market value.
(h) Interaction with sections 1092 and 1256 in examples.
(i) Effective date.

§ 1.988–2T Recognition and computation of exchange gain or loss (Temporary regulations).

(a) Disposition of nonfunctional currency.
(1) Recognition of exchange gain or loss.
(2) Computation of exchange gain or loss.
(b) Translation of interest income or expense and determination of exchange gain or loss with respect to debt instruments.
(1) Translation of interest income received with respect to a nonfunctional currency demand account.
(2) Translation of nonfunctional currency interest income or expense received or paid with respect to a debt instrument described in § 1.988–1T(a)(1)(ii) and (2)(i).
(3) Exchange gain or loss recognized by the holder with respect to accrued interest income.
(4) Exchange gain or loss recognized by the obligor with respect to accrued interest expense.
(5) Exchange gain or loss recognized by the holder of a debt instrument with respect to principal.
(6) Exchange gain or loss recognized by the obligor of a debt instrument with respect to principal.
(7) Payment ordering rules.
(8) Limitation of exchange gain or loss on payment or disposition of a debt instrument.
(9) Examples.
(10) Treatment of bond premium.
(11) Market discount.
(12) Tax exempt bonds.
(13) Nonfunctional currency debt exchanged for stock of obligor.
(14) Nonfunctional currency debt exchanged for debt of obligor.
(15) Debt instruments (or demand accounts) issued in hyperinflationary currencies.
(16) Debt instruments denominated in more than one currency.
(17) Contingent payment bonds denominated in a nonfunctional currency.
(18) Coordination with installment sale rules of section 453.
(19) Coordination with section 267 regarding debt instruments.
(c) Item of expense or gross income or receipts which is to be paid or received after the date accrued.
(1) In general.
(2) Determination of exchange gain or loss with respect to an item of gross income or receipts.
(3) Determination of exchange gain or loss with respect to an item of expense.
(4) Examples.
(d) Exchange gain or loss with respect to forward contracts, futures contracts and option contracts.
(1) Scope.
(2) Realization of exchange gain or loss.
(3) Recognition of exchange gain or loss.
(4) Determination of exchange gain or loss.
(e) Currency swaps and notional principal contracts.
(1) Realization and recognition of exchange gain or loss.
(2) Special rules for currency swaps.
(3) Amortization of swap premium or discount in the case of off market swaps.
(4) Treatment of taxpayer disposing of a currency swap.
(5) Examples.
(6) Special effective date for rules regarding currency swaps.
(f) Substance over form.
(g) Effective date.

§ 1.988–3T Character of exchange gain or loss (Temporary regulations).

(a) In general.
(b) Election to characterize exchange gain or loss on certain identified forward

§ 1.988–1T Certain definitions and special rules (Temporary regulations).

(a) *Section 988 transaction*—(1) *In general.* The term "section 988 transaction" means any of the following transactions—

(i) A disposition of nonfunctional currency as defined in paragraph (c) of this section;

(ii) Any transaction described in paragraph (a)(2) of this section if any amount which the taxpayer is entitled to receive or is required to pay by reason of such transaction is denominated in terms of a nonfunctional currency or is determined by reference to the value of one or more nonfunctional currencies. A transaction described in this paragraph (a) need not require or permit payment with a nonfunctional currency as long as any amount paid or received is determined by reference to the value of one or more nonfunctional currencies. The acquisition of nonfunctional currency is treated as a section 988 transaction for purposes of establishing the taxpayer's basis in such currency and determining exchange gain or loss thereon.

(2) *Description of transactions.* The following transactions are described in this paragraph (a)(2).

(i) *Debt instruments.* Acquiring a debt instrument or becoming an obligor under a debt instrument. The term "debt instrument" means a bond, debenture, note, certificate or other evidence of indebtedness.

(ii) *Payables, receivables, etc.* Accruing, or otherwise taking into account for purposes of subtitle A of the Internal Revenue Code, any item of expense or gross income or receipts which is to be paid or received after the date on which so accrued or taken into account. An accrual of foreign taxes (whether or not such taxes are claimed as a credit under section 901) and a payable or receivable relating to a capital expenditure or receipt are within the meaning of the preceding sentence.

(iii) *Forward contract, futures contract, option contract, or similar financial instrument.* Except as otherwise provided in this paragraph (a)(2)(iii) and paragraph (a)(4)(i) of this section, entering into or acquiring any forward contract, futures contract, option, warrant, or similar financial instrument.

(A) *Limitation for certain derivative instruments.* A forward contract, futures contract, option, warrant, or similar financial instrument is within this paragraph (a)(2)(iii) only if the underlying property to which the instrument ultimately relates is a nonfunctional currency or is otherwise described in paragraph (a)(1)(ii) of this section. Thus, if the underlying property of an instrument is another financial instrument (*e.g.*, an option on a futures contract), then the underlying property to which such other instrument (*e.g.*, the futures contract) ultimately relates must be a nonfunctional currency. For example, a forward contract to purchase wheat denominated in a nonfunctional currency, an option to enter into a forward contract to purchase wheat denominated in a nonfunctional currency, or a warrant to purchase stock denominated in a nonfunctional currency is not described in this paragraph (a)(2)(iii). On the other hand, a forward contract to purchase a nonfunctional currency, an option to enter into a forward contract to purchase a nonfunctional currency, an option to purchase a bond denominated in or the payments of which are determined by reference to the value of a nonfunctional currency, or a warrant to purchase a nonfunctional currency is described in this paragraph (a)(2)(iii).

(B) *Nonfunctional currency notional principal contracts*—(*1*) *In general.* The term "similar financial instrument" includes a notional principal contract only if the payments required to be made or received under the contract are determined with reference to a nonfunctional currency.

(*2*) *Definition of notional principal contract.* The term "notional principal contract" means an interest rate swap, cap, floor, collar, or similar financial instrument that provides for the payment of amounts by one party to another at specified intervals measured by interest rates and notional principal amounts in exchange for specified consideration or a promise to pay similar amounts. For this purpose, the term "notional principal contract" also includes a currency swap as defined in § 1.988–5T(a)(4)(ii).

(C) *Effective date with respect to certain contracts.* This paragraph (a)(2)(iii) does not apply to any forward contract, futures contract, option, warrant, or similar financial instrument entered into or acquired on or before October 21, 1988, if such instrument would have been marked to market under section 1256 if held on the last day of the taxable year.

(3) *Examples.* The following examples illustrate the application of paragraphs (a) (1) and (2) of this section. The examples assume that X is a U.S. corporation on an accrual method with the calendar year as its taxable year. Because X is a U.S. corporation the U.S. dollar is its functional currency under section 985. The examples also assume that section 988(d) does not apply.

Example (1). On January 1, 1989, X acquires 10,000 Canadian dollars. On January 15, 1989, X uses the 10,000 Canadian dollars to purchase inventory. The acquisition of the 10,000 Canadian dollars is a section 988 transaction for purposes of establishing X's basis in such Canadian dollars. The disposition of the 10,000 Canadian dollars is a section 988 transaction pursuant to paragraph (a)(1) of this section.

Example (2). On January 1, 1989, X acquires 10,000 Canadian dollars. On January 15, 1989,

X converts the 10,000 Canadian dollars to U.S. dollars. The acquisition of the 10,000 Canadian dollars is a section 988 transaction for purposes of establishing X's basis in such Canadian dollars. The conversion of the 10,000 Canadian dollars to U.S. dollars is a section 988 transaction pursuant to paragraph (a)(1) of this section.

Example (3). On January 1, 1989, X borrows 100,000 British pounds (£) for a period of 10 years and issues a note to the lender with a face amount of £100,000. The note provides for payments of interest at an annual rate of 10% paid quarterly in pounds and has a stated redemption price at maturity of £100,000. X's becoming the obligor under the note is a section 988 transaction pursuant to paragraphs (a) (1)(ii) and (2)(i) of this section. Because X is an accrual basis taxpayer, the accrual of interest expense under X's note is a section 988 transaction pursuant to paragraphs (a) (1)(ii) and (2)(ii) of this section. In addition, the acquisition of the British pounds to make payments under the note is a section 988 transaction for purposes of establishing X's basis in such pounds, and the disposition of such pounds is a section 988 transaction under subdivision (a)(1)(i) of this section. See § 1.988–2T(b) with respect to the translation of accrued interest expense and the determination of exchange gain or loss upon payment of accrued interest expense.

Example (4). On January 1, 1989, X purchases at original issue for 74,621.54 British pounds (£) a 3-year bond maturing on December 31, 1991, at a stated redemption price of £100,000. The bond provides for no stated interest. The bond has a yield to maturity of 10% compounded semiannually and has £25,378.46 of original issue discount. The acquisition of the bond is a section 988 transaction as provided in paragraphs (a) (1)(ii) and (2)(i) of this section. The accrual of original issue discount with respect to the bond is a section 988 transaction under paragraphs (a) (1)(ii) and (2)(ii) of this section. See § 1.988–2T(b) with respect to the translation of original issue discount and the determination of exchange gain or loss upon receipt of such amounts.

Example (5). On January 1, 1989, X sells and delivers inventory to Y for 10,000,000 Italian lira for payment on April 1, 1989. Under X's method of accounting, January 1, 1989 is the accrual date. Because X is an accrual basis taxpayer, the accrual of a nonfunctional currency denominated item of gross receipts on January 1, 1989, for payment after the date of accrual is a section 988 transaction under paragraphs (a) (1)(ii) and (2)(ii) of this section.

Example (6). On January 1, 1989, X agrees to purchase a machine from Y for delivery on March 1, 1990 for 1,000,000 yen. The agreement calls for X to pay Y for the machine on June 1, 1990. Under X's method of accounting, the expenditure for the machine does not accrue until delivery on March 1, 1990. The agreement to purchase the machine is not a section 988 transaction. In particular, the agreement to purchase the machine is not described in paragraph (a)(2)(ii) of this section because the agreement is not an item of expense taken into account under subtitle A (but rather is an agreement to purchase a capital asset in the future). However, the payable that will arise on the delivery date is a section 988 transaction under paragraphs (a) (1)(ii) and (2)(ii) of this section even though the payable relates to a capital expenditure. In addition, the disposition of yen to satisfy the payable on June 1, 1990, is a section 988 transaction under paragraph (a)(1)(i) of this section.

Example (7). On January 1, 1989, X purchases and takes delivery of inventory for 10,000 French francs with payment to be made on April 1, 1989. Under X's method of accounting, the expense accrues on January 1, 1989. On January 1, 1989, X also enters into a forward contract with a bank to purchase 10,000 French francs for $2,000 on April 1, 1989. Because X is an accrual basis taxpayer, the accrual of a nonfunctional currency denominated item of expense on January 1, 1989, for payment after the date of accrual is a section 988 transaction under paragraphs (a) (1)(ii) and (2)(ii) of this section. Entering into the forward contract to purchase the 10,000 French francs is a section 988 transaction under paragraphs (a) (1)(ii) and (2)(iii) of this section.

Example (8). On January 1, 1989, X acquires 100,000 Norwegian krone. On January 15, 1989, X purchases and takes delivery of 1,000 shares of common stock with the 100,000 krone acquired on January 1, 1989. On August 1, 1989, X sells the 1,000 shares of common stock and receives 120,000 krone in payment. On August 30, 1989, X converts the 120,000 krone to U.S. dollars. The acquisition of the 100,000 krone on January 1, 1989, and the acquisition of the 120,000 krone on August 30, 1989, are section 988 transactions for purposes of establishing the basis of such krone. The disposition of the 100,000 krone on January 15, 1989, and the 120,000 krone on August 30, 1989, are section 988 transactions as provided in paragraph (a)(1)(i) of this section. Neither the acquisition on January 15, 1989, nor the disposition on August 1, 1989, of the stock is a section 988 transaction.

Example (9). On January 1, 1989, X issues a 3-year bond with an issue price of 7,260 Australian dollars (equal to U.S. $5,000 translated at the spot rate on the issue date). The instrument bears interest on the U.S. dollar equivalent principal amount (*i.e.*, U.S. $5,000) at 15 percent per year payable semiannually in U.S. dollars. The stated redemption price at maturity is 7,260 Australian dollars. With respect to X, this transaction is a section 988 transaction because the principal is payable in nonfunctional currency. Further, the result would be the same if the principal were payable in U.S. dollars in an amount determined by multiplying 7,260 Australian dollars by the U.S. dollar spot rate on the maturity date.

Example (10). On May 11, 1989, X purchases a one year note at original issue for its issue price of $1,000. The note pays interest in dollars at the rate of 4 percent compounded semiannually. The amount of principal received by X upon maturity is equal to $1,000 plus the equivalent of the excess, if any, of (a) the Financial Times One Hundred Stock Index (an index of stocks traded on the London Stock Exchange hereafter referred to as the FT100) determined and translated into dollars on the last business day prior to the maturity date, over (b) £2,150, the "stated value" of the FT100, which is equal to 110% of the average value of the index for the six months prior to the issue date, translated at the exchange rate of £1=$1.50. The purchase by X of the instrument described above is not a section 988 transaction because the index used to compute the principal amount received upon maturity is determined with reference to the value of stock and not nonfunctional currency.

Example (11). On April 9, 1989, X enters into an interest rate swap that provides for the payment of amounts by X to its counterparty based on 4% of a 10,000 yen principal amount in exchange for amounts based on yen LIBOR rates. Pursuant to paragraphs (a)(1) (ii) and (iii) of this section, this yen for yen interest rate swap is a section 988 transaction.

(4) *Special rules for regulated futures contracts and non-equity options*—(i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, paragraph (a)(2)(iii) of this section shall not apply to any regulated futures contract or non-equity option which would be marked to market under section 1256 if held on the last day of the taxable year.

(ii) *Election to have paragraph (a)(2)(iii) of this section apply.* Notwithstanding paragraph (a)(4)(i) of this section, a taxpayer may elect to have paragraph (a)(2)(iii) of this section apply to regulated futures contracts and non-equity options as provided in paragraph (a)(4) (iii) and (iv) of this section.

(iii) *Procedure for making the election.* A taxpayer shall make the election provided in paragraph (a)(4)(ii) of this section by sending to the Internal Revenue Service Center, Examination Branch, Stop Number 92, Kansas City, MO 64999 a statement titled "ELECTION TO TREAT REGULATED FUTURES CONTRACTS AND NON-EQUITY OPTIONS AS SECTION 988 TRANSACTIONS UNDER SECTION 988(c)(1)(D)(ii)" that contains the following:

(A) The taxpayer's name, address, and taxpayer identification number;

(B) The date the notice is mailed or otherwise delivered to the Internal Revenue Service Center;

(C) A statement that the taxpayer (including all members of such person's affiliated group as defined in section 1504 or in the case of an individual all persons filing a joint return with such individual) elects to have section 988(c)(1)(D)(i) and § 1.988–1T(a)(4)(i) not apply;

(D) The date of the beginning of the taxable year for which the election is being made;

(E) If the election is filed after the first day of the taxable year, a statement regarding whether the taxpayer has previously held a contract described in section 988(c)(1)(D)(i) or § 1.988–1T(a)(4)(i) during such taxable year, and if so, the first date during the taxable year on which such contract was held; and

(F) The signature of the person making the election (in the case of individuals filing a joint return, the signature of all persons filing such return).

The election shall be made by the following persons: in the case of an individual, by such individual; in the case of a partnership, by each partner separately; in the case of an S corporation, by each shareholder separately; in the case of a trust (other than a grantor trust) or estate, by the fiduciary of such trust or estate; in the case of any corporation other than an S corporation, by such corporation; in the case of a controlled foreign corporation, by its controlling United States shareholders under § 1.964–1(c)(3). With respect to a corporation (other than an S corporation), the election shall be binding on all members of such corporation's affiliated group as defined in section 1504. The election shall be binding on any income or loss derived from all contracts described in section 988(c)(1)(D)(i) or paragraph (a)(4)(i) of this section in which the taxpayer holds a direct interest or indirect interest through a partnership or S corporation; however, the election shall not apply to any income or loss of a partnership for any taxable year if such partnership made an election under section 988(c)(1)(E)(iii)(V) for such year or any preceding year. Generally, a copy of the election must be attached to the taxpayer's income tax return for the first year it is effective. It is not required to be attached to subsequent returns. However, in the case of a partner, a copy of the election must be attached to the taxpayer's income tax return for every year during which the taxpayer is a partner in a partnership that engages in a transaction that is subject to the election.

(iv) *Time for making the election*—(A) *In general.* Unless the requirements for making a late election described in paragraph (a)(4)(iv)(B) of this section are satisfied, an election under section 988(c)(1)(D)(ii) and paragraph (a)(4)(ii) of this section for any taxable year shall be made on or before the first day of the taxable year or, if later, on or before the first day during such taxable year on which the taxpayer holds a contract described in section 988(c)(1)(D)(ii) and paragraph (a)(4)(ii) of this section. The election under section 988(c)(1)(D)(ii) and paragraph (a)(4)(ii) of this section shall apply to contracts entered into or acquired after October 21, 1988, and held on or after the effective date of the election. The election shall be effective as of the beginning of the taxable year and shall be binding with respect to all succeeding taxable years unless revoked with the prior consent of the Commissioner. In determining whether to grant revocation of the election, recapture of the tax benefit derived from the election in previous taxable years will be considered.

(B) *Late elections.* A taxpayer may make an election under section 988(c)(1)(D)(ii) and paragraph (a)(4)(ii) of this section within 30 days after the time prescribed in the first sentence of paragraph (a)(4)(iv)(A) of this section. Such a late election shall be effective as of the beginning of the taxable year; however, any losses recognized during the taxable year with respect to contracts described in section 988(c)(1)(D)(ii) or paragraph (a)(4)(ii) of this section which were entered into or acquired after October 21, 1988, and held on or before the date on which the late election is mailed or otherwise delivered to the Internal Revenue Service Center shall not be treated as derived from a section 988 transaction. A late election must comply with the procedures set forth in paragraph (a)(4)(iii) of this section.

(v) *Transition rule.* An election made prior to September 21, 1989, which satisfied the requirements of Notice 88–124, 1988–51 I.R.B. 6, shall be deemed to satisfy the requirements of paragraphs (a)(4) (iii) and (iv) of this section.

(vi) *General effective date provision.* This paragraph (a)(4) shall apply with respect to futures contracts and options entered into or acquired after October 21, 1988.

(5) *Special rules for qualified funds*—(i) *Definition of qualified fund.* The term "qualified fund" means any partnership if—

(A) At all times during the taxable year (and during each preceding taxable year to which an election under section 988(c)(1)(E)(iii)(V) applied) such partnership has at least 20 partners and no single partner owns more than 20 percent of the interests in the capital or profits of the partnership;

(B) The principal activity of such partnership for such taxable year (and each such preceding taxable year) consists of buying and selling options, futures, or forwards with respect to commodities;

(C) At least 90 percent of the gross income of the partnership for the taxable year (and each such preceding year) consists of income or gains described in subparagraph (A), (B), or (G) of section 7704(d)(1) or gain from the sale or disposition of capital assets held for the production of interest or dividends;

(D) No more than a de minimis amount of the gross income of the partnership for the taxable year (and each such preceding taxable year) was derived from buying and selling commodities; and

(E) An election under section 988(c)(1)(E)(iii)(V) as provided in paragraph (a)(5)(iv) of this section applies to the taxable year.

(ii) *Special rules relating to paragraph (a)(5)(i)(A) of this section*—(A) *Certain general partners.* The interest of a general partner in the partnership shall not be treated as failing to meet the 20 percent ownership requirement of paragraph (a)(5)(i)(A) of this section for any taxable year of the partnership if, for the taxable year of the partner in which such partnership's taxable year ends, such partner (and each corporation filing a consolidated return with such partner) had no ordinary income or loss from a section 988 transaction (other than income from the partnership) which is foreign currency gain or loss (as the case may be).

(B) *Treatment of incentive compensation.* For purposes of paragraph (a)(5)(i)(A) of this section, any income allocable to a general partner as incentive compensation based on profits rather than capital shall not be taken into account in determining such partner's interest in the profits of the partnership.

(C) *Treatment of tax exempt partners*—(*1*) *In general.* The interest of a partner in the partnership shall not be treated as failing to meet the 20 percent ownership requirements of paragraph (a)(5)(i)(A) of this section if none of the income of such partner from such partnership is subject to tax under Chapter 1 of Subtitle A of the Internal Revenue Code (whether directly or through one or more pass-through entities).

(*2*) *Exceptions.* [Reserved]

(D) *Look-through rule*—(*1*) *In general.* In determining whether the 20% ownership requirement of paragraph (a)(5)(i)(A) of this section is met with respect to any partnership, any interest in such partnership held by another partnership shall be treated as held proportionately by the partners in such other partnership.

(*2*) *Exceptions.* [Reserved]

(iii) *Other special rules*—(A) *Related persons.* Interests in the partnership

held by persons related to each other (within the meaning of section 267(b) or 707(b)) shall be treated as held by one person.

(B) *Predecessors.* Reference to any partnership shall include a reference to any predecessor thereof.

(C) *Inadvertent terminations.* [Reserved]

(D) *Treatment of certain debt instruments.* Solely for purposes of paragraph (a)(5)(i)(D) of this section, any debt instrument which is described in both paragraph (a)(1)(ii) and (2)(i) of this section shall be treated as a commodity.

(iv) *Procedure for making the election provided in section 988(c)(1)(E)(iii)(V).* A partnership shall make the election provided in section 988(c)(1)(E)(iii)(V) by sending to the Internal Revenue Service Center, Examination Branch, Stop Number 92, Kansas City, MO 64999 a statement titled "QUALIFIED FUND ELECTION UNDER SECTION 988(c)(1)(E)(iii)(V)" that contains the following:

(A) The partnership's name, address, and taxpayer identification number;

(B) The name, address and taxpayer identification number of the general partner making the election on behalf of the partnership;

(C) The date the notice is mailed or otherwise delivered to the Internal Revenue Service Center;

(D) A brief description of the activity of the partnership;

(E) A statement that the partnership is making the election provided in section 988(c)(1)(E)(iii)(V);

(F) The date of the beginning of the taxable year for which the election is being made;

(G) If the election is filed after the first day of the taxable year, then a statement regarding whether the partnership previously held an instrument referred to in section 988 (c)(1) (E)(i) during such taxable year and, if so, the first date during the taxable year on which such contract was held; and

(H) The signature of the general partner making the election.

The election shall be made by a general partner with management responsibility of the partnership's activities and a copy of such election shall be attached to the partnership's income tax return (Form 1065) for the first taxable year it is effective. It is not required to be attached to subsequent returns.

(v) *Time for making the election.* The election under section 988 (c)(1)(E)(iii)(V) for any taxable year shall be made on or before the first day of the taxable year or, if later, on or before the first day during such year on which the partnership holds an instrument described in section 988 (c)(1)(E)(i). The election under section 988 (c)(1)(E)(iii)(V) shall apply to the taxable year for which made and all succeeding taxable years. Such election may only be revoked with the consent of the Commissioner. In determining whether to grant revocation of the election, recapture by the partners of the tax benefit derived from the election in previous taxable years will be considered.

(vi) *Operative rules applicable to qualified funds*—(A) *In general*—(*1*) *Contracts included.* In the case of a qualified fund, any forward contract or any foreign currency futures contract traded on a foreign exchange which is not otherwise a section 1256 contract shall be treated as a section 1256 contract for purposes of section 1256.

(*2*) *Similar instruments to which paragraph (a)(5)(vi)(A) of this section applies.* [Reserved]

(*3*) *Exceptions to the rule of paragraph (a)(5)(vi)(A) of this section.* [Reserved]

(B) *Gains and losses treated as short-term.* In the case of any instrument treated as a section 1256 contract under paragraph (a)(5)(vi)(A) of this section, subparagraph (A) of section 1256 (a)(3) shall be applied by substituting "100 percent" for "40 percent" (and subparagraph (B) of such section shall not apply).

(vii) *Transition rule.* An election made prior to September 21, 1989, which satisfied the requirements of Notice 88–124, 1988–51 I.R.B. 6, shall be deemed to satisfy the requirements of § 1.988–1T(a)(5)(iv) and (v).

(viii) *General effective date rules*—(A) The requirements of subclause (IV) of section 988 (c)(1)(E)(iii) shall not apply to contracts entered into or acquired before October 21, 1988.

(B) In the case of any partner in an existing partnership, the 20 percent ownership requirements of subclause (I) of section 988 (c)(1)(E)(iii) shall be treated as met during any period during which such partner does not own a percentage interest in the capital or profits of such partnership greater than 33⅓ percent (or, if lower, the lowest such percentage interest of such partner during any period after October 21, 1988, during which such partnership is in existence). For purposes of the preceding sentence, the term "existing partnership" means any partnership if—

(*1*) Such partnership was in existence on October 21, 1988, and principally engaged on such date in buying and selling options, futures, or forwards with respect to commodities, or

(*2*) A registration statement was filed with respect to such partnership with the Securities and Exchange Commission on or before such date and such registration statement indicated that the principal activity of such partnership will consist of buying and selling instruments referred to in paragraph (a)(5)(viii)(B)(*1*) of this section.

(6) *Exception for certain transactions entered into by an individual*—(i) *In general.* A transaction entered into by an individual which otherwise qualifies as a section 988 transaction shall be considered a section 988 transaction only to the extent expenses properly allocable to such transaction meet the requirements of section 162 or 212 (other than the part of section 212 dealing with expenses incurred in connection with taxes).

(ii) *Examples.* The following examples illustrate the application of paragraph (a)(6) of this section.

Example (1). X is a U.S. citizen who therefore has the U.S. dollar as his functional currency. On January 1, 1990, X enters into a spot contract to purchase 10,000 British pounds (£) for $15,000 for delivery on January 3, 1990. Immediately upon delivery, X acquires at original issue a pound denominated bond with an issue price of £10,000. The bond matures on January 3, 1993, pays interest at a rate of 10% compounded semiannually, and has no original issue discount. Assume that all expenses properly allocable to these transactions would meet the requirements of section 212. Under § 1.988–2T(d)(1)(ii), entering into the spot contract on January 1, 1990, is not a section 988 transaction. The acquisition of the pounds on January 3, 1993, under the spot contract is a section 988 transaction for purposes of establishing X's basis in the pounds. The disposition of the pounds and the acquisition of the bond by X are section 988 transactions. These transactions are not excluded from the definition of a section 988 transaction under paragraph (a)(6) of this section because expenses properly allocable to such transactions meet the requirements of section 212.

Example (2). X is a U.S. citizen who therefore has the dollar as his functional currency. In preparation for X's vacation, X purchases 1,000 British pounds (£) from a bank on June 1, 1989. During the period of X's vacation in the United Kingdom beginning June 10, 1989, and ending June 20, 1989, X spends £500 for hotel rooms, £300 for food and £200 for miscellaneous vacation expenses. The expenses properly allocable to such dispositions do not meet the requirements of section 162 or 212. Thus, the disposition of the pounds by X on his vacation are not section 988 transactions.

(7) *Intra-taxpayer transactions*—(i) *In general.* Except as provided in paragraph (a)(7)(ii) of this section, transactions between or among the taxpayer and/or qualified business units of that taxpayer ("intra-taxpayer

transactions") are not section 988 transactions. See section 987 and the regulations thereunder.

(ii) *Certain transfers.* Exchange gain or loss with respect to nonfunctional currency or any item described in paragraph (a)(2) of this section entered into with another taxpayer shall be realized upon an intra-taxpayer transfer of such currency or item where as the result of the transfer the currency or other such item—

(A) Loses its character as nonfunctional currency or an item described in paragraph (a)(2) of this section, or

(B) Where the source of the exchange gain or loss could be altered absent the application of this paragraph (a)(7)(ii).

Such exchange gain or loss shall be computed in accordance with § 1.988–2T (without regard to § 1.988–2T(b)(8)) as if the nonfunctional currency or item described in paragraph (a)(2) of this section had been sold or otherwise transferred between unrelated taxpayers.

(iii) *Example.*—(A) X, a corporation with the U.S. dollar as its functional currency, operates through foreign branches Y and Z. Y and Z are qualified business units as defined in section 989(a) with the LC as their functional currency. X computes Y's and Z's income under section 987 (relating to branch transactions). On November 12, 1988, Y transfers $25 to the home office of X when the fair market value of such amount equals LC120. Y has a basis of LC100 in the $25. Under paragraph (a)(7)(ii) of this section, Y realizes foreign source exchange gain of LC20 (LC120–LC100) as the result of the $25 transfer. For purposes of determining whether the transfer is a remittance resulting in additional gain or loss, see section 987 and the regulations thereunder.

(B) If instead Y transfers the $25 to Z, exchange gain is not realized because the $25 is nonfunctional currency with respect to Z and if Z were to immediately convert the $25 into LCs, the gain would be foreign source. For purposes of determining whether the transfer is a remittance resulting in additional gain or loss, see section 987 and the regulations thereunder.

(8) *Transactions having the effect of avoiding section 988.*—(i) *In general.* The Commissioner may recharacterize a transaction (or series of transactions) in whole or in part as a section 988 transaction if the effect of such transaction (or series of transactions) is to avoid section 988. In addition, the Commissioner may exclude a transaction (or series of transactions) which in form is a section 988 transaction from the provisions of section 988 if the substance of the transaction (or series of transactions) indicates that it is not properly considered a section 988 transaction.

(ii) *Example.* B is an individual with the U.S. dollar as its functional currency. B holds 500,000 Swiss francs which have a basis of $100,000 and a fair market value of $400,000 as of October 15, 1989. On October 16, 1989, B transfers the 500,000 Swiss francs to a newly formed U.S. corporation, X, with the dollar as its functional currency. On October 16, 1989, B sells the stock of X for $400,000. Assume the transfer to X qualified for nonrecognition under section 351. Because the sale of the stock of X is a substitute for the disposition of an asset subject to section 988, the Commissioner may recharacterize the sale of the stock as a section 988 transaction. The same result would obtain if B transferred the Swiss francs to a partnership and then sold the partnership interest.

(b) *Spot contract.* A spot contract is a contract to buy or sell nonfunctional currency on or before two business days following the date of the execution of the contract. See § 1.988–2(d)(ii) for operative rules regarding spot contracts.

(c) *Nonfunctional currency.* The term "nonfunctional currency" means with respect to a taxpayer or a qualified business unit (as defined in section 989(a)) a currency (including the European Currency Unit) other than the taxpayer's or the qualified business unit's functional currency as defined in section 985 and the regulations thereunder. For rules relating to nonrecognition of exchange gain or loss with respect to certain dispositions of nonfunctional currency, see § 1.988–2T(a)(1)(iii).

(d) *Spot rate.*—(1) *In general.* Except as otherwise provided in this paragraph, the term "spot rate" means a rate demonstrated to the satisfaction of the District Director to reflect a fair market rate of exchange available to the public for currency under a spot contract in a free market and involving representative amounts. In the absence of such a demonstration, the District Director, in his sole discretion, shall determine the spot rate from a source of exchange rate information reflecting actual transactions conducted in a free market. For example, the taxpayer or the District Director may determine the spot rate by reference to exchange rates published in the pertinent monthly issue of "International Financial Statistics" or a successor publication of the International Monetary Fund; exchange rates published by the Board of Governors of the Federal Reserve System pursuant to 31 U.S.C. section 5151; exchange rates published in newspapers, financial journals or other daily financial news sources; or exchange rates quoted by electronic financial news services.

(2) *Consistency required in valuing transactions subject to section 988.* If the use of inconsistent sources of spot rate (or other market rate) quotations results in the distortion of income, the District Director may determine the appropriate spot rate (or other market rate).

(3) *Use of certain spot rate conventions for payables and receivables denominated in nonfunctional currency.* If consistent with the taxpayer's financial accounting, a taxpayer may utilize a spot rate convention determined at intervals of one month or less for purposes of computing exchange gain or loss with respect to payables and receivables denominated in a nonfunctional currency that are incurred in the ordinary course of business with respect to the acquisition or sale of goods or the obtaining or performance of services. For example, if consistent with the taxpayer's financial accounting, a taxpayer may accrue all payables and receivables incurred during the month of January at the spot rate on January 31 (or at an average of any spot rates occurring during the month) and record the payment or receipt of amounts in satisfaction of such payables and receivables at the spot rate on the last day of the month in which paid or received (or at an average of any spot rates occurring during the month). The use of a spot rate convention is a method of accounting under section 446 and cannot be changed without the consent of the Commissioner.

(4) *Currency where an official government established rate differs from a free market rate.*—(i) *In general.* If a currency has an official government established rate that differs from a free market rate, the spot rate shall be the rate which most clearly reflects the taxpayer's income. Generally, this shall be the free market rate.

(ii) *Examples.* The following examples illustrate the application of this paragraph (d)(4).

Example (1). X is an accrual method U.S. corporation with the dollar as its functional currency. X owns all the stock of a Country L subsidiary, CFC. CFC has the currency of Country L, the LC, as its functional currency. Country L imposes restrictions on the remittance of dividends. On April 1, 1990, CFC pays a dividend to X in the amount of LC100. Assume that the official government established rate is $1=LC1 and the free market rate, which takes into account the remittance restrictions and which is the rate

that most clearly reflects income, is $1=LC4. On April 1, 1990, X donates the LC100 in a transaction that otherwise qualifies as a charitable contribution under section 170(c). Both the amount of the dividend income and the deduction under section 170 is $25 (LC100 × the free market rate, $.25).

Example (2). X, a corporation with the U.S. dollar as its functional currency, operates in foreign country L through branch Y. Y is a qualified business unit as defined in section 989(a). X computes Y's income under the dollar approximate separate transactions method as described in § 1.985–3T. The currency of L is the LC. X can purchase legally United States dollars ($) in L only from the L government. In order take advantage of an arbitrage between the official and secondary dollar to LC exchange rates in L: (1) X purchases LC100 for $60 in L on the secondary market when the official exchange rate is $1=LC1; (2) X transfers the LC100 to Y; (3) Y purchases $100 for LC100; and (4) Y transfers $65 ($100 less an L tax withheld of $35 on the transfer) to the home office of X. Under paragraph (a)(7) of this section, the transfer of the LC100 by X to Y is a realization event. X has a basis of $60 in the LC100. Under these facts, the appropriate dollar to LC exchange rate for computing the amount realized by X is the official exchange rate. Therefore, X realizes $40 ($100−$60) of U.S. source gain from the transfer to Y. The same result would obtain if Y rather than X purchased the LC100 on the secondary market in L with $60 supplied by X, because the substance of this transaction is that X is performing the arbitrage.

(e) *Exchange gain or loss.* The term "exchange gain or loss" means the amount of gain or loss realized as determined in § 1.988–2T with respect to a section 988 transaction.

(f) *Hyperinflationary currency.* For the definition of hyperinflationary currency see § 1.985–2T(b)(2) or its successor. Unless otherwise provided, the currency in any example used in § 1.988–1T through –5T is not a hyperinflationary currency.

(g) *Fair market value.* The fair market value of an item shall, where relevant, reflect an appropriate premium or discount for the time value of money (*e.g.*, the fair market value of a forward contract to buy or sell nonfunctional currency shall reflect the present value of the difference between the units of nonfunctional currency times the market forward rate at the time of valuation and the units of nonfunctional currency times the forward rate set forth in the contract). Unless otherwise provided, the fair market value given in any example used in § 1.988–1T through –5T is deemed to reflect appropriately the time value of money.

(h) *Interaction with sections 1092 and 1256 in examples.* Unless otherwise provided, it is assumed for purposes of §§ 1.988–1T through –5T that any contract used in any example is not a section 1256 contract and is not part of a straddle as defined in section 1092. No inference is intended regarding the application of section 1092 or 1256 unless expressly stated.

(i) *Effective date.* Except as otherwise provided in this section, this section shall be effective for taxable years beginning after December 31, 1986. Thus, except as otherwise provided in this section, any payments made or received with respect to a section 988 transaction in taxable years beginning after December 31, 1986, are subject to this section.

§ 1.988–2T Recognition and computation of exchange gain or loss (Temporary regulations).

(a) *Disposition of nonfunctional currency*—(1) *Recognition of exchange gain or loss*—(i) *In general.* Except as otherwise provided in this section, § 1.988–1T(a)(7)(ii), and § 1.988–5T, the recognition of exchange gain or loss upon the sale or other disposition of nonfunctional currency shall be governed by the recognition provisions of the Internal Revenue Code which apply to the sale or disposition of property (*e.g.*, section 1001 or, to the extent provided in regulations, section 1092).

(ii) *Clarification of section 1031.* An amount of one nonfunctional currency is not "property of like kind" with respect to an amount of a different nonfunctional currency.

(iii) *Coordination with section 988 (c)(1)(C) (ii)*—(A) *In general.* No exchange gain or loss is recognized with respect to the following transactions—

(*1*) An exchange of units of nonfunctional currency for different units of the same nonfunctional currency;

(*2*) The deposit of nonfunctional currency in a demand or time deposit or similar instrument (including a certificate of deposit) issued by a bank or other financial institution if such instrument is denominated in such currency;

(*3*) The withdrawal of nonfunctional currency from a demand or time deposit or similar instrument issued by a bank or other financial institution if such instrument is denominated in such currency;

(*4*) The receipt of nonfunctional currency from a bank or other financial institution from which the taxpayer purchased a certificate of deposit or similar instrument denominated in such currency by reason of the maturing or other termination of such instrument; and

(*5*) The transfer of nonfunctional currency from a demand or time deposit or similar instrument issued by a bank or other financial institution to another demand or time deposit or similar instrument denominated in the same nonfunctional currency issued by a bank or other financial institution.

The taxpayer's basis in the units of nonfunctional currency or other property received in the transaction shall be the adjusted basis of the units of nonfunctional currency or other property transferred. See paragraph (b) of this section with respect to the timing of interest income or expense and the determination of exchange gain or loss thereon.

(B) *Example.* X is a corporation on the accrual method of accounting with the U.S. dollar as its functional currency. On January 1, 1989, X acquires 1,500 British pounds (£) for $2,250 (£1=$1.50). On January 3, 1989, when the spot rate is (£1=$1.49, X deposits the (£1,500 with a British financial institution in a non-interest bearing demand account. On February 1, 1989, when the spot rate is (£1=$1.45, X withdraws the £1,500. On February 5, 1989, when the spot rate is (£1=$1.42, X purchases inventory in the amount of (£1,500. Pursuant to paragraph (a)(1)(iii) of this section, no exchange loss is realized until February 5, 1989, when X disposes of the £1,500 for inventory. At that time, X realizes exchange loss in the amount of $120 computed under paragraph (a)(2) of this section.

(2) *Computation of gain or loss*—(i) *In general.* Exchange gain realized from the sale or other disposition of nonfunctional currency shall be the excess of the amount realized over the adjusted basis of such currency, and exchange loss realized shall be the excess of the adjusted basis of such currency over the amount realized.

(ii) *Amount realized*—(A) *In general.* The amount realized from the disposition of nonfunctional currency shall be determined under section 1001(b). A taxpayer that uses a spot rate convention under § 1.988–1T(d)(3) to determine exchange gain or loss with respect to a payable shall determine the amount realized upon the disposition of nonfunctional currency paid in satisfaction of the payable in a manner consistent with such convention.

(B) *Exchange of nonfunctional currency for property.* For purpose of paragraph (a)(2)(ii)(A) of this section, the exchange of nonfunctional currency for property (other than nonfunctional currency) shall be treated as—

(*1*) An exchange of the units of nonfunctional currency for units of functional currency at the spot rate on the date of the exchange, and

(2) The purchase or sale of the property for such units of functional currency.

(C) *Example.* G is a U.S. corporation with the U.S. dollar as its functional currency. On January 1, 1989, G enters into a contract to purchase a paper manufacturing machine for 10,000,000 British pounds (£) for delivery on January 1, 1991. On January 1, 1991, when G exchanges £10,000,000 (which G purchased for $12,000,000) for the machine, the fair market value of the machine is £17,000,000. On January 1, 1991, the spot exchange rate is £1=$1.50. Under paragraph (a)(2)(ii)(B) of this section, the transaction is treated as an exchange of £10,000,000 for $15,000,000 and the purchase of the machine for $15,000,000. Accordingly, in computing G's exchange gain of $3,000,000 on the disposition of the £10,000,000, the amount realized is $15,000,000. G's basis in the machine is $15,000,000. No gain is recognized on the bargain purchase of the machine.

(iii) *Adjusted basis*—(A) *In general.* Except as provided in paragraph (a)(2)(iii)(B) of this section, the adjusted basis of nonfunctional currency is determined under the applicable provisions of the Internal Revenue Code (*e.g.*, sections 1011 through 1023). A taxpayer that uses a spot rate convention under § 1.988–1T(d)(3) to determine exchange gain or loss with respect to a receivable shall determine the basis of nonfunctional currency received in satisfaction of such receivable in a manner consistent with such convention.

(B) *Determination of the basis of nonfunctional currency withdrawn from an account with a bank or other financial institution*—(1) *In general.* The basis of nonfunctional currency withdrawn from an account with a bank or other financial institution shall be determined under any reasonable method that is consistently applied from year to year by the taxpayer to all accounts denominated in a nonfunctional currency. For example, a taxpayer may use a first in first out method, a last in first out method, a pro-rata method (as illustrated in the example below), or any other reasonable method that is consistently applied.

(2) *Example.* X, a cash basis individual with the dollar as his functional currency, opens a demand account with a Swiss bank. Assume expenses associated with the demand account are deductible under section 212. The following chart indicates Swiss franc deposits to the account, Swiss franc interest credited to the account, the dollar basis of each deposit, and the determination of the aggregate dollar basis of all Swiss francs in the account. Assume that the taxpayer has properly translated all the amounts specified in the chart and that all transactions are subject to section 988.

Date	Swiss francs deposited	Interest received	U.S. dollar basis	Aggregate US dollar basis
1/01/89	1000Sf		500	500
3/31/89		50 Sf	25	525
6/30/89		50 Sf	24	549
9/30/89		50 Sf	25	574
12/31/89		50 Sf	26	600

On January 1, 1990, X withdraws 500 Swiss francs from the account. X may determine his basis in the Swiss francs by multiplying the aggregate U.S. dollar basis of Swiss francs in the account by a fraction the numerator of which is the number of Swiss francs withdrawn from the account and the denominator is the total number of Swiss francs in the account. Under this method, X's basis in the 500 Swiss francs is $250 computed as follows:

$$\frac{500\ Sf}{1200\ Sf} \times \$600 = \$250$$

X's basis in the Swiss francs remaining in the account is $350 ($600–$250). X must use this method consistently from year to year with respect to withdrawals of nonfunctional currency from all of X's accounts.

(iv) *Purchase and sale of stock or securities traded on an established securities market by cash basis taxpayer*—(A) *Amount realized.* If stock or securities traded on an established securities market are sold by a cash basis taxpayer for nonfunctional currency, the amount realized with respect to the stock or securities (as determined on the trade date) shall be computed by translating the units of nonfunctional currency received into functional currency at the spot rate on the settlement date of the sale. This rule applies notwithstanding that the stock or securities are treated as disposed of on a date other than the settlement date under another section of the Code. See section 453(k).

(B) *Basis.* If stock or securities traded on an established securities market are purchased by a cash basis taxpayer for nonfunctional currency, the basis of the stock or securities shall be determined by translating the units of nonfunctional currency paid into functional currency at the spot rate on the settlement date of the purchase.

(C) *Example.* On November 1, 1989 (the trade date), X, a calendar year cash basis U.S. individual, purchases stock for £100 for settlement on November 5, 1989. On November 1, 1989, the spot value of the £100 is $140. On November 5, 1989, X purchases £100 for $141 which X uses to pay for the stock. X's basis in the stock is $141. On December 30, 1990 (the trade date), X sells the stock for £110 for settlement on January 5, 1991. On December 30, 1990, the spot value of £110 is $165. On January 5, 1991, X transfers the stock and receives £110 which, translated at the spot rate, equal $166. Under section 453(k), the stock is considered disposed of on December 30, 1990. The amount realized with respect to such disposition is the value of the £110 on January 5, 1991 ($166). Accordingly, X's gain realized on December 30, 1990, from the disposition of the stock is $25 ($166 amount realized less $141 basis). X's basis in the £110 received from the sale of the stock is $166.

(b) *Translation of interest income or expense and determination of exchange gain or loss with respect to debt instruments*—(1) *Translation of interest income received with respect to a nonfunctional currency demand account.* Interest income received with respect to a demand account with a bank or other financial institution which is denominated in (or the payments of which are determined by reference to) a nonfunctional currency shall be translated into functional currency at the spot rate on the date received or accrued or pursuant to any reasonable spot rate convention consistently

applied by the taxpayer to all taxable years and to all accounts denominated in nonfunctional currency in the same financial institution. For example, a taxpayer may translate interest income received with respect to a demand account on the last day of each month of the taxable year, on the last day of each quarter of the taxable year, on the last day of each half of the taxable year, or on the last day of the taxable year. No exchange gain or loss is realized upon the receipt or accrual of interest income with respect to a demand account subject to this paragraph (b)(1).

(2) *Translation of nonfunctional currency interest income or expense received or paid with respect to a debt instrument described in § 1.988–1T(a)(1)(ii) and (2)(i)*—(i) *Scope.* Paragraph (b) of this section only applies to debt instruments described in § 1.988–1T(a)(1)(ii) and (2)(i) where all payments are denominated in, or determined with reference to, a single nonfunctional currency.

Further, this paragraph (b) shall not apply to a contingent payment debt instrument. For purposes of paragraph (b) of this section, a debt instrument is not considered a contingent payment debt instrument merely because some or all of the payments are denominated in, or determined by reference to, a nonfunctional currency.

(ii) *Determination and translation of interest income or expense*—(A) *In general.* Interest income or expense on a debt instrument described in paragraph (b)(2)(i) of this section (including original issue discount determined in accordance with sections 1271 through 1275 and 163(e) as adjusted for acquisition premium under section 1272(a)(7), and acquisition discount determined in accordance with sections 1281 through 1283) shall be determined in units of nonfunctional currency and translated into functional currency as provided in paragraph (b)(2)(ii) (B) and (C) of this section. For purposes of sections 483, 1273(b)(5) and 1274, the nonfunctional currency in which an instrument is denominated (or by reference to which payments are determined) shall be considered money.

(B) *Translation of interest income or expense that is not required to be accrued prior to receipt or payment.* With respect to an instrument described in paragraph (b)(2)(i) of this section, interest income or expense received or paid that is not required to be accrued by the taxpayer prior to receipt or payment shall be translated at the spot rate on the date of receipt or payment. No exchange gain or loss is realized with respect to the receipt or payment of such interest income or expense (other than the exchange gain or loss that might be realized under paragraph (a) of this section upon the disposition of the nonfunctional currency so received or paid).

(C) *Translation of interest income or expense that is required to be accrued prior to receipt or payment.* With respect to an instrument described in paragraph (b)(2)(i) of this section, interest income or expense that is required to be accrued prior to receipt or payment (*e.g.*, under section 1272, 1281 or 163(e) or because the taxpayer uses an accrual method of accounting) shall be translated at the average rate for the interest accrual period or, with respect to an interest accrual period that spans two taxable years, at the average rate for the partial period within the taxable year. See paragraphs (b) (3) and (4) of this section for the determination of exchange gain or loss on the receipt or payment of accrued interest income or expense.

(iii) *Determination of average rate.* For purposes of this paragraph (b), the average rate for an accrual period (or partial period) shall be a simple average of the spot exchange rates for each business day of such period or other average exchange rate for the period reasonably derived and consistently applied by the taxpayer.

(3) *Exchange gain or loss recognized by the holder with respect to accrued interest income.* The holder of a debt instrument described in paragraph (b)(2)(i) of this section shall realize exchange gain or loss with respect to accrued interest income on the date such accrued interest income is received or the instrument is disposed of. Except as otherwise provided in this paragraph (b) (*e.g.*, paragraph (b)(8) of this section), exchange gain or loss realized with respect to accrued interest income shall be recognized in accordance with the applicable recognition provisions of the Internal Revenue Code. The amount of exchange gain or loss so realized with respect to accrued interest income is determined for each accrual period by—

(i) Translating the units of nonfunctional currency interest income received with respect to such accrual period (as determined under the ordering rules of paragraph (b)(7) of this section) into functional currency at the spot rate on the date the interest income is received or the instrument is disposed of, and

(ii) Subtracting from such amount the amount computed by translating the units of nonfunctional currency interest income accrued with respect to such income received at the average exchange rate for the accrual period.

(4) *Exchange gain or loss recognized by the obligor with respect to accrued interest expense.* The obligor under a debt instrument described in paragraph (b)(2)(i) of this section shall realize exchange gain or loss with respect to accrued interest expense on the date such accrued interest expense is paid or the obligation to make payments is extinguished or transferred. Except as otherwise provided in this paragraph (b) (*e.g.*, paragraph (b)(8) of this section), exchange gain or loss realized with respect to accrued interest expense shall be recognized in accordance with the applicable recognition provisions of the Internal Revenue Code. The amount of exchange gain or loss so realized with respect to accrued interest expense is determined for each accrual period by—

(i) Translating the units of nonfunctional currency interest expense accrued with respect to the amount of interest paid into functional currency at the average exchange rate for such accrual period, and

(ii) Subtracting from such amount the amount computed by translating the units of nonfunctional currency interest paid (or, if the obligation to make payments is extinguished or transferred, the units accrued) with respect to such accrual period (as determined under the ordering rules in paragraph (b)(7) of this section) into functional currency at the spot rate on the date payment is made or the obligation is extinguished or transferred.

(5) *Exchange gain or loss recognized by the holder of a debt instrument with respect to principal.* The holder of a debt instrument described in paragraph (b)(2)(i) of this section shall realize exchange gain or loss with respect to the principal amount of such instrument on the date principal (determined under the ordering rules of paragraph (b)(7) of this section) is received from the obligor or the instrument is disposed of. For purposes of this paragraph (b)(5) of this section, the principal amount of a debt instrument is the issue price in units of nonfunctional currency if the holder acquired the instrument at original issue, or the adjusted issue price in units of nonfunctional currency on the date acquired if the holder acquired the instrument after the date of original issue. If, however, the holder acquired the instrument in a transaction in which exchange gain or loss was realized but not recognized by the transferor, the nonfunctional currency principal amount of the instrument with respect to the holder shall be the same as that of the transferor. Except as otherwise provided in this paragraph (b) (*e.g.*, paragraph (b)(8) of this section),

exchange gain or loss realized with respect to such principal amount shall be recognized in accordance with the applicable recognition provisions of the Internal Revenue Code. The amount of exchange gain or loss so realized by the holder with respect to principal is determined by—

(i) Translating the units of nonfunctional currency principal at the spot rate on the date payment is received or the instrument is disposed of, and

(ii) Subtracting from such amount the amount computed by translating the units of nonfunctional currency principal at the spot rate on the date the holder (or a transferor from whom the nonfunctional principal amount is carried over) acquired the instrument.

(6) *Exchange gain or loss recognized by the obligor of a debt instrument with respect to principal.* The obligor under a debt instrument described in paragraph (b)(2)(i) of this section shall realize exchange gain or loss with respect to the principal amount of such instrument on the date principal (determined under the ordering rules of paragraph (b)(7) of this section) is paid or the obligation to make payments is extinguished or transferred. For purposes of this paragraph (b)(6), the principal amount of a debt instrument is the issue price in units of nonfunctional currency if the obligor is the issuer, or the adjusted issue price in units of nonfunctional currency on the date the obligor assumed the obligation to make payments under the instrument. If, however, the obligor became the obligor in a transaction in which exchange gain or loss was realized but not recognized by the transferor, the nonfunctional currency principal amount of the instrument with respect to such obligor shall be the same as that of the transferor. Except as otherwise provided in this paragraph (b) (*e.g.*, paragraph (b)(8) of this section), exchange gain or loss realized with respect to such principal shall be recognized in accordance with the applicable recognition provisions of the Internal Revenue Code. The amount of exchange gain or loss so realized by the obligor is determined by—

(i) Translating the units of nonfunctional currency principal at the spot rate on the date the obligor (or a transferor from whom the principal amount is carried over) became the obligor, and

(ii) Subtracting from such amount the amount computed by translating the units of nonfunctional currency principal at the spot rate on the date payment is made or the obligation is extinguished or transferred.

(7) *Payment ordering rules*—(i) *Debt instruments subject to the rules of sections 163(e), or 1271 through 1288.* In the case of a debt instrument described in paragraph (b)(2)(i) of this section that is subject to the rules of sections 163(e), or 1272 through 1288, units of nonfunctional currency (or an amount determined with reference to nonfunctional currency) received or paid with respect to such debt instrument shall be treated first as a receipt or payment of periodic interest under the principles of section 1273 and the regulations thereunder, second as a receipt or payment of original issue discount to the extent accrued as of the date of the receipt or payment, and finally as a receipt or payment of principal. Units of nonfunctional currency (or an amount determined with reference to nonfunctional currency) treated as a receipt or payment of original issue discount under the preceding sentence are attributed to the earliest accrual period in which original issue discount has accrued and to which prior receipts or payments have not been attributed. No portion thereof shall be treated as prepaid interest. These rules are illustrated by Example (9) of paragraph (b)(9) of this section.

(ii) *Other debt instruments.* In the case of a debt instrument described in paragraph (b)(2)(i) of this section that is not subject to the rules of section 163(e) or 1272 through 1288, whether units of nonfunctional currency (or an amount determined with reference to nonfunctional currency) received or paid with respect to such debt instrument are treated as interest or principal shall be determined under section 163 or other applicable section of the Code.

(8) *Limitation of exchange gain or loss on payment or disposition of a debt instrument.* When a debt instrument described in paragraph (b)(2)(i) of this section is paid or disposed of, or when the obligation to make payments thereunder is satisfied by another person, or extinguished or assumed by another person, exchange gain or loss is computed with respect to both principal and any accrued interest (including original issue discount), as provided in paragraph (b) (3) through (7) of this section. However, pursuant to section 988(b) (1) and (2), the sum of any exchange gain or loss with respect to the principal and interest of any such debt instrument shall be realized only to the extent of the total gain or loss realized on the transaction. The gain or loss realized shall be recognized in accordance with the general principles of the Code. See Examples (3), (4) and (6) of paragraph (b)(9) of this section.

(9) *Examples.* The preceding provisions are illustrated in the following examples. The examples assume that any transaction involving an individual is a section 988 transaction.

Example (1)—(i) X is an individual on the cash method of accounting with the dollar as his functional currency. On January 1, 1989, X converts $13,000 to 10,000 British pounds (£) at the spot rate of £1=$1.30 and loans the £10,000 to Y for 3 years. The terms of the loan provide that Y will make interest payments of £1,000 on December 31 of 1989, 1990, and 1991, and will repay X's £10,000 principal on December 31, 1991. Assume the spot rates for the pertinent dates are as follows:

Date	Spot rate (pounds to dollars)
January 1, 1989	£1=$1.30
December 31, 1989	1=1.35
December 31, 1990	1=1.40
December 31, 1991	1=1.45

(ii) Under paragraph (b)(2)(ii)(B) of this section, X will translate the £1,000 interest payments at the spot rate on the date received. Accordingly, X will have interest income of $1,350 in 1989, $1,400 in 1990, and $1,450 in 1991. Because X is a cash basis taxpayer, X does not realize exchange gain or loss on the receipt of interest income.

(iii) Under paragraph (b)(5) of this section, X will realize exchange gain upon repayment of the £10,000 principal amount determined by translating the £10,000 at the spot rate on the date it is received (£10,000×$1.45=$14,500) and subtracting from such amount, the amount determined by translating the £10,000 at the spot rate on the date the loan was made (£10,000×$1.30=$13,000). Accordingly, X will realize an exchange gain of $1,500 on the repayment of the loan on December 31, 1991.

Example (2). Assume the same facts as in Example (1) except that X is an accrual method taxpayer and that average rates are as follows:

Accrual period	Average rate (pounds to dollars)
1989	£1=$1.32
1990	1=1.37
1991	1=1.42

Under paragraph (b)(2)(ii)(C) of this section, X will accrue the £1,000 interest payments at the average rate for the accrual period. Accordingly, X will have interest income of $1,320 in 1989, $1,370 in 1990, and $1,420 in 1991. Because X is an accrual basis taxpayer, X determines exchange gain or loss for each interest accrual period by translating the units of nonfunctional currency interest income received with respect to such accrual period at the spot rate on the date received and subtracting the amounts of interest income accrued for such period. Thus, X will

realize $90 of exchange gain with respect to interest received under the loan, computed as follows:

Year	Spot value interest received	Accrued interest @ avg. rate	Exch. gain
1989	$1,350	$1,320	$ 30
1990	1,400	1,370	30
1991	1,450	1,420	30
Total			90

Under paragraph (b)(5) of this section, X will realize exchange gain upon repayment of the £10,000 loan principal determined in the same manner as in Example (1). Accordingly, X will realize an exchange gain of $1,500 on the repayment of the loan principal on December 31, 1991.

Example (3). Assume the same facts as in Example (1) except that on December 31, 1990, X sells Y's note for 9,821.13 British pounds (£) after the interest payment. Under paragraph (b)(8) of this section, X will compute exchange gain on the £10,000 principal. The exchange gain is $1,000 [(£10,000×$1.40)−(£10,000×$1.30)]. This exchange gain, however, is only realized to the extent of the total gain on the disposition. X's total gain is $749.58 [(£9,821.13×$1.40)−(£10,000×$1.30)]. Thus, X will realize $749.58 of exchange gain (and will realize no market loss).

Example (4)—(i) The facts are the same as in Example (1) except that Y becomes insolvent and fails to repay the full £10,000 principal when due. Instead, X and Y agree to compromise the debt for a payment of £8,000 on December 31, 1991. Under paragraph (b)(8) of this section, X will compute exchange gain on the £10,000 originally booked. The exchange gain is $1,500 [(£10,000×$1.45)−(£10,000×$1.30)=$1,500]. This exchange gain, however, is only realized to the extent of the total gain on the disposition. X realizes an overall loss on the disposition of $1,400 [(£8,000×$1.45)−(£10,000×$1.30)=($1,400)]. Thus, X will realize no exchange gain (and a $1,400 market loss).

(ii) If the exchange rate on December 31, 1991, were £1=$1.25, rather than £1=$1.45, X would compute exchange loss under paragraph (b)(8) of this section, on the £10,000 originally booked. The exchange loss would be $500 [(£10,000×$1.25)−(£10,000×$1.30)=($500)]. X's total loss on the disposition would be $3,000 [(£8,000×$1.25)−(£10,000× $1.30)=($3,000)]. Thus, X would realize $500 of exchange loss and a $2,500 market loss on the disposition.

Example (5)—(i) X is an individual with the dollar as his functional currency. X is on the cash method of accounting. On January 1, 1989, X borrows 10,000 British pounds (£) from Y, an unrelated person. The terms of the loan provide that X will make interest payments of £1,200 on December 31 of 1989 and 1990 and will repay Y's £10,000 principal on December 31, 1990. The spot rates for the pertinent dates are as follows:

Date	Spot rate (pounds to dollars)
January 1, 1989	1=$1.50
December 31, 1989	1=1.60
December 31, 1990	1=1.70

Assume that the basis of the £1,200 paid as interest by X on December 31, 1989 is $2,000, the basis of the £1,200 paid as interest by X on December 31, 1990, is $2,020 and the basis of the £10,000 principal paid by X on December 31, 1990 is $16,000.

(ii) Under paragraph (b)(2)(ii)(B) of this section, X translates the £1,200 interest payments at the spot rate on the day paid. Thus, X paid $1,920 (£1,200×$1.60) of interest on December 31, 1989 and $2,040 (£1,200×$1.70) of interest on December 31, 1990. In addition, X will realize exchange gain or loss on the disposition of the £1,200 on December 31, 1989 and 1990, under paragraph (a) of this section. Pursuant to paragraph (a)(2) of this section, X will realize an exchange loss of $80 [(£1,200×$1.60)−$2,000] on December 31, 1989 and exchange gain of $20 [(£1,200×$1.70)−$2,020] on December 31, 1990.

(iii) Under paragraph (b)(6) of this section, X will realize exchange loss on December 31, 1990 upon repayment of the £10,000 principal amount determined by translating the £10,000 received at the spot rate on January 1, 1989 (£10,000×$1.50=$15,000) and subtracting from such amount, the amount determined by translating the £10,000 paid at the spot rate on December 31, 1990 (£10,000×$1.70=$17,000). Thus, under paragraph (b)(6) of this section, X has an exchange loss with respect to the £10,000 principal of $2,000. Further, under paragraph (a)(2) of this section, X will realize an exchange gain upon disposition of the £10,000 on December 31, 1990. Under paragraph (a)(2) of this section, X will subtract his adjusted basis in the £10,000 ($16,000) from the amount realized upon the disposition of the £10,000 (£10,000×$1.70=$17,000) resulting in a gain of $1,000. Accordingly, X's combined exchange gain and loss realized on December 31, 1990 with respect to the repayment of the £10,000 is a $1,000 exchange loss.

Example (6)—(i) X is a calendar year corporation on the accrual method of accounting and with the dollar as its functional currency. On January 1, 1989, X purchases at original issue for 82.64 Canadian dollars (C$) M corporation's 2 year note maturing on December 31, 1990, at a stated redemption price of C$ 100. The yield to maturity in Canadian dollars is 10 percent and the accrual period is the one year period beginning January 1 and ending December 31. The note has C$17.36 of original issue discount. Assume that the spot rates are as follows: C$1=U.S.$.72 on January 1, 1989; C$1=U.S.$.80 on January 1, 1990; C$1=U.S.$.82 on December 31, 1990. Assume further that the average rate for 1989 is C$1=U.S.$.76 and for 1990 is C$1=U.S.$.81.

(ii) Under paragraph (b)(2)(ii)(A) of this section, X will determine its interest income in Canadian dollars. Accordingly, under section 1272, X must take into account original issue discount in the amount of C$8.26 on December 31, 1989 and C$9.10 on December 31, 1990. Pursuant to paragraph (b)(2)(ii)(C) of this section, X will translate these amounts into U.S. dollars at the average exchange rate for the relevant accrual period. Thus, the amount of interest income taken into account in 1989 is U.S.$6.28 (C$8.26×U.S.$.76) and in 1990 is U.S.$7.37 (C$9.10×U.S.$.81). Pursuant to paragraph (b)(3)(ii) of this section, X will realize exchange gain or loss with respect to the accrued interest determined for each accrual period by translating the Canadian dollars received with respect to such accrual period into U.S. dollars at the spot rate on the date the interest is received and subtracting from that amount the amount accrued in U.S. dollars. Thus, the amount of exchange gain realized on December 31, 1990, is U.S.$.58 (U.S.$.49 from 1989+U.S.$.09 from 1990). Pursuant to paragraph (b)(5) of this section, X shall realize exchange gain or loss with respect to the principal (C$82.64) on December 31, 1990, computed by translating the C$82.64 at the spot rate on December 31, 1990 (U.S.$67.76) and subtracting the C$82.64 translated at the spot rate on January 1, 1989 (U.S.$59.50) for an exchange gain of U.S.$8.26. Thus, X's combined exchange gain is U.S.$8.84 (U.S.$.49+U.S.$.09+U.S.$8.26).

(iii) Assume instead that on January 1, 1990, X sells the note for C$86.95, which it immediately converts to U.S. dollars. X's exchange gain is computed under paragraph (b)(8) of this section with reference to the nonfunctional currency denominated principal amount (C$82.64) and the nonfunctional currency denominated accrued original issue discount (C$8.26). X will compute an exchange gain of U.S.$6.61 with respect to the issue price [(C$82.64×U.S.$.80)−(C$82.64×U.S.$.72)] and an exchange gain of U.S.$.33 with respect to the accrued original issue discount [(C$8.26×U.S.$.80)−(C$8.26×U.S.$.76)]. Accordingly, prior to the application of paragraph (b)(8) of this section, X's total exchange gain is U.S.$6.94 (U.S.$6.61+U.S.$.33), and X's market loss is U.S.$3.16 [(C$90.90−C$86.95)×U.S.$.80]. Pursuant to paragraph (b)(8) of this section, however, X's market loss on the note of U.S.$3.16 is netted against X's exchange gain of U.S.$6.94, resulting in a realized exchange gain of U.S.$3.78 and no market loss.

Example (7).—(i) The facts are the same as in Example (6)(i) except that on January 1, 1990, X contributes the M corporation note to Y, a wholly-owned U.S. subsidiary of X with the dollar as its functional currency, and Y collects C$100 from M corporation at maturity on December 31, 1990, when the spot rate is C$1:U.S.$.82. The transfer of the note from X to Y qualifies for nonrecognition of gain under section 351(a). On December 31, 1990, Y includes C$9.10 of accrued interest in income which translated at the average exchange rate of C$1=U.S.$.81 for the year results in U.S.$7.37 of interest income.

(ii) Y's exchange gain is computed under paragraph (b)(3) of this section with respect to accrued interest income and paragraph (b)(5) of this section with respect to the nonfunctional currency principal amount.

Under paragraph (b)(3), Y will realize exchange gain or loss for each accrual period computed by translating the units of nonfunctional currency interest income received with respect to such accrual period at the spot rate on the day received and subtracting the amounts of interest income accrued for such period. Thus, Y will realize $.49 of exchange gain with respect to original issue discount accrued in 1989 [(C$8.26×U.S$.82)−(C$8.26×U.S.$.76)=U.S.$.49] and $.09 of exchange gain with respect to original issue discount accrued in 1990 [(C$9.10×U.S.$.82)−(C$9.10×U.S.$.81)=$.09].

(iii) Pursuant to paragraph (b)(5) of this section, the nonfunctional currency principal amount of the M bond in the hands of Y is C$82.64 the amount carried over from X, the transferor. Y's exchange gain with respect to the nonfunctional currency principal amount is $8.26 [(C$82.64×U.S.$.82)−(C$82.64×U.S.$.72)=U.S.$8.26]. Accordingly, Y's combined exchange gain is U.S.$8.84 ($.49+$.09+$8.26). Because the amount realized in Canadian dollars equals the adjusted issue price (C$100) on retirement of the M note, there is no market loss, and the netting rule of paragraph (b)(8) of this section does not limit realization of the exchange gain.

Example (8)—(i) X, a cash basis taxpayer with the dollar as its functional currency, has the calendar year as its taxable year. On January 1, 1989, X purchases at original issue for 65.88 British pounds (£) M corporation's 5-year bond maturing on December 31, 1993, having a stated redemption price at maturity of £100. The bond provides for annual payments of interest in pounds of 1 pound per year on December 31 of each year. The bond has 34.12 British pounds of original issue discount. The yield to maturity is 10 percent in British pounds and the accrual period is the one year period beginning January 1 and ending December 31 of each calendar year. The amount of original issue discount is determined in pounds for each accrual period by multiplying the adjusted issue price expressed in pounds by the yield and subtracting from such amount the periodic interest payments expressed in pounds for such period. The periodic interest payments are translated at the spot rate on the payment date (December 31 of each year). The original issue discount is translated at the average rate for the accrual period (January 1 through December 31). The following chart describes the determination of interest income with respect to the facts presented and provides other pertinent information.

TABLE 1

Year (Dec. 31)	Periodic interest payments in pounds for the accrual period	Original issue discount in pounds for the accrual period	Issue price or adjusted issue price in pounds	Assumed spot rate on Dec. 31 (pounds to dollars)	Assumed average rate for accrual period (pounds to dollars)	Periodic interest payments in pounds multiplied by spot rate on the date of payment (column 2 times column 5)	Original issue discount in pounds multiplied by the average rate for the accrual period (column 3 times column 6)	Total interest income in dollars (column 7 plus column 8)	Adjusted issue price in dollars
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Issue Date			65.88	1=$1.20					$79.06
1989	1	5.59	71.47	1=$1.30	1=$1.25	$1.30	$6.99	$8.29	86.05
1990	1	6.15	77.62	1=1.40	1=1.35	1.40	8.30	9.70	94.35
1991	1	6.76	84.38	1=1.50	1=1.45	1.50	9.80	11.30	104.15
1992	1	7.44	91.82	1=1.60	1=1.55	1.60	11.53	13.13	115.68
1993	1	8.18	100.00	1=1.70	1=1.65	1.70	13.50	15.20	129.18

(ii) Because X is a cash basis taxpayer, X does not realize exchange gain or loss on the receipt of the £1 periodic interest payments. However, X will realize exchange gain on December 31, 1993 totaling $7.88 with respect to the original issue discount. Exchange gain is determined for each interest accrual period by translating the units of nonfunctional currency interest income received with respect to such accrual period at the spot rate on the date received and subtracting from such amount, the amount computed by translating the units of nonfunctional currency interest income accrued for such period at the average rate for the period. The following chart illustrates this computation:

TABLE 2

Year	OID accrued in pounds for each accrual period	Assumed spot rate on date payment received (pounds to dollars)	Interest received times spot rate on the date received (col. 2 times col. 3)	Assumed average rate for accrual period (pounds to dollars)	OID in pounds times the average rate for the accrual period (col. 2 times col. 5)	Exchange gain or loss (col. 4 less col. 6)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1989	5.59	1=$1.70	$9.50	1=$1.25	$6.99	$2.51
1990	6.15	1=1.70	$10.46	1=$1.35	8.30	2.16
1991	6.76	1=1.70	11.49	1=1.45	9.80	1.69
1992	7.44	1=1.70	12.65	1=1.55	11.53	1.12
1993	8.18	1=1.70	13.90	1=1.65	13.50	.40
Total						7.88

(iii) X will also realize exchange gain with respect to the principal of the loan (*i.e.*, the issue price of 65.88 British pounds) on December 31, 1993 computed by translating the units of nonfunctional currency principal received at the spot rate on the date principal is received (65.88 British pounds × $1.70=$112.00) and subtracting from such amount, the units of nonfunctional currency principal received translated at the spot rate on the date the instrument was acquired (65.88 British pounds × $1.20=$79.06). Accordingly, X's exchange gain on the principal is $32.94 and X's total exchange gain with respect to the accrued interest and principal is $40.82. It should be noted that, under this fact pattern, the total exchange gain may be determined in an alternative

fashion. Exchange gain may be computed by subtracting the adjusted issue price in dollars at maturity ($129.18—see column 10 of Table 1) from the amount computed by multiplying the stated redemption price at maturity in pounds times the spot rate on the maturity date (£100×$1.70=$170), which equals $40.82.

Example (9)—(i) C is a corporation that is a calendar year accrual method taxpayer with the dollar as its functional currency. On January 1, 1989, C lends 100 British pounds (£) in exchange for a note under the terms of which C will receive two equal payments of £57.62 on December 31, 1989, and December 31, 1990. Each payment of £57.62 represents the annual payment necessary to amortize the £100 principal amount at a rate of 10% compounded annually over a two year period. The following tables reflect the amounts of principal and interest that compose each payment and assumptions as to the relevant exchange rates:

Date	Principal	Interest
12/31/89	£47.62	£10.00
12/31/90	52.38	5.24

Date	Spot rate £1=	Average rate for year ending
1/01/89	$1.30	
12/31/89	1.40	$1.35
12/31/90	1.50	1.45

(ii) Because each interest payment is equal to the product of the outstanding principal balance of the obligation and a single fixed rate of interest, each stated interest payment constitutes periodic interest under the principles of section 1273. Accordingly, there is no original issue discount.

(iii) Because C is an accrual basis taxpayer, C will translate the interest income at the average rate for the annual accrual period pursuant to paragraph (b)(2)(ii)(C) of this section. Thus, C's interest income is $13.50 (£10.00×$1.35) in 1989, and $7.60 (£5.24×$1.45) in 1990. C will realize exchange gain or loss upon receipt of accrued interest computed in accordance with paragraph (b)(3) of this section. Thus, C will realize exchange gain in the amount of $.50 [(£10.00×$1.40)—$13.50] in 1989, and $.26 [(£5.24×$1.50)—$7.60] in 1990.

(iv) In addition, C will realize exchange gain or loss upon the receipt of principal each year computed under paragraph (b)(5) of this section. Thus, C will realize exchange gain in the amount of $4.76 [(£47.62×$1.40)—(£47.62×$1.30)] in 1989, and $10.48 [(£52.38×$1.50)—(£52.38×$1.30)] in 1990.

(10) *Treatment of bond premium*—(i) *In general.* Amortizable bond premium on a bond described in paragraph (b)(2)(i) of this section shall be computed in the units of nonfunctional currency in which the bond is denominated (or in which the payments are determined). Amortizable bond premium properly taken into account under section 171 or § 1.61–12 (or the successor provision thereof) shall reduce interest income or expense in units of nonfunctional currency. Exchange gain or loss is realized with respect to bond premium described in the preceding sentence by treating the portion of premium amortized with respect to any period as a return of principal. With respect to a holder that does not elect to amortize bond premium under section 171, the amount of bond premium will constitute a market loss when the bond matures. See paragraph (b)(8) of this section.

(ii) *Example.* X is an individual on the cash method of accounting with the dollar as his functional currency. On January 1, 1989, X purchases Y corporation's note for 107.99 British pounds (£) from Z, an unrelated party. The note has an issue price of £100, a stated redemption price at maturity of £100, pays interest in pounds at the rate of 10% compounded annually, and matures on December 31, 1993. X elects to amortize the bond premium of £7.99 under the rules of section 171. Pursuant to paragraph (b)(10)(i) of this section, bond premium is determined and amortized in British pounds. Assume the amortization schedule is as follows:

Year ending 12/31	Bond premium amortized	Unamortized premium plus principal	Interest
		£107.99	
1989	£1.36	£106.63	£8.64
1990	1.47	£105.16	8.53
1991	1.59	£103.57	8.41
1992	1.71	£101.86	8.29
1993	1.85	£100.00	8.15

The bond premium reduces X's pound interest income under the note. For example, the £10 stated interest payment made in 1989 is reduced by £1.36 of bond premium, and the resulting £8.64 interest income is translated into dollars at the spot rate on December 31, 1989. Exchange gain or loss is realized on the £1.36 bond premium based on the difference between the spot rates on January 1, 1989, the date the premium is paid to acquire the bond, and December 31, 1989, the date the bond premium is returned as part of the stated interest. The £1.36 bond premium reduces the unamortized premium plus principal to £106.63 (£107.99—£1.36). On December 31, 1993, when the bond matures and the £7.99 of bond premium has been fully amortized, X will realize exchange gain or loss with respect to the remaining purchase price of £100.

(11) *Market discount*—(i) *In general.* Market discount as defined in section 1278(a)(2) shall be determined in units of nonfunctional currency in which the market discount bond is denominated (or in which the payments are determined). Accrued market discount (other than market discount currently included in income pursuant to section 1278 (b)) shall be translated into functional currency at the spot rate on the date the market discount bond is disposed of. No part of such accrued market discount is treated as exchange gain or loss. Accrued market discount currently includible in income pursuant to section 1278(b) shall be translated into functional currency at the average exchange rate for the accrual period. Exchange gain or loss with respect to accrued market discount currently includible in income under section 1278(b) shall be determined in accordance with paragraph (b)(3) of this section relating to accrued interest income.

(ii) *Example*—(A) X is a calendar year corporation with the U.S. dollar as its functional currency. On January 1, 1990, X purchases a bond of M corporation for 96,530 British pounds (£). The bond, which was issued on January 1, 1989, has an issue price of £100.000, a stated redemption price at maturity of £100,000, and provides for annual payments of interest at 8 percent. The bond matures on December 31, 1991. X purchased the bond at a market discount of 3,470 pounds and did not elect to include the market discount currently in income under section 1278(b). X holds the bond to maturity and on December 31, 1991, receives payment of £100,000 (plus £8,000 interest) when the exchange rate is £1=$1.50.

(B) Pursuant to paragraph (b)(11) of this section, X computes market discount in units of nonfunctional currency. Thus, the market discount as defined under section 1278(a)(2) is £3,470. Accrued market discount (other than market discount currently included in income pursuant to section 1278(b)) is translated at the spot rate on the date the market discount bond is disposed of. Accordingly, X will translate the accrued market discount of £3,470 at the spot rate on December 31, 1991 (£3,470×$1.50=$5,205). No exchange gain or loss is realized with respect to the £3,470 of accrued market discount. See paragraphs (b) (3) and (5) of this section for the realization and recognition of exchange gain or loss with respect to accrued interest and principal.

(12) *Tax exempt bonds.* See § 1.988–3T(c)(2), which characterizes exchange loss realized with respect to a

nonfunctional currency tax exempt bond as a reduction of interest income.

(13) *Nonfunctional currency debt exchanged for stock of obligor*—(i) *In general.* Notwithstanding any other section of the Code other than section 267, 1091 or 1092, exchange gain or loss shall be realized and recognized by the holder and the obligor in accordance with the rules of paragraphs (b) (3) through (7) of this section with respect to the principal and accrued interest of a debt instrument described in paragraph (b)(2)(i) of this section that is acquired by the obligor in exchange for its stock, provided however, that such gain or loss shall be recognized only to the extent of the total gain or loss on the exchange (regardless of whether such gain or loss would otherwise be recognized). This rule shall apply whether the debt instrument is converted into stock according to its terms or exchanged pursuant to a separate agreement between the obligor and the holder. A debt instrument that is acquired by the obligor from a shareholder as a contribution to capital shall be treated for purposes of this section as exchanged for stock, whether or not additional stock is issued.

(ii) *Coordination with section 108.* Section 988 and this section shall apply before section 108. Exchange gain realized by the obligor on an exchange described in paragraph (b)(13)(i) of this section shall not be treated as discharge of indebtedness income, but shall be considered to reduce the amount of the liability for purposes of computing the obligor's income on the exchange under section 108(e)(4), section 108(e)(6) or section 108(e)(10).

(iii) *Effective date.* This paragraph (b)(13) shall be effective for exchanges of debt for stock effected after September 21, 1989.

(iv) *Examples.* The following examples illustrate the operation of this paragraph (b)(13). In each such example, assume that sections 267, 1091 and 1092 do not apply.

Example (1)—(i) X is a calendar year U.S. corporation with the U.S. dollar as its functional currency. On January 1, 1990 (the issue date), X acquired a convertible bond maturing on December 31, 1998, issued by Y corporation, a U.K. corporation with the British pound (£) as its functional currency. The issue price of the bond is £100,000, the stated redemption price at maturity is £100,000, and the bond provides for annual interest payments at the rate of 10%. The terms of the bond also provide that at any time prior to December 31, 1998, the holder may surrender all of his interest in the bond in exchange for 20 shares of Y common stock. On January 1, 1994, X surrenders his interest in the bond for 20 shares of Y common stock. Assume the following:

(a) The spot rate on January 1, 1990, is £1=$1.30,
(b) The spot rate on January 1, 1994, is £1=$1.50, and
(c) The 20 shares of Y common stock have a market value of £200,000 on January 1, 1994.

(ii) Pursuant to paragraph (b)(13) of this section, X will realize and recognize exchange gain with respect to the issue price (£100,000) of the bond on January 1, 1994, when the bond is converted to stock. X will compute exchange gain pursuant to paragraph (b)(5) of this section by translating the issue price at the spot rate on the conversion date (£100,000×$1.50=$150,000) and subtracting from such amount the issue price translated at the spot rate on the date X acquired the bond (£100,000×$1.30=$130,000). Thus, X will realize and recognize $20,000 of exchange gain. X's basis in the 20 shares of Y common stock is $150,000 ($130,000 substituted basis+ $20,000 recognized gain).

Example (2)—(i) X, a foreign corporation with the British pound (£) as its functional currency, lends £100 at a market rate of interest to Y, its wholly-owned U.S. subsidiary, on January 1, 1990, on which date the spot exchange rate is £1=$1. Y's functional currency is the U.S. dollar. On January 1, 1992, when the spot exchange rate is £1=$.50, X cancels the debt as a contribution to capital. Pursuant to paragraph (b)(13) of this section, Y will realize and recognize exchange gain with respect to the £100 issue price of the debt instrument on January 1, 1992. Y will compute exchange gain pursuant to paragraph (b)(6) of this section by translating the issue price at the spot rate on the date Y became the obligor (£100×$1=$100) and subtracting from such amount the issue price translated at the spot rate on the date of extinguishment (£100×$.50=$50). Thus, Y will realize and recognize $50 of exchange gain.

(ii) Under section 108(e)(6), on the acquisition of its indebtedness from X as a contribution to capital Y is treated as having satisfied the debt with an amount of money equal to X's adjusted basis in the debt (£100). For purposes of section 108(e)(6), X's adjusted basis is translated into United States dollars at the spot rate on the date Y acquires the debt (£1=$.50). Therefore, Y is treated as having satisfied the debt for $50. Pursuant to paragraph (b)(13) of this section, for purposes of section 108 the amount of the indebtedness is considered to be reduced by the exchange gain from $100 to $50. Accordingly, Y recognizes $50 of exchange gain and no discharge of indebtedness income on the extinguishment of its debt to X.

(iii) If X were a United States taxpayer with a dollar functional currency and a $100 basis in Y's obligation, X would realize and recognize an exchange loss of $50 under paragraph (b)(5) of this section on the contribution of the debt to Y. The recognized loss would reduce X's adjusted basis in the debt from $100 to $50, so that for purposes of applying section 108(e)(6) Y is treated as having satisfied the debt for $50. Accordingly, under these facts as well Y would recognize $50 of exchange gain and no discharge of indebtedness income.

Example (3)—(i) X and Y are unrelated calendar year U.S. corporations with the U.S. dollar as their functional currency. On January 1, 1990 (the issue date), X acquires Y's bond maturing on December 31, 1999. The issue price of the bond is £100,000, the stated redemption price at maturity is £100,000, and the bond provides for annual interest payments at the rate of 10%. On January 1, 1994, X and Y agree that Y will redeem its bond from X in exchange for 20 shares of Y common stock. Assume the following:

(a) The spot rate on January 1, 1990, is £1=$1.00,
(b) The spot rate on January 1, 1994, is £1=$.50,
(c) Interest rates on equivalent bonds have increased so that as of January 1, 1994, the value of Y's bond has declined to £90,000, and
(d) The 20 shares of Y common stock have a market value of £90,000 as of January 1, 1994.

(ii) Pursuant to paragraph (b)(13) of this section, X will realize and recognize exchange loss with respect to the issue price (£100,000) of the bond on January 1, 1994, when the bond is exchanged for stock. X will compute exchange loss pursuant to paragraph (b)(5) of this section by translating the issue price at the spot rate on the exchange date (£100,000×$.50=$50,000) and subtracting from such amount the issue price translated at the spot rate on the date X acquired the bond (£100,000×$1.00=$100,000). Thus, X will compute $50,000 of exchange loss, all of which will be realized and recognized because it does not exceed the total $55,000 realized loss on the exchange ($45,000 worth of stock received less $100,000 basis in the exchanged bond).

(iii) Pursuant to paragraph (b)(13) of this section, Y will realize and recognize exchange gain with respect to the issue price, computed under paragraph (b)(6) of this section by translating the issue price at the spot rate on the date Y became the obligor (£100,000×$1.00=$100,000) and subtracting from such amount the issue price translated at the spot rate on the exchange date (£100,000×$.50=$50,000). Thus, Y will realize and recognize $50,000 of exchange gain. Under section 108(e)(10), on the transfer of stock to X in satisfaction of its indebtedness Y is treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock (£90,000×$.50=$45,000). Pursuant to paragraph (b)(13) of this section, for purposes of section 108 the amount of the indebtedness is considered to be reduced by the recognized exchange gain from $100,000 to $50,000. Accordingly, Y recognizes an additional $5,000 of discharge of indebtedness income on the exchange.

Example (4)—(i) The facts are the same as in Example (3) except that interest rates on equivalent bonds have declined, rather than increased, so that the value of Y's bond on January 1, 1994, has risen to £112,500; and X and Y agree that Y will redeem its bond from X on that date in exchange for 25 shares of Y common stock worth £112,500. Pursuant to paragraphs (b)(13) and (b)(5) of this section, X will compute $50,000 of exchange loss on

the exchange with respect to the £100,000 issue price of the bond. See Example (3). However, because X's total loss on the exchange is only $43,750 ($56,250 worth of stock received less $100,000 basis in the exchanged bond), under the netting rule of paragraph (b)(13) of this section the realized exchange loss is limited to $43,750.

(ii) Pursuant to paragraphs (b)(13) and (b)(6) of this section, Y will compute $50,000 of exchange gain with respect to the issue price. See Example (3). Under section 108(e)(10), Y is treated as having satisfied the $100,000 indebtedness with an amount of money equal to the fair market value of the stock (£112,500×$.50=$56,250), resulting in a total gain on the exchange of $43,750. Accordingly, under paragraph (b)(13) of this section Y's realized (and recognized) exchange gain on the exchange is limited to $43,750. Also pursuant to paragraph (b)(13), for purposes of section 108 the amount of the indebtedness is considered to be reduced by the recognized exchange gain from $100,000 to $56,250. Accordingly, Y recognizes no discharge of indebtedness income on the exchange.

(14) *Nonfunctional currency debt exchanged for debt of obligor.* [Reserved]

(15) *Debt instruments (or demand accounts) issued in hyperinflationary currencies*—(i) *In general.* [Reserved]

(ii) *Consistency required.* Related parties (as defined in section 267(b) or 707(b)(1)) must use consistent methods for computing exchange gain or loss with respect to debt instruments issued in hyperinflationary currencies.

(16) *Debt instruments denominated in more than one currency.* [Reserved]

(17) *Contingent payment bonds denominated in a nonfunctional currency.* [Reserved]

(18) *Coordination with installment sale rules of section 453.* [Reserved]

(19) *Coordination with section 267 regarding debt instruments*—(i) *Treatment of a creditor.* For rules applicable to a corporation included in a controlled group that is a creditor under a debt instrument see § 1.267(f)–1T(h).

(ii) *Treatment of a debtor.* [Reserved]

(c) *Item of expense or gross income or receipts which is to be paid or received after the date accrued*—(1) *In general.* Except as provided in § 1.988–5T, exchange gain or loss with respect to an item described in § 1.988–1T(a) (1)(ii) and (2)(ii) (other than accrued interest income or expense subject to paragraph (b) of this section) shall be realized on the date payment is made or received. Except as provided in the succeeding sentence, such exchange gain or loss shall be recognized in accordance with the applicable recognition provisions of the Internal Revenue Code. If the taxpayer's right to receive income, or obligation to pay an expense, is transferred or modified in a transaction in which gain or loss would otherwise be recognized, exchange gain or loss shall be realized and recognized only to the extent of the total gain or loss on the transaction.

(2) *Determination of exchange gain or loss with respect to an item of gross income or receipts.* Exchange gain or loss realized on an item of gross income or receipts described in paragraph (c)(1) of this section shall be determined by multiplying the units of nonfunctional currency received by the spot rate on the payment date and subtracting from such amount, the amount determined by multiplying the units of nonfunctional currency received by the spot rate on the booking date. The term "spot rate on the payment date" means the spot rate determined under § 1.988–1T(d) on the date payment is received or otherwise taken into account. Pursuant to § 1.988–1T(d)(3), a taxpayer may use a spot rate convention for purposes of determining the spot rate on the payment date. The term "spot rate on the booking date" means the spot rate determined under § 1.988–1T(d) on the date the item of gross income or receipts is accrued or otherwise taken into account. Pursuant to § 1.988–1T(d)(3), a taxpayer may use a spot rate convention for purposes of determining the spot rate on the booking date.

(3) *Determination of exchange gain or loss with respect to an item of expense.* Exchange gain or loss realized on an item of expense described in paragraph (c)(1) of this section shall be determined by multiplying the units of nonfunctional currency paid by the spot rate on the booking date and subtracting from such amount the amount determined by multiplying the units of nonfunctional currency paid by the spot rate on the payment date. The term "spot rate on the booking date" means the spot rate determined under § 1.988–1T(d) on the date the item of expense is accrued or otherwise taken into account. Pursuant to 1.988–1T(d)(3), a taxpayer may use a spot rate convention for purposes of determining the spot rate on the booking date. The term "spot rate on the payment date" means the spot rate determined under § 1.988–1T(d) on the date payment is made or otherwise taken into account. Pursuant to § 1.988–1T(d)(3), a taxpayer may use a spot rate convention for purposes of determining the spot rate on the payment date.

(4) *Examples.* The following examples illustrate the application of paragraph (c) of this section.

Example (1). X is a calendar year corporation with the dollar as its functional currency. X is on the accrual method of accounting. On January 15, 1989, X sells inventory for 10,000 Canadian dollars (C$). The spot rate on January 15, 1989, is C$1=U.S.$.55. On February 23, 1989, when X receives payment of the C$10,000, the spot rate is C$1=U.S.$.50. On February 23, 1989, X will realize exchange loss. X's loss is computed by multiplying the C$10,000 by the spot rate on the date the C$10,000 are received (C$10,000×.50=U.S.$5,000) and subtracting from such amount, the amount computed by multiplying the C$10,000 by the spot rate on the booking date (C$10,000×.55=U.S.$5,500). Thus, X's exchange loss on the transaction is U.S.$500 (U.S.$5,000−U.S.$5,500).

Example (2). The facts are the same as in Example (1) except that X uses a spot rate convention to determine the spot rate as provided in § 1.988–1T(d)(3). Pursuant to X's spot rate convention, the spot rate at which a payable or receivable is booked is determined monthly for each nonfunctional currency payable or receivable by adding the spot rate at the beginning of the month and the spot rate at the end of the month and dividing by two. All payables and receivables in a nonfunctional currency booked during the month are translated into functional currency at the rate described in the preceding sentence. Further, the translation of nonfunctional currency paid with respect to a payable, and nonfunctional currency received with respect to a receivable, is also performed pursuant to the spot rate convention. Assume the spot rate determined under the spot rate convention for the month of January is C$1=U.S.$.54 and for the month of February is C$1=U.S.$.51. On the last date in February, X will realize exchange loss. X's loss is computed by multiplying the C$10,000 by the spot rate convention for the month of February (C$10,000×U.S.$.51=U.S.$5,100) and subtracting from such amount, the amount computed by multiplying the C$10,000 by the spot rate convention for the month of January (C$10,000×U.S.$.54=$5,400). Thus, X's exchange loss on the transaction is U.S.$300 (U.S.$5,100−U.S.$5,400). X's basis in the C$10,000 is U.S.$5,400.

Example (3). The facts are the same as in Example (2) except that X has a standing order with X's bank for the bank to convert any nonfunctional currency received in satisfaction of a receivable into U.S. dollars on the day received and to deposit those U.S. dollars in X's U.S. dollar bank account. X may use its convention to translate the amount booked into U.S. dollars, but must use the U.S. dollar amounts received from the bank with respect to such receivables to determine X's exchange gain or loss. Thus, if X receives payment of the C$10,000 on February 23, 1989, when the spot rate is C$1=U.S.$.50, X determines exchange gain or loss by subtracting the amount booked under X's convention (U.S.$5,400) from the amount of U.S. dollars received from the bank under the standing conversion order (assume $5,000). X's exchange loss is U.S.$400.

(d) *Exchange gain or loss with respect to forward contracts, futures contracts and option contracts*—(1) *Scope*—(i) *In general.* This paragraph (d) applies to forward contracts, futures contracts and option contracts described in § 1.988–

1T(a)(1)(ii) and (2)(iii). For rules applicable to currency swaps and notional principal contracts described in § 1.988–1T(a)(1)(ii) and (2)(iii), see paragraph (e) of this section.

(ii) *Treatment of spot contracts.* Solely for purposes of this paragraph (d), a spot contract as defined in § 1.988–1T(b) to buy or sell nonfunctional currency is not considered a forward contract or similar transaction described in § 1.988–1T(a)(2)(iii) unless such spot contract is disposed of (or otherwise terminated) prior to making or taking delivery of the currency. For example, if a taxpayer with the dollar as its functional currency enters into a spot contract to purchase British pounds, and takes delivery of such pounds under the contract, the delivery of the pounds is not a realization event under section 988(c)(5) and paragraph (e)(4)(ii) of this section because the contract is not considered a forward contract or similar transaction described in § 1.988–1T(a)(2)(iii). However, if the taxpayer sells or otherwise terminates the contract before taking delivery of the pounds, exchange gain or loss shall be realized and recognized in accordance with paragraph (d)(2) and (3) of this section.

(2) *Realization of exchange gain or loss*—(i) *In general.* Except as provided in § 1.988–5T, exchange gain or loss on a contract described in § 1.988–2T(d)(1) shall be realized in accordance with the applicable realization section of the Internal Revenue Code (*e.g.*, sections 1001, 1092, and 1256). See also section 988(c)(5). For purposes of determining the timing of the realization of exchange gain or loss, sections 1092 and 1256 shall take precedence over section 988(c)(5).

(ii) *Realization by offset*—(A) *In general.* Except as provided in paragraph (d)(2)(ii)(B) and (C), exchange gain or loss with respect to a transaction described in § 1.988–1T(a)(1)(ii) and (2)(iii) shall not be realized solely because such transaction is offset by another transaction (or transactions).

(B) *Exception where economic benefit is derived.* If a transaction described in § 1.988–1T(a)(1)(ii) and (2)(iii) is offset by another transaction or transactions, exchange gain shall be realized to the extent the taxpayer derives, by pledge or otherwise, an economic benefit (*e.g.*, the proceeds from a borrowing) from any gain inherent in such offsetting positions. Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain taken into account by reason of the preceding sentence. This paragraph (d)(2)(ii)(B) shall apply to transactions creating an offset after September 21, 1989.

(C) *Certain contracts traded on an exchange.* If a transaction described in § 1.988–1T(a)(1)(ii) and (2)(iii) is traded on an exchange and it is the general practice of the exchange to terminate offsetting contracts, entering into an offsetting contract shall be considered a termination of the contract being offset.

(iii) *Clarification of section 988(c)(5).* If the delivery date of a contract subject to section 988(c)(5) and paragraph (d)(4)(ii) of this section is different than the date the contract expires, then for purposes of determining the date exchange gain or loss is realized, the term delivery date shall mean expiration date.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (d)(1) and (2).

Example (1). On August 1, 1989, X, a calendar year corporation with the dollar as its functional currency, enters into a forward contract with Bank A to buy 100 New Zealand dollars for $80 for delivery on January 31, 1990. (The forward purchase contract is not a section 1256 contract.) On November 1, 1989, the market price for the purchase of 100 New Zealand dollars for delivery on January 31, 1990, is $76. On November 1, 1989, X cancels its obligation under the forward purchase contract and pays Bank A $3.95 (the present value of $4 discounted at 12% for the period) in cancellation of such contract. Under section 1001(a), X realizes an exchange loss of $3.95 on November 1, 1989, because cancellation of the forward purchase contract for cash results in the termination of X's contract.

Example (2). X is a corporation with the dollar as its functional currency. On January 1, 1989, X enters into a currency swap contract with Bank A under which X is obligated to make a series of Japanese yen payments in exchange for a series of dollar payments. On February 21, 1992, X has a gain of $100,000 inherent in such contract as a result of interest rate and exchange rate movements. Also on February 21, 1992, X enters into an offsetting swap with Bank A to lock in such gain. If on February 21, 1992, X pledges the gain inherent in such offsetting positions as collateral for a loan, X's initial swap contract is treated as being terminated on February 21, 1992, under paragraph (d)(2)(ii)(B). Proper adjustment is made in the amount of any gain or loss subsequently realized for the gain taken into account by reason of paragraph (d)(2)(ii)(B) of this section.

Example (3). X is a calendar year corporation with the dollar as its functional currency. On October 1, 1989, X enters into a forward contract to buy 100,000 Swiss francs (Sf) for delivery on March 1, 1990, for $51,220. Assume that the contract is a section 1256 contract under section 1256(g)(2) and that section 1256(e) does not apply. Pursuant to section 1256(a)(1), the forward contract is treated as sold for its fair market value on December 31, 1989. Assume that the fair market value of the contract is $1,000 determined under § 1.988–1T(g). Thus X will realize an exchange gain of $1,000 on December 31, 1989. Such gain is subject to the character rules of § 1.988–3T and the source rules of § 1.988–4T.

(v) *Extension of the maturity date of certain contracts.* An extension of time for making or taking delivery under a contract described in paragraph (d)(1) of this section (*e.g.*, a historical rate rollover as defined in § 1.988–5T(b)(2)(iii)(C)) shall be considered a sale or exchange of the contract for its fair market value on the date of the extension and the establishment of a new contract on such date. If, under the terms of the extension, the time value of any gain or loss recognized pursuant to the preceding sentence adjusts the price of the currency to be bought or sold under the new contract, the amount attributable to such time value shall be treated as interest income or expense for all purposes of the Code.

(3) *Recognition of exchange gain or loss.* Except as provided in § 1.988–5T (relating to section 988 hedging transactions), exchange gain or loss realized with respect to a contract described in paragraph (d)(1) of this section shall be recognized in accordance with the applicable recognition provisions of the Internal Revenue Code. For example, a loss realized with respect to a contract described in paragraph (d)(1) of this section which is part of a straddle shall be recognized in accordance with the provisions of section 1092 to the extent such section is applicable.

(4) *Determination of exchange gain or loss*—(i) *In general.* Exchange gain or loss with respect to a contract described in § 1.988–2T(d)(1) shall be determined by subtracting the amount paid (or deemed paid), if any, for or with respect to the contract (including any amount paid upon termination of the contract) from the amount received (or deemed received), if any, for or with respect to the contract (including any amount received upon termination of the contract). Any gain or loss determined according to the preceding sentence shall be treated as exchange gain or loss.

(ii) *Special rules where taxpayer makes or takes delivery.* If the taxpayer makes or takes delivery in connection with a contract described in paragraph (d)(1) of this section, any gain or loss shall be realized and recognized in the same manner as if the taxpayer sold the contract (or paid another person to assume the contract) on the date on which he took or made delivery for its fair market value on such date. See paragraph (d)(2)(iii) of this section regarding the definition of the term "delivery date." This paragraph (d)(4)(ii) shall not apply in any case in which the

taxpayer makes or takes delivery before June 11, 1987.

(iii) *Exchange of futures for physicals.* [Reserved]

(iv) *Examples.* The following examples illustrate the application of paragraph (d)(4) of this section.

Example (1). X is a calendar year corporation with the dollar as its functional currency. On October 1, 1989, when the six month forward rate is $.4907, X enters into a forward contract to buy 100,000 New Zealand dollars (NZD) for delivery on March 1, 1990. On March 1, 1990, when X takes delivery of the 100,000 NZD, the spot rate is 1NZD equals $.48. Pursuant to section 988(c)(5) and paragraph (d)(4)(ii) of this section, a taxpayer that takes delivery of nonfunctional currency under a forward contract that is subject to section 988 is treated as if the taxpayer sold the contract for its fair market value on the date delivery is taken. If X sold the contract on March 1, 1990, the transferee would require a payment of $1,070 [($.48×100,000NZD)−($.4907×100,000NZD)] to compensate him for the loss in value of the 100,000NZD. Therefore, X realizes an exchange loss of $1,070. X has a basis in the 100,000NZD of $48,000.

Example (2). Assume the same facts as in Example (1) except that the contract is for Swiss francs and is a section 1256 contract. Assume further that on December 31, 1989, the value to X of the contract as marked to market is $1,000. Pursuant to section 1256(a), X realizes an exchange gain of $1,000. Such gain, however, is characterized as ordinary income under § 1.988–3T and will be U.S. source under § 1.988–4T.

Example (3). X is a calendar year corporation with the dollar as its functional currency. On May 2, 1989, X enters into an option contract with Bank A to purchase 50,000 Canadian dollars (C$) for U.S. $42,500 (C$1=U.S. $.85) for delivery on or before September 18, 1989. X pays a $285 premium to Bank A to obtain the option contract. On September 18, 1989, when X exercises the option and takes delivery of the C$50,000, the spot rate is C$1 equals U.S. $.90. Pursuant to section 988(c)(5) and paragraph (d)(4)(ii), a taxpayer that takes delivery under an option contract that is subject to section 988 is treated as if the taxpayer sold the contract for its fair market value on the date delivery is taken. If X sold the contract for its fair market value on September 18, 1989, X would receive U.S. $2,500 [(C$50,000×U.S. $.90)−(C$50,000×U.S. $.85)]. Accordingly, X is deemed to have received U.S.$2,500 on the sale of the contract at its fair market value. X will realize U.S. $2,215 ($2,500 deemed received less $285 paid) of exchange gain with respect to the delivery of Canadian dollars under the option contract. X's basis in the 50,000 Canadian dollars is U.S. $45,000.

(e) *Currency swaps and notional principal contracts—(1) Realization and recognition of exchange gain or loss.* Except as provided in paragraph (e)(2) of this section or in § 1.988–5T, exchange gain or loss with respect to a notional principal contract described in § 1.988–1T(a)(2)(iii)(B) (other than a currency swap) shall be realized according to the taxpayer's method of accounting so long as that method clearly reflects income. In the case of a payment received during one taxable year with respect to a notional principal contract described in § 1.988–1T(a)(2)(iii)(B) (other than a currency swap) where such payment relates to the obligation to make a payment or payments in other taxable years under the contract, a method of accounting that properly recognizes the payment received over the life of the contract clearly reflects income. See generally Notice 89–21, 1989–8 I.R.B. 23.

(2) *Special rules for currency swaps—*(i) *In general.* Except as provided in paragraph (e)(2)(ii)(B) of this section, the provisions of this paragraph (e)(2) shall apply solely for purposes of determining the realization, recognition and amount of exchange gain or loss with respect to a currency swap contract, and not for purposes of determining the source of such gain or loss, or characterizing such gain or loss as interest. Except as provided in § 1.988–3T(c), any gain or loss realized with respect to a currency swap contract shall be characterized as exchange gain or loss (and not as interest income or expense). Any exchange gain or loss realized in accordance with this paragraph (e)(2) shall be recognized unless otherwise provided in an applicable section of the Code. For purposes of this paragraph (e)(2), a currency swap contract is a contract defined in § 1.988–5T(a)(4)(ii). With respect to a contract which requires the payment of swap principal prior to maturity of such contract, see paragraph (f) of this section.

(ii) *Timing and computation of periodic interim payments—*(A) *In general.* Except as provided in paragraph (e)(2)(ii)(B) of this section and § 1.988–5T, the timing and computation of the periodic interim payments provided in a currency swap agreement shall be determined by treating—

(*1*) Payments made under the swap as payments made pursuant to a hypothetical borrowing that is denominated in the currency in which payments are required to be made (or are determined with reference to) under the swap, and

(*2*) Payments received under the swap as payments received pursuant to a hypothetical loan that is denominated in the currency in which payments are received (or are determined with reference to) under the swap.

Except as provided in paragraph (e)(2)(iv) of this section, the hypothetical issue price of such hypothetical borrowing and loan shall be the swap principal amount. The hypothetical stated redemption price at maturity is the total of all payments (excluding any exchange of the swap principal amount at the inception of the contract) provided under the hypothetical borrowing or loan other than periodic interest payments under the principles of section 1273. For purposes of determining economic accrual under the currency swap, the number of hypothetical interest compounding periods of such hypothetical borrowing and loan shall be determined pursuant to a semiannual compounding convention unless the currency swap contract indicates otherwise. For purposes of determining the timing and amount of the periodic interim payments, the principles regarding the amortization of interest (see generally, sections 1272 through 1275 and 163(e)) shall apply to the hypothetical interest expense and income of such hypothetical borrowing and loan. However, such principles shall not apply to determine the time when principal is deemed to be paid on the hypothetical borrowing and loan. See paragraph (d)(2)(iii) of this section and Example (2) of paragraph (d)(5) of this section with respect to the time when principal is deemed to be paid. With respect to the translation and computation of exchange gain or loss on any hypothetical interest income or expense, see § 1.988–2T (b). The amount treated as exchange gain or loss by the taxpayer with respect to the periodic interim payments for the taxable year shall be the amount of hypothetical interest income and exchange gain or loss attributable to such interest income from the hypothetical borrowing and loan for such year less the amount of hypothetical interest expense and exchange gain or loss attributable to the interest expense from such hypothetical borrowing and loan for such year.

(B) *Effect of prepayment for purposes of section 956.* For purposes of section 956, the Commissioner may treat any prepayment of a currency swap as a loan.

(iii) *Timing and determination of exchange gain or loss with respect to the swap principal amount.* Exchange gain or loss with respect to the swap principal amount shall be realized on the day the units of swap principal in each currency are exchanged. (See § 1.988–5T(a)(4)(ii)(A)(*2*) which requires that the entire swap principal amount be exchanged upon maturity of the contract.) Such gain or loss shall be determined on the date of the exchange by subtracting the value (on such date) of the units of swap principal paid from the value of the units of swap principal

received. This paragraph (e)(2)(iii) does not apply to an equal exchange of the swap principal amount at the commencement of the agreement at a market exchange rate.

(iv) *Anti-abuse rule.* If the taxpayer's method of accounting for income, expense, gain or loss attributable to a currency swap does not clearly reflect income, the Commissioner may apply principles analogous to those of section 1274 or such other rules as the Commissioner deems appropriate to determine the hypothetical issue price, the hypothetical stated redemption price at maturity, and the amounts required to be taken into account within a taxable year.

(3) *Amortization of swap premium or discount in the case of off-market currency swaps*—(i) *In general.* An "off-market currency swap" is a currency swap contract under which the present value of the payments to be made is not equal to that of the payments to be received on the day the taxpayer enters into or acquires the contract (exclusive of the swap premium or discount, as defined in paragraph (e)(3)(ii)). Generally, such present values may not be equal if the swap exchange rate is not the spot rate, or the interest indices used to compute the periodic interim payments do not reflect equivalent values, on the day the taxpayer enters into or acquires the currency swap.

(ii) *Treatment of taxpayer entering into or acquiring an off-market currency swap.* If a taxpayer that enters into or acquires a currency swap makes a payment (that is, the taxpayer pays a premium, "swap premium," to enter into or acquire the currency swap) or receives a payment (that is, the taxpayer enters into or acquires the currency swap at a discount, "swap discount") in order to make the present value of the amounts to be paid equal the amounts to be received, such payment shall be amortized in a manner which places the taxpayer in the same position it would have been in had the taxpayer entered into a currency swap contract under which the present value of the amounts to be paid equal the amounts to be received (absent any swap premium or discount). Thus, swap premium or discount shall be amortized as follows—

(A) The amount of swap premium or discount that is attributable to the difference between the swap exchange rate and the spot rate on the date the contract is entered into or acquired shall be taken into account as income or expense on the date the swap principal amounts are taken into account; and

(B) The amount of swap premium or discount attributable to the difference in values of the periodic interim payments shall be amortized in a manner consistent with the principles of economic accrual. *Cf.*, section 171.

Any amount taken into account pursuant to this paragraph (e)(3)(ii) shall be treated as exchange gain or loss.

(4) *Treatment of taxpayer disposing of a currency swap.* Any gain or loss realized on the disposition or the termination of a currency swap is exchange gain or loss.

(5) *Examples.* The following examples illustrate the application of this paragraph (e).

Example (1)—(i) C is an accrual method calendar year corporation with the dollar as its functional currency. On January 1, 1989, C enters into a currency swap with J with the following terms: (1) the principal amount is $150 and 100 British pounds (£) (the equivalent of $150 on the effective date of the contract assuming a spot rate of £1=$1.50 on January 1, 1989); (2) C will make payments equal to 10% of the dollar principal amount on December 31, 1989, and December 31, 1990; (3) J will make payments equal to 12% of the pound principal amount on December 31, 1989, and December 31, 1990; and (4) on December 31, 1990, C will pay to J the $150 principal amount and J will pay to C the £100 principal amount. Assume that the spot rate is £1=$1.50 on January 1, 1989, £1=$1.40 on December 31, 1989, and £1=$1.30 on December 31, 1990. Assume further that the average rate for 1989 is £1=$1.45 and for 1990 is £1=$1.35.

(ii) Solely for determining the realization of gain or loss in accordance with paragraph (e)(2) of this section (and not for purposes of determining whether any payments are treated as interest), C will treat the dollar payments made by C as payments made pursuant to a dollar borrowing with an issue price of $150, a stated redemption price at maturity of $150, and yield to maturity of 10%. C will treat the pound payments received as payments received pursuant to a pound loan with an issue price of £100, a stated redemption price at maturity of £100, and a yield of 12% to maturity. Pursuant to § 1.988–2T(b), C is required to compute hypothetical accrued pound interest income at the average rate for the accrual period and then determine exchange gain or loss on the day payment is received with respect to such accrued amount. Accordingly, C will accrue $17.40 (£12×$1.45) in 1989 and $16.20 (£12×$1.35) in 1990. C also will compute hypothetical exchange loss of $.60 on December 31, 1989 [(£12×$1.40)−(£12×$1.45)] and hypothetical exchange loss of $.60 on December 31, 1990 [£12×$1.30)−(£12×$1.35)]. All such hypothetical interest income and exchange loss are characterized and sourced as exchange gain and loss. Further, C is treated as having paid $15 ($150×10%) of hypothetical interest on December 31, 1989, and again on December 31, 1990. Such hypothetical interest expense is characterized and sourced as exchange loss. Thus, C will have a net exchange gain of $1.80 ($17.40−$.60−$15.00) with respect to the periodic interim payments in 1989 and a net exchange gain of $.60 ($16.20−$.60−$15.00) with respect to the periodic interim payments in 1990. Finally, C will realize an exchange loss on December 31, 1990 with respect to the exchange of the swap principal amount. This loss is determined by subtracting the value of the units of swap principal paid ($150) from the value of the units of swap principal reoeived (£100×$1.30=$130) resulting in a $20 exchange loss.

Example (2). C is an accrual method calendar year corporation with the dollar as its functional currency. On January 1, 1989, when the spot rate is £1=$1.50, C enters into a currency swap contract with J under which C agrees to make and receive the following payments:

Date	C Pays	J Pays
Dec. 31, 1989	$15.00	12.00
Dec. 31, 1990	41.04	12.00
Dec. 31, 1991	0.00	12.00
Dec. 31, 1992	150.00	£112.00

Under paragraph (e)(2)(ii) of this section, C must treat the dollar periodic interim payments under the swap as made pursuant to a hypothetical dollar borrowing. The hypothetical issue price is $150 and the stated redemption price at maturity is $206.04. The amount of hypothetical interest expense must be amortized in accordance with economic accrual. Thus J must include and C must deduct periodic interim payment amounts as follows:

	Amount taken into account	Adjusted issue price
Dec. 31, 1989	$15.00	150.00
Dec. 31, 1990	15.00	123.96
Dec. 31, 1991	12.40	136.36
Dec. 31, 1992	13.64	

Gain or loss with respect to the periodic interim payments of the currency swap is determined under paragraph (e)(2)(ii)(A) of this section with respect to the dollar cash flow amortized as set forth above and the corresponding pound cash flow as stated in the currency swap contract. Gain or loss with respect to the principal payments (*i.e.*, $150 and £100) exchanged on December 31, 1992, is determined under paragraph (e)(2)(iii) of this section on December 31, 1992, notwithstanding that under the principles regarding amortization of interest $26.04 would have been regarded as a payment of principal on December 31, 1990.

Example (3)—(i) X is a corporation on the accrual method of accounting with the dollar as its functional currency and the calendar year as its taxable year. On January 1, 1989, X enters into a three year currency swap contract with Y with the following terms. The swap principal amount is $100 and the Swiss franc (Sf) equivalent, Sf200 translated at the swap exchange rate of $1=Sf2. There is no initial exchange of the swap principal amount. The interest rates used to compute the periodic interim payments are 10% compounded annually for U.S. dollar

payments and 5% compounded annually for Swiss franc payments. Thus, under the currency swap, X agrees to pay Y $10 (10%×$100) on December 31st of 1989, 1990 and 1991 and to pay Y the swap principal amount of $100 on December 31, 1991. Y agrees to pay X Sf10 (5%×Sf200) on December 31st of 1989, 1990 and 1991 and to pay X the swap principal amount of Sf200 on December 31, 1991. Assume that the average rate for 1989 and the spot rate on December 31, 1989, is $1=Sf2.5.

(ii) Under paragraph (e)(2)(ii) of this section, on December 31, 1989, X will realize an exchange loss of $6 (the sum of $10 of loss by reason of the $10 periodic interim payment paid to Y and $4.00 of gain, the value of Sf10 on December 31, 1989, from the receipt of Sf10 on such date).

(iii) On January 1, 1990, X transfers its rights and obligations under the swap contract to Z, an unrelated corporation. Z has the dollar as its functional currency, is on the accrual method of accounting, and has the calendar year as its taxable year. On January 1, 1990, the exchange rate is $1=Sf2.50.The relevant dollar interest rate is 8% compounded annually and the relevant Swiss franc interest rate is 5% compounded annually. Because of the movement in exchange and interest rates, the agreement between X and Z to transfer the currency swap requires X to pay Z $23.56 (the swap discount as determined under paragraph (e)(3)).

(iv) Pursuant to paragraph (e)(3)(iii) of this section, X may deduct the loss of $23.56 in 1990. The loss is characterized under § 1.988–3T and sourced under § 1.988–4T.

(v) Pursuant to paragraph (e)(3)(ii) of this section, Z is required to amortize the $23.56 received as follows. The amount of the $23.56 payment that is attributable to movements in exchange rates ($20) is taken into account on December 31, 1991, the date the swap principal amounts are exchanged, under paragraph (e)(3)(iii) of this section. This amount is the present value (discounted at 10%, the rate under the currency swap contract used to compute the dollar periodic interim payments) of the financial asset required to compensate X for the loss in value of the hypothetical Swiss franc loan resulting from movements in exchange rates between January 1, 1989 and January 1, 1990. This amount is determined by assuming that interest rates did not change from the date the swap originally was entered into (January 1, 1989), but that the exchange rate is $1=Sf2.50. Under this assumption, a taxpayer undertaking the obligation to pay dollars under the currency swap on January 1, 1990, would only agree to pay $8 for Sf10 on December 31, 1990 and $88 for Sf210 on December 31, 1991, because the exchange rates have moved from $1=Sf2 to $1=Sf2.50. Thus, Z requires $2 on December 31, 1990 and $22 on December 31, 1991 to compensate for the amount of dollar payments Z is required to make in exchange for the Swiss francs received on December 31, 1990 and 1991. The present value of $2 on December 31, 1990 and $22 on December 31, 1991 discounted at the rate for U.S. dollar payments of 10% is $20 ($1.82+ $18.18). This amount is discounted at the rate for U.S. dollar payments (i.e., at the historic rate) because the amount of the $23.56 payment received by Z that is attributable to movements in interest rates is computed and amortized separately as provided in the following paragraph.

(vi) Pursuant to paragraph (e)(3)(ii)(B) of this section, Z is required to amortize the portion of the $23.56 payment attributable to movements in interest rates under principles of economic accrual over the term of the currency swap agreement. The amount of the $23.56 payment that is attributable to movements in interest rates (assuming that exchange rates have not changed) is the present value ($3.56) of the excess ($2.00 in 1990 and $2.00 in 1991) of the periodic interim payments Z is required to pay under the currency swap agreement ($10 in 1990 and $10 in 1991) over the amount Z would be required to pay if the currency swap agreement reflected current interest rates on the day Z acquired the swap contract ($8 in 1990 and $8 in 1991) discounted at the appropriate dollar interest rate on January 1, 1990. Thus, under principles of economic accrual (e.g., see section 171 of the Code), Z will include in income $1.72 on December 31, 1990, the amount that, when added to the interest ($.28) on the $3.56 computed at the 8% rate on the date Z acquired the currency swap contract, will equal the $2.00 needed to compensate Z for the movement in interest rates between January 1, 1989 and January 1, 1990. Z also will include in income $1.85 on December 31, 1991, the amount that, when added to the interest ($.15) on the $1.85 (the remaining balance of the $3.56 payment) computed at the 8% rate on the date Z acquired the currency swap contract, will equal the $2.00 needed to compensate Z for the movement in interest rates between January 1, 1990 and January 1, 1991. This amount is computed assuming exchange rates have not changed because the amount attributable to movements in exchange rates is computed and amortized separately under the preceding paragraph.

(6) *Special effective date for rules regarding currency swaps.* Paragraph (e)(3) of this section regarding amortization of swap premium or discount in the case of off-market currency swaps shall be effective for transactions entered into after September 21, 1989, unless such swap premium or discount was paid or received pursuant to a binding contract with an unrelated party that was entered into prior to such date. For transactions entered into prior to this date, see Notice 89–21, 1989–8 I.R.B. 23.

(f) *Substance over form*—(1) *In general.* If the substance of a transaction described in § 1.988–1T(a) (1)(ii) differs from its form, the timing, source, and character of gains or losses with respect to such transaction shall be recharacterized in accordance with its substance. For example, if a taxpayer enters into a transaction that it designates a "currency swap contract" that requires the prepayment of all payments to be made or to be received (but not both), the transaction must be recharacterized as a loan. See also § 1.861–9T(b)(1).

(2) *Example.* On January 1, 1990, X, a U.S. corporation with the dollar as its functional currency, enters into a contract with Y under which X will pay Y $100 and Y will pay X LC100 on January 1, 1990, and X will pay Y LC109.3 and Y will pay X $133 on December 31, 1992. On January 1, 1990, the spot exchange rate is LC1=$1 and the 3 year forward rate is LCI=$.8218. X's cash flows are summarized below:

Date	Dollar	LC
1/1/90	(100)	100
12/31/90	0	0
12/31/91	0	0
12/31/92	133	(109.3)

X and Y designate this contract as a "currency swap." Notwithstanding this designation, for purposes of determining the timing, source, and character with respect to the transaction, the transaction must be characterized in accordance with its substance. Thus, the January 1, 1990, exchange by X of $100 for LC100 is treated as a spot purchase of LCs by X and the December 31, 1992, exchange by X at 109.3 LC for $133 is treated as a forward sale of LCs by X. Under such treatment there would be no tax consequences to X under paragraph (e)(2) of this section in 1990, 1991, and 1992 with respect to this transaction other than the realization of exchange gain or loss on the sale of the LC109.3 on December 31, 1992. Calculation of such gain or loss would be governed by the rules of paragraph (d) of this section.

(g) *Effective date.* Except as otherwise provided in this section, this section shall be effective for taxable years beginning after December 31, 1986. Thus, except as otherwise provided in this section, any payments made or received with respect to a section 988 transaction in taxable years beginning after December 31, 1986, are subject to this section.

§ 1.988–3T Character of exchange gain or loss (Temporary regulations).

(a) *In general.* The character of exchange gain or loss recognized on a section 988 transaction is governed by section 988 and this section. Except as otherwise provided in section 988(c)(1)(E), section 1092, § 1.988–5T and this section, exchange gain or loss realized with respect to a section 988 transaction (including a section 1256 contract that is also a section 988 transaction) shall be characterized as ordinary gain or loss. Accordingly,

unless a valid election is made under paragraph (b) of this section, any section providing special rules for capital gain or loss treatment, such as sections 1233, 1234 and 1236, shall not apply.

(b) *Election to characterize exchange gain or loss on certain identified forward contracts, futures contracts and option contracts as capital gain or loss*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, a taxpayer may elect, subject to the requirements of paragraph (b)(3) of this section, to treat any gain or loss recognized on a contract described in § 1.988–2T(d)(1) as capital gain or loss, but only if the contract—

(i) Is a capital asset in the hands of the taxpayer,

(ii) Is not part of a straddle within the meaning of section 1092(c) (without regard to subsections (c)(4) or (e)), and

(iii) Is not a regulated futures contract or nonequity option with respect to which an election under section 988(c)(1)(D)(ii) is in effect.

If a valid election under this paragraph (b) is made with respect to a section 1256 contract, section 1256 shall govern the character of any gain or loss recognized on such contract.

(2) *Special rule for contracts that become part of a straddle after an election is made.* If a contract which is the subject of an election under paragraph (b)(1) of this section becomes part of a straddle within the meaning of section 1092(c) (without regard to subsections (c)(4) or (e)) after the date of the election, the election shall be invalid with respect to gains from such contract and the Commissioner, in his sole discretion, may invalidate the election with respect to losses.

(3) *Requirements for making the election.* A taxpayer elects to treat gain or loss on a transaction described in paragraph (b)(1) of this section as capital gain or loss by clearly identifying such transaction on its books and records on the date the transaction is entered into. No specific language or account is necessary for identifying a transaction referred to in the preceding sentence. However, the method of identification must be consistently applied and must clearly identify the pertinent transaction as subject to the section 988(a)(1)(B) election. The Commissioner, in his sole discretion, may invalidate any purported election that does not comply with the preceding sentence. A taxpayer shall be presumed to have satisfied the requirements of this paragraph (b)(3) if the taxpayer receives independent verification of the election.

(4) *Verification.* The taxpayer that has made an election under § 1.988–3T(b)(3) must attach to his income tax return a statement which sets forth the following:

(i) A description and the date of each election made by the taxpayer during the taxpayer's taxable year;

(ii) A statement that each election made during the taxable year was made before the close of the date the transaction was entered into;

(iii) A description of any contract for which an election was in effect and the date such contract expired or was otherwise sold or exchanged during the taxable year;

(iv) A statement that the contract was never part of a straddle as defined in section 1092; and

(v) A statement that all transactions subject to the election are included on the statement attached to the taxpayer's income tax return.

In addition to any penalty that may otherwise apply, the Commissioner, in his sole discretion, may invalidate any or all elections made during the taxable year under § 1.988–3T(b)(1) if the taxpayer fails to verify each election as provided in this § 1.988–3T(b)(4). The preceding sentence shall not apply if the taxpayer's failure to verify each election was due to reasonable cause or bona fide mistake made in good faith. The burden of proof to show reasonable cause or bona fide mistake made in good faith is on the taxpayer.

(5) *Effective date.* This paragraph (b) is effective for taxable years beginning on or after September 21, 1989. For prior taxable years, any reasonable contemporaneous election meeting the requirements of section 988(a)(1)(B) shall satisfy this paragraph (b).

(c) *Exchange gain or loss treated as interest*—(1) *In general.* Except as provided in this paragraph (c)(1), exchange gain or loss realized on a section 988 transaction shall not be treated as interest income or expense. Exchange gain or loss realized on a section 988 transaction shall be treated as interest income or expense as provided in paragraph (c)(2) of this section with regard to tax exempt bonds, in § 1.861–9T (or its successor provision), § 1.988–2T(e)(2)(ii)(B), § 1.988–5T, and in administrative pronouncements (as that term is used in § 1.6661–3(b)(2)).

(2) *Exchange loss realized by the holder on nonfunctional currency tax exempt bonds.* Exchange loss realized by the holder of a debt instrument the interest on which is excluded from gross income under section 103(a) or any similar provision of law shall be treated as an offset to and reduce total interest income received or accrued with respect to such instrument. Therefore, to the extent of total interest income, no exchange loss shall be recognized. This paragraph (c)(2) shall be effective with respect to debt instruments acquired on or after June 24, 1987.

(d) *Effective date.* Except as otherwise provided in this section, this section shall be effective for taxable years beginning after December 31, 1986. Thus, except as otherwise provided in this section, any payments made or received with respect to a section 988 transaction in taxable years beginning after December 31, 1986, are subject to this section.

§ 1.988–4T Source of gain or loss realized on a section 988 transaction (Temporary regulations).

(a) *In general.* Except as otherwise provided in this section, the source of exchange gain or loss shall be determined by reference to the residence of the taxpayer. This rule applies even if the taxpayer has made an election under § 1.988–3T(b) to characterize exchange gain or loss as capital gain or loss. This section takes precedence over section 865.

(b) *Qualified business unit*—(1) *In general.* The source of exchange gain or loss shall be determined by reference to the residence of the qualified business unit of the taxpayer on whose books the asset, liability, or item of income or expense giving rise to such gain or loss is properly reflected.

(2) *Proper reflection on the books of the taxpayer or qualified business unit*—(i) *In general.* Whether an asset, liability, or item of income or expense is properly reflected on the books of a qualified business unit is a question of fact.

(ii) *Presumption if booking practices are inconsistent.* It shall be presumed that an asset, liability, or item of income or expense is not properly reflected on the books of the qualified business unit if the taxpayer and its qualified business units employ inconsistent booking practices with respect to the same or similar assets, liabilities, or items of income or expense. If not properly reflected on the books, the Commissioner may allocate any asset, liability, or item of income or expense between or among the taxpayer and its qualified business units to properly reflect the source (or realization) of exchange gain or loss.

(c) *Effectively connected exchange gain or loss.* Notwithstanding paragraphs (a) and (b) of this section, exchange gain or loss that under principles similar to those set forth in § 1.864–4(c) arises from the conduct of a United States trade or business shall be

sourced in the United States and such gain or loss shall be treated as effectively connected to the conduct of a United States trade or business for purposes of sections 871(b) and 882(a)(1).

(d) *Residence*—(1) *In general.* For purposes of sections 985 through 989, the residence of any person shall be—

(i) In the case of an individual, the country in which such individual's tax home (as defined in section 911(d)(3)) is located,

(ii) In the case of a corporation, partnership, trust or estate which is a United States person (as defined in section 7701(a)(30)), the United States, and

(iii) In the case of a corporation, partnership, trust or estate which is not a United States person, a country other than the United States.

If an individual does not have a tax home (as defined in section 911(d)(3)), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or resident alien. If the taxpayer is a U.S. person and has no principal place of business outside the United States, the residence of the taxpayer is the United States. Notwithstanding paragraph (d)(1)(ii) of this section, if a partnership is formed or availed of to avoid tax by altering the source of exchange gain or loss, the source of such gain or loss shall be determined by reference to the residence of the partners rather than the partnership.

(2) *Exception.* In the case of a qualified business unit of any taxpayer (including an individual), the residence of such unit shall be the country in which the principal place of business of such qualified business unit is located.

(e) *Special rule for certain related party loans*—(1) *In general.* In the case of a loan by a United States person or a related person to a 10 percent owned foreign corporation, or a corporation that meets the 80 percent foreign business requirements test of section 861(c)(1), other than a corporation subject to § 1.861–11T(e)(2)(i), which is denominated in, or determined by reference to, a currency other than the U.S. dollar and bears interest at a rate at least 10 percentage points higher than the Federal mid-term rate (as determined under section 1274 (d)) at the time such loan is entered into, the following rules shall apply—

(i) For purposes of section 904 only, such loan shall be marked to market annually on the earlier of the last business day of the United States person's (or related person's) taxable year or the date the loan matures; and

(ii) Any interest income earned with respect to such loan for the taxable year shall be treated as income from sources within the United States to the extent of any notional loss attributable to such loan under paragraph (d)(1)(i) of this section.

(2) *United States person.* For purposes of this paragraph (e), the term "United States person" means a person described in section 7701(a)(30).

(3) *Loans by related foreign persons—(i) In general.* [Reserved].

(ii) *Definition of related person.* For purposes of this paragraph (e), the term "related person" has the meaning given such term by section 954(d)(3) except that such section shall be applied by substituting "United States person" for "controlled foreign corporation" each place such term appears.

(4) *10 percent owned foreign corporation.* For purposes of this paragraph (e), the term "10 percent owned foreign corporation" means any foreign corporation in which the United States person owns directly or indirectly (within the meaning of section 318(a)) at least 10 percent of the voting stock.

(f) *Gain or loss treated as interest under § 1.988–3T.* Notwithstanding the provisions of this paragraph, any gain or loss realized on a section 988 transaction that is treated as interest income or expense under § 1.988–3T(c)(1) shall be sourced or allocated and apportioned pursuant to section 861(a)(1), 862(a)(1), or 864(e) as the case may be.

(g) *Effective date.* This section shall be effective for taxable years beginning after December 31, 1986. Thus, any payments made or received with respect to a section 988 transaction in taxable years beginning after December 31, 1986, are subject to this section.

§ 1.988–5T Section 988(d) hedging transactions (Temporary regulations).

(a) *Integration of a nonfunctional currency debt instrument and a § 1.988–5T(a) hedge*—(1) *In general.* This paragraph (a) applies to a § 1.988–5T(a) qualified hedging transaction as defined in this paragraph (a)(1). A § 1.988–5T(a) qualified hedging transaction is an integrated economic transaction, as provided in paragraph (a)(5) of this section, consisting of a qualifying debt instrument as defined in paragraph (a)(3) of this section and a § 1.988–5T(a) hedge as defined in paragraph (a)(4) of this section. If a transaction is a § 1.988–5T(a) qualified hedging transaction, no exchange gain or loss is recognized on the qualifying debt instrument or on the § 1.988–5T(a) hedge for the period that either is part of a § 1.988–5T(a) qualified hedging transaction, and the transactions shall be integrated as provided in paragraph (a)(9) of this section. However, if the qualified hedging transaction results in a synthetic nonfunctional currency denominated debt instrument, such instrument shall be subject to the rules of § 1.988–2T(b).

(2) *Exception.* This paragraph (a) does not apply with respect to a qualified hedging transaction that creates a synthetic asset or liability denominated in, or determined by reference to, a currency other than the U.S. dollar if the rate that approximates the Federal short-term rate in such currency is at least 20 percentage points higher than the Federal short term rate (determined under section 1274(d)) on the date the taxpayer identifies the transaction as a qualified hedging transaction.

(3) *Qualifying debt instrument.* A qualifying debt instrument is a debt instrument defined in § 1.988–2T(b)(2)(i), except that a qualifying debt instrument shall include an instrument under which the payments are denominated in, or determined by reference to, more than one currency. A qualifying debt instrument does not include accounts payable, accounts receivable or similar items of expense or income.

(4) *Section 1.988–5T(a) hedge*—(i) *In general.* A § 1.988–5T(a) hedge (hereinafter referred to in this paragraph (a) as a "hedge") is a spot contract, futures contract, forward contract, series of futures or forward contracts or combination thereof, a currency swap contract, or similar financial instrument, that permits the calculation of a yield to maturity in the currency in which the synthetic debt instrument is denominated (as determined under paragraph (a)(9)(ii)(A) of this section). A hedge does not include an option or similar instrument which does not permit the calculation of a yield to maturity.

(ii) *Definition of currency swap contract*—(A) *In general.* A currency swap contract is a contract involving two different currencies between two or more parties to—

(*1*) Exchange periodic interim payments, as defined in paragraph (a)(4)(ii)(D) of this section, at the swap exchange rate on or prior to maturity of the contract; and

(*2*) Exchange the swap principal amount upon maturity of the contract at the swap exchange rate.

A currency swap contract may also require an exchange of the swap

principal amount upon commencement of the agreement.

(B) *Swap principal amount.* The swap principal amount is an amount of two different currencies which, under the terms of the currency swap contract, is used to determine the periodic interim payments in each currency and which is exchanged upon maturity of the contract. If such amount is not clearly set forth in the contract, the Commissioner may determine the swap principal amount.

(C) *Swap exchange rate.* The swap exchange rate is the single exchange rate set forth in the contract upon which all exchanges of currency are determined. If the swap exchange rate is not clearly set forth in the contract, the Commissioner may determine such rate.

(D) *Exchange of periodic interim payments.* An exchange of periodic interim payments is an exchange of one or more payments in one currency specified by the contract for one or more payments in a different currency specified by the contract where the payments in each currency are computed by reference to an interest index applied to the swap principal amount. A currency swap contract must clearly indicate the periodic interim payments, or the interest index used to compute the periodic interim payments, in each currency.

(iii) *Anti-abuse rule.* If the currency swap contract does not clearly set forth the swap principal amount in each currency, the swap exchange rate, or the periodic interim payments in each currency (or the interest index used to compute the periodic interim payments in each currency), the Commissioner may defer any income, deduction, gain or loss with respect to such contract until termination of the contract.

(iv) *Retroactive application of definition of currency swap contract.* A taxpayer may apply this definition of currency swap contract in lieu of the definition of swap agreement in section 2(e)(5) of Notice 87–11, 1987–1 C.B. 423 to transactions entered into after December 31, 1986.

(5) *Definition of integrated economic transaction.* A qualifying debt instrument and a hedge are an integrated economic transaction if all of the following requirements are satisfied—

(i) All nonfunctional currency payments to be made or received under the qualifying debt instrument (or amounts determined by reference to a nonfunctional currency) are fully hedged on the date the taxpayer identifies the transaction under paragraph (a) of this section as a qualified hedging transaction such that the cost or return with respect to the qualifying debt instrument is not affected by movements in exchange rates in the currency in which such instrument is denominated after the identification date.

(ii) The hedge is entered into on the date the transaction is identified as a qualified hedging transaction.

(iii) None of the parties to the hedge are related. The term "related" means the relationships defined in section 267(b) or section 707(c)(1).

(iv) The identification requirements of paragraph (a)(8) of this section are satisfied.

(v) In the case of a qualified business unit with a residence, as defined in section 988(a)(3)(B) of the Code, outside of the United States, both the qualifying debt instrument and the hedge are properly reflected on the books of such qualified business unit throughout the term of the qualified hedging transaction.

(vi) Subject to the limitations of paragraph (a)(5) of this section, both the qualifying debt instrument and the hedge are entered into by the same individual, partnership, trust, estate, or corporation. With respect to a corporation, the same corporation must enter into both the qualifying debt instrument and the hedge whether or not such corporation is a member of an affiliated group of corporations that files a consolidated return.

(vii) With respect to a foreign person engaged in a U.S. trade or business that enters into a qualifying debt instrument or hedge through such trade or business, all items of income and expense associated with the qualifying debt instrument and the hedge (other than interest expense that is subject to § 1.882–5), would have been effectively connected with such U.S. trade or business throughout the term of the qualified hedging transaction had this paragraph (a) not applied.

(6) *Special rules for legging in and legging out of integrated treatment*—(i) *Legging in.* If a hedge is entered into after the date the qualifying debt instrument is entered into or acquired, and the other requirements of this paragraph (a) are satisfied, then this paragraph (a) shall apply, and—

(A) The qualifying debt instrument shall be treated as sold for its fair market value on the identification date, and any gain or loss (including gain or loss resulting from factors other than movements in exchange rates) from the issue or acquisition date to the identification date is realized on the identification date, and

(B) Such gain or loss will be recognized on the date that the qualifying debt instrument matures or is otherwise disposed of.

(ii) *Legging out.* If a qualifying debt instrument and hedge are properly identified as a qualified hedging transaction and the taxpayer disposes of or otherwise terminates the qualifying debt instrument or hedge prior to maturity of the qualified hedging transaction, the following rules shall apply.

(A) The transaction will be treated as a qualified hedging transaction during the time the requirements of this paragraph (a) were satisfied.

(B) If the hedge is disposed of or otherwise terminated, the qualifying debt instrument shall be treated as sold for its fair market value on the date the hedge is disposed of or otherwise terminated (the "leg-out date"), and any gain or loss (including gain or loss resulting from factors other than movements in exchange rates) from the identification date to the leg-out date is realized and recognized on the leg-out date. The spot rate on the leg-out date shall be used to determine exchange gain or loss on the debt instrument for the period beginning on the leg-out date and ending on the date such instrument matures or is disposed of or otherwise terminated. Proper adjustment to the principal amount of the debt instrument must be made to reflect any gain or loss taken into account. The netting rule of § 1.988–2T(b)(8) shall apply.

(C) If the qualifying debt instrument is disposed of or otherwise terminated, the hedge shall be treated as sold for its fair market value on the date the qualifying debt instrument is disposed of or otherwise terminated (the "leg-out date"), and any gain or loss from the identification date to the leg-out date is realized and recognized on the leg-out date. The spot rate on the leg-out date shall be used to determine exchange gain or loss on the hedge for the period beginning on the leg-out date and ending on the date such hedge is disposed of or otherwise terminated.

(7) *Transactions part of a straddle.* At the discretion of the Commissioner, a transaction shall not satisfy the requirements of paragraph (a)(5) of this section if the debt instrument making up the qualified hedging transaction is part of a straddle as defined in section 1092(c) prior to the time the qualified hedging transaction is identified.

(8) *Identification requirements*—(i) *Identification by the taxpayer.* A taxpayer must establish a separate account into which it must enter for each qualified hedging transaction the following information—

(A) The date the qualifying debt instrument and hedge were entered into;

(B) The date the qualifying debt instrument and the hedge are identified as constituting a qualified hedging transaction;

(C) The amount, if any, that must be deferred under paragraph (a)(6)(i) of this section;

(D) A description of the qualifying debt instrument and the hedge; and

(E) A summary of the cash flow resulting from treating the qualifying debt instrument and the hedge as a qualified hedging transaction.

(ii) *Identification by the Commissioner.* If—

(A) A person enters into a qualifying debt instrument and a hedge but fails to comply with one or more of the requirements of this paragraph (a), and

(B) On the basis of all the facts and circumstances, the Commissioner concludes that the qualifying debt instrument and the hedge are, in substance, a qualified hedging transaction,

then the Commissioner may treat the qualifying debt instrument and the hedge as a qualified hedging transaction. The Commissioner may identify a qualifying debt instrument and a hedge as a qualified hedging transaction regardless of whether the qualifying debt instrument and the hedge are held by the same taxpayer.

(9) *Taxation of qualified hedging transactions*—(i) *In general*—(A) *General rule.* If a transaction constitutes a § 1.988–5T(a) qualified hedging transaction as defined in paragraph (a)(1) of this section, the qualifying debt instrument and the hedge are integrated and treated as a single transaction with respect to the taxpayer that has entered into the qualified hedging transaction during the period that the transaction qualifies as a qualified hedging transaction. Neither the qualifying debt instrument nor the hedge that make up the qualified hedging transaction shall be subject to sections 263(g), 1092 or 1256 for the period such transactions are integrated. However, the qualified hedging transaction may be subject to sections 263(g) or 1092 if such transaction is part of a straddle.

(B) *Special rule for income or expense of foreign persons effectively connected with a U.S. trade or business.* Interest income of a foreign person resulting from a qualified hedging transaction entered into by such foreign person that satisfies the requirements of paragraph (a)(5)(vii) of this section shall be treated as effectively connected with a U.S. trade or business. Interest expense of a foreign person resulting from a qualified hedging transaction entered into by such foreign person that satisfies the requirements of paragraph (a)(5)(vii) of this section shall be allocated and apportioned under § 1.882–5 of the regulations.

(C) *Special rule for foreign persons that enter into qualified hedging transactions giving rise to U.S. source income not effectively connected with a U.S. trade or business.* If a foreign person enters into a qualified hedging transaction that gives rise to U.S. source interest income (determined under the source rules for synthetic asset transactions as provided in this section) not effectively connected with a U.S. trade or business of such foreign person, for purposes of sections 871(a), 881, 1441, 1442 and 6049, the provisions of this paragraph (a) shall not apply and such sections of the Internal Revenue Code shall be applied separately to the qualifying debt instrument and the hedge. To the extent relevant to any foreign person, if the requirements of this paragraph (a) are otherwise met, the provisions of this paragraph (a) shall apply for all other purposes of the Internal Revenue Code (*e.g.*, for purposes of calculating the earnings and profits of a controlled foreign corporation that enters into a qualified hedging transaction through a qualified business unit resident outside the United States, income or expense with respect to such qualified hedging transaction shall be calculated under the provisions of this paragraph (a)).

(ii) *Income tax effects of integration.* The income tax effects of integrating and treating a transaction as a single transaction are to create a synthetic debt instrument that is subject to the original issue discount provisions of sections 1272 through 1288 and 163(e), the terms of which are determined as follows:

(A) *Denomination of synthetic debt instrument.* In the case where the qualifying debt instrument is a borrowing, the denomination of the synthetic debt instrument is the same as the currency paid under the terms of the hedge to acquire the currency used to make payments under the qualifying debt instrument. In the case where the qualifying debt instrument is a lending, the denomination of the synthetic debt instrument is the same as the currency received under the terms of the hedge in exchange for amounts received under the qualifying debt instrument. For example, if the hedge is a forward contract to acquire British pounds for dollars, and the qualifying debt instrument is a borrowing denominated in British pounds, the synthetic debt instrument is considered a borrowing in dollars.

(B) *Term and accrual periods.* The term of the synthetic debt instrument shall be the period beginning on the identification date and ending on the date the qualifying debt instrument matures or such earlier date that the qualifying debt instrument or hedge is disposed of or otherwise terminated. Unless otherwise clearly indicated by the payment interval under the hedge, the accrual period shall be a six month period which ends on the dates determined under section 1272(a)(5).

(C) *Issue price.* The issue price of the synthetic debt instrument is the adjusted issue price of the qualifying debt instrument translated into the currency in which the synthetic debt instrument is denominated at the spot rate on the identification date.

(D) *Stated redemption price at maturity.* In the case where the qualifying debt instrument is a borrowing, the stated redemption price at maturity shall be determined under section 1273(a)(2) on the identification date by reference to the amounts to be paid under the hedge to acquire the currency necessary to make interest and principal payments on the qualifying debt instrument. In the case where the qualifying debt instrument is a lending, the stated redemption price at maturity shall be determined under section 1273(a)(2) on the identification date by reference to the amounts to be received under the hedge in exchange for the interest and principal payments received pursuant to the terms of the qualifying debt instrument.

(iii) *Source of interest income and allocation of expense.* Interest income from a synthetic debt instrument described in paragraph (a)(9)(ii) of this section shall be sourced by reference to the source of income under sections 861(a)(1) and 862(a)(1) of the qualifying debt instrument. The character for purposes of section 904 of interest income from a synthetic debt instrument shall be determined by reference to the character of the qualifying debt instrument. Interest expense from a synthetic debt instrument described in paragraph (a)(9)(ii) of this section shall be allocated and apportioned under § 1.861–8T to –12T or the successor sections thereof or under § 1.882–5.

(iv) *Examples.* The following examples illustrate the application of this paragraph.

Example (1). K is a U.S. corporation with the U.S. dollar as its functional currency. On December 24, 1989, K agrees to close the following transaction on December 31, 1989. K will borrow from an unrelated party on

December 31, 1989, 100 British pounds (£) for 3 years at a 10 percent rate of interest, payable annually, with no principal payment due until the final installment. K will also enter into a currency swap contract with an unrelated counterparty under the terms of which—(1) K will swap, on December 31, 1989, the £100 obtained from the borrowing for $100, and (2) K will exchange dollars for pounds pursuant to the following table in order to obtain the pounds necessary to make payments on the pound borrowing:

Date	U.S. dollars	Pounds
Dec. 31, 1990	8	10
Dec. 31, 1991	8	10
Dec. 31, 1992	108	110

The interest rate on the borrowing is set and the exchange rates on the swap are fixed on December 24, 1989. On December 31, 1989, K borrows the £100 and swaps such units for $100. Assume K has satisfied the identification requirements of paragraph (a)(8) of this section.

The pound borrowing (which constitutes a qualifying debt instrument under paragraph (a)(3) of this section) and the currency swap contract (which constitutes a hedge under paragraph (a)(4) of this section) are a qualified hedging transaction as defined in paragraph (a)(1) of this section. Accordingly, the pound borrowing and the swap are integrated and treated as one transaction with the following consequences:

(i) The integration of the pound borrowing and the swap results in a synthetic dollar borrowing with an issue price of $100 under section 1273(b)(2).

(ii) The total amount of interest and principal of the synthetic dollar borrowing is equal to the dollar payments made by K under the currency swap contract (i.e., $8 in 1990, $8 in 1991, and $108 in 1992).

(iii) The stated redemption price at maturity (defined in section 1273(a)(2)) is $100. Because the stated redemption price equals the issue price, there is no OID on the synthetic dollar borrowing.

(iv) K may deduct the annual interest payments of $8 under section 163(a) (subject to any limitations on deductibility imposed by other provisions of the Code) according to its regular method of accounting. K has also paid $100 as a return of principal in 1992.

(v) K must allocate and apportion its interest expense under the rules of § 1.861–8T through 12T.

Example (2). K, a U.S. corporation, has the U.S. dollar as its functional currency. On December 24, 1989, when the spot rate for Swiss francs (Sf) is Sf1=$1, K enters into a forward contract to purchase Sf100 in exchange for $100.04 for delivery on December 31, 1989. The Sf100 are to be used for the purchase of a franc denominated debt instrument on December 31, 1989. The instrument will have a term of 3 years, an issue price of Sf100, and will bear interest at 6 percent, payable annually, with no repayment of principal until the final installment. On December 24, 1989, K also enters into a series of forward contracts to sell the franc interest and principal payments that will be received under the terms of the franc denominated debt instrument for dollars according to the following schedule:

Date	U.S. dollars	Francs
Dec. 31, 1990	6.12	6
Dec. 31, 1991	6.23	6
Dec. 31, 1992	112.16	106

On December 31, 1989, K takes delivery of the Sf100 and purchases the franc denominated debt instrument. Assume K satisfies the identification requirements of paragraph (a)(8) of this section. The purchase of the franc debt instrument (which constitutes a qualifying debt instrument under paragraph (a)(3) of this section) and the series of forward contracts (which constitute a hedge under paragraph (a)(4) of this section) are a qualified hedging transaction under paragraph (a)(1) of this section. Accordingly, the franc debt instrument and all the forward contracts are integrated and treated as one transaction with the following consequences:

(i) The integration of the franc debt instrument and the forward contracts results in a synthetic dollar debt instrument in an amount equal to the dollars exchanged under the forward contract to purchase the francs necessary to acquire the franc debt instrument. Accordingly, the issue price is $100.04 (section 1273(b)(2) of the Code).

(ii) The total amount of interest and principal received by K with respect to the synthetic dollar debt instrument is equal to the dollars received under the forward sales contracts (i.e., $6.12 in 1990, $6.23 in 1991, and $112.16 in 1992).

(iii) The synthetic dollar debt instrument is an installment obligation and its stated redemption price at maturity is $106.15 (i.e., $6.12 of the payments in 1990, 1991, and 1992 are treated as periodic interest payments under the principles of section 1273). Because the stated redemption price at maturity exceeds the issue price, under section 1273 (a)(1) the synthetic dollar debt instrument has OID of $6.11.

(iv) The yield to maturity of the synthetic dollar debt instrument is 8.00 percent, compounded annually. Assuming K is a calendar year taxpayer, it must include interest income of $8.00 in 1990 (of which $1.88 constitutes OID), $8.15 in 1991 (of which $2.03 constitutes OID), and $8.32 in 1992 (of which $2.20 constitutes OID). The amount of the final payment received by K in excess of the interest income includible is a return of principal and a payment of previously accrued OID.

(v) The source of the interest income shall be determined by applying sections 861(a)(1) and 862(a)(1) with reference to the franc interest income that would have been received had the transaction not been integrated.

Example (3).—(i) K is an accrual method U.S. corporation with the U.S. dollar as its functional currency. On January 1, 1989, K borrows 100 British pounds (£) for 3 years at a 10% rate of interest payable on December 31 of each year with no principal payment due until the final installment. The spot rate on January 1, 1989, is £1=$1.50. On January 1, 1990, when the spot rate is £1=$1.60, K enters into a currency swap contract with an unrelated counterparty under the terms of which K will exchange dollars for pounds pursuant to the following table in order to obtain the pounds necessary to make the remaining payments on the pound borrowing:

Date	U.S. Dollars	Pounds
Dec. 31, 1990	12.80	10
Dec. 31, 1991	12.80	10
Dec. 31, 1992	160.00	100

Assume that British pound interest rates are still 10% and that K properly identifies the pound borrowing and the currency swap contract as a qualified hedging transaction as provided in paragraph (a)(8) of this section. Under paragraph (a)(6)(i) of this section, K must mark the pound borrowing to market on January 1, 1990, for the period beginning January 1, 1989, and ending January 1, 1990, and defer recognition of such gain or loss in accordance with the requirements of such section. Thus, assuming no changes in the pound value of K's bond, K must defer exchange loss in the amount of $10 [(£100×1.50)−(£100×1.60)].

(ii) Additionally, the qualified hedging transaction is treated as a synthetic U.S. dollar debt instrument with an issue date of January 1, 1990, and a maturity date of December 31, 1991. The issue price of the synthetic debt instrument is $160 (£100×1.60, the spot rate on January 1, 1990) and the total amount of interest and principal is $185.60. The accrual period is the one year period beginning on January 1 and ending December 31 of each year. The stated redemption price at maturity is $160. Thus, K is treated as paying $12.80 of interest in 1990, $12.80 of interest in 1991, and $160 of principal in 1991. The interest expense is allocated and apportioned in accordance with the rules of § 1.861–8T through –12T. Sections 263(g), 1092, and 1256 do not apply to the positions comprising the synthetic dollar borrowing.

Example (4).—(i) K is an accrual method U.S. corporation with the U.S. dollar as its functional currency. On January 1, 1990, K borrows 100 British pounds (£) for 3 years at a 10% rate of interest payable on December 31 of each year with no principal payment due until the final installment. The spot rate on January 1, 1990, is £1=$1.50. Also on January 1, 1990, K enters into a currency swap contract with an unrelated counterparty under the terms of which K will exchange dollars for pounds pursuant to the following table in order to obtain the pounds necessary to make the remaining payments on the pound borrowing:

Date	U.S. Dollars	Pounds
Dec. 31, 1990	12.00	10
Dec. 31, 1991	12.00	10
Dec. 31, 1992	162.00	110

Assume that K properly identifies the pound borrowing and the currency swap contract as

a qualified hedging transaction as provided in paragraph (a)(1) of this section.

(ii) The pound borrowing (which constitutes a qualifying debt instrument under paragraph (a)(3) of this section) and the currency swap contract (which constitutes a hedge under paragraph (a)(4) of this section) are a qualified hedging transaction as defined in paragraph (a)(1) of this section. Accordingly, the pound borrowing and the swap are integrated and treated as one transaction with the following consequences:

(A) The integration of the pound borrowing and the swap results in a synthetic dollar borrowing with an issue price of $150 under section 1273(b)(2).

(B) The total amount of interest and principal of the synthetic dollar borrowing is equal to the dollar payments made by K under the currency swap contract (i.e., $12 in 1990, $12 in 1991, and $162 in 1992).

(C) The stated redemption price at maturity (defined in section 1273(a)(2)) is $150. Because the stated redemption price equals the issue price, there is no OID on the synthetic dollar borrowing.

(D) K may deduct the annual interest payments of $12 under section 163(a) (subject to any limitations on deductibility imposed by other provisions of the Code) according to its regular method of accounting. K has also paid $150 as a return of principal in 1992.

(E) K must allocate and apportion its interest expense under the rules of § 1.861–8T through 12T.

(iii) Assume that on January 1, 1991, the spot exchange rate is £1=$1.60, interest rates have not changed since January 1, 1990 (accordingly, assume that the market value of K's bond in pounds has not changed) and that K transfers its rights and obligations under the currency swap contract in exchange for $10. Under § 1.988–2T(e)(3)(iii), K will include in income as exchange gain $10 on January 1, 1991. Pursuant to paragraph (a)(6)(ii) of this section, the pound borrowing and the currency swap contract are treated as a qualified hedging transaction for 1990. The loss inherent in the pound borrowing from January 1, 1990, to January 1, 1991, is realized and recognized on January 1, 1991. Such loss is exchange loss in the amount of $10.00 [(£100×$1.50, the spot rate on January 1, 1990)−(£100×$1.60, the spot rate on January 1, 1991)]. For purposes of determining exchange gain or loss on the £100 principal amount of the debt instrument for the period January 1, 1991, to December 31, 1992, the spot rate on January 1, 1991 is used rather than the spot rate on the issue date. Thus, assuming that the spot rate on December 31, 1992, the maturity date, is £1=$1.80, K realizes exchange loss in the amount of $20 [(£100×$1.60)−(£100×$1.80)].

Example (5). K, a U.S. corporation, has the U.S. dollar as its functional currency. On January 1, 1990, when the spot rate for Swiss francs (Sf) is Sf1=$.50, K converts $100 to Sf200 and purchases a franc denominated debt instrument. The instrument has a term of 3 years, an adjusted issue price of Sf200, and will bear interest at 5 percent, payable annually, with no repayment of principal until the final installment. The U.S. dollar interest rate on an equivalent instrument is 8% on January 1, 1990, compounded annually. On January 1, 1990, K also enters into a series of forward contracts to sell the franc interest and principal payments that will be received under the terms of the franc denominated debt instrument for dollars according to the following schedule:

Date	U.S. dollars	Francs
Dec. 31, 1990	5.14	10
Dec. 31, 1991	5.29	10
Dec. 31, 1992	114.26	210

Assume K satisfies the identification requirements of paragraph (a)(3) of this section. Assume further that on January 1, 1991, the spot exchange rate is Sf1=U.S.$.5143, the U.S. dollar interest rate is 10%, compounded annually, and the Swiss franc interest rate is the same as on January 1, 1990 (5%, compounded annually). On January 1, 1991, K disposes of the forward contracts that were to mature on December 31, 1991, and December 31, 1992 and incurs a loss of $3.62 (the present value of $.10 with respect to the 1991 contract and $4.27 with respect to the 1992 contract).

(i) The purchase of the franc debt instrument (which constitutes a qualifying debt instrument under paragraph (a)(3) of this section) and the series of forward contracts (which constitute a hedge under paragraph (a)(4) of this section) are a qualified hedging transaction under paragraph (a)(1) of this section. Accordingly, the franc debt instrument and all the forward contracts are integrated for the period beginning January 1, 1990, and ending January 1, 1991.

(A) The integration of the franc debt instrument and the forward contracts results in a synthetic dollar debt instrument with an issue price of $100.

(B) The total amount of interest and principal to be received by K with respect to the synthetic dollar debt instrument is equal to the dollars to be received under the forward sales contracts (i.e., $5.14 in 1990, $5.29 in 1991, and $114.26 in 1992).

(C) The synthetic dollar debt instrument is an installment obligation and its stated redemption price at maturity is $109.27 (i.e., $5.14 of the payments in 1990, 1991, and 1992 is treated as periodic interest payments under the principles of section 1273). Because the stated redemption price at maturity exceeds the issue price, under section 1273(a)(1) the synthetic dollar debt instrument has OID of $9.27.

(D) The yield to maturity of the synthetic dollar debt instrument is 8.00 percent, compounded annually. Assuming K is a calendar year taxpayer, it must include interest income of $8.00 in 1990 (of which $2.86 constitutes OID).

(E) The source of the interest income is determined by applying sections 861(a)(1) and 862(a)(1) with reference to the franc interest income that would have been received had the transaction not been integrated.

(ii) Because K disposed of the forward contracts on January 1, 1991, the rules of paragraph (a)(6)(ii) of this section shall apply. Accordingly, the $3.62 loss from the disposition of the forward contracts is realized and recognized on January 1, 1991. Additionally, K is deemed to have sold the franc debt instrument for $102.86, its fair market value in dollars on January 1, 1991. K will compute gain or loss with respect to the deemed sale of the franc debt instrument by subtracting its adjusted basis in the instrument ($102.86—the value of the Sf200 issue price at the spot rate on the identification date plus $2.86 of original issue discount accrued on the synthetic dollar debt instrument for 1990) from the amount realized on the deemed sale of $102.86. Thus K realizes and recognizes no gain or loss from the deemed sale of the debt instrument. The dollar amount used to determine exchange gain or loss with respect to the franc debt instrument is the Sf200 issue price on January 1, 1991, translated into dollars at the spot rate on January 1, 1991, of Sf1=U.S.$.5143.

(v) *Transition rule.* Any transaction entered into prior to September 21, 1989, which satisfied the requirements of Notice 87–11, 1987–1 C.B. 423, shall be deemed to satisfy the requirements of paragraph (a) of this section.

(b) *Hedged executory contracts*—(1) *In general.* If the taxpayer enters into a hedged executory contract as defined in paragraph (b)(2) of this section, the executory contract and the hedge shall be integrated as provided in paragraph (b)(4) of this section.

(2) *Definitions*—(i) *Hedged executory contract.* A hedged executory contract is an executory contract as defined in paragraph (b)(2)(ii) of this section that is the subject of a hedge as defined in paragraph (b)(2)(iii) of this section, provided that the following requirements are satisfied—

(A) The executory contract and the hedge are identified as a hedged executory contract as provided in paragraph (b)(3) of this section.

(B) The hedge is entered into (or in the case of nonfunctional currency deposited in a separate account with a bank or other financial institution, such currency is acquired and deposited) on or after the date the executory contract is entered into and before the accrual date as defined in paragraph (b)(2)(iv) of this section.

(C) The executory contract is hedged in whole or in part throughout the period beginning with the date the hedge is identified in accordance with paragraph (b)(3) of this section and ending on or after the accrual date (but not later than the payment date), and the amount of the executory contract that is hedged is not decreased during such period (although the amount may be increased).

(D) None of the parties to the hedge are related. The term related means the relationships defined in section 267(b) and section 707(c)(1).

(E) In the case of a qualified business unit with a residence, as defined in section 988(a)(3)(B) of the Internal Revenue Code, outside of the United States, both the executory contract and the hedge are properly reflected on the books of the same qualified business unit.

(F) Subject to the limitations of paragraph (b)(2)(i)(E) of this section, both the executory contract and the hedge are entered into by the same individual, partnership, trust, estate, or corporation. With respect to a corporation, the same corporation must enter into both the executory contract and the hedge whether or not such corporation is a member of an affiliated group of corporations that files a consolidated return.

(G) With respect to a foreign person engaged in a U.S. trade or business that enters into an executory contract or hedge through such trade or business, all items of income and expense associated with the executory contract and the hedge would have been effectively connected with such U.S. trade or business throughout the term of the hedged executory contract had this paragraph (b) not applied.

(ii) *Executory contract*—(A) *In general.* Except as provided in paragraph (b)(2)(ii)(B) of this section, an executory contract is an agreement entered into before the accrual date to pay nonfunctional currency (or an amount determined with reference thereto) in the future with respect to the purchase of property used in the ordinary course of the taxpayer's business, or the acquisition of a service (or services), in the future, or to receive nonfunctional currency (or an amount determined with reference thereto) in the future with respect to the sale of property used or held for sale in the ordinary course of the taxpayer's business, or the performance of a service (or services), in the future. (Thus, for example, a contract to sell stock of an affiliate is not an executory contract for this purpose.) On the accrual date, such agreement ceases to be considered an executory contract and is treated as an account payable or receivable.

(B) *Exceptions.* An executory contract does not include a section 988 transaction. For example, a forward contract to purchase nonfunctional currency is not an executory contract. An executory contract also does not include a transaction described in paragraph (c) of this section.

(iii) *Hedge*—(A) *In general.* For purposes of this paragraph (b), the term hedge means a deposit of nonfunctional currency in a separate acccount (for each hedge) with a bank or other financial institution, a forward or futures contract described in § 1.988–1T(a)(1)(ii) and (2)(iii), or combination thereof, which reduces the risk of exchange rate fluctuations by reference to the taxpayer's functional currency with respect to nonfunctional currency payments made or received under an executory contract.

(B) *Special rule for series of hedges.* Except as provided in paragraph (b)(4)(iii)(B) of this section, a series of hedges as defined in paragraph (b)(3)(iii)(A) of this section shall be considered a hedge if the executory contract is hedged in whole or in part throughout the period beginning with the date the hedge is identified in accordance with paragraph (b)(3)(i) of this section and ending on or after the accrual date. A taxpayer that enters into a series of hedges will be deemed to have satisfied the preceding sentence if the hedge that succeeds a hedge that has been terminated is entered into on the business day following such termination.

(C) *Special rules for historical rate rollovers*—(*1*) *Definition.* A historical rate rollover is an extension of the maturity date of a forward contract where the new forward rate is adjusted on the rollover date to reflect the taxpayer's gain or loss on the contract as of the rollover date plus the time value of such gain or loss through the new maturity date.

(*2*) *Certain historical rate rollovers considered a hedge.* A historical rate rollover is considered a hedge if the rollover date is before the accrual date.

(*3*) *Treatment of time value component of certain historical rate rollovers that are hedges.* Interest income or expense determined under § 1.988–2T(d)(2)(v) with respect to a historical rate rollover shall be considered part of a hedge if the period beginning on the first date a hedging contract is rolled over and ending on the date payment is made or received under the executory contract does not exceed 183 days. Such interest income or expense shall not be recognized and shall be an adjustment to the income from, or expense of, the services performed or received under the executory contract, or to the amount realized or basis of the property sold or purchased under the executory contract. For the treatment of such interest income or expense that is not considered part of a hedge see § 1.988–2T(d)(2)(v).

(D) *Interest on deposit of nonfunctional currency.* Interest income on a deposit of nonfunctional currency in a separate account for each hedge with a bank or other financial institution may be taken into account for purposes of determining the amount of a hedge if such interest is accrued on or before the accrual date. However, such interest income shall be included in income as provided in section 61. For example if a taxpayer with the dollar as its functional currency enters into an executory contract for the purchase and delivery of a machine in one year for 100 British pounds (£), and on such date deposits £90.91 in a properly identified bank account that bears interest at the rate of 10%, the interest that accrues prior to the accrual date shall be included in income and may be considered a hedge.

(iv) *Accrual date.* The accrual date is the date when the item of income or expense (including a capital expenditure) that relates to an executory contract is required to be accrued under the taxpayer's method of accounting.

(v) *Payment date.* The payment date is the date when payment is made or received with respect to an executory contract or the subsequent corresponding account payable or receivable.

(3) *Identification rules*—(i) *Identification by the taxpayer.* A taxpayer must establish a separate account on its books and records designated "Executory Contract Hedging Account under § 1.988–5T(b)." Before the close of the date the hedge is entered into, the taxpayer must enter into the account a clear description of the executory contract and the hedge and indicate that the transaction is being identified in accordance with paragraph (b)(3) of this section.

(ii) *Identification by the Commissioner.* If a taxpayer enters into an executory contract and a hedge but fails to satisfy one or more of the requirements of paragraph (b)(3)(i) of this section and, based on the facts and circumstances, the Commissioner concludes that the executory contract is hedged, then the Commissioner may apply the provisions of paragraph (b)(3)(i) of this section as if the taxpayer had satisfied all of the requirements therein, and may make appropriate adjustments. The Commissioner may apply the provisions of paragraph (b) of this section regardless of whether the executory contract and the hedge are held by the same taxpayer.

(4) *Effect of hedged executory contract*—(i) *In general.* The effect of integrating an executory contract and a hedge is to treat amounts paid or received under the hedge as paid or received under the executory contract, or any subsequent account payable or receivable, or that portion thereof to which the hedge relates. No exchange

gain or loss shall be recognized on the hedge. If an executory contract, on the accrual date, becomes an account payable or receivable, no exchange gain or loss shall be recognized on such payable or receivable for the period covered by the hedge.

(ii) *Partially hedged executory contracts.* The effect of integrating an executory contract and a hedge that partially hedges such contract is to treat the amounts paid or received in functional currency under the hedge as paid or received under the portion of the executory contract being hedged, or any subsequent account payable or receivable. The income or expense of services performed or received under the executory contract, or the amount realized or basis of property sold or purchased under the executory contract, that is attributable to that portion of the executory contract that is not hedged shall be translated into functional currency on the accrual date. Exchange gain or loss shall be realized when payment is made or received with respect to any payable or receivable arising on the accrual date with respect to such unhedged amount.

(iii) *Disposition of a hedge or executory contract prior to the accrual date*—(A) *In general.* If a taxpayer identifies an executory contract as part of a hedged executory contract as defined in paragraph (b)(2) of this section, and disposes of (or otherwise terminates) the executory contract prior to the accrual date, the hedge shall be treated as sold for its fair market value on the date the executory contract is disposed of and any gain or loss shall be realized and recognized on such date. The spot rate on the date the hedge is treated as sold shall be used to determine subsequent exchange gain or loss on the hedge. If a taxpayer identifies a hedge as part of a hedged executory contract as defined in paragraph (b)(2) of this section, and disposes of the hedge prior to the accrual date, any gain or loss realized on such disposition shall not be recognized and shall be an adjustment to the income from, or expense of, the services performed or received under the executory contract, or to the amount realized or basis of the property sold or purchased under the executory contract.

(B) *Certain events in a series of hedges treated as a termination of the hedged executory contract.* If the amount of the hedge is decreased during the period between the identification date and the accrual date, or if the rules of paragraph (b)(2)(iii)(B) are not satisfied, the hedged executory contract shall be terminated and the provisions of paragraph (b)(4)(iii)(A) shall apply to any gain or loss actually realized with respect to such hedge. Any subsequent hedging contracts entered into to reduce the risk of exchange rate movements with respect to such executory contract shall not be considered a hedge as defined in paragraph (b)(2)(iii) of this section.

(iv) *Disposition of a hedge on or after the accrual date.* If a taxpayer identifies a hedge as part of a hedged executory contract as defined in paragraph (b)(2) of this section, and disposes of the hedge on or after the accrual date, no gain or loss is recognized on the hedge and the booking date as defined in § 1.988–2T(c)(2) of the payable or receivable for purposes of computing exchange gain or loss shall be the date such hedge is disposed of. See Example (3) of paragraph (b)(4)(iv) of this section.

(v) *Sections 263(g), 1092, and 1256 do not apply.* Sections 263(g), 1092, and 1256 do not apply with respect to an executory contract or hedge which comprise a hedged executory contract as defined in paragraph (b)(2) of this section. However, sections 263(g), 1092 and 1256 may apply to the hedged executory contract if such transaction is part of a straddle.

(vi) *Examples.* The principles set forth in paragraph (b) of this section are illustrated in the following examples. The examples assume that K is an accrual method, calendar year U.S. corporation with the dollar as its functional currency.

Example (1)—(i) On January 1, 1992, K enters into a contract with JPF, a Swiss machine manufacturer, to pay 500,000 Swiss francs for delivery of a machine on June 1, 1993. Also on January 1, 1992, K enters into a foreign currency forward agreement to purchase 500,000 Swiss francs for $250,000 for delivery on June 1, 1993. K properly identifies the executory contract and the hedge in accordance with paragraph (b)(3)(i) of this section. On June 1, 1993, K takes delivery of the 500,000 Swiss francs (in exchange for $250,000) under the forward contract and makes payment of 500,000 Swiss francs to JPF in exchange for the machine. Assume that the accrual date is June 1, 1993.

(ii) Under paragraph (b)(1) of this section, the hedge is integrated with the executory contract. Therefore, K is deemed to have paid $250,000 for the machine and there is no exchange gain or loss on the foreign currency forward contract. K's basis in the machine is $250,000. Section 1256 does not apply to the forward contract.

Example (2)—(i) On January 1, 1992, K enters into a contract with S, a Swiss machine manufacturer, to pay 500,000 Swiss francs for delivery of a machine on June 1, 1993. Under the contract, K is not obligated to pay for the machine until September 1, 1993. On February 1, 1992, K enters into a foreign currency forward agreement to purchase 500,000 Swiss francs for $250,000 for delivery on September 1, 1993. K properly identifies the executory contract and the hedge in accordance with paragraph (b)(3) of this section. On June 1, 1993, K takes delivery of machine. Assume that under K's method of accounting the delivery date is the accrual date. On September 1, 1993, K takes delivery of the 500,000 Swiss francs (in exchange for $250,000) under the forward contract and makes payment of 500,000 Swiss francs to S.

(ii) Under paragraph (b)(1) of this section, the hedge is integrated with the executory contract. Therefore K is deemed to have paid $250,000 for the machine and there is no exchange gain or loss on the foreign currency forward contract. Thus K's basis in the machine is $250,000. In addition, no exchange gain or loss is recognized on the payable in existence from June 1, 1993, to September 1, 1993. Section 1256 does not apply to the forward contract.

Example (3) The facts are the same as in Example (2) except that K disposed of the forward contract on August 1, 1993 for $10,000. Pursuant to paragraph (b)(4)(iv) of this section, K does not recognize the $10,000 gain. K's basis in the machine is $250,000 (the amount fixed by the forward contract), regardless of the amount in dollars that K actuallly pays to acquire the Sf500,000 when K pays for the machine. K has a payable with a booking date of August 1, 1993, payable on September 1, 1993 for 500,000 Swiss francs. Thus, K will realize exchange gain or loss on the difference between the amount booked on August 1, 1993 and the amount paid on September 1, 1993 under § 1.988–2T(c).

Example (4)—(i) On January 1, 1992, K enters into a contract with S, a Swiss machine repair firm, to pay 500,000 Swiss francs for repairs to be performed on June 1, 1992. Under the contract, K is not obligated to pay for the repairs until September 1, 1992. On February 1, 1992, K enters into a foreign currency forward agreement to purchase 500,000 Swiss francs for $250,000 for delivery on August 1, 1992. K properly identifies the executory contract and the hedge in accordance with paragraph (b)(3) of this section. On June 1, 1992, S performs the repair services. Assume that under K's method of accounting this date is the accrual date. On August 1, 1992, K takes delivery of the 500,000 Swiss francs (in exchange for $250,000) under the forward contract. On the same day, K deposits the Sf500,000 in a separate account with a bank and properly identifies the transaction as a continuation of the hedged executory contract. On September 1, 1992, K makes payment of the Sf500,000 in the account to S.

(ii) Under paragraph (b)(1) of this section, the hedge is integrated with the executory contract. Therefore K is deemed to have paid $250,000 for the services and there is no exchange gain or loss on the foreign currency forward contract or on the disposition of Sf500,000 in the account. Any interest on the Swiss francs in the account is included in income but is not considered part of the hedge (because the amount paid for the services must be set on the accrual date). In addition, no exchange gain or loss is recognized on the payable in existence from

June 1, 1992, to September 1, 1992. Section 1256 does not apply to the forward contract.

Example (5)—(i) On January 1, 1992, K enters into a contract with S, a Swiss machine manufacturer, to pay 500,000 Swiss francs for delivery of a machine on June 1, 1993. Under the contract, K is not obligated to pay for the machine until September 1, 1993. On February 1, 1992, K enters into a foreign currency forward agreement to purchase 250,000 Swiss francs for $125,000 for delivery on September 1, 1993. K properly identifies the executory contract and the hedge in accordance with paragraph (b)(3) of this section. On June 1, 1993, K takes delivery of the machine. Assume that under K's method of accounting the delivery date is the accrual date. Assume further that the exchange rate is Sf1 = $.50 on June 1, 1993. On August 30, 1993, K purchases Sf250,000 for $135,000. On September 1, 1993, K takes delivery of the 250,000 Swiss francs (in exchange for $125,000) under the forward contract and makes payment of 500,000 Swiss francs (the Sf250,000 received under the contract plus the Sf250,000 purchased on August 30, 1993) to S. Assume the spot rate on September 1, 1993, is 1 Sf= $.5420 (Sf250,000 equals $135,500).

(ii) Under paragraph (b)(1) of this section, the partial hedge is integrated with the executory contract. K is deemed to have paid $250,000 for the machine [$125,000 on the hedged portion of the Sf500,000 and $125,000 ($.50, the spot rate on June 1, 1993, times Sf250,000) on the unhedged portion of the Sf500,000]. K's basis in the machine therefore is $250,000. K recognizes no exchange gain or loss on the foreign currency forward contract but K will realize exchange gain of $500 on the disposition of the Sf250,000 purchased on August 30, 1993 under § 1.988–2T (a). In addition, exchange loss is realized on the unhedged portion of the payable in existence from June 1, 1993, to September 1, 1993. Thus, K will realize exchange loss of $10,500 ($125,000 booked less $135,500 paid) under § 1.988–2T(c) on the payable. Section 1256 does not apply to the forward contract.

Example (6)—(i) On January 1, 1990, K enters into a contract with S, a Swiss steel manufacturer, to buy steel for 1,000,000 Swiss francs (Sf) for delivery and payment on December 31, 1990. On January 1, 1990, the spot rate is Sf1 =$.50, the U.S. dollar interest rate is 10% compounded annually, and the Swiss franc rate is 5% compounded annually. Under K's method of accounting, the delivery date is the accrual date.

(ii) Assume that on January 1, 1990, K enters into a foreign currency forward contract to buy Sf1,000,000 for $523,800 for delivery on December 31, 1990. K properly identifies the executory contract and the hedge in accordance with paragraph (b)(3) of this section. Pursuant to paragraph (b)(2)(iii) of this section, the forward contract constitutes a hedge. Assuming that the requirements of paragraph (b)(2)(i) are satisfied, the executory contract to buy steel and the forward contract are integrated under paragraph (b) (1) of this section. Thus, K is deemed to have paid $523,800 for the steel and will have a basis in the steel of $523,800. No gain or loss is realized with respect to the forward contract and section 1256 does not apply to such contract.

(iii) Assume instead that on January 1, 1990, K enters into a foreign currency forward contract to buy Sf1,000,000 for $512,200 for delivery on July 1, 1990. K properly identifies the executory contract and the hedge in accordance with paragraph (b)(3) of this section. On July 1, 1990, when the spot rate is Sf1 = $.53, K cancels the forward contract in exchange for $17,800 ($530,000 − $512,200). On July 1, 1990, K enters into a second forward agreement to buy Sf1,000,000 for $542,900 for delivery on December 31, 1990. K properly identifies the second forward agreement as a hedge in accordance with paragraph (b) (3) of this section. Pursuant to paragraph (b)(2) (iii) of this section, the forward contract entered into on January 1, 1990, and the forward contract entered into on July 1, 1990, constitute a hedge. Assuming that the requirements of paragraph (b)(2)(i) are satisfied, the executory contract to buy steel and the forward agreements are integrated under paragraph (b)(1) of this section. Thus, K is deemed to have paid $525,100 for the steel (the forward price in the second forward agreement of $542,900 less the gain on the first forward agreement of $17,800) and will have a basis in the steel of $525,100. No gain is realized with respect to the forward contracts and section 1256 does not apply to such contracts.

(iv) Assume instead that on January 1, 1990, K enters into a foreign currency forward contract to buy Sf1,000,000 for $512,200 for delivery on July 1, 1990. K properly identifies the executory contract and the hedge in accordance with paragraph (b)(3) of this section. On July 1, 1990, when the spot rate is Sf1=$.53, K enters into a historical rate rollover of its $17,800 gain ($530,000−$512,200) on the forward agreement. Thus, K enters into a second foreign currency forward agreement to buy Sf1,000,000 for $524,210 for delivery on December 31, 1990. (The forward price of $524,210 is the market forward price on July 1, 1990 for the purchase of Sf1,000,000 for delivery on December 31, 1990 of $542,900 less the $17,800 gain on January 1, 1990 contract and less the time value of such gain of $890.) K properly identifies the second forward agreement as a hedge in accordance with paragraph (b)(3) of this section. On December 31, 1990, when the spot rate is Sf1=$.54, K takes delivery of the Sf1,000,000 (in exchange for $524,210) and purchases the steel for Sf1,000,000. Pursuant to paragraph (b)(2)(iii) of this section, the forward contract entered into on January 1, 1990, and the forward contract entered into on July 1, 1990, which incorporates the rollover of K's gain on the January 1, 1990 contract, constitute a hedge. Assuming that the requirements of paragraph (b)(2)(i) are satisfied, the executory contract to buy steel and the forward agreements are integrated under paragraph (b)(1) of this section. Because the period from the rollover date to the date payment is made under the executory contract does not exceed 183 days, the $890 of interest income is considered part of the hedge and is not recognized. Thus, K is deemed to have paid $524,210 for the steel and will have a basis in the steel of $524,210. No gain is realized with respect to the forward contracts and section 1256 does not apply to such contracts.

(v) Assume instead that on January 1, 1990, K purchases Sf952,380.95 (the present value of Sf1,000,000 to be paid on December 31, 1990) for $476,190.48 and on the same day deposits the Swiss francs in a separate bank account that bears interest at a rate of 5%, compounded annually. K properly identifies the transaction as a hedged executory contract. Over the period beginning January 1, 1990, and ending December 31, 1990, K receives Sf47,619.05 in interest on the account that is included in income and that has a basis of $25,714.29. (Assume that under § 1.988–2T(b)(1), K uses the spot rate of Sf1=$.54 to translate the interest income). On December 31, 1990, K makes payment of the Sf1,000,000 principal and accrued interest in the account to S. Pursuant to paragraph (b)(2)(iii) of this section, the principal in the bank acccount and the interest constitute a hedge. Under paragraph (b)(1) of this section, the hedge is integrated with the executory contract. Therefore K is deemed to have paid $501,904.77 (the basis of the principal deposited plus the basis of the interest) for the steel and there is no exchange gain or loss on the disposition of the Sf1,000,000. K's basis in the steel therefore is $501,904.77.

(c) *Hedges of period between trade date and settlement date on purchase or sale of publicly traded stock or security in the case of cash basis taxpayers.* If a cash basis taxpayer purchases or sells stocks or securities which are traded on an established securities market and—

(1) Hedges all or part of such purchase or sale for the period beginning on the trade date and ending on the settlement date, and

(2) Identifies the hedge and the underlying stock or securities as an integrated transaction under the rules of paragraph (b)(3) of this section,

then any gain or loss on the hedge shall be an adjustment to the amount realized or the adjusted basis of the stock or securities sold or purchased (and shall not be taken into account as exchange gain or loss). The term hedge means a deposit of nonfunctional currency in a separate account with a bank or other financial institution, or a forward or futures contract described in § 1.988–1T(a) (1)(ii) and (2)(iii), or combination thereof, which reduces the risk of exchange rate fluctuations for the period beginning on the trade date and ending on the settlement date. The provisions of paragraphs (b)(2)(i) (D) through (G) of this section shall apply by substituting the term "stock or securities" for "executory contract." Sections 263(g), 1092, and 1256 do not apply with respect to stock or securities and a hedge which are subject to this paragraph (c).

(d) *Effective date.* Except as otherwise provided in this section, the rules of this section shall apply to qualified hedging transactions, hedged executory contracts and transactions described in

paragraph (c) of this section entered into on or after September 21, 1989. This section shall apply even if the transaction being hedged (*e.g.*, a debt instrument or executory contract) was entered into or acquired prior to such date.

OMB Control Numbers Under the Paperwork Reduction Act

26 CFR PART 602

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.988–0T through –5T.....1545–1053".

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: August 11, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–22017 Filed 9–20–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 81

[CGD 89–067]

RIN 2115–AD37

Amendments to the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: On June 29, 1989, the President proclaimed the 1987 amendments to the Regulations of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), which will enter into force for the United States of America on November 19, 1989. This rule publishes the President's Proclamation and revises the text of the 72 COLREGS to include the 1987 amendments.

EFFECTIVE DATE: November 19, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Palmer, Office of Navigation Safety and Waterway Services, U.S. Coast Guard, (G–NSR–3), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone (202) 267–0406.

SUPPLEMENTARY INFORMATION: The Convention on the International Regulations for Preventing Collisions at Sea, 1972, (72 COLREGS) entered into force for the United States of America on July 15, 1977, and was first amended in November, 1981. Both the 72 COLREGS and the 1981 amendments were proclaimed by the President and were published in the **Federal Register.** (42 FR 17112, March 31, 1977, and 48 FR 28634, June 23, 1983). On November 19, 1987, the Assembly of the International Maritime Organization (IMO) adopted additional amendments to the 72 COLREGS which will enter into force for the United States of America on November 19, 1989.

33 U.S.C. 1602 provides that amendments to the International Regulations for Preventing Collisions at Sea be proclaimed by the President and that the Proclamation with the annexed international regulations amendments be published in the **Federal Register.** This rule, therefore, publishes the President's June 29, 1989, Proclamation and the 1987 amendments to the 72 COLREGS.

Appendix A to 33 CFR part 81 contains the text of the 72 COLREGS as amended in 1981. This rule amends appendix A to include the amendments adopted in 1987, which become effective on November 19, 1989.

Discussion of the Amendments/Changes

There are nine amendments to the 72 COLREGS. Each of these amendments are discussed below:

Rule 1(e)—The amendment to Rule 1(e) for vessels of special construction deletes the phrase "without interfering with the special function of the vessel." This amendment simplifies the government's determination that a vessel complies as closely as possible with the Rules.

Rule 3(h)—The amendment to Rule 3(h) adds a new consideration, width of navigable water, when determining if a vessel is constrained by her draft.

Rule 8—The amendment to Rule 8 adds a new paragraph (f) which defines the conduct required by the terminology "not to impede" in passing situations.

Rule 10(a)—The amendment to Rule 10(a) adds the phrase "and does not relieve any vessel of her obligation under any other rule." The amendment makes it clear that the 72 COLREGS apply in addition to the special rules for vessels in traffic separation schemes.

Rule 10(c)—The amendment to Rule 10(c) adds the phrase "on a heading." The amendment clarifies the rule by inserting the words "on a heading" which are implied in the present language of the rule.

Annex 1, section 2(d)—The amendment applies the height requirement for masthead lights to the optional all-around light of Rule 23(c)(i).

Annex 1, section 2(i)(ii)—The amendment substitutes the phrase "above the gunwale" for "above the hull". The amendment better defines the location from which the masthead light is measured when two or three lights are carried in a vertical line on a vessel less than 20 meters in length.

Annex 1, sections 10 (a) and (b)—The amendments add the word "underway" after the words "sailing vessels" to clarify the applicability of the annex.

Annex IV, section 1—A new paragraph (o) is added (Distress signals)—The amendment adds "approved signals transmitted by radiocommunication systems" to the list of approved distress signals. The new signals include the International Maritime Satellite Corporation (INMARSAT) system and the Digital Selective Calling (DSC) system.

Since this revision is concerned with a foreign affairs function of the United States, it is excepted from the rulemaking requirements under 5 U.S.C. 553 and may be published without notice and opportunity for public comment.

Drafting Information

The principal persons involved in drafting this document are Mr. Peter Palmer, Project Manager, Office of Navigation Safety and Waterway Services, and Christena Green, Office of Chief Counsel.

List of Subjects in 33 CFR Part 81

Navigation (water), Treaties.

In consideration of the foregoing, the President's Proclamation of June 29, 1989, and the 1987 Amendments to the 72 COLREGS are set forth below.

Dated: August 31, 1989.

J.W. Lockwood,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

By the President of the United States of America

A Proclamation

Considering That:

The Amendments to the Regulations of the Convention on the International Regulations for Preventing Collisions at Sea, 1972, were adopted in accordance with paragraph 3 of article VI of the Convention by the Assembly of the International Maritime Organization at London on November 19, 1987, a certified copy of which Amendments in

the English and French languages, is hereto annexed; [1]

The President of the United States of America transmitted the Amendments to the Congress of the United States of America on July 26, 1988, consistent with section 3(d) of the International Navigational Rules Act of 1977 (91 Stat. 308; 33 USC 1602);

The United States of America did not notify the International Maritime Organization of an objection to the Amendments;

In the absence of an objection, the Amendments will enter into force for the United States of America on November 19, 1989, in accordance with article VI of the Convention and Resolution A.626(15) of the Assembly, adopted on November 19, 1987;

Now, Therefore, I, George Bush, President of the United States of America, by authority vested in me by the Constitution and the laws of the United States of America, including the International Navigational Rules Act of 1977, proclaim and make public the Amendments, to the end that they shall be observed and fulfilled with good faith on and after November 19, 1989, by the United States of America and all other persons subject to the jurisdiction thereof.

In Testimony Whereof, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this twenty-ninth day of June in the year of our Lord one thousand nine hundred eighty-nine and of the Independence of the United States of America the two hundred thirteenth.

By the President:
George Bush

Lawrence Eagleburger,
Acting Secretary of State.

Amendments to the International Regulations for Preventing Collisions at Sea, 1972, Adopted on 19 November 1987

Resolution A.626(15)

Adopted on 19 November 1987

Amendments to the International Regulations for Preventing Collisions at Sea, 1972

THE ASSEMBLY,

RECALLING article VI of the Convention on the International Regulations for Preventing Collisions at Sea, on amendments to the Regulations,

HAVING CONSIDERED the amendments to the International Regulations for Preventing Collisions at Sea, 1972, adopted by the Maritime Safety Committee at its fifty-third and fifty-fourth sessions and communicated to all Contracting Parties in accordance with paragraph 2 of article VI of that Convention and also the recommendations of the Maritime Safety Committee concerning entry into force of these amendments,

1. ADOPTS, in accordance with paragraph 3 of article VI of the Convention, the amendments set out in the Annex to the present resolution;

2. DECIDES, in accordance with paragraph 4 of article VI of the Convention, that each amendment shall enter into force on 19 November 1989 unless by 19 May 1988 more than one third of the Contracting Parties have notified their objection to the amendments;

3. REQUESTS the Secretary-General, in conformity with paragraph 3 of article VI, to communicate this resolution to all Contracting Parties to the Convention for acceptance, together with copies to all Members of the Organization;

4. INVITES Contracting Parties to notify any objections to the amendments not later than 19 May 1988, whereafter the amendments will be deemed to have entered into force in accordance with the provisions of this resolution.

Annex

Amendments to the International Regulations for Preventing Collisions at Sea, 1972

1 *Rule 1(e)—Vessel of special construction*

The existing text is replaced by the following:

(e) Whenever the Government concerned shall have determined that a vessel of special construction or purpose cannot comply fully with the provisions of any of these Rules with respect to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, such vessel shall comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, as her Government shall have determined to be the closest possible compliance with these Rules in respect of that vessel.

2 *Rule 3(h)—Vessel constrained by her draught*

The existing text is replaced by the following:

(h) The term "vessel constrained by her draught" means a power-driven vessel which, because of her draught in relation to the available depth and width of navigable water, is severely restricted in her ability to deviate from the course she is following.

3 *New rule 8(f)—Not to impede*

The following new paragraph (f) is added:

(f)(i) A vessel which, by any of these rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the rules of this part.

(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the rules of this part when the two vessels are approaching one another so as to involve risk of collision.

4 *Rule 10(a)—Traffic separation schemes adopted by the Organization*

The existing text is replaced by the following:

(a) This rule applies to traffic separation schemes adopted by the Organization and does not relieve any vessel of her obligation under any other rule.

5 *Rule 10(c)—Crossing traffic lanes*

The existing text is replaced by the following:

(c) A vessel shall, so far as practicable, avoid crossing traffic lanes but if obliged to do so shall cross on a heading as nearly as practicable at right angles to the general direction of traffic flow.

6 *Annex 1, section 2(d)—Uppermost light*

The existing text is replaced by the following:

(d) A power-driven vessel of less than 12 metres in length may carry the uppermost light at a height of less than 2.5 metres above the gunwale. When however, a masthead light is carried in addition to sidelights and a sternlight or the all-round light prescribed in rule 23(c)(i) is carried in addition to sidelights, then such masthead light or all-round light shall be carried at least 1 metre higher than the sidelights.

7 *Annex 1, section 2(i)(ii)—Vertical spacing of lights*

The existing text is replaced by the following:

(ii) on a vessel of less than 20 metres in length such lights shall be spaced not less than 1 metre apart and the lowest of these lights shall, except where a towing light is

[1] Editorial note: The French language copy of the amendments is part of the original proclamation which the Department of State will transfer to the National Archives and Records Administration as part of the U.S. treaty series.

required, be placed at a height of not less than 2 metres above the gunwale.

8 *Annex 1, section 10—Sailing vessels lights*

In section 10(a):

In the lead-in, the word "underway" is added after "sailing vessels".

In section 10(b):

In the lead-in, the word "underway" is added after "sailing vessels".

9 *Annex IV, new paragraph 1(o)—Distress signals*

The following new paragraph (o) is added:

(o) approved signals transmitted by radiocommunication systems.

As set forth in the preamble, chapter I of title 33 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 81 is revised to read as follows:

Authority: 33 U.S.C. 1607; E.O. No. 11964; 49 CFR 1.46.

2. Appendix A to part 81 is amended by removing the texts of the Proclamations of January 19, 1977, and June 16, 1983; by revising the appendix heading and note as set forth below; and by amending the International Regulations for Preventing Collisions at Sea, 1972, as set forth above in the 1987 Amendments.

PART 81—[AMENDED]

Appendix A to Part 81—72 COLREGS

Note: Below is the text of the 72 COLREGS, as published with the Proclamation of January 19, 1977, at 42 FR 17112, March 31, 1977, and subsequently amended with the Proclamation of June 16, 1983, published at 48 FR 28634, June 23, 1983, and the Proclamation of June 29, 1989, published at 54 FR 38851, September 21, 1989.

* * * * *

[FR Doc. 89-22288 Filed 9-20-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL-3649-1]

Extremely Hazardous Substances List and Threshold Planning Quantities; Emergency Planning and Release Notification Requirements; Correction

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Correction; final rule.

SUMMARY: EPA is correcting a legal citation in the definition of the term CERCLA contained in the final rule publishing the extremely hazardous substances list and threshold planning quantities, and emergency planning and release notification requirements that were published on April 22, 1987 (52 FR 13378).

FOR FURTHER INFORMATION CONTACT: Kathleen Bishop, Chemical Emergency Preparedness and Prevention Office, OS-120, U.S. EPA, 401 M Street SW., Washington, DC 20460 or Emergency Planning and Community Right to Know Information Line 1-800-535-0202 or 202-479-2449 in Washington, DC and Alaska.

Accordingly, EPA is correcting 40 CFR 355.20 to read as follows:

PART 355—[AMENDED]

§ 355.20 Definitions.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

Dated: August 10, 1989.

Robert Duprey,

Acting Assistant Administrator.

[FR Doc. 89-22291 Filed 9-20-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR P.L.O. 6749

[UT-942-09-4214-10; U-59197]

Withdrawal of Public Lands for Jordanelle Dam and Reservoir Site; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 718.13 acres of reserved mineral interests from mining and 112.52 acres of public lands from surface entry and mining for a period of 100 years for the Bureau of Reclamation to protect the Jordanelle Dam and Reservoir Site. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111, 801-539-4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the reserved mineral interests in the following described lands are hereby withdrawn from mining under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the Jordanelle Dam and Reservoir Site:

Salt Lake Meridian

T. 2 S., R. 4 E.,
Sec. 13, SE¼.
T. 2 S., R. 5 E.,
Sec. 7, N½SE¼;
Sec. 8, W½SW¼;
Sec. 17, SE¼NW¼, E½SW¼, SW¼SE¼;
Sec. 20, W½NE¼, except patented portion;
Sec. 30, Lot 3, NE¼NE¼, S½NE¼.

The areas described aggregate 718.13 acres in Wasatch County.

2. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the Jordanelle Dam and Reservoir Site:

Salt Lake Meridian

T. 2 S., R. 5 E.,
Sec. 20, SE¼, except patented portion;
Sec. 28, Lot 4, except patented portion;
Sec. 29, E½, except patented portion.

The areas described aggregate 112.52 acres in Wasatch County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 100 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 18, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-22427 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-DQM

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6850]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street SW., Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number forth is program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

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

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

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Alabama: Covington County, unincorporated areas	010244	Aug. 4, 1989	Dec. 13, 1974.
Michigan: Chippewa, township of, Isabella County	260824	Aug. 14, 1989	Do.
Arkansas: Salesville, city of, Baxter County	050579	do	Do.
Texas:			
*Tyler County, unincorporated areas	481034	Aug. 15, 1989	Nov. 8, 1977.
*Johnson County, unincorporated areas	480879	Aug. 25, 1989	May 17, 1977.
Kentucky: [1] Rockport, town of, Ohio County	210245	Aug. 28, 1989	Do.
Regular Program			
Idaho: Nezperce, city of, Lewis County	160255	Aug. 3, 1989	Aug. 3, 1989.
Michigan: Scio, township of, Washtenaw County	260537	Aug. 28, 1989	Aug. 3, 1989.
New Hampshire: Milton, town of, Strafford County	330149	Aug. 29, 1989	Aug. 3, 1989.
Pennsylvania: Coalport, borough of, Clearfield County	420301	Aug. 12, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.; Aug. 4, 1989, Rein.	July 4, 1989.
Ohio:			
Huron, city of, Erie County	390154	Mar. 30, 1973, Emerg.; Apr. 3, 1978, Reg.; July 4, 1989, Susp.; Aug. 7, 1989, Rein.	Apr. 3, 1987.
Scioto County, unincorporated areas	390496	Nov. 20, 1975, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; Aug. 7, 1989, Rein.	June 19, 1989.
North Dakota: Caldonia, township of, Traill County	380638	Jan. 3, 1980, Emerg.; Aug. 5, 1986, Reg.; July 17, 1989, Susp.; Aug. 7, 1989, Rein.	Aug. 5, 1986.
Wyoming: Laramie County, unincorporated areas	560029	May 21, 1980, Emerg.; May 1, 1980, Reg.; July 4, 1989, Susp.; Aug. 7, 1989, Rein.	May 1, 1980.
South Dakota: Clay County, unincorporated areas	460259	May 16, 1989, Emerg.; Apr. 1, 1987, Reg.; July 17, 1989, Susp.; Aug. 9, 1989, Rein.	Apr. 1, 1987.
Pennsylvania: West Brunswick, township of, Schuylkill County.	422028	Aug. 1, 1979, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.; Aug. 11, 1989, Rein.	July 17, 1989.
Virginia: Grayson County, unincorporated areas	510243	Dec. 4, 1974, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.; Aug. 11, 1989, Rein.	July 17, 1989.
Colorado: Idaho Springs, town of, Clear Creek County	080036	Dec. 4, 1973, Emerg.; Nov. 15, 1978, Reg.; June 19, 1989, Susp.; Aug. 11, 1989, Rein.	Nov. 15, 1978.
Montana: Roundup, city of, Musselshall County	300050	Mar. 12, 1975, Emerg.; Mar. 18, 1986, Reg.; July 17, 1989, Susp.; Aug. 11, 1989, Rein.	Mar. 18, 1986.
Pennsylvania: Lawrence, township of, Clearfield County	421528	July 29, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp.; Aug. 16, 1989, Rein..	Aug. 3, 1989.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New York: Black River, village of, Jefferson County	361525	July 8, 1976, Emerg.; Dec. 19, 1984, Reg.; June 5, 1989, Susp.; Aug. 22, 1989, Rein.	June 5, 1989.
Texas: *Coryell County, unincorporated areas	480768	Oct. 26, 1979, Emerg.; Sept. 30, 1981, Reg.; May 4, 1988, Susp.; Aug. 14, 1989, Rein.	Sept. 3, 1981.
Colorado: Calhan, town of, El Paso County	080192	Mar. 12, 1976, Emerg.; Mar. 18, 1986, Reg.; July 17, 1989, Susp.; Aug. 23, 1989, Rein.	Mar. 18, 1986.
Pennsylvania: College, township of, Centre County	420259	Apr. 19, 1973, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.; Aug. 28, 1989, Rein.	July 4, 1989.
South Dakota: Redfield, town of, Spink County	460081	May 22, 1975, Emerg.; Nov. 15, 1985, Reg.; Aug. 3, 1989, Susp.; Aug. 28, 1989, Rein.	Nov. 15, 1985.
Iowa: Kirkman, city of, Shelby County	190250	June 9, 1975, Emerg.; May 17, 1982, Reg.; June 3, 1988, Susp.; Aug. 25, 1989, Rein.	May 17, 1982.
Utah: Henefer, town of, Summit County	490136	July 23, 1975, Emerg.; May 20, 1980, Reg.; Aug. 3, 1989, Susp.; Aug. 23, 1989, Rein.	May 20, 1980.
Region II			
New York:			
Coeymans, town of, Albany County	360005	Aug. 3, 1989, suspension withdrawn	Aug. 3, 1989.
Westerlo, town of, Albany County	360017	do	Aug. 3, 1989.
Region III			
Pennsylvania:			
Bell, township of, Clearfield County	421513	do	Aug. 3, 1989.
Coalmont, borough of, Huntingdon County	420484	do	Aug. 3, 1989.
Hastings, borough of, Cambria County	420230	do	Aug. 3, 1989.
Howard, borough of, Centre County	420263	do	Aug. 3, 1989.
Howard, township of, Centre County	421464	do	Aug. 3, 1989.
Jackson, township of, Huntingdon County	421691	do	Aug. 3, 1989.
Logan, township of, Huntingdon County	421694	do	Aug. 3, 1989.
Madison, township of, Columbia County	421553	do	Aug. 3, 1989.
Region V			
Illinois: St. Marie, village of, Jasper County	170820	do	Aug. 3, 1989.
Wisconsin: Waupaca, city of, Waupaca County	550502	do	Aug. 3, 1989.
Region VI			
Texas: Trophy Club, town of, Denton County	481606	do	Aug. 3, 1989.
Region VIII			
Colorado: Sedgwick, city of, Sedgwick County	080171	do	Aug. 3, 1989.
Region IX			
California:			
San Diego County, unincorporated areas	060284	do	Aug. 3, 1989.
Benicia, city of, Solano County	060368	do	Aug. 3, 1989.
Region I			
Massachusetts: Chesterfield, town of, Hampshire County	250158	Aug. 15, 1989, suspension withdrawn	Aug. 15, 1989.
Region III			
Pennsylvania:			
Boggs, township of, Centre County	421193	do	Aug. 15, 1989.
Midway, borough of, Washington County	422558	do	Aug. 15, 1989.
Petersburg, borough of, Huntingdon County	420490	do	Aug. 15, 1989.
Quemahoning, township of, Somerset County	422053	do	Aug. 15, 1989.
Shirley, township of, Huntingdon County	421700	do	Aug. 15, 1989.
Westover, borough of, Clearfield County	420317	do	Aug. 15, 1989.
Worth, township of, Centre County	421472	do	Aug. 15, 1989.
Virginia: Caroline County, unincorporated areas	510249	do	Aug. 15, 1989.
West Virginia:			
Petersburg, city of, Grant County	540089	do	Aug. 15, 1989.
Pendleton County, unincorporated areas	540153	do	Aug. 15, 1989.
Region IV			
Florida: Jacksonville, city of, Duval County	120077	do	Aug. 15, 1989.
Region VIII			
Colorado: Edgewater, city of, Jefferson County	080089	do	Aug. 15, 1989.
Region II			
New York:			
Claverack, town of, Columbia County	360173	Sept. 6, 1989, suspension withdrawn	Sept. 6, 1989.
Coxsackie, town of, Greene County	361115	do	Sept. 6, 1989.
Coxsackie, village of, Greene County	360288	do	Sept. 6, 1989.
Athens, town of, Greene County	361117	do	Sept. 6, 1989.
Region III			
Pennsylvania:			
Manns Choice, borough of, Bedford County	421325	do	Sept. 6, 1989.
Napier, township of, Bedford County	421348	do	Sept. 6, 1989.
Sandy, township of, Clearfield County	421191	do	Sept. 6, 1989.
Washington, township of, Jefferson County	422451	do	Sept. 6, 1989.
Confluence, borough of, Somerset County	422043	do	Sept. 6, 1989.
Hopewell, township of, Bedford County	421339	do	Sept. 6, 1989.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Region IV			
North Carolina:			
Richmond County, unincorporated areas	370348	.....do	Sept. 6, 1989.
Sanford, city of, Lee County	370143	.....do	Sept. 6, 1989.
Region V			
Ohio:			
Auglaize County, unincorporated areas	390761	.....do	Sept. 6, 1989.
Lynchburg, village of, Highland County	390271	.....do	Sept. 6, 1989.
Mercer County, unincorporated areas	390392	.....do	Sept. 6, 1989.
Versailles, village of, Darke County	390142	.....do	Sept. 6, 1989.
Wisconsin: Boaz, village of, Richland County	550357	.....do	Sept. 6, 1989.
Region VII			
Iowa: Williamsburg, city of, Iowa County	190427	.....do	Sept. 6, 1989.
Region IX			
Arizona: Pima County, unincorporated areas	040073	.....do	Sept. 6, 1989.
Hawaii: Maui County, unincorporated areas	150003	.....do	Sept. 6, 1989.

[1] The Town of Rockport, (Ohio County) Kentucky is scheduled to be coverted to the Regular Program on the FIRM effective date September 29, 1989.
*Declared Disaster Areas.
Code for reading third column: Emerg.—Emergency. Reg.—Regular. Susp.—Suspension. Rein.—Reinstatement.

Issued: September 15, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-22293 Filed 9-20-89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6849]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Adminstrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street Southwest, Room 417, Washington, DC 20472.

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

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

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance

decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

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

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

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorizaton/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania:				
Bedford, township of, Bedford County	421331	July 30, 1975, Emerg.; Oct. 17, 1989, Reg.; Oct. 17, 1989, Susp.	10-17-89	Oct. 17, 1989.
Franklin, township of, Susquehanna County	422097	Dec. 4, 1975, Emerg.; May 17, 1989, Reg.; Oct. 17, 1989, Susp.	5-17-89	May 17, 1989.
Lilly, borough of, Cambria County	421430	Feb. 25, 1977, Emerg.; Oct. 17, 1989, Reg.; Oct. 17, 1989, Susp.	10-17-89	Oct. 17, 1989.
West Virginia:				
Marlington, town of, Pocahontas County	540159	Jan. 27, 1975, Emerg.; Oct. 17, 1989, Reg.; Oct. 17, 1989, Susp.	10-17-89	Do.
Pocahontas County, unincorporated areas	540283	Feb. 12, 1976, Emerg.; Oct. 17, 1989, Reg.; Oct. 17, 1989, Susp.	10-17-89	Do.
Durbin, town of, Pocahontas County	540158	May 13, 1975, Emerg.; Aug. 24, 1984, Reg.; Oct. 17, 1989, Susp.	10-17-89	Do.
Region VI				
Texas: Muleshoe, city of, Bailey County	480019	Sept. 13, 1974, Emerg.; Oct. 17, 1989, Reg.; Oct. 17, 1989, Susp.	10-17-89	Do.

Code for reading third column: Emerg.—Emergency. Reg.—Regular. Susp.—Suspension. Rein.—Reinstatement.

Issued: September 15, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-22294 Filed 9-20-89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 65

[Docket No. FEMA-6967]

Changes in Flood Elevation Determination

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

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

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

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L.

90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65 [AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Connecticut	Hartford	Town of West Hartford.	September 8, 1989, September 15, 1989, The Hartford Courant.	Mr. David R. Kraus, Assistant Town Engineer, Department of Community Services, Town of West Hartford, Town Hall Common, West Hartford, Connecticut 06107.	Aug. 24, 1989	095082
Georgia	Bryan	City of Richmond Hill.	September 6, 1989, September 13, 1989, Richmond Hill Area News.	The Honorable Richard R. Davis, Mayor, City of Richmond Hill, P.O. Box 250, Richmond Hill, Georgia 31324.	Aug. 24, 1989	130018
Georgia	Fulton	Unincorporated Areas.	August 24, 1989, August 31, 1989, Daily Report.	The Honorable Sam Brownlee, Manager, Fulton County, 207 Administration Building, 165 Central Avenue, SW., Atlanta, Georgia 30335.	Aug. 10, 1989	135160
Iowa	Des Moines	City of Burlington	September 21, 1989, September 28, 1989, The Hawkeye.	The Honorable Lowell H. Bauer, Mayor, City of Burlington, 400 Washington Street, Burlington, Iowa 52601.	Sept. 7, 1989	190114
South Carolina	Charleston	Unincorporated Areas.	September 13, 1989, September 20, 1989, Charleston News & Courier.	The Honorable Ed Sava, County Administrator, Charleston County, County Office Building, #2 Courthouse Square, Rm. 401, Charleston, South Carolina 29401.	Aug. 30, 1989	455413

Issued: September 8, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–22295 Filed 9–20–89; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

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

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

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and

Urban Development Act of 1968, (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR part 65.

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Flordia	Dade (Docket No. FEMA–6958).	Unincorporated Areas.	May 19, 1989, May 26, 1989, Miami Review.	The Honorable Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 NW. 1st Street, Suite 2910, Miami, FL 33128–1971.	May 10, 1989	125098
Illinois	Cook and Lake (Docket No. FEMA–6963).	Village of Buffalo Grove.	April 13, 1989, April 20, 1989, The Daily Herald.	The Honorable William R. Balling, Village Manager, Village of Buffalo Grove, 51 Raupp Boulevard, Buffalo Grove, IL 60090.	Apr. 4, 1989	170068
Texas	Nueces and Kleberg (FEMA Docket No. 6954).	City of Corpus Christi.	April 5, 1989, April 12, 1989, The Corpus Christi Caller Times.	The Honorable Betty Turner, Mayor of the City of Corpus Christi, Nueces and Kleberg Counties, P.O. Box 9277, Corpus Christi, TX 78469.	Mar. 22, 1989	485464 C

Issued: September 8, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–22296 Filed 9–20–89; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

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

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

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

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

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

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

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

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

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

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

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

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

State city/town/county source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD). Modified.
CALIFORNIA	
Anaheim (city), Orange County (FEMA Docket No. 6935)	
East Richfield Channel:	
Approximately 150 feet west of the intersection of Burbach Street and Larkspur Circle	*259
East Richfield Channel:	
Approximately 600 feet north of the intersection of Meadowhill Avenue and Azure Street	*259
Maps are available for inspection at the City of Anaheim Planning Department, 200 South Anaheim Boulevard, Anaheim, California 92805.	
Costa Mesa (city), Orange County (FEMA Docket No. 6935)	
Santa Ana River:	
Approximately 1,200 feet west of the intersection of Starfish Court and Walkabout Circle	*10
Maps are available for inspection at the Planning Department, 77 Fair Drive, Second Floor, Costa Mesa, California 92626.	
Fullerton (city), Orange County (FEMA Docket No. 6935)	
Brea Canyon Channel:	
Approximately 250 feet south of the intersection of Hermosa Drive and Greenmeadow Drive	*298
Approximately 200 feet northeast of the intersection of Puente Street and Rosarita Drive	*298
Approximately 300 feet northeast of the intersection of Puente Street and Rosarita Drive	*300
Maps are available for inspection at the Engineering Department, 303 West Commonwealth Avenue, Fullerton, California 92632.	
Huntington Beach (city), Orange County (FEMA Docket No. 6935)	
Pacific Ocean:	
Approximately 1,300 feet southwest of the intersection of Weatherly Lane and Warner Avenue	*12
Approximately 4,500 feet south of the intersection of Davenport Drive and Edgewater Lane	*10
Approximately 1,500 feet south of the intersection of Cherryhill Drive and Palm Avenue	*15
Approximately 300 feet south of the intersection of Pacific Coast Highway and Lake Street	*12
Approximately 2,000 feet south of the intersection of Surfrider Lane and Christine Drive	*11
Maps are available for inspection at the Planning Department, 2000 Main Street, Third Floor, Huntington Beach, California 92648.	
Laguna Beach (city), Orange County (FEMA Docket No. 6935)	
Pacific Ocean:	
The Laguna Beach corporate limit in the vicinity of Emerald Point Drive extended to the shoreline	*11
Maps are available for inspection at the Community Development Office, City Hall, 505 Forest Avenue, Laguna Beach, California 92651.	
Newport Beach (city), Orange County (FEMA Docket No. 6935)	
Pacific Ocean:	
Orange Street extended to the shoreline	*10
19th Street extended to the shoreline	*11
Larkspur Avenue extended to the shoreline	*12
Poppy Avenue extended to the shoreline	*20
Lower Newport Bay:	
Approximately 900 feet south of the intersection of Riverside Avenue and Pacific Coast Highway	*6
Approximately 2,000 feet south of the intersection of Pacific Coast Highway and Bayshore Drive	*6
Approximately 1,000 feet south of the intersection of Park Avenue and Abalone Avenue	*6
Upper Newport Bay:	
Approximately 1,200 feet east of the intersection of Galaxy Drive and Rigel Circle	*6
Approximately 2,000 feet east of the intersection of 23rd Street and Irvine Avenue	*6
Approximately 1,400 feet south of the intersection of Bayview Avenue and Mesa Drive	*6
Maps are available for inspection at the Building Department, 3300 Newport Boulevard, Newport Beach, California 92663.	
Orange County (unincorporated areas) (FEMA Docket No. 6935)	
Pacific Ocean:	
22nd Street extended approximately 400 feet towards the shore	*12
15th Street extended approximately 350 feet towards the shore	*14
Approximately 300 feet south of the intersection of Brighton Road and Cameo Shores Road	*16
Approximately 700 feet south of the intersection of Emerald Point Drive and Bay Crest Drive	*11
Approximately 600 feet west of the intersection of Island View Drive and Aliso Drive	*25
Approximately 800 feet west of the intersection of Sea Bluff Lane and Pacific Coast Highway	*11
Approximately 400 feet west of the intersection of Vista Del Sol and South La Senda Drive	*13
Approximately 800 feet west of the intersection of Cabrillo Isle and Seaward Isle	*13
Approximately 500 feet south of the intersection of Cove Road and Street of the Green Lantern	*20
Approximately 800 feet south of the intersection of Dana Point Harbor Drive and Island Way	*6
Approximately 750 feet south of the westernmost intersection of Pacific Coast Highway and Camino Las Ramblas	*9
Approximately 700 feet south of the intersection of Camino Capistrano and Camino De Estrella	*10
San Juan Creek (Shallow Flooding):	
Approximately 2,200 feet east of the intersection of Dana Point Harbor Drive and Puerto Place	# 1
Approximately 400 feet east of the intersection of Doheny Park Road and Domingo Avenue	# 1
Approximately 600 feet north of the intersection of Atchison, Topeka and Santa Fe Railway and Victoria Boulevard	# 1
Approximately 1,400 feet east of the intersection of Seaside Drive and Stonehill Drive	# 1
Approximately 300 feet east of the intersection of Coral Reach Street and Admiral Way	# 3
Approximately 200 feet south of the intersection of Bougainvillaea and Mimbrera	# 1
Santa Ana River:	
Approximately 100 feet west of the intersection of Avalon Avenue and Fairview Street	*104
Approximately 3,000 feet west of the intersection of Whittier Avenue and 18th Street	*10
Approximately 400 feet south of the intersection of Summer View Circle and Edinger Avenue	# 3
Approximately 700 feet east of the intersection of Hutchings Street and Galena Avenue	# 3
Approximately 1,000 feet south of the intersection of Katella Avenue and Douglass Street	# 1

State city/town/county source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD). Modified.
100 feet northeast of westernmost intersection of Sugar Avenue and Van Buren Street	# 3
County area in the vicinity of Peters Avenue, Flight Avenue, and Jefferson Street	# 3
Approximately 300 feet west of the intersection of Los Reyes Street and Lehnhardt Avenue	# 3
East Garden Grove Wintersburg Channel (Shallow Flooding):	
Approximately 3,500 feet south of the intersection of Beck Circle and Gainsford Lane	*1
2,100 feet south of the intersection of Los Patos Avenue and Lynn Street	*1
Upper Newport Bay:	
Approximately 2,500 feet south of the intersection of Zenith Avenue and Spruce Street	*6
Houston Storm Channel:	
Approximately 400 feet south of Page Avenue and 400 feet west of Brookhurst Street	# 2
Approximately 550 feet south of Page Avenue and 1,250 feet west of Brookhurst Street	# 2
Carbon Canyon Channel:	
Upstream face of Carbon Canyon Dam	*470
Approximately 700 feet south of Telegraph Canyon Road Crossing	*471
Maps are available for inspection at the Orange County Flood Program Office, 400 W. Civic Center Drive, Room 322, Santa Ana, California 92702-4048.	
San Clemente (city), Orange County (FEMA Docket No. 6935)	
Pacific Ocean:	
Approximately 500 feet west of the intersection of Avenue Del Poiente and Buena Vista	*11
Approximately 900 feet west of the intersection of Calle Serena and Calle de Los Alamos	*10
Avenue de Las Palmeras extended to the shoreline	*11
Maps are available for inspection at the Engineering Department, 101 West Portal, San Clemente, California 92672.	
San Juan Capistrano (city), Orange County (FEMA Docket No. 6935)	
San Juan Creek: (Shallow Flooding)	
Approximately 600 feet west of the intersection of Villa San Juan and Camino Capistrano	# 1
Maps are available for inspection at the Public Works Department, 32400 Paseo Adelanto, San Juan Capistrano, California 92675.	
Seal Beach (city), Orange County (FEMA Docket No. 6935)	
Pacific Ocean:	
Approximately 400 feet south of the southern most point of Park Circle Drive	*5
Approximately 700 feet west of the intersection of Sunset Way East and Park Circle Drive	*5
Approximately 2,200 feet west of the intersection of Sunset Way East and Park Circle Drive	*5
Maps are available for inspection at City Hall, 211 8th Street, Seal Beach, California 90740.	
COLORADO	
Adams County (unincorporated areas) (FEMA Docket No. 6957)	
South Platte River:	
Approximately 1,180 feet downstream of westbound Interstate Highway 270	*5112
At Metro Denver Sewage Treatment Plant bridge	*5119
At York Street bridge	*5128
At Burlington Ditch diversion structure	*5137
At Franklin Street bridge (at upstream county line)	*5144
Maps are available for review at the Adams County Planning and Development Services Department, 4955 East 74th Avenue, Commerce City, Colorado.	
FLORIDA	
Seminole County (unincorporated areas) (FEMA Docket No. 6959)	
St. Johns River:	
About 2,000 feet downstream of Osteen Bridge	*9
At Orange County boundary	*11
Econlockhatchee River:	
At confluence with St. Johns River	*11
At Orange County boundary	*35
Little Econlockhatchee River:	
At confluence with Econolockhatchee River	*32
At Orange County boundary	*42
Maps are available for inspection at the Planning Department, 1101 East First Street, Sanford, Florida.	
KANSAS	
Newton (City), Harvey County (FEMA Docket No. 6959)	
South Branch Slate Creek:	
About 250 feet downstream of South Kansas Street	*1434
Just upstream of South Kansas Street	*1437
Just downstream of Union Pacific Railroad	*1445
Country Club Branch Slate Creek:	
About 400 feet upstream of confluence with South Branch Slate Creek	*1440
Just upstream of earth dam	*1451
Maps are available for inspection at the City Hall, Newton City Engineer's Office, 120 East 7th Street, Newton, Kansas.	
KENTUCKY	
Elkhorn City (city), Pike County (FEMA Docket No. 6957)	
Russell Fork:	
Just downstream of confluence of Moore Branch	*773
Approximately 2,400 feet upstream of confluence of Big Island Branch	*820
Maps are available for inspection at the City Hall, Nelly R. Tackett, Treasure Clerk, South Center Street, Elkhorn City, Kentucky.	
Pike County (unincorporated areas) (FEMA Docket No. 6957)	
Levisa Fork:	
At downstream County Boundary	*666
About 2.83 miles upstream of confluence of Russell Fork	*696
Russell Fork:	
At mouth	*695
At upstream State Boundary	*869
Ratliff Creek:	
At mouth	*672
About 0.39 miles upstream from confluence of Levisa Fork	*672
Shelby Creek:	
At mouth	*687
About 1.12 miles upstream of confluence of Levisa Fork	*687
Marrowbone Creek:	
At mouth	*716
About 0.58 miles upstream from confluence of Russell Fork	*716
Maps are available for inspection at the Public Works Department, Flood Plain Management Division, Pike County Courthouse, Main Street, Pikeville, Kentucky.	
MARYLAND	
Perryville (town), Cecil County (FEMA Docket No. 6957)	
Mill Creek:	
At confluence with Furnace Bay	*12
At U.S. Route 40	*100
Maps are available for inspection at the Town Hall, 515 Broad Street, Perryville, Maryland.	
Prince George's County (unincorporated areas) (FEMA Docket No. 6948)	
Indian Creek:	
Approximately 230 feet upstream of Interstate Route 95	*75
Approximately 0.5 mile upstream of Sunnyside Avenue	*92
Maps are available for inspection at the County Administrative Building, Upper Marlboro, Maryland.	
OKLAHOMA	
Wewoka (city), Seminole County (FEMA Docket No. 6955)	
Tributary A:	
Approximately 1,600 feet upstream of State Route 59	*790
Approximately 2,700 feet upstream of State Route 59	*792

State city/town/county source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD). Modified.
Maps are available for inspection at the City Hall, 123 South Mekesukey Avenue, Wewoka, Oklahoma.	
PENNSYLVANIA	
Lehighton (borough), Carbon County (FEMA Docket No. 6957)	
Mahoning Creek:	
Approximately 25 feet upstream of CONRAIL Bridge	*462
Approximately 700 feet upstream of Dam	*465
Maps are available for inspection at the Municipal Building, Constitution Avenue, Lehighton, Pennsylvania.	
Falls (township), Bucks County (FEMA Docket No. 6959)	
Delaware River:	
At downstream corporate limits	*12
At upstream corporate limits	*20
Maps are available for inspection at the Falls Township Building, 285 Yardley Avenue, Falls, Pennsylvania.	
Malden Creek (township), Berks County (FEMA Docket No. 6952)	
Willow Creek:	
Approximately 930 feet upstream of Private Lane	*324
Approximately 240 feet upstream of State Route 73	*312
Maps are available for inspection at the Township Building, Quarry Road, Blandon, Pennsylvania.	
SOUTH CAROLINA	
Richland County (unincorporated areas) (FEMA Docket No. 6959)	
Tributary LJ-1:	
About 500 feet downstream of Liongate Road	*286
Just downstream of Spring Valley Road	*299
Just upstream of Spring Valley Road	*307
Maps are available for inspection at the Richland County Engineering Office, Columbia, South Carolina.	
VIRGINIA	
Patrick County (unincorporated areas) (FEMA Docket No. 6957)	
South Mayo River:	
Approximately 0.7 mile downstream of State Route 681	*1,153
Approximately 100 feet downstream of confluence of North Fork South Mayo River	*1,214
Campbell Branch:	
At confluence with South Mayo River	*1,176
At downstream side of Masonite Building	*1,180
South Mayo River Diversion:	
At confluence with South Mayo River	*1,175
At divergence from South Mayo River	*1,186
Maps are available at the County Administration Building, Rucker Street, Stuart, Virginia.	

Issued: September 8, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-22297 Filed 9-20-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 153

[CGD 81-101]

RIN 2115-AA73

Hazardous Liquids Pollution Rules

CFR Correction

In Title 46 of the Code of Federal Regulations, Parts 140 to 155, revised as of October 1, 1988, on page 230, in § 153.7(d)(4), subparagraphs (i) through (iii) should be removed.

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 54, No. 182
Thursday, September 21, 1989

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25 and 95

RIN 3150-AD28

Credit Checks; Expanded Personnel Security Investigative Coverage

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations to (1) expand the investigative scope for licensee "R" special nuclear material access authorization and "L" security clearance applicants by adding a credit check; and (2) revise the corresponding fee schedules to recover the additional cost of each credit check. This amendment is necessary to achieve a higher degree of assurance that licensee "R" and "L" applicants are reliable, trustworthy, and do not have any significant financial problems which may cause them to be susceptible to pressures, blackmail, or coercion to act contrary to the national interest.

DATE: Comment period expires November 21, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver Comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Copies of the regulatory analysis and comments recieved may be examined at: Room LL6, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beth Bradshaw, Personnel Security Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 2055, telephone: (301) 492-4120.

SUPPLEMENTARY INFORMATION: On April 12, 1989, the Executive Director for Operations (EDO) approved the immediate addition of a credit check to the scope of the initial investigation coverage required for a NRC "L" security clearance for NRC employees, contractors, and other non-licensee personnel. The EDO also approved the initiation of rulemaking to implement the same investigative scope change for "R" and "L" licensee applicants. The current investigative coverage for "R" and "L" applicants normally consists of a National Agency Check (NAC) conducted by the Office of Personnel Management (OPM). While a NAC provides important coverage of an individual's background (e.g., FBI criminal history fingerprint and name checks; record checks with OPM, the Department of Defense (DOD) and other applicable agenices), it does not provide information concerning an individual's financial situation. NRC proposes, therefore, to expand the present investigative scope for an "R" special nuclear material access authorization and "L" security clearance by adding a credit check.

The addition of the credit check is necessary to achieve a higher degree of assurance that "R" and "L" licensee applicants are reliable, trustworthy, and do not have any significant financial problems which may cause them to be susceptible to pressures, blackmail, or coercion to act contrary to the national interest. In October 1987, OPM added several significant financial questions to its SF-86, "Questionnaire For Sensitive Positions," which the NRC currently uses as a basis for its personnel security investigations. OPM added these questions in order to identify security related concerns and possible exploitable weaknesses in a person's background. In view of recent espionage for money cases, it is important to identify those individuals who have serious financial difficulties and are, therefore, more susceptible to committing espionage or similar activities against the United States.

Furthermore, NRC has found, based on actual case experience, that an individual's financial difficulties may be an indicator or result of other more serious problems such as drug abuse, alcohol abuse, or dishonesty.

In addition to providing greater assurance of an "R" and "L" licensee applicant's eligibility, the credit check will achieve greater comparability between NRC's requirements and those of the Department of Energy and other agencies which require the credit check for their "L" and Secret clearances. The proposed requirement will be more consistent with the investigative coverage proposed in the Nuclear Management and Resources Council (NUMARC) guidelines for licensee personnel with unescorted access to protected and vital areas of nuclear power plants.

The applicable fee schedules will be revised to reflect the additional cost associated with the conduct of the credit check. Specifically, the fee for an NRC "R" special nuclear material access authorization or "L" security clearance will increase from $15.00 to $25.00.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described as a categorical exclusion in 10 CFR 51.22 (c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046, 3150-0047, and 3150-0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, Room LL6, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Beth Bradshaw, Division of Security, Office of Administration, U.S. Nuclear Regualtory Commission, Washington, DC 20555, telephone: (301) 492-4120.

Regulatory Flexibility Certification

Based upon the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking activity applies only to those licensees and others who need to use, process, store, transport, or deliver to a carrier for transport formula quantities of special nuclear material (as defined in 10 CFR part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 25). Approximately 31 NRC licensee and other license related interests would be affected under the provisions of 10 CFR parts 11 and/or 25. However, 20 of these licensee or other interests have only a limited number of active clearances, e.g., one or two each, relating to safeguards activities. Because these licensees are not classified as small entities as defined by the NRC's size standards (December 9, 1985; 50 FR 50241), the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 11, 25, and 95.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.7, paragraph (d) is revised to read as follows:

§ 11.7 Definitions.

* * * * *

(d) *NRC—'R' special nuclear material access authorization* means an administrative determination based upon a national agency check and credit investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

3. In § 11.15, paragraphs (e)(1) and (f) are revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i. NRC-U requiring full field investigation—$2,127
ii. NRC-U requiring full field investigation (expedited processing—$2,645
iii. NRC-U based on certification of comparable full field background investigation—0 [1]
iv. NRC-U or R renewal—25 [1]
v. NRC-R—25 [1]
vi. NRC-R based on certification of comparable investigation—0 [2]

* * * * *

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–Q access authorization or an equivalent Federal security clearance granted by another Federal agency ("Top Secret") based on a comparable full field background investigation may be permitted in accordance with § 11.11 the same level of unescorted access that an NRC-U special nuclear material access authorization would afford.

(2) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE-L access authorization or an equivalent security clearance granted by another Federal agency ("Secret") based on a background investigation or national agency check and credit investigation may be permitted in accordance with § 11.11 the same level of unescorted access that an NRC-R special material access authorization would afford. An NRC or DOE-L access authorization or an equivalent security clearance ("Secret"), based on a background investigation or national agency check, which was granted or being processed by another Federal agency prior to September 21, 1989, is acceptable to meet this requirement.

4. Section 11.16 is revised to read as follows:

§ 11.16 Cancellation of request for special nuclear material access authorization.

When a request for an individual's access authorization is withdrawn or cancelled, the licensee shall notify the Chief, Personnel Security Branch, NRC Division of Security immediately, by telephone, so that the full field investigation or national agency check and credit investigation may be discontinued. The caller shall provide the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("U" or "R"). The licensee shall promptly submit written confirmation of the telephone notification to the Personnel Security Branch, NRC Division of Security. A portion of the fee of the "U" special nuclear material access authorization may be refunded depending upon the status of the full field investigation at the time of withdrawal or cancellation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

5. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP.,

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,127 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a national agency check and credit investigation is necessary, a fee of $25.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of $2,127 will be assessed prior to the conduct of the investigation.

p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9071).

For the purposes of sec. 223, 68 Stat. 958 as amended (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33(b) and (c) are issued under sec. 161i, 68 stat. 949, as amended (42 U.S.C. 2201 (i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 25.5, the definition of "L" is revised to read as follows:

§ 25.5 Definitions.

* * * * *

L access authorization means an access authorization granted by the Commission which is normally based on a national agency check and credit (NAC&C) investigation or national agency check, inquiries and credit (NACIC) investigation conducted by the Office of Personnel Management.

* * * * *

7. Section 25.25 is revised to read as follows:

§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization is withdrawn or cancelled, the requester shall notify the NRC Division of Security immediately, by telephone, so that the full field investigation or national agency check and credit investigation may be discontinued. The caller shall supply the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("Q" or "L"). The telephone notification must be promptly confirmed in writing.

8. Appendix A is revised to read as follows:

APPENDIX A.—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" Access Authorization	[1] $25
Reinstatment of "L" Access Authorization	[1] $25
Extension or Transfer of "L" Access Authorization	[1] $25
Initial "Q" Access Authorization	2,127
Initial "Q" Access Authorization (expedited processing)	2,645
Reinstatement of "Q" Access Authorization	[2] 2,127
Reinstatement of "Q" Access Authorization (expedited processing)	[2] 2,645
Extension or Transfer of "Q"	[2] 2,127
Extension or Transfer of "Q" (expedited processing)	[2] 2,645

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,127 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

9. The authority citation for part 95 continues to read as follows:

Authority: Secs. 145, 161, 88 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

10. In § 95.5 the definition of "L" is revised to read as follows:

§ 95.5 Definitions.

* * * * *

L access authorization means an access authorization granted by the Commission which is normally based on a national agency check and credit investigation (NAC&C) or national agency check, inquiries and credit (NACIC) investigation conducted by the Office of Personnel Management.

* * * * *

Dated at Rockville, Maryland this 6th day of September, 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 89–22314 Filed 9–20–89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Ch. III

Implementation of the Price-Anderson Amendments Act of 1988 Civil and Criminal Penalty Authority

AGENCY: Department of Energy.

ACTION: Notice of inquiry and request for public comments.

SUMMARY: The Department of Energy (DOE) hereby gives notice of, and invites public comments on, its plans to implement newly enacted authority to subject DOE nuclear contractors, subcontractors and suppliers to civil and criminal penalties for violations of DOE nuclear-safety requirements pursuant to the Price-Anderson Amendments Act of 1988 (PAAA) (Pub. L. No. 100–408, August 20, 1988). The notice requests public comments on DOE's plan to implement these new provisions and discusses pertinent background information, including key features of relevant statutory authorities and their legislative history, existing DOE safety requirements, the forthcoming issuance of a general statement of enforcement policy and proposed procedural rules for civil penalties.

DATES: The public is invited to submit comments and recommendations to either of the addresses listed below by November 6, 1989.

ADDRESSES: Mail comments to either:

Susan Kuznick, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6975

or

Ellen Ott, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6975

Comments may be examined in the DOE Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue SW., Washington, DC 20585 Between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Susan Kuznick (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 20, 1988, President Reagan signed into law the Price-Anderson Amendments Act of 1988 (Pub. L. No. 100–408) (PAAA). The PAAA subjects DOE contractors who enter into indemnification agreements under the Price-Anderson Act, and their subcontractors and suppliers, to civil and criminal penalties for violations of applicable DOE rules, regulations or orders related to nuclear safety. Today, DOE invites the public to comment on its plans to implement this new civil and criminal penalty authority as part of an integrated DOE enforcement program that provides enforcement actions commensurate with the significance of the involved safety issues.

The notice invites comments to aid the Department in formulating a general statement of enforcement policy designed to make clear to the contractors, subcontractors and suppliers the manner in which DOE will exercise its enforcement discretion. DOE has reviewed the enforcement policies of other agencies, such as the Nuclear Regulatory Commission, the Environmental Protection Agency, the Research and Special Programs Administration and the Federal Aviation Administration within the Department of Transportation, and the Occupational Safety and Health Administration within the Department of Labor, as well as recommendations of the Administrative Conference of the United

States. The results of this review will be considered in developing the DOE enforcement policy. DOE also will consider public comments received in response to this notice.

DOE plans to initiate rulemaking on two issues raised by the PAAA civil and criminal penalty provisions. The PAAA exempts certain persons, including some educational institutions, from the civil penalty provisions and authorizes DOE to determine by rule whether other nonprofit educational institutions should receive automatic remission of civil penalties. Development of procedures to be utilized when a nuclear-safety violation has been alleged also will be accomplished by rulemaking. A Notice of Proposed Rulemaking on these two issues will be published in the Federal Register in the future.

II. Background

A. DOE Management and Operating Contracts

DOE and its predecessor agencies, the Manhattan Engineer District, the Atomic Energy Commission (AEC), and Energy Research and Development Administration (ERDA), have utilized the services of private industry and universities to operate their major nuclear facilities since the early 1940s. The Government decided that it was necessary to enlist the scientists, engineers and technicians available outside the Government to develop and produce nuclear weapons, but that it was impracticable to hire these experts directly.

Therefore, AEC, ERDA and DOE generally have entered into 5-year contracts with universities, such as the University of California, and private corporations, such as Westinghouse Electric Corporation, to fulfill continuing research, development, and production needs. These contractors are paid all allowable costs, as enumerated in the contracts, and bear little financial risk for carrying out the Government's nuclear programs since the allowable costs provisions are extensive and the Price-Anderson Act indemnity clause is broad. See 48 CFR 970.5204–13 and 952.250–70.

Although the assets of management and operating contractors historically have been at little risk, the award fee system, applicable to most corporate management and operating contractors, allows for lower fees for poor contract performance. Still, the existing assets of these contractors would not be affected significantly by reduced fees. Now, with the passage of PAAA penalty provisions, DOE management and operating contractors engaged in nuclear activities, as well as other DOE nuclear contractors and their subcontractors and suppliers, are subject to more significant financial risk for violations of applicable DOE nuclear-safety requirements. DOE intends to amend its Acquisition Regulations to state that Price-Anderson penalties are not allowable costs under any circumstances.

B. The Price-Anderson Act

In 1957, Congress amended the Atomic Energy Act by enacting the Price-Anderson Act (the Act), 42 U.S.C. 2210 and parts of 2014, to establish a system of financial protection for persons who may be injured by a nuclear incident. The Act authorizes the Nuclear Regulatory Commission (NRC) to indemnify its licensees operating nuclear power plants and DOE to indemnify its contractors engaged in nuclear activities for public liability arising from a nuclear incident. The new Price-Anderson Amendments Act of 1988 (PAAA) was signed into law on August 20, 1988 (Pub. L. No. 100–408). The PAAA renews NRC and DOE authority to indemnify under the Act until August 1, 2002, and amends the Act in many respects.

Two major changes to the Act are relevant here. First, the PAAA makes mandatory DOE's previously discretionary authority to provide Price-Anderson indemnity coverage and extends that coverage to any person who may conduct activities under a DOE contract that involve the risk of public liability for a nuclear incident and who is not covered by the NRC-administered Price-Anderson system. This new statutory requirement significantly broadens the class of DOE contractors who will receive Price-Anderson coverage, since under the prior law only persons under the risk of public liability for a substantial nuclear incident could obtain the indemnity. In the near future, DOE will be proposing amendments to its Acquisition Regulations, codified in 48 CFR chapter 9, addressing the question of which DOE contractors, subcontractors and suppliers will be covered by the DOE administerd Price-Anderson system.

Second, the PAAA makes most DOE contractors covered by the DOE Price-Anderson system, and their subcontractors and suppliers, subject to civil and criminal penalties for violations of applicable DOE nuclear-safety requirements. These penalty provisions are the subject of this notice.

This notice refers to DOE contractors covered by Price-Anderson and thus subject to penalty provisions as "DOE nuclear contractors" for ease of reference.

C. Legislative History of Civil and Criminal Penalty Provisions

When the original Price-Anderson Act was being considered in 1957, the AEC suggested that the term "public liability," which defines coverage under the Act (42 U.S.C. 2014(w)), exclude "willful damages," apparently to prevent indemnifying a contractor who caused damages through willful misconduct. This approach was rejected by the Joint Committee on Atomic Energy in 1957:

> The suggestion which was contained in the original draft legislation of the Commission that willful damages be excluded was not accepted since the damage to the public is the same, whether caused by any means "willful or nonwillful." S. Rep. No. 296, 85th Cong., 1st Sess., reprinted in 1957 U.S. Code Cong. & Ad. News. 1819.

Therefore, the indemnity provided in the Price-Anderson indemnity clause has not contained any exception based on the conduct of the contractor. In fact, these clauses state:

> The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract * * * 48 CFR 952.250–70(h).
>
> * * * * *
>
> The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract * * *." 48 CFR 952.250–70(j).

During the 1983 to 1988 congressional consideration of legislation to renew Price-Anderson indemnity authority, the soundness of this approach was questioned. Several members of Congress expressed the view that fully indemnifying a contractor from liability for damages caused by that contractor's negligence was a disincentive to safe operations.

In response to such views, the civil and criminal penalty provisions of the PAAA were enacted, which do not affect indemnity directly, but place indemnified contractors and their subcontractors and suppliers under the risk of penalties for violation for applicable DOE nuclear-safety rules, regulations, and orders.

The Senate Report explains:

> The Committee included this authority in legislation extending the Price-Anderson Act to provide for greater accountability of contractors, subcontractors and suppliers in the performance of their duties under contract with the Department of Energy for nuclear activities indemnified under the Price-Anderson Act. The Committee believes that the availability and careful exercise of

this authority by the Department can reduce the likelihood of serious nuclear incidents in connection with DOE facilities and activities by providing greater reason for care in existing operations and strong incentives to identify capital improvements in existing facilities and modifications in practices that can improve health, safety and environmental management. S. Rep. No. 166, 100th Cong., 1st Sess. 22 (1987).

D. Civil and Criminal Penalty Provisions

A summary of the major provisions follows below:

1. Civil Penalties

- The PAAA authorizes the Secretary of Energy to assess civil penalties against DOE nuclear contractors and their subcontractors and suppliers for violations of applicable DOE nuclear-safety rules, regulations and orders, including those expressly incorporated by reference by DOE, except those issued by the Department of Transportation (DOT). The penalty may not exceed $100,000 per day per violation. If a violation is a continuing one, each day of the violation constitutes a separate violation.
- The PAAA exempts from such penalties DOE's existing contractors, and their subcontractors and suppliers, at the following laboratories for activities associated with operating these laboratories: Argonne National Laboratory, Los Alamos National Laboratory, Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, Sandia National Laboratories, FERMI National Laboratory, Princeton Plasma Physics Laboratory, Brookhaven National Laboratory, and Pacific Northwest Laboratory.
- The PAAA requires that the Secretary determine by rule whether nonprofit educational institutions not otherwise exempt from penalties under the PAAA should receive automatic remission of civil penalties. The initiation of that rulemaking will be noticed in the **Federal Register** in the future.
- The PAAA gives the Secretary discretion in implementation of the civil penalty authority. In determining the amount of a penalty, the Secretary is authorized to take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as the Secretary deems just.
- A civil penalty may be issued only by order, and before issuing the order, the alleged violator must be provided notice and afforded the opportunity to elect, in writing, within 30 days either adjudication before an administrative law judge or prompt assessment of the penalty, with 60 days to pay, before DOE initiates any action in federal district court.

2. Criminal Penalties

- The PAAA also subjects all DOE nuclear contractors, subcontractors and suppliers (with no exemptions) to criminal sanctions (up to $25,000 in fines and 2 years imprisonment for a first conviction, and $50,000 in fines and 5 years imprisonment for subsequent convictions) for knowing and willful violations of applicable DOE nuclear-safety rules, regulations or orders, including those expressly incorporated by reference by DOE, except those issued by the DOT, when such violations result in or, if undetected, would have resulted in a nuclear incident.
- Suspected criminal violations must be referred to the Department of Justice for appropriate action. 42 U.S.C. 2271. Therefore, DOE's enforcement policy will apply only to civil penalties.

III. DOE Safety Requirements

The PAAA authorizes DOE to assess civil penalties for violations of applicable rules, regulations, and orders related to nuclear safety. Generally, the safety requirements for the Department's nuclear operations are specified in DOE Orders. These Orders provide minimum requirements to be followed in the operation of the Department's reactors and nuclear facilities. The Operations Offices in the field provide DOE Order Supplements to the contractor, which reflect DOE Order requirements and provide more detailed requirements related to the specific operations at particular sites. Contractors also are subject to facility and site specific safety requirements imposed through contract conditions, such as technical specifications or operational safety requirements. Requirements applicable to naval nuclear propulsion, where DOE performs the research and development functions and oversees nuclear safety matters pertaining to the shipboard and prototype propulsion plants used for U.S. Naval nuclear powered warships are contained in classified documents because of their military nature.

The cognizant congressional committees were aware that DOE's nuclear-safety requirements generally are compiled in DOE Orders and as contract conditions. These committees did not include in the new legislation any requirement to establish new safety provisions or to subject the existing ones to review. Rather, the Senate Report states:

> The Committee expects the Secretary of Energy to publish and make available to DOE contractors, subcontractors and suppliers the rules, regulations and orders (including identification of those rules, regulations and orders incorporated by reference) applicable to the activities in which those contractors, subcontractors and suppliers are engaged, the violation of which may subject these persons to the penalties authorized by this amendment [civil penalties] and by amendment 15 [criminal penalties], discussed below." S. Rep. No. 166, 100th Cong., 1st Sess. 22–23 (1987).

Therefore, DOE intends to publish, and make available to DOE nuclear contractors, subcontractors, and suppliers, a list of DOE Orders and other current requirements related to nuclear safety the violation of which may result in a penalty. Although classified and sensitive unclassified requirements will not be published, they will nonetheless be made known to the contractor.

IV. General Statement of Enforcement Policy

DOE intends to issue a general statement of enforcement policy designed to make clear to DOE nuclear contractors, subcontractors, and suppliers the manner in which DOE will exercise its enforcement discretion. The initial recommendation for imposition of a penalty will be made by persons conversant with the technical details of the contractor's work, contractual responsibilities, history of performance, and applicable nuclear safety-related requirements.

DOE invites public comments on the objectives and the content of its enforcement policy, as discussed in A, B, and C below.

A. Enforcement Objectives

DOE views the purpose of implementing the enforcement provisions of the PAAA on DOE nuclear contractors, subcontractors, and suppliers to be the promotion and protection of the safety of the public and employees from undue risks stemming from the violation of applicable nuclear-safety requirements. A DOE enforcement program will satisfy this purpose if the following objectives are met:

(1) Compliance with applicable DOE rules, regulations, orders, and technical specifications (or operational safety requirements) related to the nuclear safety of facilty operations by DOE contractors.

(2) Accountability of contractors, subcontractors and suppliers in performance of their duties under

contract with DOE for nuclear activities indemnified under the PAAA.

(3) Positive incentives for a contractor's timely: (a) Self-detection of problems; (b) Reporting to DOE; (c) Analysis of root causes of problems; (d) Correction of problems on a permanment basis that precludes recurrence.

(4) Deterrence of future violations of DOE requirements by a contractor.

(5) Encouragement, by example, of the improvement of DOE nuclear contractors' operation of DOE facilities.

The success of the DOE program to implement the enforcement provisions of the PAAA depends on the degree to which the above objectives are met, and the manner in which the overall enforcement authority is exercised. DOE believes the following are key factors in exercising this authority:

(1) Prompt, vigorous, and consistent enforcement action.

(2) Appropriate balancing of penalty with risk, ensuring the penalty is commensurate with the seriousness of the violation and past performance of the contractor.

(3) Well defined safety requirements.

B. Enforcement Policy Alternatives

The PAAA requires that in determining the amount of any civil penalty, DOE shall take into account the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require. In addition, in determining the amount of any civil penalty, DOE intends to consider self-detection, timely reporting and self-correction by the contractor. DOE intends, as part of the development of its enforcement program, to establish a policy addressing these factors. Public comments are solicited on the following alternatives:

(1) Adapting the NRC enforcement policy (10 CFR part 2, appendix C) to DOE requirements. Preliminary review of the NRC enforcement policy indicates that this may be the preferred option.

The NRC uses a risk-based enforcement program that has evolved over many years of application. Although many DOE nuclear activities differ significantly from NRC-licensed activities, the nuclear safety requirements and the legislative authority (including penalty limits of $100,000 a day per violation) are similar for both agencies. The purpose of the NRC program is to promote the public health and safety by: (a) Ensuring compliance with regulations and licenses; (b) obtaining prompt correction of violations; (c) deterring future violations; and (d) encouraging overall improvement of the performance of licensees and the industry. These goals are analogous to DOE's goals, except that we would apply our program to contractors rather than licensees and seek compliance with safety requirements and contracts rather than regulations and licenses.

The primary criterion used by NRC for assessing penalties is the gravity of the violation. Secondary criteria are: (a) Prompt identification and reporting to NRC; (b) timely corrective actions; (c) past performance and occurrence of similar events, (d) multiple occurrences of the same violation; and (e) ability to pay. NRC applies these criteria in establishing which of five severity levels will be used to determine the amount of civil penalty to be assessed. NRC defines these levels as follows: Levels I and II—actual or high potential public risk or of very significant regulatory concern; Level III—significant concern; Level IV—less serious, but more than minor concern, and if uncorrected could lead to more serious concern; Level V—minor safety or environmental concern. Generally, civil penalties are assessed only for Levels I, II, and III, but discretion is exercised on a case-by-case basis.

The NRC enforcement policy was recently amended to provide greater incentives for the licensee to identify and correct violations by decreasing or eliminating civil penalties when a licensee identifies the violation and promptly reports the violation to the NRC, and increasing penalties where a licensee fails to identify, prevent and correct violations. 53 FR 40019, October 13, 1988.

(2) Adopting a simplified multi-level penalty system. For example, assess penalties as follows: least severe violation (no civil penalty), intermediate severity level violation ($50,000/violation/day), and most severe violation ($100,000/violation/day).

(3) Using penalties that relate directly to the cost to the government of nuclear-safety violations where the contractor clearly can be held responsible. In these cases, the contractor could be required to take corrective actions at its own expense for deficiencies identified as the root cause of the problem.

C. Relationship Between Penalty Assessment and Other DOE Enforcement Tools

Public comments are solicited on the appropriate means of achieving an integrated enforcement program that utilizes all enforcement tools available to DOE. For example, many DOE nuclear contracts provide for lower fees for poor performance or safety violations. Should these arrangements be modified to reflect the possible imposition of civil and criminal penalties? Should there be a specific relationship established between fee reductions and penalty assessments?

V. Nonprofit Educational Institutions

The PAAA requires that DOE determine by rule whether nonprofit educational institutions, other than those exempted by statute, should receive automatic remission of any civil penalty under the PAAA. the initiation of that rulemaking will be noticed in the **Federal Register** in the future.

VI. Enforcement Procedures

The PAAA is explicit about what basic procedures are to be followed in the event DOE assesses a civil penalty. DOE must assess the penalty by order, and before issuing the order, the alleged violator must be provided notice of the proposed penalty and the opportunity to elect in writing within 30 days either of the following procedures (if an election is not made, the first procedure will be implemented):

(1) A determination of violation made on the record after an opportunity for an agency hearing, pursuant to 5 U.S.C. 554, before an administrative law judge. Judicial review of the order could be sought by the violator within 60 calendar days through an action in the appropriate U.S. Court of Appeals; or

(2) Prompt assessment of the penalty giving the alleged violator 60 days to pay the penalty before DOE initiates an action in the appropriate U.S. District Court for an order affirming the assessment. The District Court has authority to conduct a *de novo* review of the law and facts involved, and can enforce, modify or set aside the assessment.

The PAAA also provides DOE with the power to compromise, modify, or remit civil penalties with or without conditions. The Administrative Conference of the United States has stated that agencies possessing civil penalty authority have found it efficient to try to resolve cases before the formal hearing stage, through settlement and negotiation, and has recommended that agencies provide an alleged violator a right to reply in writing and/or an informal oral conference if necessary. 1 CFR 305.79–3. DOE anticipates that it will establish a policy for resolving cases prior to the initiation of formal procedures required by the PAAA.

DOE intends to propose procedural rules to advise persons of the process to be utilized when a nuclear-safety violation has been alleged. The initiation of that rulemaking will be noticed in the Federal Register in the near future.

Issued in Washington, DC, September 15, 1989.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 89-22332 Filed 9-20-89; 8:45 am]

BILLING CODE 6718-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Requirements For An Outside Audit; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: This proposed rule adds § 701.13 and amends § 741.2. The proposed rule prescribes the regulatory requirement for an outside, independent audit of any federally insured credit union by a certified public accountant under certain specified conditions. The proposed rule is being added to reflect applicable provisions of Public Law 101-73, the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

DATE: Comments must be received on or before October 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley or Karen K. Kelbly, Office of Examination and Insurance. Telephone Number: (202) 682-9640.

SUPPLEMENTARY INFORMATION: .

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in § 701.12 of NCUA's Regulations (OMB No. 3133-0075) relating to supervisory committee audits and verification of accounts. The proposed rule is within this collection requirement.

Background

This proposed rule is necessitated by section 919 of the Federal Financial Institutions Reform, Recovery, and the Enforcement Act of 1989 (FFIRREA) which amends section 202(a) of the Federal Credit Union Act (12 U.S.C. 1762(a)). FFIRREA requires that within 120 days of its enactment, the NCUA Board prescribe, by regulation, audit requirements for the outside, the independent audit of any federally insured credit union by a certified public accountant under certain conditions.

Current Audit Requirements

Section 115 of the Federal Credit Union Act (12 U.S.C. 1761(d)) requires that the supervisory committee of a federal credit union make or cause to be made an annual audit. Section 701.12(a) of the NCUA Rules and Regulations (12 CFR 701.12(a)) discusses the supervisory committee's responsibilities and the audit and verification activities generally used to carry out these responsibilities. Section 701.12(b) references generally accepted auditing standards and discusses the minimum audit tests needed and the audit reporting requirements. Section 701.12(c) discusses the preparation, maintenance and availability requirements for workpapers in support of the annual audit. Section 701.12(d) requires that credit union compensated auditors be independent as defined therein. And § 701.12(e) provides instructions for the verification of members' accounts, which must be accomplished at least once every 2 years.

It is NCUA's understanding that most, if not all, states have comparable annual audit requirements for federally insured state chartered credit unions. In any event, FFIRREA clearly imposes a requirement that every federally insured credit union annually obtain either a complete and satisfactory supervisory committee audit or an independent audit by a certified public accountant. Additionally, § 741.2 of the NCUA Rules and Regulations requires any federally insured credit union to make or cause to be made a verification of member's accounts not less frequently than once every 2 years consistent with § 701.12(e).

Proposed Additional requirement

This proposed rule would add § 701.13 for federal credit unions which provides that, under certain specified conditions (discussed below), the Administration will require an outside, independent audit or verification, as applicable, to be conducted by a certified public accountant. Additionally, the proposed rule would amend § 741.2 to require federally insured credit unions to meet the audit requirements of § 701.12 and 701.13.

As required by section 919 of FFIRREA, § 701.13 defines the three specified conditions under which an outside, independent audit by a certified public accountant shall be required:

(1) The supervisory committee of the credit union has not conducted an annual supervisory committee audit; or

(2) The annual supervisory committee audit conducted was not complete and satisfactory; or

(3) The credit union has experienced serious and persistent recordkeeping deficiences.

The proposed regulation is discussed in greater detail below in light of each of these three conditions.

No Audit Conducted

If a credit union fails to obtain an annual audit or does not verify members' accounts at least once every 2 years, the proposed rule would require an outside, independent audit by a certified public accountant, such audit or verification to fully comply with the existing rules in § 701.12.

Audit Incomplete or Unsatisfactory

Any supervisory committee audit which does not satisfactorily and completely address the § 701.12(a) general guidelines, does not encompass the § 701.12(b) minimum testing requirements, is not properly supported by adequate and complete workpaper evidence in accordance with § 701.12(c), or was conducted by a compensated auditor who was not independent as defined in § 701.12(d), will be considered to fall within the scope of this proposed rule, i.e., the credit union will be required to obtain an outside, independent audit by a certified public accountant, such audit to fully comply with § 701.12.

Additionally, verifications which do not fully meet the requirements of § 701.12(e) and amended 741.2(b) will fall within the scope of this proposed rule and the credit union will be required to obtain an outside, independent verification by a certified public accountant.

Serious and Persistent Recordkeeping Deficiencies

The proposed rule will require a more comprehensive audit (greater audit scope than § 701.12 minimum tests) for credit unions having serious and persistent recordkeeping deficiencies as defined herein. Credit unions with serious and persistent recordkeeping problems will be required by the Administration to obtain an outside, independent audit by a certified public accountant in accordance with generally accepted auditing standards which results in an opinion, i.e., the audit must provide a reasonable basis for expressing an opinion regarding the financial statements taken as a whole.

The Administration believes this higher level of review is necessary for safety and soundness reasons when a credit union has serious recordkeeping problems which continue to exist past a usual, expected, or normal period of time. Persistent recordkeeping deficiencies will be considered serious if the Administration has a reasonable doubt that the financial condition of the credit union is accurately and fairly presented in the credit union's statements and that management practices and procedures are sufficient to safeguard members' assets.

Audit work performed by other than a certified public accounting firm will be accepted provided that a certified public accountant certifies the financial statements and attests to the opinion, therefore bearing full responsibility and accountability to the Administration for the opinion expressed thereon.

Executive Order 12612

Congress has mandated in section 919 of FFIRREA that NCUA prescribe regulations requiring that all federally insured state chartered credit unions obtain an outside, independent audit by a certified public accountant if the credit union has not obtained an annual supervisory committee audit, the supervisory committee audit is not complete and satisfactory or the credit union has experienced serious and persistent recordkeeping deficiencies as defined by the NCUA Board.

To implement the FFIRREA provisions, it is incumbent upon NCUA to define what constitutes a "complete and satisfactory supervisory committee audit" and "serious and persistent recordkeeping deficiencies". To accomplish this, NCUA has proposed to apply to federally insured state credit unions the same standards that exist in § 701.12 and proposed § 701.13 for federal credit unions.

It is the NCUA Board's belief that this is the most fair and administratively feasible method of accomplishing the requirements of FFIRREA, and that, inasmuch as state-chartered credit unions are already subject to comparable audit requirements under state law, significant new burdens will not be imposed beyond those legislatively mandated by FFIRREA. Comments are requested on this approach.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, should not have a significant impact on a substantial number of small credit unions. The proposed rule will only affect small credit unions to the extent they do not adhere to existing regulations. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

List of Subjects

12 CFR 701

Credit unions, Reporting and recordkeeping requirements, Supervisory committee audits.

12 CFR 741

Credit unions; Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 14, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761(a), 1761(b), 1766, 1767, 1782, 1784, 1787, 1789, and 1796; and P.L. 101–73. Section 701.33 is also authorized by 15 U.S.C. 1601 et. seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. Section 701.13 be added to read as follows:

§ 701.13 Requirements for an outside audit.

(a) A federal credit union shall obtain an outside, independent audit by a certified public accountant for any fiscal year during which any one of the following three conditions is present:

(1) The supervisory committee of the federal credit union has not conducted an annual supervisory committee audit;

(2) The annual supervisory committee audit conducted did not meet the audit requirements of § 701.12 including § 701.12(e);

(3) The Federal credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section.

(b) For the purposes of this section and in relation to conditions (a) (1) and (2) of this section, the scope of the outside, independent audit conducted by a certified public accountant must fully encompass the requirements set forth in § 701.12. For the purposes of this section and in relation to condition (a)(3) of this section, the outside, independent audit by a certified public accountant must be an opinion audit as that term is understood under generally accepted auditing standards.

(c) For the purposes of this section and in relation to condition (a)(3) of this section, persistent recordkeeping deficiencies shall mean serious recordkeeping problems which continue to exist past a usual, expected, or normal period of time. Persistent recordkeeping deficiencies shall be considered serious if the Administration has a reasonable doubt that the financial condition of the credit union is accurately and fairly presented in the credit union's statements and that management practices and procedures are sufficient to safeguard members' assets.

PART 741—[AMENDED]

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781 through 1790; P.L. 101–73.

2. Section 741.2 be revised to read as follows:

§ 741.2 Audit and verification requirements.

(a) The supervisory committee of each credit union insured pursuant to title II of the Act shall make or cause to be made an audit of the credit union at least once every calendar year covering the period elapsed since the last audit. The audit must fully meet the requirements set forth in §§ 701.12 and 701.13.

(b) Each credit union which is insured pursuant to title II of the Act shall verify or cause to be verified, under controlled conditions, all passbooks and accounts with the records of the treasurer not less frequently than once every 2 years. The verification must fully meet the requirements set forth in §§ 701.12(e) and 701.13.

[FR Doc. 89–22318 Filed 9–20–89; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. 46494; Notice No. 89–18]

RIN 2105–AB47

Computer Reservation System

AGENCY: Office of the Secretary, DOT

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department is initiating this rulemaking to determine the need to continue or modify its existing rules governing computer reservations

systems (CRS) and to obtain comments on a number of issues raised in petitions for rulemaking. Unless extended by the Department, the existing rules (14 CFR part 255) expire on December 31, 1990. It is the Department's preliminary position that these rules should be continued, and perhaps revised.

DATE: Comments must be submitted on or before November 20, 1989.

ADDRESS: Comments must be filed in Room 4107, Docket 46494, U.S. Department of Transportation 400 7th Street, SW., Washington DC 20590. Late filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Sam Whitehorn or Robert Young, Office of the General Counsel, 400 7th St., SW., Washington, DC 20590, (202) 366–9307 or 366–9285, respectively.

I. Background

A. History of the CRS Industry

Beginning in the late 1960s, several airlines began investing substantial amounts of money to acquire the computer hardware and to develop the software that would upgrade their internal computer reservation systems (CRSs) and thereby allow them to manage larger and more complex data bases. These systems soon became an indispensable management tool—essential for operating the airline and for acquiring detailed information on the airline marketplace. It also was becoming apparent that travel agents could benefit significantly from greater automation and, as a result, the American Society of Travel Agents (ASTA) began to take an active role in promoting the development of computer technology for the industry.

Between 1967 and 1976, there were several attempts to develop and market a neutral, industry-wide CRS. However, for a variety of reasons (e.g., funding and potential antitrust concerns), such a system was never developed. For example, in 1967 the Donnelly Official Airline Reservation System was developed but failed because of a lack of financial support. The Automated Travel Agency Reservation System was started in 1969 by several carriers but failed because of a challenge from the Department of Justice (DOJ) and concerns raised by the Civil Aeronautics Board (CAB). An industry-wide project, the Joint Industry Computerized Reservation System, was then initiated but was discontinued after United Air Lines and American Airlines decided to market their own systems. Finally, in 1979, the CAB approved an agreement under its regulatory authority for 12 airlines, ASTA, and American Express to develop a multi-access reservation system (MAARS); however, the CAB did not grant antitrust immunity and the effort was discontinued. As a result, a number of other major carriers followed United's and American's lead and developed their own CRSs.

The industry is now composed of five major systems: Apollo, also referred to as Covia, established by United in 1976 and now owned by United, USAir and several European carriers; Sabre, established by American Airlines in 1976; Pars, established by TWA in 1978 and now owned by TWA and Northwest Airlines; System One or Soda, established by Eastern in 1982 and now owned by Texas Air Corp.; and DATAS II, established by Delta in 1982. In 1986, these CRS vendors had the following shares of U.S. automated travel agency bookings: Sabre, 43 percent; Apollo, 32 percent; System One, 10 percent; Pars, 10 percent; and DATAS II, 5 percent.

Today's CRSs consist of a periodically updated central data base that is accessed by subscribers (primarily travel agents) through computer terminals. The systems provide users with up-to-date information on airline fares and services, allow them to make reservations and issue tickets, and also provide information on additional services (e.g., car rentals and hotel reservations). Travel agents generally lease the necessary computer terminals and ticketing equipment from a vendor. Airlines and other travel providers pay the vendor a booking fee when their services are booked through the CRS.

Travel agents in foreign countries are also relying more on CRSs for determining what airline services are available, making bookings, and issuing tickets. The increasing importance of CRSs in other countries has caused several foreign governments to adopt or begin to develop rules regulating CRSs, particularly in Europe where multinational rules are being adopted. Although those rules generally are similar to ours, some contain provisions that are significantly different. The European Economic Community rules, for example, will prescribe the display algorithm and require all CRS charges to be reasonably related to costs.

B. History of the Rules

In response to concerns raised by non-vendor airlines and many travel agents about the manner in which vendors operated their CRSs, in 1982 Congress requested that the CAB, in consultation with the DOJ, investigate CRS practices. (H.R. Rep. No. 97–960, 97th Cong., 2d Sess. (1982)).

The CAB's "Report to Congress on Airline Commuter Reservation Systems" outlined various allegations of anticompetitive abuses by the vendors. While the report was being prepared, the Association of Retail Travel Agents (ARTA) filed a petition for rulemaking to correct flight display bias. Shortly thereafter, a dozen carriers filed two more petitions for rulemaking seeking relief from display bias and other alleged abuses.

The CAB then issued an advance notice of proposed rulemaking (EDR–466, 48 FR 41171 (September 14, 1983) and suggested that the CRS vendors might well have the ability to harm competition in air transportation and to mislead consumers. Comments were requested in three areas: Bias in flight displays, fare information and in the loading of data to favor the CRS vendors' services, discriminatory access fees charged other carriers by CRS vendors, and the vendors' use of CRS information on travel agent bookings of their competitors. Each of the CRS owners also was directed to file extensive information on its systems. Based on extensive comments (including DOJ comments and the information supplied by the vendors), the CAB issued a notice of proposed rulemaking setting out rules designed to curb and control CRS abuses. (EDR–466C, 49 FR 11644 (March 27, 1984)). Again a significant number of comments were filed, some in support of and some in opposition to the rules, with others suggesting various modifications.

The CAB ultimately concluded that, because the systems were so much more efficient than other tools, almost all travel agents used CRSs to determine what airline services and fares are available, to make bookings, and to issue tickets. Each airline's ability to market its services, in turn, effectively depended on the fairness and accuracy of the data displayed in each system, because travel agents sold at least sixty percent of all airline tickets, and most travel agents used only one system. As a result, CRS vendors had a substantial degree of power over price and output in the CRS industry. Moreover, as competitors in the "downstream" air transportation industry, they had the ability and incentive to use that power in ways that interfered with air transport competition and deceived consumers. Accordingly, the CAB concluded that rules were needed to prevent unfair methods of competition and issued them. (ER–1385, 49 FR 32540 (August 15, 1984)). The rules were challenged by United and others, but the challenge was rejected by the Seventh Circuit Court of Appeals. *United Air Lines, Inc.*, v. *CAB*, 766 F.2d 1107 (7th

Cir. 1985). With the sunset of the CAB, responsibility for the rules was transferred to the Department of Transportation (DOT or Department).

C. Summary of the Existing Rules

The major provisions of the rules are as follows:

- Participation in the various CRSs must be open to all carriers on a nondiscriminatory basis.
- All systems must provide primary displays that include the schedules, fares, rules, and availability of carrier services. The information provided must be organized in a manner that is based on objective and unbiased factors (e.g., it cannot be based on carrier identity).
- In selecting information for the primary screens, vendors must use a minimum of nine alternative connecting points for city pairs in providing passengers alternative choices. The selection of the connecting points must be based on objective criteria.
- A vendor must use the same standard of care and timeliness for loading each participating carrier's flight and fare information that it uses in loading its own, and if it provides special loading capabilities to participating carriers, it must do so in a nondiscriminatory manner.
- No vendor may discriminate among participating carriers with respect to fees charged for participating in the system.
- No subscriber contract may have a term in excess of five years.
- No vendor may require a subscriber to use its system exclusively.
- No vendor may require a travel agent to use its system as a condition for the receipt of a commission related to the sale of its air transportation services.
- If a vendor offers a service enhancement to any participating carrier, it must offer similar enhancements on nondiscriminatory terms to all participating carriers.
- Each vendor must make available to all participating carriers on a nondiscriminatory basis all domestic marketing, booking, and sales data that it elects to generate from its system.
- System vendors need not comply with the rules with respect to foreign air carriers that operate CRSs that discriminate against U.S. carriers in their display of flights.

In issuing the rules, the CAB added a provision that the rules would be reviewed within five years of their effective date, and, unless extended on the basis of the review, the rules would terminate on December 31, 1990.

The Department already has taken a number of steps in investigating the CRS business and the rule's effects. For example, the Department issued its "Study of Airline Computer Reservation Systems" in May 1988 (the "CRS Study," a copy of which has been placed in the docket). The CRS Study, initiated as a result of a General Accounting Office (GAO) study ("Airline Competition: Impact of Computerized Reservation Systems", Washington, DC May 1986), and a request from Senator Kassebaum and Congressmen Mineta and Hammerschmidt (letter to former Secretary Dole dated May 21, 1986), focused on the extent to which CRS vendors obtain incremental revenues (i.e., revenues in excess of what their airline services might be expected to garner if they did not control a CRS) and whether CRS booking fees are above competitive levels. The Study concluded, among other things, that vendors have continued to obtain incremental revenue despite the rule's prohibition on display bias, and that participating fees charged by the larger vendors are in excess of their current costs. The Study also was the subject of a hearing before the House Subcommittee on Aviation, Committee on Public Works on September 14, 1988. The Department, as well as GAO, testified on the Study. GAO, without suggesting any specific action, urged that the Department should initiate a rulemaking.

In addition, the Department recently began an investigation into the effects on airline competition of CRSs and the carriers' distribution methods, including the role played by travel agents. The Department has sought information from CRS vendors to update the Study and also look at other CRS issues that were not addressed in the study (Order 89–5–52, May 25, 1989). The investigation also will provide information on the effects of the CRS rules, as will this proceeding as a result of comments submitted in response to this notice.

D. Rulemaking Petitions

The Department has three pending petitions for rulemaking that concern the relationship between CRS vendors and travel agent subscribers. System One has filed a petition in Docket 45757, and the American Society of Travel Agents (ASTA) has filed petitions in Dockets 45140 and 45711. We summarize below these petitions and the comments filed in response to them.

1. Petitions

The petitions focus on the need for further regulation of the vendor/subscriber relationship to increase CRS competition for agencies. System One and ASTA propose to reduce the maximum contract length from five to three years. ASTA also proposes to explicitly prohibit rollover provisions that automatically extend the length of a contract whenever a subscriber acquires new equipment or services, and System One proposes to prohibit vendors from seeking to renew subscriber contracts if more than six months remain in their current terms.

Both System One and ASTA request that the Department amend the rules to prohibit minimum use clauses that require a subscriber to make a minimum number of bookings on each terminal. ASTA also wants to prohibit parity provisions that require an agent using multiple systems to maintain a fixed ratio of each CRS's equipment.

System One seeks to amend the rules to prohibit the inclusion of lost booking fee revenues in liquidated damages clauses. In its original petition, ASTA proposes a prohibition on onerous liquidated damages clauses. In its second petition, it proposes an outright ban on liquidated damages clauses.

System One also wants to ban all "coercive forms of inducement, whether threats or promises" from CRS vendors. ASTA also complains about vendor practices of limiting non-subscribers' access to last seat availability, wait list clearances, boarding passes, and other services.

ASTA proposes to prohibit unreasonable restraints on connecting third-party equipment to a CRS and on the business uses for which CRSs are available. In addition, it seeks a prohibition on assertedly onerous indemnification and warranty provisions and forum selection clauses for litigation concerning subscriber contracts.

2. Industry Replies

Delta/DATAS II, Northwest and ARTA support some additional regulation of vendor/subscriber contracts. Delta/Datas II and Northwest support elimination of minimum use provisions (and, according to Delta/DATAS II, parity provisions), although they argue that existing rules already prohibit them. Both carriers favor rules to limit liquidated damages. Northwest also supports a reduction in the maximum contract term to three years. Delta/DATAS II opposes regulation of contract terms such as those governing indemnification and forum selection.

United/APOLLO and American/SABRE oppose further regulation of vendor/subscriber relationships. They argue that the five-year terms and minimum use provisions enable them to charge lower fees to subscribers by

allowing them to rely on booking fee revenues. The carriers defend their current liquidated damages clauses and argue that they actually reduce an agent's cost of converting to another system because they are lower than the actual damages that a vendor could recover from the agent. They also assert that explicit prohibitions on rollover provisions and parity clauses are unnecessary.

E. Enforcement Complaints

Several enforcement complaints have been filed alleging that certain vendors have engaged in practices that violate the CRS rules or constitute unfair methods of competition which should be proscribed under section 411 of the Federal Aviation Act. These complaints include SystemOne's complaints (Dockets 45758 and 45759) alleging that the larger vendors' use of liquidated damages clauses and five-year terms for their subscriber contracts is an unfair method of competition, that the major vendors' subscriber contracts violate the Department's rules by requiring subscribers to make a minimum number of bookings each month, and that some major systems' reservation of certain enhancements (e.g., the issuance of boarding passes) for bookings on the vendor carrier unfairly discourages agents from booking on the non-vendor carriers. A travel agent has complained that Northwest uses a minimum use clause that precludes agents from using another system and also that Northwest refused to participate in Sabre's direct access enhancement. (Docket 45593). Northwest complained that Sabre's minimum use and liquidated damages clauses violate the CRS rules. (Docket 45641). Several travel agents in Utah have filed a complaint against Delta, that state's dominant carrier, charging that Delta provides certain benefits to the state's largest agents on the condition that they install Delta's system. (Docket 45796).

Commenters who believe that we should amend the CRS rules to regulate or proscribe the alleged practices underlying these complaints should explain why in their comments.

II. Request for Comments

Listed below are a series of questions on the rules that commenters should focus on in considering the need to extend the effective date of the rules and to modify them. Comment is also requested on the issues raised by the rulemaking petitions noted above.

In submitting their views, commenters should be aware that the Department's preliminary position is that the CRS rules should be extended and that revisions related to further limiting the term of CRS contracts, prohibiting mandatory rollovers, and establishing a quantitative or qualitative standard on minimum use clauses may be warranted.

A. General Questions

1. Should the rules be continued? If so, for how long? Should another review be required in five years? If the rules should not be continued, commenters should address the consequences of such action on airlines, competition among vendors, travel agents, and the public.

2. Have the rules been effective? Have the rules been sufficient to keep abreast of changing technology and changing business conditions in the airline and travel industries? Are changes needed since most systems are no longer controlled by a single airline?

3. In those areas where commenters believe the rules have not been effective, should the provisions be modified or deleted, and if modified, how so? Commenters should address how the rules have been effective or ineffective in detail.

4. Have there been problems with the degree of information/participation in enhancements that vendor airlines are willing to make available through their competitors' CRSs. Does the Department need to address this area if the rules are continued?

U.S. vendors attempting to sell their systems abroad have encountered some difficulties when the dominant airline in a country has refused to participate in the U.S. CRS in the airline's home country, or has refused to permit the U.S. CRS to be used to issue its tickets. We have found in two instances that such refusals are violations of the guarantee of equal opportunity to compete contained in most U.S. bilateral aviation treaties. Orders 88-7-11 (July 8, 1988) and 88-9-33 (September 15, 1988).

5. Have similar problems been encountered by persons attempting to sell CRSs in the United States? Should U.S. vendors with a dominant airline market share (nationally or regionally) be prohibited from refusing to participate in competing CRSs?

B. Display of Information (§ 255.4)

The display rules were intended to prevent consumer deception and to limit the unfair competitive advantage that CRS vendors obtained through increased airline sales generated by more favorable display of their flights. Despite the elimination of overt display bias, vendors continue to earn incremental airline revenues.

1. Does the continuing existence of incremental revenues adversely affect airline competition enough to warrant regulatory action?

2. What are the causes or sources of the continuing incremental revenues? If regulatory action is justified to limit incremental revenues, how should the rules be changed?

3. Are the existing rules requiring objective displays and a minimum of nine connecting points still necessary to ensure that vendors do not program flight displays to favor their own services?

4. Are protections needed to prevent "loading of information" abuses (e.g., a vendor loading its information in a more timely fashion than other participating carriers)? If so, in what format?

5. Should the Department adopt rules prohibiting or regulating the use of any of the objective ranking criteria (e.g., on-line preferences or elapsed times), which are used to rank flights?

C. Contracts With Carriers and Subscribers (§§ 255.5 & 255.6)

1. Are the provisions of these sections effective? Are additional regulations needed?

The CAB chose not to regulate the level of fees charged by vendors for booking of services through their CRSs. While the CAB hoped that the nondiscrimination rule and the largest air carriers' ability to negotiate with vendors would lead to prices close to competitive levels, failure to regulate has led some to criticize the rules, claiming that the booking fees charged by the vendors raise competitive problems. The CRS Study found that booking fees of most vendors greatly exceeded the costs allocated to the booking process. Moreover, lower fees charged by DATAS II and System One shortly after the rule went into effect did not cause other vendors to reduce prices.

2. Are booking fees an issue that we should consider addressing, and if so, how? Does the lack of competition on booking fees adversely affect airline competition? If so, how should the rule be changed?

3. Do provisions such as minimum use clauses, liquidated damage clauses that include payment of lost booking fees, or fiveyear contract terms adversely affect CRS competition? If so, how might the rules best be changed to eliminate these adverse effects? NOTE: The arguments over contracts with carriers and travel agents are the primary focus of the rulemaking petitions.

4. Should the rule's prohibitions against tying airline sales to the use of particular systems, and against prohibiting the use of other CRSs, be

eliminated, strengthened or clarified? To what extent do vendors currently abide by the spirit and letter of these provisions? Are they necessary?

5. Should we consider prohibiting vendors from restricting the kinds of equipment or software a subscriber may use in conjunction with their systems?

D. Service Enhancements and Marketing Information (§§ 255.7 & 255.8)

1. Are these sections of the rule necessary? How have they been effective or ineffective in meeting their intended purpose? If they have been ineffective, how should they be changed?

E. Reciprocity

1. Should the rules be amended to allow U.S. vendors more discretion in responding to foreign CRS practices or rules that unfairly discriminate against U.S. carrier services?

2. Should the rules be amended to require U.S. vendors to modify treatment of foreign air carriers in response to foreign CRS practices or rules that unfairly discriminate against U.S. carriers? If so, what action should be taken?

III. Timetable for Action

As noted above, this ANPRM together with the competition study constitutes the review of the CRS rules, and thus complies with § 255.10(a). The rulemaking process will be completed well before the December 31, 1990, termination date so that vendors, carriers and travel agents will have sufficient notice of any changes that may be required.

IV. Consolidation of Dockets/Comment Period

All petitions and pleadings filed in the three dockets noted above will be considered and consolidated in this rulemaking. Therefore, all future comments on those petitions, and on this rulemaking, should be filed in this rulemaking docket.

Comments are due no later than 60 days after publication in the **Federal Register.**

V. Federal Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rulemaking falls within the statutory responsibility of the Department of Transportation. Further, the national/international scope of the industry necessitates regulation on a national basis. The Department now regulates the industry and a myriad of state or local laws attempting to regulate would make compliance difficult for vendors, carriers and travel agents in providing services nationwide. Finally, this ANPRM focuses on whether to extend or modify already existing Federal regulations. If commenters have information to the contrary, it should be submitted to the docket for our consideration.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96–354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities.

In accordance with the Act, the CRS rulemaking was reviewed by the creator of the rule, the Civil Aeronautics Board. The CAB determined that the rules would not have a significant economic impact on a substantial number of small entities. At this time, the Department has no basis to make a contrary findings to those stated in the preamble to the CAB's final rule. Comment is requested.

VII. Paperwork Reduction

The collection-of-information requirements of the rule were approved by the Office of Management and Budget (control number 2106–0028). Commenters should address ways to reduce the paperwork burdens associated with the CRS rules. If the rules are extended or modified, appropriate OMB approval will be sought.

VIII. Regulatory Impact Analysis and Review

Executive Order 12291 on "Federal Regulation" and the Department's Regulatory Policies and Procedures require the preparation of a Regulatory Impact Analysis for every "major rule". A major rule is defined as any regulation that is likely to result in one or more of the following: 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 governments, or geographic regions; or, significant adverse effects on competition, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

The effects of the CRS rule were the subject of review and analysis when originally proposed by the CAB. The Department recognizes that the effects of the rule are substantial (and could be controversial), and thus any rulemaking would be considered significant under the Department's Regulatory Policies and Procedures. The CAB analyzed the impacts of the rule and concluded that it constituted a "major rule" under the Executive Order, and it also found that the rule was cost beneficial. (The CAB's analysis was not based on the termination of the rule). This ANPRM seeks comments on whether the rule should be extended, modified or terminated. In addition and as noted above, the CRS Study discusses industry costs and revenues, and a copy has been placed in the Docket for review in light of this ANPRM. As noted above, the Department's preliminary view is that regulation of the CRSs is needed. At this point, however, it is unclear whether the extension, modification or termination of the rule would ultimately be considered "major".

Comments submitted in response to this notice should address the potential effects any changes could have on the economy, costs or prices for consumers and the government, and adverse effects on competition.

List of Subjects in 14 CFR Part 255

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Issued in Washington, DC on September 14, 1989.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 89–22234 Filed 9–18–89; 11:50 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL–0485–89]

RIN 1545–AL16

Taxation of Gain or Loss From Certain Nonfunctional Currency Transactions (Section 988 Transactions)

AGENCY: Internal Revenue Service, Treasury.

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

SUMMARY: This document contains proposed Income Tax Regulations relating to the taxation of gain or loss

from certain foreign currency transactions and applies to taxpayers engaging in such transactions. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: These regulations are proposed to be effective for taxable years beginning after December 31, 1986; except for § 1.267(f)–1T, which is effective for transactions entered into after September 21, 1989; § 1.988–1T (a)(2)(iii), (a)(4)(ii), and (a)(5), which is proposed to be effective for certain transactions entered into after October 21, 1988; § 1.988–2T(b)(13), which is proposed to be effective after September 21, 1989; § 1.988–2T(d)(2)(ii)(B), which is proposed to be effective September 21, 1989; § 1.988–2T(e)(3), which is proposed to be effective for transactions entered into after September 21, 1989; § 1.988–3T (b)(5), which is proposed to be effective for taxable years beginning on or after September 21, 1989; § 1.988–3T(c)(2), which is proposed to be effective with respect to debt instruments acquired on or after June 24, 1987; and § 1.988–5T, which is proposed to be effective for transactions entered into on or after September 21, 1989. Written comments and requests for a public hearing must be delivered or mailed by November 20, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, (Attention: CC:CORP:T:R, (INTL–0485–89)), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Dorfman or Charles T. Plambeck of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL–0485–89)) (202–566–6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545–1131), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.988–1T(a) (4) and (5), § 1.988–3T(b), and § 1.988–5T (a) through (c). This information is required by the Internal Revenue Service to verify various elections made by a taxpayer. The likely respondents are individuals, partnerships, and corporations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 3,333 hours.

The estimated annual burden per respondent varies from thirty minutes to 1 hour, depending on individual circumstances, with an estimated average of 40 minutes.

Estimated number of respondents: 5,000.

Estimated annual frequency of responses: Annually.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend § 1.267(f)–1T(h) and add new §§ 1.988–OT through 1.988–5T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR parts 1 and 602. For the text of the temporary regulations, see (T.D. 8265) published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jeffrey Dorfman with the assistance of Charles T. Plambeck in developing and drafting the rules regarding notional principal contracts and integrated hedging transactions, and of Barbara A. Felker in developing and drafting the rules regarding nonfunctional currency debt exchanged for stock or other securities. Messrs. Dorfman and Plambeck and Ms. Felker are of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR

§§ 1.861–1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The temporary regulations (T.D. 8265), published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 267 and 988 of the Internal Revenue Code 1986.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89–22021 Filed (9–20–89; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-364,7-9]

National Oil and Hazardous Substance Contingency Plan; The National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Norman Poer Farm site form the National Priorities List (NPL) and requests public comment. The NPL is appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). This action is being taken by EPA, because it has been determined that all Fund financed response under CERCLA have been implemented and EPA, in consultation with the State, had determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete the Norman Poer Farm site.

DATE: Comments concerning the proposed deletion of site may be submitted until October 23, 1989.

ADDRESSES: Comments may be mailed to Margaret V. Pearce, Remedial Project Manager, U.S. EPA, Office of Superfund, 230 S. Dearborn St., Chicago, IL 60604. The comprehensive information on the site is available at your local information repository located at: Hancock County Health Department, Court House, 1st Floor, Greenfield, IN, 46140.

Request for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is C. Freeman (5HS–12), Region V, U.S. EPA, 230 S. Dearborn Street, Chicago, IL, 60604, (312) 886–6214.

FOR FURTHER INFORMATION CONTACT: Margaret V. Pearce, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, IL, 60604, (312) 886–4747 or Art Gasior 5PA–14, Office of Public Affairs, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, IL, 60604 (312) 886–6128.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL), appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and mainatins the NPL as the list of those sites. Sites on the NPL may be subject of Hazardous Superfund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that the conditions at the site warrant such action.

The site EPA intends to delete from the NPL is Norman Poer Farm, Charlottesville, Indiana.

The EPA will accept comments on the site for 30 days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action, and those that the Agency is considering using for future site deletions. Section IV discusses the history of the site and explains how the site meets the deletion criteria.

The Agency believes it is appropriate to review all sites being considered or proposed for deletion from the NPL, including the site being noticed today, to determine whether the requirement for a five-year review (under CERCLA section 121(c)) applies. This is consistent with the intent of the statement in the Administrator's "Management Review of the Superfund Program" (the "90-day study"), that "EPA will modify Agency policy so that no site, where hazardous substances remain, will be deleted from the NPL until at least one five year review is conducted and the review indicates that the remedy remains protective of human health and the environment." EPA will shortly issue its policy on when and how five-year review sites may be deleted from the NPL. This policy may have an effect on the timing of site deletions proposed in this and other notices.

II. NPL Deletion Criteria

The 1985 Amendments to the NCP establish the criteria the Agency uses to delete sites form the NPL. The NCP (40 CFR 300.66 (c)(7)) provides that sites "may be deleted from or recategorized on the NPL where no further response is appropriate." In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required.

(ii) All appropriate Fund-Financed responses under CERCIA have been implemented; and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate.

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must make a determination that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions, if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for information purposes and to assist in Agency management.

III Deletion Procedures

Upon determination that at least one of the criteria described in § 300.66(c)(7) has been meet, EPA may formally begin deletion procedures. The first steps are the preparation of a Superfund Close Out Report and the updating of the local information repository and the Regional deletion docket. These actions have been completed. This **Federal Register** notice, and concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and the deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a responsiveness

summary which addresses any comments received. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary. If, after receiving public comment, EPA determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the **Federal Register.**

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete this Site from the NPL.

"Norman Poer Farm Superfund Site"
"Charlottesville, Indiana"

The Norman Poer Farm Superfund Site is located about 4 miles north of Charlottesville on a 4½ acre tract of land in Hancock County, Indiana. The town of Greenfield lies approximately 9 miles west of the site.

Approximately 260 drums containing liquid wastes were reported to have been placed on the site in 1973. The wastes, primarily offgrade solvents and paint resins supplied to Norman Poer and Michael Coleman by Inmont Corporation, were intended to be blended into low quality, bridge and barn paint. The project was abandoned, and the drums were stockpiled on the Poer property. In August 1981, the Hancock County Health Department requested cleanup assistance from the State Fire Marshall because of the potential fire hazard. Since 1981, local, State, and Federal officials have conducted on-site and off-site investigations and sampling.

Emergency action cleanup activities were initiated by EPA in June 1983 and concluded in July 1983. All wastes were removed from the site, and 6 to 8 inches of soil were removed from drum storage areas on-site. The site was placed on the NPL in September 1983.

In 1985, Inmont signed a Consent Order with the EPA and the Indiana State Board of Health (ISBH), under which Inmont agreed to reimburse EPA for costs and to conduct a Remedial Investigation (RI) and Feasibility Study (FS). The RI studied the surface soils, soil borings, soil affected by site drainage, and groundwater. Sample analyses showed that EPA had removed all contamination detected to *de minimis* levels during the 1983 removal action. Since the RI indicated that the site no longer posed a threat to public health and environment, the EPA concluded that a FS was not necessary.

On September 29, 1988, Region 5 approved a Record of Decision (ROD) which called for No Further Action, once monitoring wells were decommissioned. The Indiana Department of Environmental Management (IDEM) formerly named ISBH, concurred with the ROD on September 28, 1988. After the sealing and abandonment of the monitoring wells according to State specifications, IDEM concurred on December 22, 1988, with the EPA's intent to delete the site from the NPL.

EPA's community relations staff conducted an active campaign to ensure that the residents were well informed about the activities at the site. Community relations activities included public meetings; press releases, progress fact sheets, and media contacts; establishing and maintaining an information repository; and a development of a formal procedure for responding to citizen inquiries. These activities have been ongoing from the inception of the removal action, to the signing of the ROD. The selected remedy of no further action was presented in the August 1988 Proposed Plan and the September 8, 1988, public meeting. The public reaction to the selected remedy of the ROD and the site cleanup has been positive. EPA plans to continue community relations activities throughout the deletion process.

EPA, in consultation with the State of Indiana, has determined that all appropriate Fund-financed responses under CERCIA have been implemented at the Norman Poer Farm site and that no further cleanup by responsible parties is appropriate.

Dated: August 18, 1989.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA—Region V.

[FR Doc. 89-22075 Filed 9-20-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-6968]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Statute 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with

these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

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

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

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Diaz, city, Jackson County.	White River	Ponding effects on the landside of the White River Levee.	*231	*222
Maps available for inspection at the City Hall, Highway 17, Diaz, Arkansas.					
Send comments to The Honorable Blount Hohn, Mayor of the City of Diaz, P.O. Box 136, Diaz, Arkansas 72043.					
Arkansas	Jackson County, unincorporated areas.	White River	Ponding area north of the city of Newport and east of the White River Levee.	*232	*222
			Ponding area north of the town of Jacksonport and east of the White River Levee.	*233	*222
Maps available for inspection at the County Courthouse Building, Newport, Arkansas.					
Send comments to The Honorable Bobby Miller, Jackson County Judge, County Courthouse Building, Newport, Arkansas 72112.					
Connecticut	Litchfield, town, Litchfield County.	Shepaug River	Approximately 300 feet downstream of downstream corporate limits.	None	*732
			At the Shepaug Reservoir Dam	None	*777
Maps available for inspection at the Town Office Building, West Street, Litchfield, Connecticut.					
Send comments to The Honorable Linda Bongiolatti, First Selectman of the Town of Litchfield, Litchfield County, Town Office Building, West Street, Litchfield, Connecticut 06759.					
Delaware	New Castle County, unincorporated areas.	Christina River	Approximately 300 feet downstream of CONRAIL.	*90	*91
			Approximately 840 feet upstream of State Route 273.	*133	*134
Maps available for inspection at the City/County Building, 800 French, Wilmington, Delaware.					
Send comments to The Honorable Dennis Greenhouse, New Castle County Executive, City County Building, 800 French, Wilmington, Delaware 19801.					
Georgia	Unincorporated areas of Forsyth County.	Starr Creek	At mouth	None	*1,063
			Just downstream of Holbrook Road	None	*1,092
			Just upstream of Holbrook Road	None	*1,100
			Just downstream of Dam No. 25	None	*1,102
		Thalley Creek	At mouth	None	*1,084
			Just downstream of John Burrus Road	None	*1,089
			Just upstream of John Burrus Road	None	*1,094
			Just downstream of Dam No. 11	None	*1,097
		Squattingdown Creek	At mouth	None	*1,104
			Just downstream of Dam No. 54	None	*1,131
		Bannister Creek	Just upstream of Nicholson Road	None	*974
			Just downstream of Dam No. 4	None	*1,014
		Brewton Creek	At mouth	None	*974
			Just downstream of Dam No. 1	None	*989
		Tributary A	At mouth	None	*1,068
			Just downstream of Dam No. 26	None	*1,077
		Tributary B	At mouth	None	*1,105
			Just downstream of Dam No. 30B	None	*1,112
		Settingdown Creek	Just downstream of confluence of Hurricane Creek.	None	*969
			About 350 feet downstream of Poole Mill Road	None	*1,008
			Just upstream of Poole Mill Road	None	*1,032
			Just downstream of Dam No. 56	None	*1,172
		Hurricane Creek	At mouth	None	*969
			Just downstream of Dam No. 27	None	*1,045
		Yellow Creek	At mouth	None	*1,046
			Just downstream of Hurt Bridge Road	None	*1,047
			Just upstream of Hurt Bridge Road	None	*1,054
			Just downstream of Pisgah Road	None	*1,060
			Just upstream of Pisgah Road	None	*1,066
			Just downstream of Watson Road	None	*1,092
			Just upstream of Watson Road	None	*1,097
			About 3070 feet upstream of confluence of Tributary B.	None	*1,119
		Tributary C	At mouth	None	*1,086
			Just downstream of Dam No. 16	None	*1,106
		Tributary D	At mouth	None	*1,095
			Just downstream of Dam No. 15	None	*1,103

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Tributary E	At mouth	None	*1,098
			Just downstream of Dam No. 21	None	*1,109
		Tributary F	At mouth	None	*1,117
			Just downstream of Dam No. 10	None	*1,120
		Tributary G	At mouth	None	*1,140
			Just downstream of Dam No. 6	None	*1,142
		Tributary H	At mouth	None	*1,148
			Just downstream of Dam No. 4	None	*1,160
		Tributary J	At mouth	None	*1,157
			Just downstream of Dam No. 59	None	*1,173

Maps available for inspection at the County Administrator's Office, County Courthouse, P.O. Box 128, Cumming, Georgia.

Send comments to The Honorable Charles Welch, Chairman, County Board of Commissioners, Forsyth County, County Courthouse, P.O. Box 128, Cumming, Georgia 30130.

Kentucky	Unincorporated Areas of Lawrence County.	Big Sandy River	At downstream county boundary	*563	*562
			At confluence of Tug Fork and Levisa Fork	*577	*576
		Levisa Fork	About 1.82 miles downstream of confluence of Griffith Creek.	*577	*577
			About 1.2 miles upstream of confluence of Lost Creek.	*595	*598
		Tug Fork	At mouth	*577	*576
			About 0.30 mile downstream of confluence of Rockcastle Branch.	*596	*599
			At upstream county boundary	*608	*608
		Blaine Creek	At mouth	*568	*567
			About 6.82 miles upstream of mouth	*568	*568

Maps available for inspection at the County Courthouse Building, 122 South Main Cross, Louisa, Kentucky.

Send comments to The Honorable J.J. Jordan, Judge/Executive, Lawrence County, 122 South Main Cross, Louisa, Kentucky 41230.

Kentucky	City of Pikeville, Pike County.	Levisa Fork	About 1500 feet downstream of CSX railroad	*668	*670
			About 3500 feet upstream of confluence of Marion Branch.	*680	*683
		Ratliff Creek	At mouth	*670	*672
			About 1600 feet upstream of mouth	None	*672

Maps available for inspection at the City Hall, Building Inspector's Office, P.O. Box 1228, Pikeville, Kentucky.

Send comments to The Honorable William C. Hambley, M.D., Mayor, City of Pikeville, City Hall, P.O. Box 1228, Pikesville, Kentucky 41501.

Kentucky	City of Prestonsburg, Floyd County.	Levisa Fork	About 0.85 mile downstream of University Drive.	None	*632
			About 0.7 mile upstream of abandoned suspension bridge.	*639	*645
		Middle Creek	Within community	*633	*636

Maps available for inspection at the City Hall, 31 North Lake Drive, Prestonsburg, Kentucky, Attention: Mr. Larry Adams, Building Inspector.

Send comments to The Honorable Ann Latta, Mayor, City of Prestonsburg, City Hall, 31 North Lake Drive, Prestonsburg, Kentucky 41653.

Tennessee	City of Red Bank, Hamilton County.	Stringers Branch	Just downstream of Signal Mountain Road	None	*654
			Just upstream of Signal Mountain Road	*659	*660
			Just downstream of State Route 29 Spur	*660	*660
			Just upstream of State Route 29 Spur	*663	*667
			About 300 feet upstream of Leawood Avenue	*739	*738

Maps available for inspection at the City Manager Office, 317 Dayton Boulevard, P.O. Box 15069, Red Bank, Tennessee.

Send comments to The Honorable Ralph C. Barger, Mayor, City of Red Bank, 317 Dayton Boulevard, P.O. Box 15069, Red Bank, Tennessee 37415.

Texas	Plainview, city, Hale County.	Playa Fl	North of West Frontage Road approximately 640 feet west of Quincy Street.	None	*3,381

Maps available for inspection at the Municipal Building, 901 Broadway, Plainview, Texas.

Send comments to The Honorable E.V. Ridlehuber, Mayor of the City of Plainview, Hale County, Municipal Building, 901 Broadway, Plainview, Texas 79072.

Texas	San Antonio, city, Bexar County.	Leon Creek	Approximately 860 feet upstream of the corporate limits.	*848	*849
			Approximately 1.4 miles upstream of the corporate limits.	*874	*873

Maps available for inspection at the City Hall, Military Plaza, San Antonio, Texas.

Send comments to The Honorable Lila Cockrell, Mayor of the City of San Antonio, Bexar County, P.O. Box 839966, San Antonio, Texas 78283-3966.

Vermont	Brighton, town, Essex County.	Island Pond Brook	Approximately 500 feet upstream of the confluence with Pherrins River.	*1,174	*1,173
			At State Routes 105 & 114	*1,179	*1,175
		Island Pond	Entire shoreline	*1,179	*1,175

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Hall, Main Street, Island Pond, Vermont. Send comments to The Honorable Paul E. Jefts, Chairman of the Town of Brighton Board of Selectmen, Essex County, Town Hall, P.O. Box 377, Island Pond, Vermont 05849.					
Virginia	Stafford County, unincorporated area.	Aquia Creek	Approximately 1,200 feet downstream of the U.S. Route 1 Bridge.	*14	*13
			Approximately 750 feet upstream of southbound Interstate 95.	*34	*35
Maps available for inspection at the Rowser Building, 1739 Jefferson Davis Highway, Stafford, Virginia. Send comments to The Honorable C.M. Williams, Jr., Stafford County Administrator, P.O. Box 339, Stafford, Virginia 22554.					

Issued: September 8, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-22298 filed 9-20-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 89-07]

Inquiry Into the Laws, Regulations and Policies of Ecuador Affecting Shipping in the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; enlargement of comment period.

SUMMARY: The Commission by notice published August 18, 1989 (54 FR 34194), proposed rules imposing a fee of $100,000 per outbound voyage from the United States to Ecuador on Maritima Transligra, S.A., an Ecuadorian flag carrier. The rule would adjust or meet apparent unfavorable conditions by imposing burdens on an Ecuadorian carrier in response to burdens imposed on U.S. commerce by Ecuadorian laws and regulations. This Notice extends the time to comment on the proposed rule by one week.

DATE: Comments due September 25, 1989.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-22468 Filed 9-20-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife; Finding on Petition to List the Hawaiian Population of the Band-Rumped (Harcourt's) Storm-Petrel as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife. The petition has been found to present substantial information indicating that the requested action may be warranted. A status review is initiated.

DATES: The finding announced in this notice was made in June 1989. Comments and information must be submitted by November 20, 1989.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Room 6307, 300 Ala Moana Boulevard, P.O. Box 50167, Honolulu, Hawaii 96850. The petition, findings, supporting data, and comments are available for public inspecton, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest Kosaka, Field Supervisor, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

Craig Harrison submitted a petition to the Service to list the *band-rumped* (Harcourt's) storm-petrel (*Oceanodroma castro cryptoleucura*) as an endangered species. The petition was dated May 3, 1989, and was received by the Service on May 8, 1989.

Information provided by the petitioner indicates that the band-rumped storm-petrel is now the rarest breeding seabird in Hawaii, with a breeding population found only on the island of Kauai and estimated at less than 100 pairs. Recent archaeological studies have found abundant remains of this species in middens on other islands in Hawaii, indicating that the species was at one time common. The band-rumped storm-petrel is already listed as endangered by the State of Hawaii, pursuant to the State Endangered Species Act.

On the basis of the best scientific and commercial information presently available, the Service has found that this petition presents substantial information indicating that the action requested may be warranted. A status review has been initiated for the band-rumped and is announced herewith.

The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species. Of particular interest is information that would verify and validity of the subspecific status, or would otherwise indicate genetic isolation of the Hawaiian population. In the Pacific, other populations are found in Japan and the Galapagos.

Author

This notice was prepared by John Engbring, Honolulu Field Office, at the above address.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 11, 1989.

David Olsen

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–22336 Filed 9–20–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 264

[Docket No. 90804–9204]

RIN 0648–AA46

United States Standards for Grades of Frozen Fish Blocks

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

ACTION: Proposed rule with request for comments.

SUMMARY: NOAA is proposing to revise the U.S. Standards for Grades of Frozen Fish Blocks used in NMFS's National Seafood Inspection Program. Participation in the program by industry members is voluntary. The intended effect is to update the Standards for Grades to reflect such things as technical advances in fish processing equipment, increased industry size, a larger number of processed species, at-sea processing, and a Codex Alimentarius Commission draft standard for Quick Frozen Blocks. Comments are invited.

DATES: Comments must be received on or before November 6, 1989.

ADDRESSES: Comments should be sent to Thomas J. Moreau, Director, Technical Services Unit, Inspection Services Division, F/TS45, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Earl C. Johnston, Chief, Standards and Specification Branch, NMFS, 508–281–9219.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Standards for Grades of Frozen Fish Blocks (50 CFR part 264, subpart A) provide a system for federal and state inspectors to classify frozen fish blocks by quality into U.S. Grade Categories (*i.e.*, grades A, B, and C) and allow identification of a product quality level for the benefit of the consumer and industry. The standards are used by inspectors in NMFS's National Seafood Inspection Program. Industry participation in the program is voluntary.

The existing standards for frozen fish blocks were first issued by the Department of the Interior in 1964 and were reissued by the Department of Commerce in 1977. Since then, numerous technological advancements and changes have occurred in the fish processing industry. Among these are:

1. The use of factory ships capable of harvesting and processing fish into frozen fish blocks while at sea.
2. The increasing variety of species being processed into frozen fish blocks.
3. The continued growth of a large industry utilizing frozen fish blocks in their products.
4. The technological advancements made in the equipment used by the fish processing industry.
5. The development of a Codex Alimentarius Commission draft Standard for Quick Frozen Blocks.

These advances and changes prompted industry members to seek to have the standards revised. The proposed revised Standards for Frozen Fish Blocks were developed during Technical Working Group meetings with participation from industry and user groups. Before a decision was made to propose them, the revised standards were applied to 661 samples and the results were examined and evaluated. The major proposed changes to the current standards are:

1. Determination of grade. The current Standards for Grades (§ 264.111(a)) have a maximum score of 100 and a minimum score of 0. The proposed Standards for Grades (§ 264.104(f)) is based on a perfect score of 0 (no physical defects).

2. Sampling.

a. Sample unit size. The proposed Standards for Grades (§ 264.104(b)) use the whole block for thawed state evaluations. The current Standards for Grades (§§ 264.121(b)(1) and 264.121(b)(2)) use a 5-pound (2.27 kg) subsample unit for thawed state evaluations. This change allows a more thorough evaluation of the entire block.

b. Sampling plan. Due to the proposed change in sample unit size, the proposed Standards for Grades (§ 264.108) include a modified sampling plan with comparable statistical confidence that was developed to reflect the increase in sample unit size while reducing the cost involved in destructive sampling.

3. Frozen State Evaluations.

a. Improper fill. The proposed Standards for Grades (§ 264.104(e)(5)) incorporate a depth requirement for point assessment. (See § 264.121(a)(6) for current Standards for Grades definition of improper fill).

b. Color. The assessment for this defect appears in the frozen state evaluation (§ 264.121(a)(1)) in the current Standard for Grades. It has been moved to the thawed state evaluation section in the proposed Standards for Grades (§ 264.104(e)(9)) to permit a more thorough examination of the product for this defect.

4. Thawed State Evaluations.

a. Belly flaps (napes). This defect does not appear in the current Standards for Grades. Under the proposed Standards for Grades (§ 264.104(e)(6)), points for this defect would be assessed if the allowable tolerance of 15% by weight is exceeded.

b. Bones. In response to concerns and comments expressed by consumers, this defect in the proposed Standards for Grades (§ 264.104(e)(15)) has been redefined into measurable quantities. The measurements are based on those developed by the international Codex Alimentarius Commission's draft Standard for Quick Frozen Fish Blocks. The current Standards for Grades (§ 264.121(b)(2)) is based on a subjective interpretation of the definition of a "potentially harmful" bone.

c. Parasites. This defect does not appear in the current Standards for Grades. In response to consumer

concerns and comments, it has been incorporated into these proposed Standards for Grades (§ 264.104(e)(17)) and covers metazoan parasites and parasitic copepods.

d. Viscera, roe and lace. These defects do not appear in the current Standards for Grades. These defects were incorporated into the proposed Standards for Grades (§ 264.104(e)(10)) because the flatfish species that exhibit these defects are being processed into blocks in greater quantities.

5. Thawed state defect points. The proposed Standards for Grades express the defect points from the thawed state evaluations (excluding belly flaps) on a per pound (kilogram) basis (§ 264.104(f)). That is, points assessed from §§ 264.104(e)(7) through 264.104(e)(17) would be added together and the sum divided by the declared weight of the block.

The revisions should facilitate trade in frozen fish blocks. The proposed revisions will allow consumers to select at purchase a greater variety of fish products on the basis of identified quality. Interested persons are invited to submit written comments and suggestions or objections to these proposed Standards for Grades (see **ADDRESSES**). The comments will be reviewed and adjustments will be made to these proposed Standards for Grades, if necessary.

Classification

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this proposed rule is not a "major rule" requiring preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted as proposed, will not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices; and will not have a significant adverse effect on competition, employment, investment, productivity or innovation.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule is expected to facilitate grading and trade in fish blocks while not imposing any new costs on industry. As a result, a Regulatory Flexibility Analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implication sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 264

Food grades and standards, Seafood, Incorporation by Reference.

Dated: September 14, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 264 is proposed to be amended as follows:

PART 264—UNITED STATES STANDARDS FOR GRADES OF FROZEN FISH BLOCKS AND PRODUCTS MADE THEREFROM

1. The authority citation for part 264 is revised to read as follows:

Authority: 7 U.S.C. 1621–1630; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

2. Part 264, subpart A is revised to read as follows:

Subpart A—United States Standards for Grades of Frozen Fish Blocks

Sec.

Subpart A—United States Standards for Grades of Frozen Fish Blocks

§ 264.101 Scope and product description.

(a) These U.S. Standards for Grades apply to frozen fish blocks which are rectangularly shaped masses made from a single species of fish flesh, skin-on and scaled or skinless fillets or skinless fillet pieces or both. Blocks processed from skin-on fish flesh shall be so labeled. The blocks shall not contain minced or comminuted fish flesh. Thc blocks shall not be made by restructuring (reworking) pieces of fish blocks into the shape of a fish block.

(b) These Standards for Grades are implemented in accordance with guidance set forth in part II of NOAA Handbook 25, "Inspector's Instructions for Grading Frozen Fish Blocks."

§ 264.102 [Reserved]

§ 264.103 Grades.

(a) U.S. Grade A fish blocks shall:

(1) Possess good flavor and odor in accordance with § 264.104; and

(2) Comply with the limits for physical defects for U.S. Grade A quality in accordance with § 264.104.

(b) U.S. Grade B fish blocks shall:

(1) Possess reasonably good flavor and odor in accordance with § 264.104; and

(2) Comply with the limits for physical defects for U.S. Grade B quality in accordance with § 264.104.

(c) U.S. Grade C fish blocks shall:

(1) Possess reasonably good flavor and odor in accordance with § 264.104; and

(2) Comply with the limits for physical defects for U.S. Grade C quality in accordance with § 264.104.

(d) "Substandard" fish blocks shall fail to meet one or more of the requirements given in paragraphs (a), (b) and (c) of this section for U.S. Grades A, B, and C.

§ 264.104 Grade determination.

(a) *Procedures for grade determination.* The grade shall be determined by evaluating a product in the frozen, thawed and cooked states according to paragraphs of this section—namely, sampling; flavor and odor; physical defects; listing defect points; and grade assignment.

(b) *Sampling.* Sampling shall be done in accordance with the sampling plan given in § 264.208.

(1) For examination in the frozen state and the thawed state, a sample unit is one fish block.

(2) For examination in the cooked state, a sample unit is at least three 4- to 6-ounce (113.4 to 170.1 g) samples which are taken from a thawed sample unit.

(c) *Evaluation of flavor and odor.* (1) *Good* flavor and odor (essential quality requirements for a U.S. Grade A product) mean that the raw product has the odor and the cooked product has the flavor and odor characteristics of the indicated species of fish and are free from off-flavors and off-odors of any kind.

(2) *Reasonably good* flavor and odor (minimum requirements of a U.S. Grade B and a U.S. Grade C product) mean that the raw product or the cooked product is lacking in good odor (for the raw product) or good flavor and odor (for the cooked product) which is characteristic of the indicated species. Both the raw and the cooked products are free from objectionable off-flavors and off-odors of any kind.

(d) *Examination for physical defects.* Each sample unit shall be examined for physical defects using the list of

definitions of defects given in paragraph (e) of this section.

(e) *Definitions of physical defects.*

(1) *Dehydration.* This defect refers to loss of moisture from the surface of a fish block during frozen storage. Affected areas have a whitish appearance.

(i) *Moderate dehydration* masks the surface color of the product and affects more than 5 percent up to and including 15 percent of the surface area. If more than 15 percent of the surface area is affected, each additional 15 percent of surface area affected is each additional instance. Moderate dehydration can be readily removed by scraping with a blunt instrument.

(ii) *Excessive dehydration* masks the normal flesh color and penetrates the product. It affects more than 5 percent up to and including 10 percent of its surface area. If more than 10 percent of the surface area is affected each additional 10 percent of surface area affected is each additional instance. Excessive dehydration requires a knife or other sharp instrument to remove.

(2) *Uniformity of block size.* This defect refers to the degree of conformity to the declared size. It includes deviations from the standard length, width or thickness. Only one deviation for each dimension shall be counted.

(i) *Moderate.* A deviation of length and width ⅛ inch (0.32 cm) or more up to and including ¼ inch (0.64 cm). A deviation of thickness 1/16 inch (0.16 cm) or more up to and including ⅛ inch (0.32 cm).

(ii) *Excessive.* Each additional ⅛ inch (0.32 cm) of length and width. Each additional 1/16 inch (0.16 cm) of thickness.

(3) *Underweight* refers to underweight deviations from the stated weight.

(i) *Slight.* From 0.1 ounce (2.84 g) up to and including 1.0 ounce (28.35 g).

(ii) *Moderate.* Over 1.0 ounce (28.35 g) up to and including 4.0 ounces (113.4 g).

(iii) *Excessive.* If over 4.0 ounces (113.4 g), each additional 1.0 ounce (28.35 g) is an instance.

(4) *Angles.* An acceptable edge angle is an angle formed by two adjoining surfaces whose apex (deviation from 90 degrees) is within ⅜ inch (0.95 cm) of a carpenter's square placed along its surfaces. An acceptable corner angle is an angle formed by three adjoining surfaces whose apex is within ⅜ inch (0.95 cm) of a carpenter's square.

(5) *Improper fill.* This defect refers to voids, air pockets, ice pockets, ragged edges, bumps, depressions, damage, and imbedded packaging material each of which is greater than ⅛ inch (0.32 cm) in depth, and which would result in product loss after cutting. It is estimated by determining the minimum number of 1-ounce (28.35 g) model units which could be affected adversely. For the purpose of estimating product loss, the 1-ounce (28.35 g) model unit shall have the dimensions 4×1×⅝ inch (10.16×2.54×1.59 cm). The total number of model units that would be affected adversely is the number of instances.

(6) *Belly flaps (Napes)* may be either loose or attached to a fillet or part of a fillet. The maximum amount of belly flaps should not exceed 15 percent by weight of the block. If this amount does exceed 15 percent, each additional 5 percent by weight is each instance.

(7) *Blood spots.* Each lump or mass of clotted blood greater than 3/16 inch (0.48 cm) up to and including ⅜ inch (0.95 cm) in any dimension is an instance. If a blood spot is larger than ⅜ inch (0.95 cm), each additional 3/16 inch (0.48 cm) is counted as an additional instance.

(8) *Bruises* include distinct, unnatural, dark, reddish, grayish, or brownish off-colors due to diffused blood. Each instance is each bruise larger than 0.5 square inch (3.23 cm^2) and less than 1.5 square inch (9.68 cm^2). For each bruise 1.5 square inch (9.68 cm^2) or larger, each additional complete 1.0 square inch (6.45 cm^2) is another instance.

(9) *Discoloration* refers to deviations from reasonably uniform color characteristics of the species used such as melanin deposits, yellowing, rusting or other kinds of discoloration of the fish flesh.

(i) *Moderate.* A noticeable but moderate degree which is greater than 0.5 square inch (3.23 cm^2) up to and including 1.5 square inch (9.68 cm^2) is one instance. If the discoloration is greater than 1.5 square inch (9.68 cm^2) each additional complete 1.0 square inch (6.45 cm^2) is another instance.

(ii) *Excessive.* An excessive degree of discoloration which is greater than 0.5 square inch (3.23 cm^2) up to and including 1.5 square inch (9.68 cm^2) is one instance. If the discoloration is greater than 1.5 square inch (9.68 cm^2) each additional complete 1.0 square inch (6.45 cm^2) is another instance.

(10) *Viscera, roe and lace.* Viscera and roe refer to any portion of the internal organs. Each occurrence of viscera and roe is an instance. Lace (frill) is a piece of tissue adhering to the edge of a flatfish (Order *Pleuronectiformes*) fillet. For each lace, each ½ inch is (1.27 cm) each instance.

(11) *Skin.* In skinless fish blocks, each piece of skin larger than 0.5 square inch (3.23 cm^2) up to and including 1.0 square inch (6.45 cm^2) is an instance. For each piece of skin that is larger than 1.0 square inch (6.45 cm^2), another instance shall be assessed for each additional complete 0.5 square inch (3.23 cm^2) in area. For pieces of skin smaller than 0.5 square inch (3.23 cm^2), the number of 0.5 square inch (3.23 cm^2) squares fully or partially occupied after collecting these pieces on a grid is the number of instances.

(12) *Membrane (black belly lining).* Each piece of membrane (black belly lining) larger than 0.5 square inch (3.23 cm^2) up to and including 1.5 square inch (9.6s cm^2) is an instance. For pieces of membrane (black belly lining) that are larger than 1.5 square inch (9.68 cm^2), another instance shall be assessed for each additional complete 0.5 square inch (3.23 cm^2) in area.

(13) *Scales.*—(i) *For skin-on fillets that have been scaled,* an instance is an area of scales over 0.5 square inch (3.23 cm^2) up to and including 1.5 square inch (9.68 cm^2). If the area is greater than 1.5 square inch (9.68 cm^2) each additional complete 1.0 square inch (6.45 cm^2) is another instance. Loose scales are counted and instances are deducted in the same manner as for skinless fillets.

(ii) *For skinless fillets,* the first five to ten loose scales is an instance. If there are over ten loose scales, each additional complete count of five loose scales is an additional instance.

(14) *Foreign matter.* Any harmless extraneous material, including packaging material, not derived from fish. Each occurrence is an instance.

(15) *Bones (including pin bone and fin bone).* Each bone defect is a bone or part of a bone whose maximum profile is 3/16 inch (0.48 cm) or more in length or at least 1/32 inch (0.08 cm) in shaft diameter or width or, for bone chips, a longest dimension of at least 3/16 inch (0.48 cm). An excessive degree of bone defect is each bone whose maximum profile can not be fitted into a rectangle, drawn on a flat, solid surface, which has a length of 1 3/16 inch (3.02 cm) and a width of ⅜ inch (0.95 cm).

(16) *Fins or part fins.* This defect refers to two or more bones connected by membrane, including internal or external bones, or both, in a cluster.

(i) *Moderate.* Connected by membrane in a cluster, no internal bone.

(ii) *Excessive.* Connected by membrane in a cluster with internal bone.

(17) *Parasites.*

(i) *Metazoan parasites.* Each such parasite or fragment of such a parasite that is detected is an instance.

(ii) *Parasitic copepods.* Each such parasite or a fragment of such a parasite that is detected is an instance.

(18) *Texture* means that the cooked product has the textural characteristics of the indicated species of fish. It does not include any abnormal textural characteristics such as mushy, soft, gelatinous, tough, dry or rubbery.

(i) *Moderate.* Moderately abnormal textural characteristics.

(ii) *Excessive.* Excessively abnormal textural characteristics.

(f) *Listing defect points.* When a sample unit is examined for physical defects using the list of defect definitions given in paragraph (e) of this section, defects are noted and numerical values are assigned in accordance with Table 1. The numbers assigned to defects in Table 1 are points. For examination in the frozen state and for belly flaps and texture, the defect points are added together. For examination of defects number 7 through 17 in the thawed state, the defect points are added together and this sum is divided by the weight of the sample unit in pounds. Express the result to the nearest whole number. Then add the sum of defect points for the frozen state and for belly flaps and texture to the sum of defect points for the thawed state expressed on a per pound basis. This result is used to determine the sample unit grade. The scoring system is based on a perfect score of zero (no physical defects).

(g) *Grade assignment.* Each sample unit will be assigned its grade in accordance with the limits for defects summarized as follows:

Grade assignment	Flavor and odor	Maximum number of defect points
U.S. Grade A	Good	15
U.S. Grade B	Reasonably Good.	30
U.S. Grade C	Reasonably Good.	40

If a sample unit has been assigned a grade for flavor and odor which is different from the grade indicated by the number of defect points, the sample unit grade will be the lower grade.

§ 264.105 Tolerances for lot certification.

(a) The grade assigned to a lot is the grade indicated by the average of the total scores, provided that the number of sample units in the next lower grade for both physical defects and flavor and odor does not exceed the acceptance number as indicated in the sampling plans contained in § 264.108 and the provisions of 50 CFR 260.21. In 50 CFR 260.21, the four score points are additive, not subtractive.

(b) The grade assigned to a lot is one grade below the majority of all the sample unit grades if either:

(1) The number of sample units in the next lower grade does exceed the acceptance number as given in the sampling plans contained in § 264.108; or

(2) The grade of any one of the sample units is more than one grade below the majority of all the sample unit grades.

§ 264.106 Hygiene.

All lots to be assigned a grade shall be processed and maintained in accordance with §§ 260.98 through 260.104 of this subchapter and of the good manufacturing practice regulations contained in 21 CFR part 110.

§ 264.107 Methods of analysis.

Product samples will be analyzed in accordance with the "Official Methods of Analysis" of the Association of Official Analytical Chemists (AOAC), Fourteenth Edition (1984), section 18.004 (page 331) plus sections 32.059 and 32.060 (page 613) or the Thirteenth Edition (1980), section 18.003 (page 285) plus sections 32.050 and 32.051 (page 543) which are incorporated by reference. Copies of the AOAC methods may be obtained from AOAC, 2200 Wilson Blvd., Suite 400, Arlington, VA 22201. This incorporation by reference was approved by the Director of the Federal Register on January 18, 1989. These methods are incorporated as they exist on the date of approval. A notice of any change in the sections of the AOAC methods cited herein will be published in the **Federal Register.**

§ 264.108 Sampling Plan for Fish Blocks.

Lot size (Number of blocks)	Sampling size (Number of blocks to be tested) (n)	Acceptance number [1] (c)
15 or less	2	0
16–50	3	0
51–150	5	1
151–500	8	1
501–3200	13	2
3201–35000	20	3
over 35000	32	5

[1] For interpretation of this column in grading, see § 264.105.

TABLE 1.—DEFECT TABLE FOR A FISH FILLET BLOCK SAMPLE UNIT

[Size of a sample unit is given in §264.104(b).]

Defect description	Degree	Point value
1. Dehydration		
Moderate (easily scraped)		
Affecting 5 to 15% of surface area	Each instance	3
Each additional 15% of surface area affected	Each additional instance	7
Excessive (difficult to scrape)		
Affecting 5 to 10% of surface area	Each instance	7
Each additional 10% of surface area affected	Each additional instance	16
2. Uniformity of block size		
Deviation from each dimension		
Moderate		
Length, width ⅛ inch to ¼ inch (0.32 to 0.64 cm)	Each instance	3
Thickness 1/16 inch to ⅛ inch (0.16 to 0.32 cm)	Each instance	3
Excessive		
Length, width each additional ⅛ inch (0.32 cm)	Each additional instance	6
Thickness each additional 1/16 inch (0.16 cm)	Each additional instance	6
3. Underweight		
Slight		
0.1 oz. to 1.0 oz. (2.84 to 28.35 g)	Each instance	3
Over 1.0 to 4.0 oz. (28.35 to 113.40 g)	Each instance	11
Excessive		
Over 4.0 oz. (113.40 g), each additional 1.0 oz. (28.35 g)	Each additional instance	16

TABLE 1.—DEFECT TABLE FOR A FISH FILLET BLOCK SAMPLE UNIT—Continued

[Size of a sample unit is given in §264.104(b).]

Defect description	Degree	Point value
4. Angles		
Edge angle—apex should be within ⅜ inch (0.95 cm)	Each unacceptable edge	1
Corner angle—apex should be within ⅜ inch (0.95 cm)	Each unacceptable corner	1
5. Improper fill		
If over ⅛ inch (0.32 cm) deep, minimum number of one ounce (28.35 g) units affected	Each instance	1
THAWED STATE		
6. Belly flaps (Napes)		
If over 15% each additional 5%	Each instance	16
7. Blood spots		
Each spot greater than 3/16 inch to ⅜ inch (0.48 to 0.95 cm)	Each instance	2
If spot over ⅜ inch (0.95 cm) each additional 3/16 inch (0.48 cm)	Each additional instance	4
8. Bruises		
Each bruise 0.5 square inch (3.23 cm) to 1.5 square inch (9.68 cm^2)	Each instance	2
If bruise 1.5 square inch (9.68 cm^2) or larger, each additional 1.0 square inch (6.45 cm^2)	Each additional instance	2
9. Discoloration		
Moderate degree, over 0.5 square inch (3.23 cm^2) to 1.5 square inch (9.68 cm^2)	Each instance	4
Moderate degree, over 1.5 square inch (9.68 cm^2), each additional 1.0 square inch (6.45 cm^2)	Each additional instance	4
Excessive degree, over 0.5 square inch (3.23 cm^2) to 1.5 square inch (9.68 cm^2)	Each instance	16
Excessive degree, over 1.5 square inch (9.68 cm^2), each additional 1.0 square inch (6.45 cm^2)	Each additional instance	16
10. Viscera, roe and lace		
Viscera, roe each occurrence	Each instance	8
Lace (frills) each ½ inch (1.27 cm)	Each instance	8
11. Skin (applies to skinless fish blocks)		
Each piece over 0.5 square inch (3.23 cm^2) to 1.0 square inch (6.45 cm^2)	Each instance	2
If pieces over 1.0 square inch (6.45 cm^2), each additional 0.5 square inch (3.23 cm^2)	Each additional instance	10
If pieces under 0.5 square inch (3.23 cm^2), number of 0.5 square inch (3.23 cm^2) squares occupied.	Each instance	6
12. Membrane (black belly lining)		
Each piece over 0.5 square inch (3.23 cm^2) to 1.5 square inch (9.68 cm^2)	Each instance	4
Over 1.5 square inch (9.68 cm^2), each additional 0.5 square inch (3.23 cm^2)	Each additional instance	10
13A. Scales		
For skin-on fillets that have been scaled, an area over 0.5 square inch (3.23 cm^2) to 1.5 square inch (9.68 cm^2).	Each instance	2
If area over 1.5 square inch (9.68 cm^2), each additional 1.0 square inch (6.45 cm^2)	Each additional instance	2
13B. Scales		
For skinless fillets, the first 5 to 10 loose scales	Each instance	2
If over 10 loose scales, each additional 5 loose scales	Each additional instance	2
14. Foreign Matter		
Harmless material	Each instance	16
15. Bones		
Each bone defect as defined	Each instance	18
Each excessive degree of bone defect as defined	Each instance	48
16. Fins or part fins		
Moderate (no internal bone)	Each instance	18
Excessive (with internal bone)	Each instance	48
17. Parasites		
Each metazoan parasite or fragment of it as defined	Each instance	36
Each parasitic copepod or fragment of it as defined	Each instance	36
COOKED STATE		
18. Texture		
Moderate degree	Moderate	6
Excessive degree as defined	Excessive	31

[FR Doc. 89-22208 Filed 9-20-89; 8:45 am]

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50 CFR Part 265

[Docket Number 90805-9205]

RIN0648-AA47

United States Standards for Grades of Fresh and Frozen Shrimp

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

ACTION: Proposed rule with request for comments.

SUMMARY: NOAA is proposing to revise the U.S. Standards for Grades of Fresh and Frozen Shrimp used in NMFS's National Seafood Inspection Program. Participation in the program by industry members is voluntary. The intended effect is to update the Standards for Grades to reflect changes in shrimp processing technology, reduce labor costs of sampling and grading shrimp, and allow identification of product quality level for the benefit of the consumer and the industry. Comments are invited.

DATES: Comments must be received on or before November 6, 1989.

ADDRESSES: Thomas J. Moreau, Director, Technical Services, Office of Trade and Industry Services, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Earl C. Johnston, Chief, Standards and Specifications Branch, NMFS, 508-281-9219.

SUPPLEMENTARY INFORMATION:

Background

The U.S. General Standards for Grades of Shrimp (50 CFR, part 265, subpart A) provide a system for federal

and state inspectors to classify fresh and frozen shrimp by quality into U.S. Grade categories (i.e., A and B) and allow identification of a product quality level for the benefit of the consumer and industry. The standards are used by inspectors in NMFS's National Seafood Inspection Program. Industry participation in the program is voluntary.

The existing standards for fresh and frozen, non-breaded shrimp were issued in 1982. Since that time, changes in processing technology have occurred and the industry has suggested changes in sampling and grading procedures to lower associated costs. These proposed revised standards for fresh and frozen, non-breaded shrimp were developed during Technical Working Group meetings with participation from industry and user groups. Before a decision was made to propose them, the proposed revised standards were applied to more than 660 sample units and the results examined and evaluated. The major proposed changes to the current standards are:

1. Grade assignment. The sample unit grade in the proposed standards for grades (50 CFR 265.104(g)) is based on a perfect score of zero (no physical defects). The sample unit grade in the current standards for grades (50 CFR 265.104(f)) is based on an attribute system of tolerances for defects. Users of the standards for grades commented that the proposed numerical grade system is preferable to the existing attribute system because of its similarity to other standards for grades of fishery products now in use by the industry.

2. Market forms. The current standards for grades define 14 market forms (50 CFR 265.102(c)). The proposed standards for grades would eliminate all market forms designated as "pieces" (50 CFR 265.102(c)), thus reducing the number of market forms to ten. Comments received from industry indicated that "pieces" are a secondary product of the shrimp processing operation and not a market form.

3. Limiting rules. The proposed standards for grades include several limiting rules that would tighten the requirements for Grade A product. These limiting rules would subject the lot being tested to the limitations of the acceptance/rejection numbers that appear in 50 CFR 260.61 (Sampling plans and procedures for determining lot compliance).

The defects subject to limiting rules are:

a. Count (50 CFR 265.104(c)(3)). If the count of a sample unit does not conform to the declared count, that sample unit would be considered a deviant.

b. Pieces, damaged and broken shrimp (50 CFR 265.103(a)(2)). If the percent by weight of the affected shrimp exceeds the parameters of the limiting rule, that sample would be considered a deviant.

c. Improperly deveined (50 CFR 265.103(a)(2)). If the percent by weight of affected shrimp exceeds the limiting rule, that sample unit would be considered a deviant.

4. Sample unit size. The current standards for grades use one sample unit size for physical defect assessments and another sample unit size for uniformity of size evaluation (50 CFR 265.104(b)). Comments from industry indicated the need for using different sample unit sizes for different size counts of shrimp sampled, to reduce the time necessary to perform inspections and reduce inspection costs. Therefore, the proposed standards for grades would utilize one sample unit size to evaluate both physical defects and uniformity of size (50 CFR 265.104(b)), with the sample unit size varying according to count per pound (kilogram).

5. Evaluation of physical defects.

a. Deterioration. Evaluation procedures for this defect appear in 50 CFR 265.104(e)(2) of the current standards. Since detection of deterioration is made organoleptically, this defect would be integrated into the flavor and odor defect category in the proposed standards for grades (50 CFR 265.104(d)).

b. Broken, damaged and pieces. In the current standards for grades, broken, damaged and pieces of shrimp are addressed as two separate defect categories: "broken or damaged shrimp" (50 CFR 265.104(e)(3)) and "shrimp pieces" (50 CFR 265.104(e)(4)). Because of the similar nature of these defects and their comparable aesthetic qualities, they would be combined into one defect category in the proposed standards for grades (50 CFR 265.104(e)(2)(iii)).

c. Unusable material. The current standards for grades contain an extensive list of unusable materials (50 CFR 265.104(e)(5)). Comments received from industry stressed the need to separate this defect into units consisting of similar types of unusable material; for example, the comments suggested that light unusable material, such as antennae and loose shell, should be grouped together in one unit, and heavy unusable material, such as shrimp heads and abnormal shrimp, should be grouped together in another. The proposed standards for grades would divide the unusable material into two separate defect categories: "Unusable material" (50 CFR 265.104(e)(2)(vi)) and "Unacceptable shrimp and heads" (50 CFR 265.104(e)(2)(v)).

d. Improperly or inadvertently peeled and improperly deveined. This defect is combined into one defect category in the current standards for grades (50 CFR 264.104(e)(7)). Comments received from industry indicated that since these two defects resulted from separate processing operations, they should be divided into two defect categories. The proposed standards for grades would divide this defect into two defect categories: "Inadvertently peeled and improperly peeled shrimp" (50 CFR 265.104(e)(2)(vi)) and "Improperly deveined shrimp" (50 CFR 265.104(e)(2)(vii)).

6. Defect table. The proposed standards for grades would utilize a table, broken down by five shrimp size-count categories, for purposes of defect point assessment. Comments received indicated the need to develop a method of point assessment that would reflect the varying aesthetic value of different sized shrimp.

The proposed revisions would allow consumers to select at purchase fresh and frozen, non-breaded shrimp on the basis of identified quality. Interested persons are invited to submit written comments and suggestions on, or objections to, these proposed standards for grades (see **ADDRESSES**).

Classification

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

NOAA has determined that this proposed rule is not a "major rule" requiring preparation of a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted as proposed, will not have a $100 million effect on the economy; will not cause a major increase in costs or prices; and will not have a significant adverse effect on competition, employment, investment, productivity or innovation.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule is expected to facilitate grading and trade in fresh and frozen shrimp while not imposing any new costs on industry; sampling and grading costs to participants in the program are expected to decrease. As a result, a Regulatory Flexibility Analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 265

Food grades and standards, Seafood.

Dated: September 14, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 265 is proposed to be amended by revising Subpart A to read as follows:

PART 265—UNITED STATES STANDARDS FOR GRADES OF CRUSTACEAN SHELLFISH PRODUCTS

Subpart A—United States Standards for Grades of Fresh and Frozen Shrimp

Sec.

Subpart A—United States Standards for Grades of Fresh and Frozen Shrimp

Authority: 7 U.S.C. 1621–1630; Reorganization Plan No. 4 (84 Stat. 2090).

§ 265.101 Scope and product description.

These Standards for Grades apply to clean, wholesome shrimp that are fresh or frozen, raw or cooked and are implemented in accordance with guidance set forth in part II of NOAA Handbook 25, "Inspector's Instructions for Grading Fresh and Frozen Shrimp." Copies of the handbook may be obtained from the National Seafood Inspection Laboratory, DASS, NMFS, NOAA, P.O. Drawer 1207—3209 Frederic Street, Pascagoula, MS 39568–1207.

§ 265.102 Product forms.

(a) *Types.* (1) Chilled, fresh (not previously frozen).

(2) Unfrozen, thawed (previously frozen).

(3) Frozen individually (IQF), glazed or unglazed.

(4) Frozen solid pack, glazed or unglazed.

(b) *Styles.* (1) Raw (uncoagulated protein).

(2) Blanched (parboiled)—heated for a period of time such that the surface of the product reaches a temperature adequate to coagulate the protein.

(3) Cooked—heated for a period of time such that the thermal center of the product reaches a temperature adequate to coagulate the protein.

(c) *Market Forms.* (1) Heads on (head, shell, tail fins on).

(2) Headless (only head removed; shell, tail fins on).

(3) Peeled, undeveined, round, tail on (all shell removed except last shell segment and tail fins, with segment unslit).

(4) Peeled, undeveined, round, tail off (all shell and tail fins removed, with segments unslit).

(5) Peeled and deveined, round, tail on (all shell removed except last shell segment and tail fins, with segments shallowly slit to last segment).

(6) Peeled and deveined, round, tail off (all shell and tail fins removed, with segments shallowly slit to last segment).

(7) Peeled and deveined, fantail or butterfly, tail on (all shell removed except last shell segment and tail fins, with segments deeply slit to last segment).

(8) Peeled and deveined, fantail or butterfly, tail off (all shell and tail fin removed, with segments deeply slit to last segment).

(9) Peeled and deveined, western (all shell removed except last shell segment and tail fins, with segments split to fifth segment and vein removed to end of cut).

(10) Other forms of shrimp as specified and so designated on the label.

§ 265.103 Grades.

(a) *U.S. Grade A* shrimp shall: (1) Possess good flavor and odor characteristics of the species being evaluated in accordance with § 265.104 of this subpart; and

(2) Comply with the limits for defects for U.S. Grade A quality in accordance with § 265.104 of this subpart; and conform to the following limiting rules:

(i) They shall possess no more than the amount of pieces, damaged shrimp or broken shrimp, singly or in combination, described in the following schedule, to apply to each sample unit. If the sample unit does not conform to the limiting rule, that sample unit is a deviant. If the number of deviants in the sample exceeds the acceptance number for its sample size, the lot fails the requirements for Grade A.

(A) *Shell-on.*	
Up to and including 70 count per pound (0.45 kg).	No more than 2 percent by weight.
Over 70 count per pound (0.45 kg).	No more than 8 percent by weight.
(B) *Peeled.*	
Up to and including 40 count per pound (0.45 kg).	No more than 4 percent by weight.
41–70 count per pound (0.45 kg).	No more than 6 percent by weight.
71–130 count per pound (0.45 kg).	No more than 10 percent by weight.
Over 130 count per pound (0.45 kg).	No more than 15 percent by weight.

(ii) *Peeled and deveined* market forms shall possess no more than the amount of veins described in the following schedule according to the count of shrimp, to apply to each sample unit. If a sample unit does not conform to the limiting rule, that sample unit is a deviant. If the number of deviants in the sample exceeds the acceptance number for its sample size, the lot fails the requirements for Grade A.

Up to and including 70 count per pound (0.45 kg).	No more than 5 percent by weight has a vein longer than one segment.
71–130 count per pound (0.45 kg).	No more than 10 percent by weight has a vein longer than two segments.
131–200 count per pound (0.45 kg).	No more than 12 percent by weight has a vein longer than two segments.
Over 200 count per pound (0.45 kg).	No more than 20 percent by weight has a vein longer than two segments.

(b) *U.S. Grade B* shrimp shall: (1) Possess reasonably good flavor and odor characteristics of the species being evaluated in accordance with § 265.104(d) of this subpart; and

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 265.104(g) of this subpart.

§ 265.104 Grade determination.

(a) *Procedures for grade determination.* Shrimp are evaluated for odor and flavor in accordance with paragraph (d) of this section. Shrimp are evaluated for physical characteristics, defects and uniformity of size in accordance with paragraph (e) of this section.

(b) *Sampling.* Lot size, number of sample units and acceptance numbers shall be in accordance with the regulations governing processed fishery products, 50 CFR 260.61, Table II, V or VI, whichever is applicable. For examination of physical defects, the sample unit will be as follows:

(1) For shrimp under 70 count per pound (0.45 kg), the sample unit will be

one or more packages sufficient to provide 2 pounds (0.91 kg) net weight. If the contents of a package exceed 2 pounds (0.91 kg), a representative 2-pound (0.91 kg) net weight sample unit will be used.

(2) For shrimp 70–250 count per pound (0.45 kg), the sample unit will be a representative 1 pound (0.45 kg) net weight.

(3) For shrimp over 250 count per pound (0.45 kg), the sample unit will be a representative 8 ounces (0.23 kg) net weight.

(c) *Count.* "Count", or number of shrimp per pound (0.45 kg), is determined by dividing the number of whole shrimp in a sample unit by the adjusted weight in pounds (0.45 kg).

(1) "Adjusted weight" means the weight of all of the whole shrimp in the sample unit.

(2) "Adjusted count" means the number of shrimp comprising the adjusted weight.

(3) If the "count" or number of shrimp per pound (0.45 kg) of a sample unit does not conform to the declared count, that sample unit is a deviant. A lot has the declared count if the number of deviant sample units does not exceed the acceptance number prescribed for its sample size in Part 260 of this subchapter. If the number of deviant sample units exceeds the acceptance number for its sample size, it is marked as a mixed lot and it is not graded.

(d) *Evaluation of flavor and odor.*

(1) Definitions of flavor and odor.

(i) *Good* flavor and odor (essential requirements for a U.S. Grade A product) mean that the raw product and the cooked product have the normal, pleasant flavor and odor characteristic(s) of freshly caught shrimp that is free from off-flavors and odor of any kind. A natural odor or flavor reminiscent of iodoform is acceptable.

(ii) *Reasonably good* flavor and odor (minimum requirements for U.S. Grade B shrimp) mean that the product may be somewhat lacking in good flavor and odor characteristics of freshly caught shrimp but it is free from objectionable off-flavors and off-odors of any kind.

(2) Procedures.

(i) Raw styles of shrimp are evaluated for flavor and odor in the cooked state. Raw odor is also evaluated in the fresh or thawed state.

(ii) Cooked styles of shrimp are evaluated for flavor and odor without further cooking, if fresh, or after thawing, if frozen.

(e) *Definitions of defects.* Each sample unit is evaluated for its physical characteristics and defects in accordance with the following definitions. Detailed descriptions of defects are in part II of NOAA Handbook 25, "Inspector's Instructions for Grading Fresh or Frozen Shrimp" (see § 265.101 for availability).

(1) Examination in the frozen state:

(i) *Dehydration* refers to a general drying of the shrimp flesh that is noticeable after any glaze and shell are removed. It includes any detectable change from the normal characteristics, bright appearance of freshly caught, properly iced or properly processed shrimp.

(A) *Slight dehydration* means scarcely noticeable drying of the shrimp flesh that will not affect the sensory quality of the sample.

(B) *Moderate dehydration* means conspicuous drying of the shrimp flesh that will not seriously affect the sensory quality of the sample.

(C) *Excessive dehydration* means conspicuous drying that will seriously affect the sensory quality of the sample.

(ii) [Reserved]

(2) Examination in the fresh or thawed state:

(i) *Uniformity of size* refers to the degree of uniformity of the shrimp in the container to determine their conformity to the declared count. The product shall be evaluated in the fresh or thawed state for uniformity of size as follows:

(A) From the adjusted sample unit (all whole, unbroken, undamaged shrimp in the sample unit) visually select and weigh not more than 10 percent by count, but not less than one, of the largest shrimp.

(B) Visually select and weigh not more than 10 percent by count, but not less than one, of the smallest shrimp.

(C) Divide the weight of the large shrimp by the weight of the small shrimp and the result will be the uniformity ratio.

(ii) *Black spots, improperly headed (throats), and improperly cleaned ends* refer to the presence of any objectionable black or darkened area that affects the desirability or sensory quality of the shrimp, whether the market form is shell-on or peeled. Although any occurrence of blackspot is considered objectionable and is subject to point assessment, upon request black spot can be broken down into the following degrees of severity:

(A) *Slight.* Black spot occurring on the shell only.

(B) *Moderate.* Black spot on the membrane. If the black spot can be removed by rubbing over it with the finger, it is on the membrane, not on the meat.

(C) *Excessive.* Black spot on the meat. The black spot cannot be removed by rubbing over it with the finger. The degree of severity is for information purposes only and will not alter the point assessment for this defect. "Throats" are those portions of flesh and/or extraneous material from the head (cephalothorax) which remain attached to the first segment after heading.

(iii) *Pieces of shrimp, broken or damaged shrimp.*—(A) *Shrimp pieces.* "Piece" means for a count of 70 or less unglazed shrimp per pound (0.45 kg), any shrimp that has fewer than five segments, with or without tail fins attached, or for a count of more than 70 unglazed shrimp per pound (0.45 kg), any shrimp that has fewer than four segments, or any whole shrimp with a break in the flesh greater than ⅔ of the thickness of the shrimp.

(B) *Broken shrimp* means a shrimp having a break in the flesh greater than ⅓ of the thickness of the shrimp.

(C) *Damaged shrimp* means a shrimp that is crushed or mutilated so as to materially affect its appearance or usability.

(iv) *Unusable material* includes the following:

(A) *Legs* refer to walking legs only, whether attached or not attached to the body (heads-on market form excepted).

(B) *Loose shell and antennae* are any pieces of shell or antennae which are completely detached from the shrimp.

(C) *Flipper* refers to any detached tail fin with or without the last shell segment attached, with or without flesh inside.

(D) *Extraneous material* means any material in a sample unit which is not shrimp material.

(v) *Unacceptable shrimp and heads.*—(A) *Unacceptable shrimp* refers to abnormal or diseased shrimp.

(B) *Head* refers to the cephalothorax, except for heads-on shrimp.

(vi) *Inadvertently peeled and improperly peeled shrimp* refer to the presence or absence of head, shell segment, swimmeret, tail fin, which should or should not have been removed for certain market forms as described in § 265.102(c) of this subpart. (Shell-on shrimp with tail fins and/or telson missing is "inadvertently peeled", but if the last segment of flesh is missing, the shrimp is "damaged").

(vii) *Improperly deveined shrimp* refers to the presence of vein (alimentary canal) or roe which should have been removed for peeled and deveined market forms as described in § 265.102(c) of this subpart. For shrimp of 70 count per pound (0.45 kg) or less, a vein or dark roe defect is longer than one segment. For shrimp of 71 to 500 count per pound (0.45 kg), a vein or dark

roe defect is longer than two segments. **Note:** This does not pertain to the last segment. For shrimp of over 500 count per pound (0.45 kg), vein or dark roe of any length is not a defect.

(3) *Examination in the cooked state:* The texture of cooked shrimp should be firm, slightly resilient but not tough, moist but not mushy. Texture as a defect refers to an undesirable toughness, dryness or mushiness which deviates from the normal characteristics of the species when freshly caught, properly processed, and cooked.

(i) *Slight.* Slightly tough, dry but not mushy.

(ii) *Moderate.* Moderately tough, dry or mushy.

(iii) *Excessive.* Excessively tough, very dry or very mushy.

(f) *Listing defect points.* When a sample unit is examined for physical defects, using the list of defect definitions given in paragraph (e) of this section, defects are noted and numerical values are assigned in accordance with Table 1. The numbers assigned to defects in Table 1 are points. The defect points are added together. The final total number of defect points is used to determine a sample unit grade. The scoring system is based on a perfect score of zero (no physical defects).

(g) *Grade assignment.* Each sample unit will be assigned its grade in accordance with the limits for defects summarized as follows:

Grade assignment	Flavor and odor	Maximum number of defect points
U.S. Grade A	Good	15
U.S. Grade B	Reasonably Good	30

If a sample unit has been assigned different grade levels for flavor and odor and number of defect points, the sample unit grade will be the lower grade level.

§ 265.105 Tolerances for lot certification.

The grades of specific lots shall be certified in accordance with §§ 260.61 and 260.21 of this subchapter. In § 260.21 of this subchapter, the four score points are additive, not subtractive.

§ 265.106 Hygiene.

All lots to be assigned a grade will be processed and maintained in accordance with §§ 260.98 to 260.104 of this subchapter and of the Good Manufacturing Practice regulations contained in 21 CFR part 110.

§ 265.107 Methods of analysis.

Product samples will be analyzed in accordance with the "Official Methods of Analysis" of the Association of Official Analytical Chemists, (AOAC), Fourteenth Edition (1984), as described below.

(a) Cooking seafood products (AOAC "Official Methods of Analysis" section 18.004).

(1) *Procedure.* Cooking procedure is based on heating product to internal temperature of ≥160 °F (70 °C). Cooking times vary according to size of product and equipment used. To determine cooking time, cook extra sample using a temperature measuring device with probe of known length to determine internal temperature. Cooking equipment, including cooking oil for deep fat frying, shall be free from substances which interfere with sensory evaluation of cooked product.

(2) Methods of heating product include, but are not limited to, baking, bake-in-foil, broiling, boil-in-bag, shallow pan frying, deep fat frying, oven frying, grilling, poaching, steaming, and microwave heating.

(b) Net Contents of Frozen Food Containers-Unglazed Foods (AOAC "Official Methods of Analysis" sections 32.059 and 32.060).

(1) *Procedures.* For packages up to 5 pounds (2.27 kg). Use scale of adequate capacity with sensitivity of 0.01 oz. (0.28 g).

(2) For packages over 5 pounds (2.27 kg). Use scale of adequate capacity with sensitivity of 0.025 oz. (0.71 g).

(3) Set scale on firm support and level. Adjust 0 load indicator or rest point and check sensitivity.

(4) Remove package from low temperature storage, remove frost and ice from outside of package, and weigh immediately (W). Open package; remove contents, including any product particles and frost crystals. Air-dry empty package at room temperature and weigh (E). Weight of contents = W − E.

(c) Net Contents of Frozen Seafoods—Glazed Seafoods (AOAC "Official Methods of Analysis" section 18.002).

(1) *Procedures.* Set scale as in section 32.059 above, on firm support and level. Adjust 0 load indicator or rest point and check sensitivity.

(2) Remove package from low temperature storage, open immediately and place contents under gentle spray of cold water. Agitate carefully so product is not broken. Spray until all ice glaze that can be seen or felt is removed. Transfer product to circular No. 8 sieve, 20 cm (8") diameter for ≤0.9 kg (2 lb) and 30 cm (12") for >0.9 kg (2 lb). Without shifting product, incline sieve at angle of 17–20° to facilitate drainage and drain exactly 2 min. (stop watch). Immediately transfer product to tared pan (B) and weigh (A). Weight of product = A − B.

(d) Drained Weight of Frozen Shrimp (AOAC "Official Methods of Analysis" sections 18.016 and 18.017).

(1) *Apparatus.* Container—Wire mesh basket large enough to hold contents of one package and with openings small enough to retain all pieces. Expanded metal test-tube basket or equivalent, fully lined with standard 16 mesh per linear inch (2.54 cm) insect screen is satisfactory.

(2) Balance—Sensitive to 0.25 g or 0.01 oz. sieves—U.S. No. 8, 20 cm (8") and 30 cm (12").

(3) *Procedures.* Place contents of individual package in wire mesh basket and immerse in 15 l (4 gal.) container of fresh water at 26±3 °C (80±5 °F) so that top of basket extends above water level. Introduce water of same temperature at bottom of container at flow rate of 4–11 l (1–3 gal.)/min. As soon as product thaws, as determined by loss of rigidity, transfer all material to 30 cm (12"), for package >450 g (1 lb), or 20 cm (8"), for packages ≤1 lb., no. 8 sieve, distributing evenly. Without shifting material on sieve, incline sieve to 30° from horizontal to facilitate drainage. Two minutes from time placed on sieve, transfer product to previously weighed pan, and weigh. Weight so found minus weight of pan is drained weight of product.

(4) Alternative methods of analysis may be submitted to the Administrator to determine their acceptability based on their accuracy, repeatability, reproducibility and lowest level of reliable measurement, as demonstrated by at least six laboratories.

TABLE 1.—DEFECT TABLE

[Size of sample unit is given in §265.104(b)]

Name of Defect	Defect Points Assigned				
	Up to 40	41 to 70	71 to 130	131 to 500	Over 500
Count of Shrimp per Pound:					
1. Dehydration:					
Slight	3	3	3	3	3
Moderate	8	8	8	8	8
Severe	16	16	16	16	16
2. Uniformity of size:					
Weight ratio	1.75–2.00	1.75–2.00	2.00–4.00	2.50–5.00	(1)
Defect points	4	4	4	4	(1)
Weight ratio	2.01–2.50	2.01–2.50	4.01–6.00	5.01–7.00	(1)
Defect points	8	8	8	8	(1)
Weight ratio	>2.50	>2.50	>6.00	>7.00	(1)
Defect points	16	16	16	16	(1)
3. Black spots, throats and improperly cleaned ends:					
Percent by weight	1.00–4.00	1.00–4.00	2.00–6.00	2.00–6.00	2.00–6.00
Defect points	3	3	3	3	3
Percent by weight	4.01–8.00	4.01–8.00	6.01–10.00	6.01–10.00	6.01–10.00
Defect points	5	5	5	5	5
Percent by weight	>8.00	>8.00	>10.00	>10.00	>10.00
Deficit points	16	16	16	16	16
4. Pieces, damaged shrimp, and broken shrimp: [2]					
Percent by weight	1.50–4.00	2.00–6.00	3.00–7.00	8.00–11.00	>16.00
Defect points	4	4	4	4	16
Percent by weight	4.01–6.00	6.01–9.00	7.01–11.00	11.01–16.00	
Defect points	8	8	8	8	
Percent by weight	>6.00	>9.00	>11.00	>16.00	
Defect points	16	16	16	16	
5. Unusable material (legs, loose shell, antennae, flippers, or extraneous material:					
Percent by weight	0.1–0.2	0.1–0.2	0.1–0.2	0.1–0.2	0.1–0.2
Defect points	6	6	6	6	6
Percent by weight	>0.2	>0.2	>0.2	>0.2	>0.2
Defect points	16	16	16	16	16
6. Unacceptable shrimp and heads:					
Percent by weight	1.00–2.50	1.00–2.50	1.00–2.50	1.00–2.50	1.00–2.50
Defect points	3	3	3	3	3
Percent by weight	2.51–5.00	2.51–5.00	2.51–5.00	2.51–5.00	2.51–5.00
Defect points	6	6	6	6	6
Percent by weight	>5.00	>5.00	>5.00	>5.00	>5.00
Defect points	16	16	16	16	16
7. Improperly peeled and inadvertently peeled shrimp:					
Percent by weight	2.00–6.00	2.00–6.00	4.00–9.00	7.00–12.00	>12.00–17.00
Defect points	3	3	3	3	8
Percent by weight	6.01–10.00	6.01–10.00	9.01–14.00	12.01–17.00	17.00
Defect points	8	8	8	8	16
Percent by weight	>10.00	>10.00	>14.00	>17.00	
Defect points	16	16	16	16	
8. Improperly deveined shrimp: [3]					
Percent by weight	1.00–6.00	1.00–6.00	6.00–11.00	6.00–11.00	(1)
Defect points	3	3	3	3	(1)
Percent by weight	6.01–10.00	6.01–10.00	11.01–16.00	11.01–16.00	(1)
Defect points	8	8	8	8	(1)
Percent by weight	>10.00	>10.00	>16.00	>16.00	(1)
Defect points	16	16	16	16	(1)
9. Texture:					
Slight	2	2	2	2	2
Moderate	5	5	5	5	5
Excessive	16	16	16	16	16

(1) Does not apply.

[2] U.S. Grade A shrimp shall not exceed the following percentages by weight of this defect. Shell-on shrimp: Up to 70 count, 3%; over 70 count, 7%. Peeled shrimp: Up to 40 count, 4%; 41 to 70 count, 6%; 71 to 130 count, 7%; Over 130 count, 11%.

[3] U.S. Grade A shrimp shall not exceed the following percentages by weight of this defect. Peeled and deveined shrimp: Up to 70 count, 5%; 71 to 130 count, 10%; 131 to 200 count, 12%; 201 to 500 count, 20%; Over 500 count—Does Not Apply.

[FR Doc. 89–22209 Filed 9–20–89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 182
Thursday, September 21, 1989

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.

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Peformance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights' Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Acting Staff Director, U.S. Commission on Civil Rights for the FY 1989 rating year.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Tyler, Personnel and EEO Officer, Office of the Deputy Staff Director for Management, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW, Washington, DC 20425, (202) 376–8364.

Members

Robert G. Drew, Director, Bureau of Regulations, Federal Maritime Commission

Lorin L. Goodrich, Director, Office of Administration, International Trade Commission

Jessalyn L. Pendarvis, Director, Office of Equal Opportunity Programs, Agency for International Development

Dated: September 15, 1989.

Jeffrey P. O'Connell,

Acting Solicitor.

[FR Doc. 89–22335 Filed 9–20–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget OMB for Review

Action: Notice.

The Department of Defense has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: *Manufacturing Lead Time Production Solicitation and Occupational Survey:* No Form; and OMB Control Number 0703–0033.

Type of Request: Extension.

Average Burden Hours Per Response: 1.5 Hours.

Frequency of Response: Semi-Annual.

Number of Respondents: 1100.

Annual Burden Hours: 3300.

Annual Responses: 2200.

Needs and Uses: The Manufacturing Lead Time Production Solicitation and Occupational Survey is used by Navy planners to evaluate domestic industry's capability to support Navy Shipbuilding, Conversion and Repair Programs.

Affected Public: Any business which supports or is capable of supporting Navy Shipbuilding, Conversion and Repair Programs.

Frequency: Semi-Annual.

Respondent's Obligation: None.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rasco-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: September 15, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–22309 Filed 9–20–89; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

High Definition Systems; Meeting

AGENCY: Under Secretary of Defense (Acquisition), DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming planning meeting for a Defense Manufacturing Board project on high definition systems.

DATE AND TIME: 27 September 89, 0830–1700.

ADDRESS: Five Skyline Place, 5111 Leesburg Pike, Suite 300, Falls Church, VA 22041.

The agenda for the meeting will include a review of the current state of U.S. manufacturing and key areas of high technology.

FOR FURTHER INFORMATION CONTACT: Dr. Roy Beasley at (301) 986–4679.

Dated: September 15, 1989.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–22308 Filed 9–20–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 11–13 October 1989

Time: 0830–1700 daily

Place: 11–12 October, Fort Monmouth, NJ, 13 October, Carnegie Mellon University, PA

Agenda: The Army Science Board Ad Hoc Subgroup on Software in the Army will hold its second meeting for the purpose of studying the procurement and maintenance of Army software. This meeting is open to the public. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner,

may be contacted for further information at (202) 695–0781 or 0782.

Sally A. Warner,

Administrator Officer, Army Science Board.

[FR. Doc. 89–22327 Filed 9–20–89; 8:45 am]—

BILLING CODE 3710–08–M

Defense Nuclear Agency

Membership of the Defense Nuclear Agency Performance Review Board

AGENCY: Department of Defense, Defense Nuclear Agency.

ACTION: Notice of membership of the Defense Nuclear Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Nuclear Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Nuclear Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DNA PRB is on or about 4 October 1989.

FOR FURTHER INFORMATION CONTACT: D. Dial-Alfred, Policy Branch (CVPO), Defense Nuclear Agency, Washington, DC 20305–1000, (703) 325–7593.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DNA PRB are set forth below. All are DNA officials unless otherwise identified:

Major General J.C. Scheidt, Director for Operations, USAF
Mr. David G. Freeman, Director, Acquisition Management Office
Dr. Don A. Linger, Director for Test
Mr. Curtis Dierdorff, Director of Personnel, Defense Mapping Agency
Dr. Spiros G. Pallas, Special Assistant to the Deputy Director for Tactical Warfare Programs, Office of the Secretary of Defense

The following DNA officials will serve as alternate members of the DNA PRB, as appropriate.

Mr. John M. Bachkosky, Director for Plans, Programs and Requirements
Mr. Robert Britigan, General Counsel
Dr. Paul H. Carew, Comptroller
Mr. Frederick S. Celec, Deputy Director for Operations
Mr. Jonathan Z. Farber, Special Assistant to the Deputy Director
Dr. Kent L. Goering, Chief, Structural Dynamics Division
Mr. Clifton B. McFarland, Jr., Chief, Weapons Effects Division
Mrs. Joan Ma Pierre, Director for Radiation Sciences
Dr. George W. Ullrich, Director for Shock Physics
Mr. Robert C. Webb, Chief, Electronics Effects Division
Dr. Leon A. Wittwer, Chief, Atmospheric Effects Division

Dated: September 14, 1989.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–22307 Filed 9–20–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award (Cooperative Agreement) to Sun Refining and Marketing

AGENCY: Morgantown Energy Technology Center, DOE.

ACTION: Notice of acceptance of noncompetitive financial assistance application for a cooperative agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(B), the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a 33-month cost-shared Cooperative Agreement to Sun Refining and Marketing, Applied Research and Development, P.O. Box 1135, Marcus Hook, Pennsylvania 19061–0835, in the amount of $2,300,000. The DOE will fund approximately 48 percent of the allowable costs. The pending award is based on an unsolicited application for a research project entitled, "Catalytic Conversion of Light Alkanes." The application proposes to further develop catalysts that will aid in the conversion, through selective oxidation, of light alkanes to alcohols. The technology proposed to accomplish this research is to develop catalysts that will react in a manner that resembles biological activities. This research activity is a new process which uses a combination of the best of known catalytic chemistry and a process based on the biologic chemistry of methanogenic enzymes. Technically this would provide new market areas for natural gas and would provide the means for transporting costly natural gas to market at acceptable costs. If these techniques were developed, it could be used to offset imported oil to this country and would provide new transportation fuels, energy fuels and chemical feedstocks to the marketplace. The merits of this effort involve the development of an economic, simple method to convert methane to higher value hydrocarbons. This project fits well within the METC Natural Gas To Liquids Program.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26505, Telephone: (304) 291–4241, Cooperative Agreement No. DE–FC21–89MC26029.

Dated: September 13, 1989.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89–22333 Filed 9–20–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date and Time: Tuesday, October 10, 1989, 9:00 a.m.

Place: The Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order by Lodwrick M. Cook, Chairman, National Petroleum Council.
—Remarks by the Honorable W. Henson Moore, Deputy Secretary, Department of Energy.
—Consideration of administrative matters.
—Discussion of any other business properly brought before the National Petroleum Council.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–22334 Filed 9–20–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP89–2065–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP89–2065–000]

September 12, 1989.

Take notice that on September 6, 1989, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–2065–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Unicorp Energy, Inc. (Unicorp), a marketer of natural gas, under NGPL's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGPL proposes to transport on an interruptible basis up to 200,000 MMBtu of natural gas on a peak day, 60,000 MMBtu on an average day and 21,900,000 MMBtu on an annual basis for Unicorp. NGPL states that Unicorp may request and NGPL may agree to accept additional volumes as overrun gas consistent with NGPL's Rate Schedule ITS. NGPL indicates that it would receive the gas at various points in Texas, offshore Texas, Louisiana, offshore Louisiana, Illinois, Kansas, New Mexico, Iowa, Oklahoma, Nebraska and Arkansas and deliver at points in Texas, offshore Texas, Louisiana, offshore Louisiana, Illinois, Oklahoma, Missouri, New Mexico, Nebraska, Arkansas, Iowa and Kansas.

It is explained that the service commenced July 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–4692. NGPL indicates that no new facilities would be necessary to provide the subject service.

Comment date: October 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Black Marlin Pipeline Company

[Docket No. CP89–2070–000]

September 13, 1989.

Take notice that on September 11, 1989, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–2070–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for OXY USA Inc. (OXY), a producer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–75–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Black Marlin states that pursuant to a transportation agreement dated July 5, 1989, under its Rate Schedule ITS/OCS, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas for OXY. Black Marlin states that it would transport the gas from receipt points located offshore Texas and would deliver the gas to OXY at the HPL-Texas City, Galveston County, Texas, delivery point, as shown in the agreement.

Black Marlin advises that service under § 284.223(a) commenced July 5, 1989, as reported in Docket No. ST89–4382–000. Black Marlin further advises that it would transport 18,750 MMBtu on an average day and 9,125,000 MMBtu annually.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88–92–001]

September 14, 1989.

Take notice that on September 7, 1989,[1] Transcontinental Gas Line Corporation (Applicant) Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–92–001 an amended application pursuant to section 7(c) of the Naural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and firm transportation, all as more fully set forth in the amended application which is on file with the Commission and open to public inspection.

Applicant states that the Commission order issued in the Associated PennEast Customer Group's (APEC) settlement (Applicant's Docket No. CP89–6–000) has made it necessary to modify the facilities proposed in Docket No. CP88–92–000. Applicant states that the following facilities would have to be constructed to provide the proposed 73,500 dekatherms of transportation service:

1. 8.22 miles of 36-inch diameter pipeline loop from M.P. 149.41 to M.P. 157.63 on its Leidy Line in Pennsylvania.

2. 2.25 miles of 16-inch diameter pipeline loop from Leidy Line M.P. 203.53 to M.P. 2.20 on its Wharton Line in Pennsylvania.

3. A 75,000 Mcf/day metering and regulating station expansion at the Wharton interconnection with National Fuel Gas Supply Corporation.

In addition, Applicant states that it proposes to construct 5.15 miles of 30-inch diameter pipeline loop from M.P. 185.48 to M.P. 190.63 on its Leidy Line if authorization to construct this line is not given in Docket No. CP89–6–000. The approximate cost to construct the above facilities is $13,300,000 to $19,300,000 depending on whether the 5.15 miles of pipeline are included.

Because the proposed facilities were modified, the proposed rates were also changed. Applicant states that initial monthly D–1 and D–2 reservation rates would be $0.71 and $0.0233 per dekatherm and the commodity rate would be $0.0566 per dekatherm if the 5.15 miles of pipeline were excluded and a D–1 rate of $1.03 per dekatherm, a D–2 rate of $0.0340 per dekatherm, and a commodity rate of $0.0822 per dekatherm if the 5.15 miles of pipeline is included.

Comment date: October 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–2066–000]

September 14, 1989.

Take notice that on September 7, 1989, Northern Natural Gas Company,

[1] The amendment was tendered for filing on August 18, 1989, however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until September 7, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–2066–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Philbro Distributors Corporation, a marketer, under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation service agreement dated August 2, 1989, it proposes to receive up to 100,000 million Btu of natural gas per day from Philbro at specified points located in the offshore and onshore areas of Texas and in the offshore Louisiana and redeliver the gas at other specified points in onshore and offshore Texas and offshore Louisiana. Northern estimates that the peak day volumes, average day volumes, and annual volumes would be 100,000 million Btu, 75,000 million Btu, and 36,500,000 million Btu, respectively. It is stated that on August 2, 1989, Northern commenced a 120-day transportation service for Philbro under § 284.223(a), as reported in Docket No. ST89–4563–000.

Northern further states that no facilities need be constructed to implement the service. Northern states that the agreement provides for a primary term of one year, but would continue on a month-to-month basis unless terminated by either party on thirty days written notice. Northern proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT–1.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. El Paso Natural Gas Company

[Docket No. CP89–2079–000]

September 14, 1989.

Take notice that on September 12, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–2079–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for BridgeGas U.S.A. Inc. (BridgeGas) under El Paso's blanket certificate issued in Docket No. CP88–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated June 30, 1989, between El Paso and BridgeGas, El Paso would transport up to 105,500 MMBtu of natural gas per day for BridgeGas. El Paso further states that the estimated average day and estimated annual quantities to be transported would be 52,750 MMBtu and 19,253,750 MMBtu, respectively. El Paso indicates that it would receive the natural gas at receipt points on its system in the states of Oklahoma and Texas and would redeliver the natural gas at delivery points located in the states of Texas, California and Arizona.

El Paso states that transportation service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on July 19, 1989, as reported in Docket No. ST89–4483–000.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. National Fuel Gas Supply Corporation

[Docket No. CP89–2055–000]

September 14, 1989.

Take notice that on September 1, 1989, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP89–2055–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate sales tap facilities to atttach new residential customers of National Fuel Gas Distribution Corporation (Distribution) under its blanket authorization issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National proposes to construct sales tap facilities in Washington Township and North east Township, Erie County; Sigel Township, Jefferson County; Mineral Township, Venango County; Glade Township, Warren County; and Millstone Township, Elk County, Pennsylvania, in order to serve additional residential customers of Distribution.

It is stated that the peak and annual deliveries would be about 21 Mcf and 1,950 Mcf, respectively, and that the service would be made under National's Rate Schedule RQ.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. El Paso Natural Gas Company

[Docket No. CP89–2069–000]

September 14, 1989.

Take notice that on September 11, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request for authorization at Docket No. CP89–2069–000, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act to provide interruptible transportation service for TXO Gas Marketing Corporation (TXO Gas), under El Paso's blanket certificate issued at Docket No. CP88–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso requests authority to transport up to 52,750 MMBtu of natural gas per day for TXO Gas from any point of receipt on El Paso's system to delivery points at the borderline between the States of Arizona and California. El Paso states that the estimated daily and annual quantities would be 26,375 MMBtu and 9,626,875 MMBtu, respectively. El Paso further states that transportation service under § 284.223(a) commenced on August 1, 1989, as reported at Docket No. ST89–4567–000.

El Paso also states that no new facilities will be constructed to provide the proposed transportation service.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89–2074–00]

September 14, 1989.

Take notice that on September 11, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–2074–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport gas on an interruptible basis for Total Minatome Corporation (Minatome) under Southern's blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Minatome, a producer, pursuant to a service agreement dated July 6, 1989, under Southern's Rate Schedule IT. The service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. The service agreement provides for a maximum quantity of

100,000 MMBtu of gas on a peak day but Minatome anticipates requesting 3,000 MMBtu of gas on an average day, and accordingly, 1,095,000 MMBtu of gas on an annual basis. Southern proposes to receive the gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to various production area points in Louisiana and offshore Louisiana. Southern asserts that no new facilities are required to implement the proposed service.

Southern advises that service under § 284.223(a) commenced on July 12, 1989, as reported in Docket No. ST89–4474–000. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP89–2000–000]

September 14, 1989.

Take notice that on August 25, 1989, as supplemented on September 13, 1989, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2000–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization for an additional sales delivery point for Central Illinois Light Company (CILCO), under the authorization issued in Docket No. CP83–83–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to § 157.212(a) of the Commission's Regulations, it requests authorization to add the new delivery point, Newman West, to its G–2 sales agreement. Panhandle proposes to construct a two-inch hot tap, a skid mounted dual two-inch meter run and a dual one-inch pressure regulator/monitor loop. The location of the proposed Newman West will be section 5, Township 15 North, Range 14 West, Douglas County, Illinois. It is stated that Panhandle's sales to CILCO are made pursuant to a new service agreement dated July 28, 1989. Panhandle states that CILCO is an existing jurisdictional sales customer under Panhandle's G–2 Rate Schedule. Panhandle states that its peak day obligation and CILCO's peak day demand both before and after the installation of the new delivery point will be 218,180 Mcf. Likewise, it is stated that Panhandle's annual obligation and CILCO's annual contract demand before and after the installation of the new delivery point will be 49,480,840 Mcf. Panhandle adds that the installation of the new delivery point is not intended to change peak day or annual requirements. The new delivery point will assist CILCO in maintaining its operational requirements and providing its operational flexibility within existing daily and annual contract demand limits. Panhandle further states that it has sufficient capacity to accomplish deliveries to the Newman West point without detriment or disadvantage to its other customers.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–2034–000]

September 14, 1989.

Take notice that on August 30, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP89–2034–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to partically abandon firm sales entitlements under its Rate Schedule PS–1 and a certificate of public convenience and necessity authorizing an increase in its currently authorized firm sales entitlements under its Rate Schedules SS–1 and WPS–1 to Iowa-Illinois Gas and Electric Company (Iowa-Illinois), all as more fully set forth in the request which is open to public inspection.

Northern proposes to decrease its daily firm entitlement sales under Rate Schedule PS–1 for Iowa-Illinois' delivery to Fort Dodge, Iowa, from 1,806 Mcf to 1,252 Mcf, while increasing its daily firm sales entitlements under Rate Schedule SS–1 from 30 Mcf to 2,676 Mcf and under Rate Schedule WPS–1 from 0 Mcf to 2,341 Mcf in order to met anticipated firm loads for the 1989–1990 heating season. Northern also states that it has sufficient gas supply for the proposed increased sales entitlements and that no new facilities would be required in this request.

Comment date: October 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

11. Black Marlin Pipeline Company

[Docket No. CP89–2041–000]

September 14, 1989.

Take notice that on August 31, 1989, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–2041–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas and pre-granted abandonment authorization to abandon self-implementing transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Black Marlin requests authorization to provide firm and interruptible transportation services for shippers on a non-discriminatory basis under proposed Rate Schedules FTS and ITS, respectively. Black Marlin requests acceptance and approval of the new proposed Rate Schedules FTS and ITS along with new proposed General Terms and Conditions in the First Revised Volume No. 1 of Black Marlin's tariff. Black Marlin states that the tariff sheets also consolidate into one firm and one interruptible rate schedule all of Black Marlin's existing transportation services and would further apply to the transportation services performed under the blanket certificate requested herein under part 284 of the Commission's Regulations. Further, Black Marlin states that it would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations.

Comment date: October 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. Southern Natural Gas Company

[Docket No. CP89–2073–000]

September 14, 1989.

Take notice that on September 11, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–2073–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Total Minatome Corporation (Minatome), under Southern's blanket certificate issued in Docket No. CP89–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to transport, on an interruptible basis, up to a maximum of 150,000 MMBtu of natural gas per day for Minatome from receipt points located in Offshore Texas, Offshore Louisiana, Texas, Louisiana, Mississippi and Alabama to delivery points located in Louisiana and Mississippi. Southern anticipates transporting 10,000 MMBtu of natural gas on an average day and an annual volume of 3,650,000 MMBtu.

Southern states that the transportation of natural gas for Minatome commenced July 11, 1989, as reported in Docket No. ST89-4480-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88-316-000.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Eastern Transmission Corporation and Columbia Gas Transmission Corporation

[Docket No. CP89-2021-000]

September 14, 1989.

Take notice that on August 29, 1989, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252 and Columbia Gas Transmission Corporation (Columbia), Post Office Box 1273, Charleston, West Virginia 25325, (jointly referred to as Applicants) filed a joint application in Docket No. CP89-2021-000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authority to effect an assumption by UGI Corporation (UGI) of 50,000 Dt per day of Columbia's current sales entitlement from Texas Eastern including the related option for daily conversion of up to 50% of sales entitlements to firm transportation. The joint aplication involves no facilities, but requests a certificate of public convenience and necessity authorizing the sale for resale of natural gas by Texas Eastern to UGI, and an order permitting and approving abandonment of certain interdependent services by Texas Eastern and Columbia, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that there currently exists a service agreement dated March 10, 1986, between Texas Eastern and Columbia pursuant to which Texas Eastern renders a firm sales service to Columbia under Texas Eastern's Rate Schedule DCQ; and there currently exists various service agreements between Columbia and UGI pursuant to which Columbia renders sales and transportation service to UGI, including service under Columbia's Rate Schedules CDS, at twenty-three existing delivery points. At nine of the twenty-three delivery points at which UGI purchases and receives natural gas from Columbia, physical deliveries of natural gas are made directly to UGI by Texas Eastern for Columbia's account. Columbia does not own or owns only minimal facilities at these nine points.

Applicants state that Texas Eastern is implementing a contract restructuring program as contemplated in Docket Nos. RP85-177 and CP88-136, *et al.* and subsequently authorized by Commission order dated July 31, 1989. In response to this program, Columbia has submitted to Texas Eastern a nomination for service levels which will convert to firm transportation, under Texas Eastern's Rate Schedule FT-1, all sales quantities under the March 10, 1986 Sales Agreement, except the 50,000 dt per day for service under Rate Schedule CD-1 and 25,000 dt per day of associated standby firm transportation under Rate Schedule FT-1.

Texas Eastern, Columbia and UGI propose to adjust their contractual situation so that UGI will become a sales and transportation customer of Texas Eastern. Delivery points for this service by Texas Eastern to UGI will be the same nine delivery points where UGI presently receives deliveries from Texas Eastern of gas which it purchases from Columbia. UGI will assume Columbia's rights to firm sales of 50,000 dt/d and 25,000 dt/d of associated standby firm transportation service from Texas Eastern as contemplated by a Precedent Agreement dated August 11, 1989, between Columbia, UGI and Texas Eastern. UGI would become a sales and transportation customer of Texas Eastern. The Precedent Agreement contemplates the simultaneous termination and abandonment by Columbia of the corresponding part of its existing firm sales service to UGI and termination and abandonment by Texas Eastern of the corresponding firm sales and associated standby firm transportation service to Columbia.

Thus:

1. Texas Eastern requests authorization to abandon its firm sales authorization to Columbia under Rate Schedule CD-1 of 50,000 dt per day along with the related rights of Columbia to elect on a daily basis to have Texas Eastern provide standby firm transportation of up to 25,000 dt per day;

2. Columbia requests authorization to permit partial abandonment of its firm sales authorization to UGI by 50,000 dt per day under Rate Schedule CDS; and

3. Texas Eastern requests a certificate of public convenience and necessity authorizing the sale for resale of 50,000 dt per day as well as the contract standby firm transportation of 25,000 dt per day to UGI.

Applicant state that each request is entirely interdependent and none will proceed without the others.

Comment date: October 5, 1989, in accordance with Standard Paragraph F at the end of the notice.

14. Texas Gas Transmission Corporation

[Docket No. CP89-2060-000]

September 14, 1989.

Take notice that on September 6, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2060-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Eastern Stainless Corporation (Eastern) under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 3,500 MMBtu of natural gas per day for Eastern from receipt points located in Arkansas, Illinois, Indiana, Kentucky, Louisiana, offshore Louisiana, Ohio, Tennessee, Texas and offshore Texas to a delivery point located in Warren County, Ohio. Texas Gas anticipates transporting, on an average day 2,500 MMBtu and an annual volume of 900,000 MMBtu.

Texas Gas states that the transportation of natural gas for Eastern commenced July 26, 1989, as reported in ST89-4392-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88-686-000.

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Equitrans, Inc.

[Docket No. CP89-2071-000]

September 14, 1989.

Take notice that on September 11, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-2071-000 a request pursuant to §§ 157.205 and 284.223 of the

Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Consolidated Fuel Corporation (Consolidated) under its blanket certificate issued in Docket No. CP86–553 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Equitrans states that it would receive the gas for Consolidated at various existing points of receipt in West Virginia and Pennsylvania, and would redeliver the gas at various existing delivery points located in Pennsylvania.

Equitrans further states that the maximum daily, average daily and annual quantities that it would transport for Consolidated would be 19,600 Mcf of natural gas, 5,014 Mcf of natural gas and 1,830,110 Mcf of natural gas, respectively.

Equitrans indicates that in a filing made with the Commission in Docket No. ST89–4524, it reported that transportation service for Consolidated commenced on August 1, 1989 under the 120–day automatic authorization provisions of § 284.223(a).

Comment date: October 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Kern River Gas Transmission Company

[Docket Nos. CP89–2047–000 & CP89–2048–000]

September 14, 1989.

Take notice that on September 1, 1989, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas, 77252–2511, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, and subpart E of Part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), filed in Docket No. CP89–2048–000 an application for an optional certificate of public convenience and necessity authorizing it to: (1) Construct, own, and operate an interstate natural gas pipeline system commencing at a proposed point of interconnection with the facilities of Northwest Pipeline Corporation (Northwest) near Opal, Wyoming, and extending southwestward through a portion of Wyoming and through the states of Utah and Nevada to terminal points near Bakersfield, California; and (2) abandon all or any part of the authorized facilities or services Kern River determines are no longer needed upon expiration of the underlying contracts. In Docket No. CP89–2047–000, under subpart F of part 157, Kern River requests blanket authority to construct, own and operate appurtenant facilities as necessary to render the authorized service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kern River states that its Application is intended to implement provisions of a settlement agreement with Mojave Pipeline Company (Mojave) and Southern California Gas Company (SoCal). The Application provides that Kern River will jointly own with Mojave, as tenants in common, the portion of the pipeline system extending from a point near Daggett, California to the terminal points in Kern County. Kern River states that it has, in connection with this Application, concurrently filed an application pursuant to 18 CFR 284.221 for a blanket certificate of public convenience and necessity authorizing self-implementing transportation for others on a non-discriminatory basis.

Kern River states that this application is not intended to supercede in any way Kern River's pending application in Docket No. CP85–552. If the Commission determines that this application and Kern River's previously-filed application cannot both remain pending, Kern River requests that the Commission give Kern River an opportunity to withdraw either this, or its earlier application, in order to permit Kern River to determine which proposal can best satisfy the needs of its shippers.

Kern river is a Texas general partnership and that its principal place of business is Houston, Texas. It is expalined that the partnership is owned equally by Kern River Corporation, an affiliate of Tenneco Inc., and Williams Western Pipeline Company, an affiliate of The Williams Companies.

Kern River states that the purpose of the pipeline project is to provide an efficient natural gas transmission system for transportation of gas for contract shippers, a major portion of which are anticipated to be heavy oil producers in the Kern County, California area, transporting gas for use in their enhanced oil recovery (EOR) and cogeneration (Cogen) operations.

Kern River states that, based upon discussions with and information obtained from prospective shippers and its own studies, it is satisfied that there is at least an initial market need, not currently capable of being served, of 700 MMcf per day of gas to support its proposed pipeline system. Kern River notes that its pipeline system will be available to all shippers who desire transportation service and who make the necessary arrangements for the delivery of gas to Kern River's pipeline. The proposed pipeline will be well-situated to provide shippers with economical access to abundant sources of reliable gas supplies from the Rocky Mountain Overthrust area, from Canada, and from other sources.

Kern River proposes to construct the following pipeline facilities: (1) 676.2 miles of 36-inch outer diameter (O.D.) pipeline beginning at a point of interconnection with Northwest's mainline near Opal, Wyoming, approximately 60 miles north of the Utah/Wyoming border, and extending southwestward through Wyoming and across the States of Utah and Nevada, utilizing the "Wasatch Variation" and the "North Las Vegas Variation" to a point near Daggett, California, where it will interconnect with Mojave's facilities; (2) 121.5 miles of 42-inch O.D. pipeline which will be jointly owned with Mojave, extending from Daggett to a point of bifurcation into two laterials; (3) 104 miles of 36-inch O.D. and 30-inch O.D. pipeline comprising two lines which will be jointly owned with Mojave and which will extend to terminal points in the Kern County oil fields; (4) approximately 35,700 site-rated horsepower of compression at three compressor stations, one at the interconnection with Northwest at milespost 0, one in central Utah at milepost 279 and one in southern Nevada at milepost 568; and (5) taps, valves, metering and other appurtenant facilities.

The proposed system will be capable of delivering 700,000 Mcf per day at the point of interconnection with Mojave's system. The commonly-owned system will be capable of receiving up to 700 MMcf/d from Kern River's system and up to 400 MMcf/d from Mojave's system. Each lateral line will be capable of delivering 400 MMcf/d at its terminus. In addition, the system will have a delivery point approximately 12.5 miles west of the bifurcation point which will be capable of delivering up to 300 MMcf/d at a proposed point of interconnection with the facilities of SoCal.

Kern River proposes a transportation service only. Kern River proposes to transport gas for third-party shippers, up to the full capacity of its proposed system, which is designed to be approximately 700 MMcf per day. Applicant has concurrently filed in Docket No. CP89–2047 an application for a blanket certificate pursuant to subpart G of part 284 of the Commission's Regulations, to authorize non-discriminatory, self-implementing transportation for others on its proposed system.

Kern River's proposed tariff incorporates two rate schedules. A firm transportation service pursuant to Rate Schedule KRF–1, a two-part rate, including a maximum reservation rate and Kern River's Rate Schedule KRI–1, applicable to interruptible service, which is a one-part volumetric rate. All rates will be discountable between stated maximum and minimum levels.

The total direct and indirect captial cost of Kern River's proposed project, including line pact, and including Kern River's share of the cost of the commonly-owned facilities, is estimated to be $853,201,000 in 1989 dollars. Kern River proposed to finance its project through a combination of partners' equity contributions and debt, with the initial capitalization ratio of 70 percent debt, 30 percent equity.

The route and facilities described in its Application have, with only insignificant exceptions, already been the subject of extensive environmental review in the proceedings in Mojave Pipeline Co., Docket No. CP85–437–000, et al., including the preparation of the five-volume Mojave-Kern River-El Dorado Natural Gas Pipeline Projects Final Environmental Impact Report/ Statement (FEIS), and the two-volume Supplement to the FEIS, and the proposed system has been found by the Commission to be capable of construction in an environmentally acceptable fashion. Applicant requests waiver of the provisions of 18 CFR 157.206(d) to the extent necessary.

Comment date: October 5, 1989, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[Docket No. TM90–1–20–001]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff; Correction of Tariff Sheet

September 15, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 11, 1989, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Proposed to be effective October 1, 1989. Substitute Eighth Revised Sheet No. 221.

Algonquin states that it is filing Substitute Eighth Revised Sheet No. 221 as a direct replacement for Eighth Revised Sheet No. 221 as contained in Algonquin's September 1, 1989 filing in the instant Docket which incorporated the Commission's revised Annual Charge Adjustment Surcharge. In order to correct a typographical error in Eighth Revised Sheet No. 221 which sets forth a demand rate of $0.0328 for Rate Schedule T–1, Algonquin is filing Substitute Eighth Revised Sheet No. 221, which contains the proper rate of $0.0330 per MMBtu.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 22, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–22322 Filed 9–20–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–2068–000]

ANR Pipeline Co.; Application

September 15, 1989.

Take notice that on September 8, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–2068–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a total of 552,201 dt Contract Demand Maximum Daily Quantity (MDQ) and 69,207,351 dt of Annual Contract Quantity (ACQ) relative to eighteen of its firm sales customers under Rate Schedules CD–1, MC–1 and SGS–1 of Original Volume No. 1 of its FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that a Stipulation and Agreement (S&A) filed August 16, 1989 in Docket Nos. RP86–169, RP86–105 and RP87–25, incorporates MDQ and ACQ levels which are reduced to levels nominated by the eighteen firm sales customers. ANR requests that at the same time that the Commission approves such S&A, it also issued an order authorizing ANR to permanently

abandon sales service in excess of the sales MDQ and ACQ levels thus renominated by ANR's sales customers. It is also requested that such abandonment and reduction be effective as of October 31, 1989, contingent upon the Commission's acceptance of the S&A without unacceptable conditions.

According to ANR, the following schedules reflect each of the eighteen customer's existing and renominated firm sales entitlements.

SCHEDULE I

Company	Current level MDQ	Renominated MDQ	Increase (decreased)
Fountaintown Gas Company	5,446	4,500	(946)
Great River Gas Company	12,886	10,030	(2,856)
Illinois Power Company	13,946	8,000	(5,964)
Indiana Gas Company, Inc.	2,614	2,614	0
Iowa Electric Light & Power Co	7,683	6,610	(1,073)
Iowa Southern Utilities Co	52,702	40,000	(12,702)
Michigan Consolidated Gas Co	1,284,443	856,000	(428,443)
Madison Gas & Electric Co	129,150	129,150	0
Michigan Gas Utilities Co	125,220	106,437	(18,783)
Midwest Gas	15,673	9,471	(6,202)
Ohio Gas Co	2,602	2,200	(402)
Ohio Valley Gas Corp	12,500	9,500	(3,000)
Paris-Henry County Pub. Util	8,200	6,200	(2,000)
St. Joseph Light & Power Co	9,741	9,741	0
West Ohio Gas Co	9,107	9,107	0
Wisconsin Gas Co	665,000	665,000	0
Wisconsin Power & Light Co	144,510	120,000	(24,510)
Wisconsin Public Service Corp	295,320	250,000	(45,320)
TOTAL	2,796,761	2,244,560	(552,201)

SCHEDULE II

Company	Current level ACQ	Renominated ACQ	Increase (decrease)
Fountaintown Gas Company	775,000	450,000	(325,000)
Great River Gas Company	750,000	557,175	(195,825)
Illinois Power Company	1,050,000	1,050,000	0
Indiana Gas Company, Inc.	200,000	150,000	(50,000)
Iowa Electric Light & Power Co	751,640	638,894	(112,746)
Iowa Southern Utilities Co	3,845,000	2,900,000	(945,600)
Michigan Consolidated Gas Co	125,000,000	100,000,000	(25,000,000)
Madison Gas & Electric Co	15,500,000	13,500,000	(2,000,000
Michigan Gas Utilities Co	13,320,000	11,322,000	(1,998,000)
Midwest Gas	1,200,000	1,024,320	(175,680)
Ohio Gas Co	150,000	127,500	(22,500)
Ohio Valley Gas Corp	820,000	820,000	0
Paris-Henry County Pub. Util	900,000	800,000	(100,000)
St. Joseph Light & Power Co	2,150,000	1,500,000	(650,000)
West Ohio Gas Co	1,000,000	500,000	(500,000)
Wisconsin Gas Co	77,500,000	54,400,000	(23,100,000)
Wisconsin Power & Light Co	17,510,000	11,475,000	(6,035,000)
Wisconsin Public Service Corp	35,000,000	27,000,000	(8,000,000)
TOTAL	297,422,240	228,214,889	(69,207,351)

Since the reduced levels of MDQ's and ACQ's reflected herein represent customer nominations, ANR states that the abandonment sought herein comports with the precepts of public convenience and necessity. Therefore, ANR requests that an order permitting and approving abandonment be issued with respect to the eighteen sales customers that have nominated reduced sales MDQ and ACQ levels.

Any person desiring to make any protest with reference to said application should on or before September 22, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 (FR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-22323 Filed 9-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Change in FERC Gas Tariff

September 15, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on September 11, 1989 certain revised tariff sheets included in appendix A attached to the filing. Such revised sheets are proposed to be effective November 1, 1989.

ESNG states the filing is its annual PGA filing pursuant to § 154.305 of the Commission's regulations and section 21 of its FERC Gas Tariff, Original Volume No. 1. The effect of the filing is to increase commodity rates by $0.71 per dekatherm (dt), increase D-1 demand rates by $4.2175 per dt, and increase D-2 demand rates by $0.0824 per dt over the new base tariff rates filed by ESNG in Docket No. RP89-164. These base tariff rates, which are filed on May 1, 1989, were accepted and suspended until November 1, 1989, subject to refund.

ESNG further states the above increases are the result of (1) an increase in the current purchased gas cost adjustment ($.7515, $3.8224, and $.1171 per dt in the commodity, D-1, and D-2, rates respectively), (2) the implementation of new Deferred Adjustments to be effective during the twelve-month period commencing November 1, 1989 ($0.0353), $0.3951, and ($0.0347) per dt in the commodity, D-1, and D-2 rates, respectively, and (3) a decrease of .02 cents per dt in FERC's Annual Charges Assessment (ACA) to the commodity rates only, all as explained in additional detail in the subject filing.

ESNG states that the current purchased gas cost adjustment have been developed using a quarterly estimate of gas supply and requirements and the latest known pipeline supplier rates on file with the Commission as of the date of its filing. It should be noted that ESNG's new base tariff rates mentioned above reflect the implementation of Transco's Stipulation and Agreement (S&A) as filed on April 3, 1989 in Docket No. RP88-68-000, *et al.* Transco's S&A was rejected by the Commission by order dated July 19, 1989. Although the S&A has been modified and was refiled on August 7, 1989, the Commission has not yet acted on it. Transco's S&A provides for an interm 100% conversion from CD sales service to firm transportation service, *i.e.*, ESNG would be permitted to purchase all of its gas supplies from various third parties and have such supplies transported to its city gate from Transco. Absent approval of the S&A however, ESNG's access to third-party gas supply will be limited.

Moreover, ESNG anticipates that, for the quarterly projection period covered by the PGA filing (November 1989 through January 1990), there will be an interruptible transportation service (IT) available of Transco's system, which will further restrict access to third-party gas supply. The only services projected to be available to ESNG are its permanently converted firm transportation service (FT) and sales service under Transco's CD-3 rate schedule in addition to service from Columbia under its CDS rate schedule and storage service from both Transco and Columbia.

Furthermore, ESNG states that it expects both Transco and Columbia to file, on or before September 29, 1989 revised tariff sheets to comply with their respective Quarterly PGA effective date of November 1, 1989. ESNG, therefore, anticipates a possible revision to its current adjustment as contemplated by § 054.305(c) of the Commission's regulations.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions of protests should be filed on or before October 3, 1989. 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. 89-22324 Filed 9-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-216-000 and TA90-1-38-000]

Ringwood Gathering Co.; Request for Waiver

September 15, 1989.

Take notice that on August 4, 1989, and September 1, 1989, Ringwood Gathering Company, (Ringwood) filed a request for a waiver of the requirement in § 154.305(a) of the Commission's regulations that its annual purchased gas adjustment (PGA) effective date.

On May 1, 1987, Williams reduced its purchases from Ringwood to 5,000 Mcf per day and indicated that there would be no increase in purchases above that level. Williams continues to take 5,000 Mcf per day only as a result of Ringwood's agreement to provide that supply at a delivered cost not exceeding $1.999 per Mcf.

Since Ringwood's unit cost of service, excluding gas costs, amounts to $.372 per Mcf, the weighted average cost of purchased gas must be kept below approximately $1.618 per Mcf.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before October 4, 1989. 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. 89-22325 Filed 9-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-82-000 and RP84-82-001]

Tarpon Transmission Co.; Informal Settlement Conference

September 15, 1989.

Take notice that on October 10, 1989, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, there will be an informal settlement conference to explore the potential resolution of the issues contained in the above-captioned

proceeding. It is the intention of the parties to discuss settlement of all outstanding issues. The parties will be notified of the specific location of the conference.

Any party, as defined by 18 CFR 385.102(c) (1989), is invited to attend. Any person wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations prior to the conference (18 CFR 385.214 (1989)).

For further information contact Russell B. Mamone, (202) 357-5744.

Lois D. Cashell,

Secretary.

[FR Doc. 89-22326 Filed 9-20-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. AM611 PA; FRL 3649-2]

Deficiency for the Pennsylvania State Implementation Plan; Generic Bubble and Banking Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of deficiency.

SUMMARY: On May 26, 1988, Pennsylvania received a SIP call which identified, among other regulations, Pennsylvania's regulations for generic bubbles (§ 129.53) and banking (§ 127.67) as deficient. A SIP call is a finding made by EPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) in which EPA identifies a SIP to be inadequate to attain and maintain the National Ambient Air Quality Standard (NAAQS). This notice reiterates and explains the deficiencies in Pennsylvania's generic bubble and banking regulations which were previously identified in the June 14, 1988 follow-up SIP call letter and referenced in the September 7, 1988 Federal Register notice which informed the public that SIP calls had been made in certain States. In addition, this notice serves as a SIP call of the generic bubble and banking provisions in Pennsylvania's SIP for all counties in Pennsylvania not previously identified in the May 26, 1988 SIP call since these provisions are applicable statewide and are sufficiently deficient to warrant it. The effect of this action will be to reiterate Pennsylvania's previous obligation to adhere to its schedule to correct these regulations, among other regulations cited in the June 14, 1988 letter, and to impose this schedule for correction of the generic bubble and banking regulations as it applies to all counties in Pennsylvania.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Cyntia H. Stahl, (215) 597-9337.

SUPPLEMENTARY INFORMATION: On December 4, 1986, EPA published a final policy statement on the emissions trading (ET) policy and the banking and use of emission reduction credits (51 FR 43814). In this ET policy statement, EPA indicated that it would notify States which had deficient generic rules and require the States to correct those rules according to a schedule established in the notification.

On May 26, 1988, EPA issued State Implementation Plan (SIP) calls for States around the nation. Pennsylvania was one of the States which received a SIP call. In the Pennsylvania SIP call follow-up letter of June 14, 1988, EPA specifically identified Pennsylvania's Regulations for Alternative Standards, § 129.53, and Conditions for Banking of Emission Offsets, § 127.67, as deficient, listed the nature of those deficiencies and indicated what corrective action must be taken. The May 26, 1988 SIP call letter required that Pennsylvania submit a workplan within 60 days of the SIP call and that the completion date to correct deficiencies (among other activities) should not exceed one year from the date of the workplan submittal. This notice reaffirms the schedule agreed to by Pennsylvania for the May 26, 1988 SIP call areas and, since the same regulations are applicable statewide, establishes the same schedule for the remaining counties in Pennsylvania.

This notice additionally identifies all the remaining counties in Pennsylvania as having deficient regulations with regard to generic bubbles and banking. These regulations are the same as those identified in the June 14, 1988 follow-up SIP call letter because Pennsylvania applies these regulations statewide. These remaining counties in Pennsylvania are as follows:

Adams	Elk
Bedford	Erie
Berks	Forest
Blair	Franklin
Bradford	Fulton
Cambria	Huntingdon
Cameron	Indiana
Centre	Jefferson
Clarion	Juniata
Clearfield	Lackawanna
Clinton	Lancaster
Columbia	Lawrence
Crawford	Lebanon
Cumberland	Luzerne
Dauphin	Lycoming
McKean	Somerset
Mercer	Sullivan
Mifflin	Susquehanna
Monroe	Tioga
Montour	Union
Northumberland	Venango
Perry	Warren
Pike	Wayne
Potter	Wyoming
Schuykill	York
Snyder	

Generic Bubble (Section 129.53)

Pennsylvania's generic "bubble" or emissions trading regulation is deficient in three major aspects: (a) Baseline, (b) involvement of new sources, and (c) adequate public notice and opportunity for public and EPA comment.

(a) Baseline

Pennsylvania's equation to determine allowable emissions from a surface coating or graphic arts source does not require calculations to be performed on a solids basis, does not require the use of lower of actual or allowable factors for variables A, B, and C, and does not provide for a minimum of 20 percent emission reduction beyond the baseline. The equation is as follows:

$E = (A1)(B1) + (A2)(B2) + \ldots\ldots (An)(Bn) + C1 + C2 + \ldots Cn$

Where E = the allowable emissions from the surface coating or graphic arts facility in pounds per hour.

A1,2,. . . . .,n = the allowable emission rate for each surface coating process as determined in § 129.52 of this title (Pennsylvania Title 25, sections relating to surface coating processes) in pounds per gallon of coating, excluding water.

B1,2,. . . . .,n = the amount of coating material in gallons per hour, excluding water, which would be used when using the complying coating.

C1,2,. . . . .,n = the allowable emission rate in pounds per hour from each graphic arts process based on the specific limitation applied in § 129.67(b) and (c) of this title (Pennsylvania Title 25, sections relating to graphic arts systems).

Further, the Pennsylvania generic bubble equation is incorrect and does not adequately define the variables used. Each of the deficient elements mentioned is discussed in more detail below.

1. Solids Basis Calculations

EPA policy requires that calculations of VOC emissions be done on a solids basis. Calculations which are performed on a solids basis permit the emission reduction credits to be actual credits and not paper credits which actually reflect only a reduction of the amount of coating which is applied. In addition, the ET policy requires that emission reductions be surplus, permanent, quantifiable, and enforceable. Without a solids basis calculation, none of these

criteria are met. Although the above equation does no prohibit the use of a solids calculation, it also does not require it; and the equivalent solids standard is not contained in the regulation. Therefore, the use of the above equation, as defined, is not consistent with EPA's general policy on VOC calculations or the ET policy, both of which interpret and apply the requirements of section 110 of part D of the Clean Air Act (the Act).

2. Lower of Actual or Allowable Factors

Calculation of emissions is typically the product of three factors: emission rate, production and capacity. In accordance with the ET policy on the calculation of baseline, each of the three variables, emission rate (ER), production (H) and capacity (CU), should represent the lower of historical actual or historical allowable amounts. Variable B in Pennsylvania's equation appears to be a combination of production and capacity factors. While it is permissible to combine the production and capacity into one factor (H×CU), it is still necessary to clearly define that factor by reference to its separate components. Generally, it is clearer to define production and capacity factors separately. The following discussion will treat each of the three baseline factors separately since combining factors can be done later at any time once the individual components of these factors are clearly and correctly defined.

Pennsylvania's treatment of emission rate, production, and capacity are contained in variables A and B of the generic bubble formula. The emission rate, ER, should specify the lower of actual or allowable gallons of solids per hour to be used for relevant baseline years for the reasons described above. Production, H, should represent the lower of the number of hours of actual or allowable operation during a representative time period (usually the previous two years). Pennsylvania's regulation does not require the use of a lower of actual or allowable baseline for production and does not explicitly state what variables A and B represent, particularly with regard to defining the time period or whether actual or allowable values are to be used. Therefore, many different evaluators could arrive at different conclusions as to what these variables (and also variable E) would represent. This type of calculation is not consistent with the ET policy and with section 110 of the Clean Air Act.

Pennsylvania's variable C is the only treatment of emission rate, production, and capacity applicable to graphic arts sources. This variable has all the problems identified above for variables A and B (applicable to all sources other than the graphic arts). Further, the equation appears to permit the adding of variable C to variables A and B which would increase calculated allowable or actual emissions and provide an inflated value for use as "credit" in the equation. A further problem with variable C relates to its reliance on graphic arts standards which are expressed as a percentage emission reduction from baseline, rather than an emission standard, without converting the expression to emission standards.

Section 129.67, which only pertains to graphic arts sources, states that a source may comply in one of three ways; (1) Use a waterborne ink of 75 percent or greater percentage of water, (2) use an ink of 60 percent or more volume percent solids, or (3) install a piece of control equipment which destroys at least 90 percent of the volatiles captured and provide an overall reduction of 60 percent to 75 percent, depending on the type of press that is controlled. The graphic arts standard alternative to waterborne or high solids inks is expresed as a percentage reduction from an unspecified baseline and testing is not required to determine the actual reductions obtained. If a source chooses to comply without the use of any control equipment, the credit can be calculated using, as a baseline, inks which contain at least 75 percent or 60 percent solids, depending on the ink. If, however, a source requires credit from any control equipment, the Pennsylvania regulation does not require the performance of a capture efficiency test in order to determine the overall (quantifiable) reduction. Overall control device efficiency is defined as a product of the capture efficiency and destruction efficiency. Capture efficiency is the amount of emissions which reach the control device divided by the total emissions entering the system (i.e. coating line). Destruction efficiency is the amount of emissions which are destroyed by the control device divided by the emissions which enter that device. The ET policy requires that emission reduction credits be surplus, permanent, quantifiable, and enforceable. Unless actual testing is performed, the allowable emissions and therefore, emission credits are not quantifiable and cannot be determined to be surplus, permanent or enforceable. Therefore, this regulation is also inadequate in this respect.

3. Minimum Additional 20 Percent Emission Reduction

The ET policy requires that generic VOC trades must assure that there is no net increase in the applicable baseline and in nonattainment areas which lack approved demonstrations (and by implication, SIP call areas), require at least an additional 20 percent emissions reduction beyond the baseline. An emissions reduction of greater than 20 percent baseline is required for generic bubble rules in such areas if the air qualify analysis indicates that the overall emission reduction needed from stationary sources is greater than 20 percent (51 FR 43852, col. 2). Since the baseline under Pennsylvania's generic rule does not require the minimum additional 20 percent emissions reduction in SIP call areas, the generic rule is deficient with respect to how baseline is to be determined for this reason as well. With respect to this particular deficiency, instead of adding the additional emission reduction requirement of 20 percent or greater to the regulation, Pennsylvania may choose to relinquish its authority to approve any bubbles under its generic rule until the nonattainment areas lacking approved demonstrations (including those subject to SIP calls) have federally-approved SIPs and clearly state this in the body of the regulation. If Pennsylvania chooses to retain its generic authority and to include the minimum 20 percent additional reduction requirement, it must also provide for certain additional state assurances for bubbles in nonattainment areas lacking demonstrations (51 FR 43853, col. 1).

(b) New Sources

The ET policy does not allow existing sources to provide credits for new sources to meet applicable new source requirements. Pennsylvania's regulation does not clearly prevent such activity; therefore, in order to be consistent with the ET policy, Pennsylvania must modify its generic rule to specify that any source subject to other non-RACT programs, such as Prevention of Significant Deterioration (PSD), New Source Review (NSR), or New Source Performance Standards (NSPS), cannot use existing source credits to meet its applicable new source standard.

(c) Notification Requirements

Pennsylvania's rule does not require the notification which the final ET policy specifies is required. According to the ET policy, Pennsylvania must give EPA a copy of the public notice, the proposed bubble, and any supporting documents at the beginning of the comment period to allow EPA the chance to comment. In addition, Pennsylvania must give EPA a copy of the approved bubble and any comments which were received during the coment period. Currently, Pennsylvania is required to provide public notice when the bubble is approved. However, EPA has not generally been notified when a

bubble is approved under its generic rule. Pennsylvania must modify its generic rule to meet the requirements of the final ET policy.

Banking and Offsets (Section 127.67)

Pennsylvania's banking regulation does not meet the December 4, 1986 ET policy because, under the Pennsylvania regulation, banked emissions are not required to be surplus, enforceable, permanent, and quantifiable. The banking regulation must meet all the requirements specified in that ET policy including such requirements as specifying how emission credits are to be calculated and specifying all the relevant data needed to perform this calculation. Recordkeeping provisions need to be required and clearly stated and a formal system of recording emission credit/debit transactions, must be established. Clear records of ownership, available for public inspection must be kept and updated. Provisions must be added to make emission credit deposits state enforceable at the time of deposit and to make emission credit withdrawals both state and federally enforceable at the time of use. As stated in the December 4, 1986 ET policy, the use of emission credits obtained from the emissions bank must meet the requirements of the applicable program(s), whether bubbling Reasonably Available Control Technology (RACT) sources or offsetting emissions for PSD or NSR purposes, at the time it is to be used. The State must allow for possible adjustments to be banked emission credits, for air quality management purposes, by stating the conditions under which banked emission credits can be altered or eliminated. The existence of banked emission credits cannot interfere with the State's ability to obtain additional emission reductions to attain or maintain ambient air quality standards. All external offsets must be submitted as SIP revisions. This latter requirement was stated in the approval of the Pennsylvania banking/offset regulation (45 FR 33621, col. 2).

Schedules

EPA's SIP call required that Pennsylvania submit a workplan by August 15, 1988 indicating the schedule for completing, among other activities, correction of deficiencies including those listed for the generic bubble and banking regulations in the Pennsylvania SIP. The schedule was not to exceed one year from the date of the workplan submittal. On August 11, 1988, Pennsylvania submitted a workplan with a schedule to submit a final draft to correct all identified SIP deficiencies by September 30, 1989 and to adopt those new changes by March 31, 1990. EPA agreed to this extended schedule because of the lengthy rulemaking process in Pennsylvania. This notice reiterates the obligations and schedule which Pennsylvania agreed to meet in its August 11, 1988 workplan. This notice also in no way relieves Pennsylvania of its responsibility to correct all the other SIP deficiencies identified in the SIP call on the agreed schedule. Additionally, since Pennsylvania's regulations are statewide, the Commonwealth is expected to meet its deadline of September 30, 1989 for submittal of draft changes to the §§ 129.53 (generic bubbles) and 127.67 (banking and offsets) for all counties, including those not identified in the May 26, 1988 SIP call but now identified in this notice.

As a result of today's notice, Pennsylvania is formally notified that EPA may begin the process of rescinding approval of, among other provisions, the generic bubble and banking provisions in the Pennsylvania SIP if the September 30, 1989 milestone date for draft submittals is not met. The draft submittal is expected to adequately address the deficiencies identified in the affected regulations. The consequence of rescinding approval of the Pennsylvania regulations will be to remove Pennsylvania's authority to approve generic bubble and banking transactions without prior EPA approval. Pennsylvania would then be required to submit all such actions to EPA as revisions to its SIP.

Conclusion

Through the May 26, 1988 SIP call, Pennsylvania was formally notified that its generic bubble and banking regulations were deficient and needed to be corrected within one year. These corrections were to have been made for all regulations identified as deficient, including those with statewide applicability, such as the generic bubble and banking regulations. On June 25, 1989, a draft of the proposed changes to the Pennsylvania generic bubble regulation was submitted by Pennsylvania.[1] This submittal and any supplment to it will be evaluated against deficiencies set forth in the June 14, 1988 SIP call follow-up letter and this Notice. Pennsylvania has not yet submitted any proposed changes to the banking and offset provisions of its SIP.

EPA is, with this Notice, reiterating and clarifying the deficiencies in Pennsylvania's generic bubble and banking provisions that were previously brought to the Commonwealth's attention with the May 26, 1988 SIP call and the June 14, 1988 SIP call follow-up letter. In addition, EPA is also making a SIP call, with regard to the generic bubble and banking regulations, for all the remaining counties in Pennsylvania which did not receive a SIP call on May 26, 1988. The public was also previously informed about EPA's SIP calls in a September 7, 1988 Federal Register notice (53 FR 34500); although the specific deficiencies were referenced rather than listed in the notice itself. While EPA considers the May 26, 1988 SIP calls formal notification, this notice provides further notice of the specific deficiencies for those May 26, 1988 SIP call areas and makes an official SIP call for all the remaining counties in Pennsylvania with respect to the generic bubble and banking rules. For emissions trades or "bubbles" granted by Pennsylvania under the deficient regulation, EPA can make a finding of SIP deficiency and, if the individual bubbles are not revised in accordance with the Act, EPA can rescind SIP approval for any such bubble.

EPA anticipates making SIP calls for other areas in the nation where nonattainment has been recently monitored as well as for those areas where deficient statewide regulations apply and the State has not committed to removing the deficiencies. Therefore, this action is consistent with other EPA actions.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: September 15, 1989.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 89–22289 Filed 9–20–89; 8:45 am]

BILLING CODE 6560–50–M

[1] Pennsylvania's draft submittal proposes deleting the entire generic bubble rule with the exception of the generic authority to grant such bubbles. In addition, the proposal adds language which references the general requirements for generic bubbles in the December 4, 1986 ET policy.

FEDERAL MARITIME COMMISSION

Port of Oakland Terminal Agreement et al; 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 10220. 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.: 224–010974–003

Title: Port of Oakland Terminal Agreement
Parties: Port of Oakland (Port) International Transportation Services, Inc. (ITS)
Synopsis: The Agreement amends the basic agreement (Agreement No. 224–010974) to reduce ITS's retention of gross dockage and wharfage tariff revenues which accrue from terminal use agreement users of the assigned premises from 25 percent to 23 percent. The Agreement also reduces ITS's minimum annual crane guarantee from $600,000 to $550,000, effective on the date of this Agreement.

Agreement No.: 224–200287

Title: Port of Oakland Terminal Agreement
Parties: Port of Oakland (Port) Mitsui O.S.K. Lines, Limited (Mitsui)
Synopsis: The Agreement provides for a two-year nonexclusive preferential assignment of certain premises at Berth 35 of the Port's Seventh Street Marine Terminal to Mitsui to be used as a containership terminal. Mitsui may extend the term of the assignment for two additional periods of one year each. Mitsui will pay the Port 90% of tariff dockage rates under the Port's terminal tariff subject to a minimum of 50 annual vessel calls at the Port. Mitsui will also pay 65% of wharfage and 100% of wharf demurrage, wharf storage and all other charges which accrue under the Port's terminal tariff, subject to a minimum annual tonnage throughput of 300,000 revenue tons after which Mitsui will receive an additional reduction of tariff charges for wharfage for the remainder of such contract year.

Agreement No.: 224–200286

Title: Port of Tacoma Terminal Agreement
Parties: Port of Tacoma (Port) Maersk, Inc. (MI)
Synopsis: The Agreement provides for MI's lease of 29 acres of land adjacent to Pier 3, Port of Tacoma. It also provides for MI's preferential non-exclusive use of the Port's 950 foot Pier 3 and three container cranes. In addition, a fourth container crane will be available on the same basis for up to 26 consecutive hours of each week.

Agreement No.: 225–200285

Title: City of Los Angeles Terminal Agreement
Parties: City of Los Angeles (City) Marine Terminal Corp. (MTC)
Synopsis: The Agreement allows the storage of stevedoring equipment in an area designated as Berths 156 and 157 at the Port of Los Angeles. MTC will pay the city $8,957.00 per month as rental for the use of the premises.

Agreement No.: 224–200284

Title: Georgia Ports Authority Terminal Agreement
Parties: Georgia Ports Authority (Port) United Arab Shipping Company (United Arab)
Synopsis: The Agreement provides that the Port will perform, for the benefit of the United Arab, certain container handling services at Savannah, Georgia for a consolidated rate based upon an agreed upon unit rate per container. The Port shall bill United Arab for all other services provided by it at tariff rates published in its Terminal Tariff No. 1–F. Any changes in the consolidated rates shall be submitted to this Commission in advance of the effective date of said change.

By order of the Federal Maritime Commission.

Dated: September 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–22237 Filed 9–20–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

John P. English; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

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 5, 1989.

A Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Arkard Street, Dallas, Texas 75222:

1. *John P. English*, Claude, Texas; to acquire 2.04 percent of the voting shares of First Caprock Bancshares, Inc., Claude, Texas, and thereby indirectly acquire First National Bank of Claude, Claude, Texas.

Board of Governors of the Federal Reserve System, September 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–22254 Filed 9–20–89; 8:45 am]

BILLING CODE 6210–01–M

First City, Inc., 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 writting 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 13, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First City, Inc.*, Memphis, Tennessee; to become a bank holding company upon the conversion of its wholly-owned subsidiary, First City, a Federal Savings Bank, Memphis, Tennessee, to a national bank.

2. *Southside Bancshares Corp.*, St. Louis, Missouri; to acquire at least 99.2 percent of the voting shares of Farmers and Merchants Bank of Berger, Berger, Missouri.

Board of Governors of the Federal Reserve System, September 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–22255 Filed 9–20–89; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0023, Surplus Personal Property Mailing List Application. This information is provided by persons who wish to have their names placed on the Surplus Personal Property Bidders Mailing List maintained by GSA Regional Sales Activities.

AGENCY: Federal Supply Service (FBP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden: Respondents: 25,000; annual responses: 1.0; average hours per response: 0.0580; burden hours: 1,450.

FOR FURTHER INFORMATION CONTACT: Ed Hochard, (703) 557–0814.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 535–7691, or by faxing your request to (202) 786–9027.

Dated: September 11, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–22261 Filed 9–20–89; 8:45 am]

BILLING CODE 6820–24–M

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0060, Building Service Contractor Work Report. This information collection requires guard contractors to submit sign-in, sign-out logs as evidence of the hours that employees have worked.

AGENCY: Public Buildings Service (PPB), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW, Washington, DC 20405.

Annual Reporting Burden: Respondents: 190; annual responses: 52.0; average hours per response: 0.5000; burden hours: 4,940.

FOR FURTHER INFORMATION CONTACT: Jewell D. Wilson, (202) 566–1811.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 535–7691, or by faxing your request to (202) 786–9027.

Dated: September 12, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–22262 Filed 9–20–89; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Advisory Committee for Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET)

Time and Date:
8:00 a.m.–4:30 p.m.—October 11, 1989
8:00 a.m.–2:30 p.m.—October 12, 1989

Place: Executive II & III Conference Rooms, Lanier Plaza Conference Center, 418 Armour Drive, NE., Atlanta, Georgia 30324.

Status: Open

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters To Be Discussed: Tuberculosis control among the foreign-born, tuberculosis control in nursing homes, and statements on preventive therapy and screening. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE, Mailstop E–10, Atlanta, Georgia 30333, Telephones: FTS: 236–2501; Commercial: 404/639–2501.

Dated: September 15, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–22253 Filed 9–20–89; 8:45 am]

BILLING CODE 4160–18–M

National Institutes of Health

National Institutes of Health/Alcohol, Drug Abuse, and Mental Health Administration Industry Collaboration Forum

The Federal Technology Transfer Act of 1986 has provided new incentives to both scientists and industrial companies to participate in Cooperative Research and Development Agreements (CRADAs), and thus facilitate the transfer of technology from the Federal laboratory into public use by product commercialization. Industrial companies can be assured that they may obtain exclusive licenses to patented inventions developed under a CRADA, in view of the resources contributed to the CRADA by the company.

As part of a government-wide effort to implement the FTTA, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) will sponsor the second annual NIH-ADAMHA-Industry Collaboration Forum to be held on Tuesday, October 3, 1989 at the National Institutes of Health in Bethesda, Maryland. Although eligibility for registration is unrestricted, the Forum will be most useful to those for-profit organizations with interest, capabilities and resources to conduct research having biomedical or behavioral applications.

The Forum will begin at 8:00 a.m. with a plenary session consisting of two panels followed by a poster session displaying the goals and research capabilities of various NIH and ADAMHA laboratories. Due to space availability, registration by September 25, 1989 is strongly encouraged. To obtain registration information, call (301) 986-4886 or write to: Ms. Judy Gale, Social and Scientific Systems, 7101 Wisconsin Avenue, Suite 610, Bethesda, MD 20814-4805, FAX (301) 652-1749.

Dated: September 12, 1989.

William F. Raub,

Acting Director, NIH.

[FR Doc. 22394 Filed 9-20-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Policy for Cabin Management on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service final policy concerning cabin management on National Wildlife Refuges in Alaska is now available.

DATES: The policy is effective September 12, 1989.

ADDRESS: Questions should be directed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199, Attention: William Knauer.

FOR FURTHER INFORMATION CONTACT: William Knauer at the above address or telephone (907) 876-3399.

SUPPLEMENTARY INFORMATION: The original cabin policy for the U.S. Fish and Wildlife Service (Service) was developed in 1981 and revised in 1984. This policy was the basis for regulations printed in the Code of Federal Regulations title 50. In September 1987, the Service, believing revisions of the existing cabin policy and regulations were needed, published a Draft Cabin Management Policy for cabins on National Wildlife Refuges in Alaska. Comments and suggestions on the draft policy were solicited during a 60-day public review period.

Because of the number and nature of comments received during the public review of the draft policy, the Service made such extensive revisions that a revised draft of the cabin management policy was published in December 1988, to give the public another opportunity to comment before the policy was made final.

The revised draft was completely reorganized, more clearly describing the objectives of the policy, and setting forth the guidelines needed to comply with the Alaska National Interest Lands Conservation Act of 1980 and the National Wildlife Refuge System Administration Act of 1966. The comment period for the revised draft was also 60 days.

The purpose of the cabin policy is to provide uniform guidance to both the public and refuge managers on human use and occupancy of cabins located on National Wildlife Refuges in Alaska. The policy further serves to define under what conditions use and occupancy of a cabin may be compatible with the purposes for which the refuge was established.

Compatibility with refuge purposes is implicit in all cabin management decisions.

Copies of the final policy are available from any national wildlife refuge in Alaska, from the Regional Office (address above), or by calling Ms. Gina Mullen in the Alaska Regional Office at (907) 786-3390.

Since the policy has now been finalized, the Service will begin the development of draft regulations for the public's consideration and subsequent incorporation into the Code of Federal Regulations.

Dated: September 12, 1989.

John G. Rogers,

Acting Regional Director.

[FR Doc. 89-22264 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[MT-930-09-4214-12; MTM 16260]

Termination of Classification for Multiple-Use Management; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates the classification which segregated 320 acres of public land from appropriation, selection, location, and entry under the public land laws, including the general mining laws, and from surface use and occupancy under the mineral leasing laws. The classification is no longer needed since Public Land Order 6674 withdrew these lands from surface entry and mining.

EFFECTIVE DATE: September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, it is ordered as follows:

Pursuant to 43 CFR 2091.7-1(b)(3) and the authority delegated to me by BLM Manual section 1203 (48 FR 85), the classification for multiple-use management published December 3, 1970, in 49 FR 18405, is hereby terminated. The lands affected are described as follows:

Principal Meridian, Montana

Blacktail Creek Paleontological Site

T. 13 N., R. 22 E.,
Sec. 6, W½SE¼;
Sec. 8, SW¼NW¼.
T. 14 N., R. 22 E.,
Sec. 33, N½SE¼;
Sec. 34, N½SW¼ and SE¼NE¼.

The areas described aggregate 320 acres in Fergus County.

These lands will continue to be withdrawn from surface entry and mining for 20 years by PLO 6674, published April 27, 1988, 53 FR 15041, for protection of a valuable paleontological resource.

Dated: September 11, 1989.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89-22271 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-DN-M

[OR-054-4351-12; GP9-330]

Emergency Closure of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective immediately all public lands as legally described below are closed to all

vehicle access and travel with the exception of designated roads.

Township 11 South, Range 20 East, Willamette Meridian

Sec. 2: NE¼NE¼, W½NE¼, W½;
Sec. 3: E½, NE¼NW¼, E½SW¼;
Sec. 11: S½NE¼, NW¼, S½;
Sec. 12: All;
Sec. 13: All.

The purpose of this closure is to protect steep highly erosive watersheds, native vegetation, wildlife, paleontological and cultural resources.

The only exception would be for special authorized administrative use and emergency needs.

The authority for this closure is 43 CFR 8341.1. This closure will remain in effect until an ORV designation plan is completed for this area.

Dated: September 12, 1989.

James L. Hancock,

District Manager.

[FR Doc. 89-22265 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-054-09-4351-11; GP9-331]

Emergency Closure of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective immediately the road as legally described below is closed to motorized vehicle access and travel:

T. 9 S., R. 26 E., W.M.,
Sec. 25: S½SW¼;
Sec. 36: E½SW¼, E½NW¼.
T. 10 S., R. 26 E., W.M.,
Sec. 1: Lot 3, SE¼NW¼; NE¼SW¼; NW¼SW¼; S¼SW¼;
Sec. 12: E½NW¼, NE¼SW¼;
Sec. 13: NW¼SE¼, NE¼SW¼, SE¼NW¼.

And all open public lands as legally described below are closed to all motorized vehicle access and travel:

T. 10 S., R. 26 E., W.M.,
Sec. 12: SE¼, SE¼SW¼, W½SW¼;
Sec. 13: N½NE¼, SE¼NE¼, S½SE¼, SE¼SW¼, W½SW¼, SW¼NW¼, N½NW¼;
Sec. 24: NE¼, N½SE¼, SE¼SE¼, E½SW¼, NW¼;
Sec. 25: E½E½, NE¼SW¼, E½NW¼.

The purpose of this closure is to protect the public from a hazardous road condition, and protection of a watershed and anadromous fish rearing and spawning habitat.

The only exception would be for special authorized administrative use and emergency needs.

The authority for this closure is 43 CFR 8341.2. This closure will remain in effect until the Two Rivers/John Day RMP Amendment is completed.

Dated: September 12, 1989.

James L. Hancock,

District Manager.

[FR Doc. 89-22266 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-33-M

[UT-060-09-4111-10]

Environmental Assessment for the Desolation Canyon Wilderness Study Area

September 13, 1989.

AGENCY: Moab, Bureau of Land Management, Interior.

ACTION: Notice of 30-day comment period on draft environmental assessment analyzing the impacts of geophysical exploration for oil and gas in the Desolation Canyon (UT-060-068A) Wilderness Study Area (WSA).

SUMMARY: Frontier Exploration, Inc. has submitted a notice of intent to conduct oil and gas exploration operations near and in the Desolation Canyon WSA. Operations will include the use of a helicopter to transport drilling equipment, on-site drilling operations, the use of below-ground explosives, and placement of seismic monitoring equipment. Six seismograph lines totaling about twenty-eight miles would be completed. Less than five miles of these lines would be within the Desolation Canyon WSA. The entire area of operations is located in Township 17-18 South and Ranges 15-17 East in the Book Cliffs in Emery County, Utah. A draft environmental assessment has been written to analyze the impacts from the proposed action and alterntives. Interested parties may comment on the proposal. Comments must be received within thirty days from the date of publication of this notice. For further information contact: Dan Cressy, Bureau of Land Management, 900 North 700 East, Price, Utah 84501, (801) 637-4584.

Dated: September 13, 1989.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 89-22267 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-940-09-4730-12]

Filing of Remonumentation of Field Notes

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of remonumentation of field notes.

SUMMARY: The field notes of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., September 12, 1989. Black Hills and Sixth Principal Meridians.

The field notes of the remonumentation of the corner common to Nebraska and South Dakota, on the Wyoming State Boundary, of the Black Hills and Sixth Principal Meridians, in the States of Nebraska, South Dakota and Wyoming, was accepted September 6, 1989.

This remonumentation was executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 12, 1989.

Dennis D. Bland,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 89-22272 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-22-M

[AZ040-09-4351-02 SPCA]

Meeting of the San Pedro Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 100-696 and 43 CFR 1780, that a meeting of the San Pedro Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATE: Tuesday, October 24, 1989 at 10:00 a.m.

ADDRESS: Arizona Electric Power Cooperative Inc. Office building located at 1000 South Highway 80, Benson, Arizona.

FOR FURTHER INFORMATION: Erick Campbell, San Pedro Project Manager, BLM, Box 9853, Rural Rte. 1, Huachuca City, Arizona, 85616. Telephone (602) 457-2265.

SUPPLEMENTARY INFORMATION: The agenda for San Pedro Advisory Committee meeting includes the following items:

1. Introductions.
2. Approval of Minutes from last meeting.
3. Review of nominations received for the San Pedro Riparian NCA Advisory Committee.

4. Presentation & Discussion of the Record of Decision on the San Pedro Management Plan & Environmental Input Statement and on the newly issued Supplementary Rules.
5. Discussion of the San Rafael del Valle public access road.
6. Review of Proposal Resource Monitoring Plan.
7. Discussion of options for public access needs for the North end of the NCA. There will be a field trip to this area immediately following lunch.

The meeting is open to the public. Interested persons may make oral statements to the Advisory Committee between 11:00 and 11:30 a.m. or may file written statements for consideration by the Advisory Committee. Anyone wishing to make an oral statement must contact the BLM San Pedro Project Manager by Friday, October 20, 1989.

Summary minutes of the meeting will be maintained in the San Pedro Project Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 14, 1989.

Frank Rowley,

Acting District Manager.

[FR Doc. 89-22269 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-32-M

[MT-920-09-4111-11; NDM 54559]

Proposed Reinstatement of Terminated Oil and Gas Lease; North Dakota

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease NDM 54559, Slope County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: September 11, 1989.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 89-22270 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-DN-M

[CO-016-09-4410-08]

Availability of Approved Little Snake Resource Management Plan/Record of Decision; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of approved resource management plan/record of decision.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management (BLM), has prepared a Record of Decision (ROD) for the approved Little Snake Resource Management Plan (RMP) and Environmental Impact Statement. The BLM also has designated four areas of critical environmental concern (ACECs).

ADDRESS: Copies of the ROD/RMP are available upon request at the Little Snake Resource Area Office, Bureau of Land Management, 1280 Industrial Avenue, Craig, Colorado 81625.

EFFECTIVE DATE: The Record of Decision, approved Resource Management Plan, and the ACEC designations hereunder became effective with the signing of the documents on April 26, 1989, by Tom Walker, Associate State Director for Colorado.

FOR FURTHER INFORMATION CONTACT: Duane Johnson, Project Leader, Bureau of Land Management, Little Snake Resource Area, 1280 Industrial Avenue, Craig, Colorado 81625.

SUPPLEMENTARY INFORMATION: The Little Snake RMP is approved. The plan was prepared under the regulations for implementing the Federal Land Policy and Management Act (FLPMA) of 1976 (43 CFR part 1600). An environmental impact statement was prepared for this plan in compliance with the National Environmental Policy Act (NEPA) of 1969. The approved RMP is identical to the one set forth in the revised RMP published in October 1988.

Decisions: The RMP describes management prescriptions for 17 management units within the Little Snake Resource Area. The management unit descriptions also contain the geographical location, the acreage, and the management objective of the unit. Major decisions made in the RMP area:

—Approximately 636,800 acres (containing an estimated 5.8 billion tons of coal) are available for further consideration for coal leasing.
—The Resource Area is open to oil and gas leasing with various stipulations attached except for 36,240 acres proposed as wilderness, which would be closed to leasing if the area is designated as wilderness by Congress.
—Public land is open to locatable mineral entry and development, except for 50,321 acres proposed as wilderness, which would be closed to locatable mineral entry if these areas are designated as wilderness by Congress.
—Full livestock preference is authorized until completion of monitoring studies.
—Wildlife habitat is provided for mule deer, elk, pronghorn, and bighorn sheep with no request for adjustments in numbers until completion of monitoring studies.
—Four areas of critical environmental concern (ACEC), totaling 22,530 acres, are designated to protect sensitive plants, scenic qualities, archaeological history, and threatened and endangered species. These areas are the Limestone Ridge, Cross Mountain Canyon, Irish Canyon, and Lookout Mountain ACECs.
—Soil and water resources are protected by special stipulations applied to surface-disturbing activities.
—Diamond Breaks (36,240 acres) and Cross Mountain (14,081 acres) WSAs are recommended to the Secretary of the Interior as suitable for designation as wilderness.
—Little Yampa/Juniper Canyon (19,840 acres) is administered as a special recreation management area. Wild Mountain (21,000 acres), Cedar Mountain (880 acres), and two areas on Cold Spring Mountain (27,000 acres) are managed for recreation values.
—Acres have been designated as open, limited, or closed to vehicle use, with an implementation plan to be completed within one year.

Mitigation: The RMP has been designed to avoid or minimize adverse environmental impacts where practicable. Specific mitigation measures are described in Chapter Two of the approved RMP.

Dated: September 12, 1989.

Tom Walker,

Acting State Director.

[FR Doc. 89-22273 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-JB-M

[NM-010-4212-11/GP9-0125]

Realty Action; Recreation and Public Purpose Act Classification, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action for a proposed Recreation and Public Purpose lease.

SUMMARY: This notice is to advise that the following public lands in San Juan County, New Mexico have been examined and found suitable for classification for lease to San Juan County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). San Juan County purposes to use the lands for a solid waste compactor/transfer station.

New Mexico Principal Meridian

T. 29 N., R. 9 W.,
Sec. 17, SE/4NW/4.
Containing two acres, more or less.

The lands are not needed for Federal purposes. Leasing is consistent with current BLM land use planning and would be in the public interest.

The lease, when issued, would be subject to the following terms:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Farmington Resources Area, 1235 La Plata Highway, Farmington, New Mexico.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Bureau of Land Management, 435 Montano Road, NE, Albuquerque, NM 87107. Any adverse comments will be reviewed by the State Director. In the absence of any advance comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: September 15, 1989.

Robert Dale,

District Manager.

[FR Doc. 89-22368 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-FB-M

[ID-020-09-4212-12; I-27064]

Realty Action; Amendment to the Malad Hills Management Framework Plan, Idaho; Correction

In notice document 89-18142 beginning on page 32016 in the issue of Thursday, August 3, 1989, make the following correction:

On page 32017, in the 1st column, in the 20th line, "Section 12: NE¼, NW¼NE¼" should read "Section 12: E½NE¼, NW¼NE¼".

Dated: September 13, 1989.

Gerald L. Quinn,

District Manager.

[FR Doc. 89-22292 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-GG-M

[WY-940-09-4730-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plat of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., September 14, 1989.

T. 23 N., R. 63 W.

The plat representing the metes and bounds survey of certain lots within the Veteran Townsite, section 13, T. 23 N., R. 63 W., Sixth Principal Meridian, Wyoming, Group 522, was accepted September 11, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 15, 1989.

Dennis D. Bland,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 89-22274 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-22-17

National Park Service

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 22, 1989, 7:00 p.m.[1]

Inclement weather reschedule date: October 13, 1989.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12765-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround disposal of septage materials in the Upper Delaware Region.

The objectives of the Economic Development Council of Northeastern Pennsylvania will be discussed.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

miles north of Narrowsburg, New York, Damascus Township, Pennsylvania.

Maureen Finnerty,

Acting Regional Director, Mid-Atlantic Region.

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance office at the phone 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, Paperwork Reduction Project (1029–0007), Washington, DC 20503, telephone 202–395–7340.

Title: General Performance Standards 30 CFR 715

OMB approval number: 1029–0007

Abstract: This information is collected to meet the requirements of section 502 of the Surface Mining Control and Reclamation Act. The standards contained in the regulation are applicable at sites governed under the initial regulatory program.

Bureau form number: None

Frequency: On occasion

Description of Respondents: Coal Mine Operators

Estimated completion time: One Hour

Annual Responses: One

Annual Burden Hours: One

Bureau Clearance Officer: Andrew DeVito (202) 343–5954

Dated: August 2, 1989.

Annetta L. Cheek,

Chief Regulatory Development and Issues Management.

[FR Doc. 89–22275 Filed 9–20–89; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT CORPORATIVE AGENCY

Agency International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523.

Date Submitted: September 5, 1989

Submitting Agency: Agency for Internationl Development

OMB Number: 0412–0531

Type of Submission: Reinstatement

Title: General Screening and Selection of Normal Volunteers for Malaria Vaccine Testing

Purpose: A.I.D.'s Malaria vaccine testing research requires volunteers for the testing. To effectively monitor the patient volunteers, the A.I.D. contractor has developed a patient profile form for use in general screening of prospective volunteers. Respondents will have a submission burden of one response per year. Returning respondents will have an additional burden of one follow-up response.

Reviewer: Doanld Arbuckle (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building. Washington, DC 20503.

Dated: September 5, 1989.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 89–22263 Filed 9–20–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 477]

Modifications to General Purpose Costing System

AGENCY: Interstate Commerce Commission.

ACTION: Notice to policy determination.

SUMMARY: The Commission has decided to modify the railroad general purpose costing system (GPCS) to reflect (1) the use of depreciation accounting for track structures, (2) an adjustment to reduce the net investment base by the total of accumulated deferred taxes and (3) a rate of return on that net investment base equal to the current cost of capital. These modifications are being made in response to recommendations by the Railroad Accounting Principles Board and the Commission's own on-going efforts to develop more economically accurate costs. These modifications will be applied to the Uniform Railroad Costing System (URCS) that the Commission is adopting today in a simultaneously served decision in Ex Parte No. 431 (Sub-No. 1). The Commission is also adopting a bridge between the previous costing system (Rail Form A) and URCS which will be used to measure the impact of the modifications adopted here and those resulting from the adoption of URCS while preserving the status quo with respect to the amount of traffic subject to maximum rate regulation.

DATES: Effective October 20, 1989.

FOR FURTHER INFORMATION CONTACT:

William T. Bono (202) 275–7353

Thomas A. Schmitz (202) 275–7549

[TDD for hearing impaired (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington DC 20423, or telephone (202) 289–4357 or 4359. Assistance for the hearing impaired is available through TDD Services at (202) 275–1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10705a and 10709.

Dated: September 8, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–22286 Filed 9–20–89; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 431; Sub-No. 1]

Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for All Regulatory Costing Purposes

AGENCY: Interstate Commerce Commission.

ACTION: Notice of policy determination.

SUMMARY: The Commission has decided to adopt the Uniform Railroad Costing System (URCS) in lieu of Rail Form A

which has been used traditionally for all regulatory purposes where general purpose costs are appropriate. Section 307 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act) required the Commission to develop a new and more accurate railroad cost accounting system. URCS has been specifically designed to take advantage of the refinements contained in the new Uniform System of Accounts developed in response to the 4–R Act. Use of URCS does not preclude the use of other costing procedures in specific cases where their superiority is proven. Costs introduced for jurisdictional threshold determinations may be used in conjunction with a bridge adjustment also adopted today in Ex Parte No. 477, which is intended generally to preserve the status quo regarding the amount of traffic subject to Commission jurisdiction. Adoption of URCS will result in more economically accurate costs for regulatory purposes.

DATE: Effective October 20, 1989.

FOR FURTHER INFORMATION CONTACT:
William T. Bono (202) 275–7354
Thomas A. Schmitz (202) 275–7549
[TDD for hearing impaired (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington DC 20423, or telephone (202) 289–4357 or 4359. Assistance for the hearing impaired is available through TDD Services at (202) 275–1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10705a and 10709.

Dated: September 8, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners, Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–22287 Filed 9–20–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55; Sub-No. 307X]

CSX Transportation, Inc., Abandonment Exemption of Rail Line in Harrison County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by CSX Transportation, Inc., of 3.34 miles of rail line in Harrison County, WV, subject to standard labor protective conditions.

DATES: Provided no formal expressions of intent to file an offer of financial assistance has been received, this exemption will be effective on October 21, 1989. Formal expression of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 2, 1989, petitions to stay must be filed by October 5, 1989, and petitions for reconsideration must be filed October 16, 1989. Requests for a public use condition must be filed by October 2, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 307X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Patricia Vail, 500 Water Street—J150, Jacksonville, FL 32202, (904) 359–1246.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: September 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–22285 Filed 9–20–89; 8:45 am]

BILLING CODE 7035–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Advisory Committee on Appellate Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on the Federal Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a meeting of the Judicial Conference Advisory Committee on Appellate Rules to consider proposed amendments to the Federal Rules of Appellate Procedure pursuant to section 131 of the title 38, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on October 26, 1989, beginning at 9:00 a.m.

ADDRESS: The meeting will be held at the Administrative Office of the United States Courts, in Conference Room 638, 811 Vermont Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633–6021.

Dated: September 13, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89–22284 Filed 9–20–89; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Ketchikan Pulp Co.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on August 30, 1989, a consent decree in *United States* v. *Ketchikan Pulp Company*, Civil Action No. A88–430, was lodged with the United States District Court for the District of Alaska. The complaint sought penalties and injunctive relief against Ketchikan Pulp Company under section 309 of the Clean Water Act, 33 U.S.C. 1319, for violations of Ketchikan's National Pollutant Discharge Elimination System (NPDES) permit and of an administrative order issued by the Environmental Protection Agency.

The proposed consent decree imposes a permanent injunction against future violations of the Clean Water Act and a civil penalty of $175,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v.

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Ketchikan Pulp Company, D.J. Ref. No. 90–5–1–1–3153.

The proposed decree may be examined at the Office of the United States Attorney, District of Alaska, U.S. Federal Building & Courthouse, Room C–252, Mail Box 9, 701 C Street, Anchorage, AK 99513–0067, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 2623, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed 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 $1.40 (10 cents per page reproduction costs) payable to the "Treasurer of the United States".

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–22276 Filed 9–20–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; W.J. Smith Wood Preserving Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 5, 1989, a proposed Consent Decree in *United States* v. *W.J. Smith Wood Preserving Company*, Civil Action Number S–87–193 CA, was lodged with the United States District Court for the Eastern District of Texas. The Complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. 6901 *et seq.* Defendant W.J. Smith Wood Preserving Company owns a wood-preserving facility in Denison, Texas, that uses creosote preservatives to treat wood products. The W.J. Smith Wood Preserving Company violated the Resource Conservation and Recovery Act and the regulations passed thereunder by operating without a final permit to treat, store or dispose of hazardous wastes, failing to comply with applicable financial responsibility requirements, failure to close a land disposal unit in accordance with an appropriate closure plan, and failing to implement an adequate groundwater monitoring plan.

The Consent Decree provides that the defendant shall pay a civil penalty of $60,000.00 to the United States and shall implement a closure plan and a groundwater monitoring assessment plan.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *W.J. Smith Wood Preserving Company*, D.J. No. 90–7–1–417.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 101 East Pecan, Room 317, Sherman, Texas 75090 at the Region 6 office of the Environmental Protection Agency, Office of Regional Counsel, 1445 Ross Avenue, Dallas, Texas 75202–2733, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., 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 refer to *Untied States* v. *Smith Wood Preserving Company*, D.J. No. 90–7–1–417, and include a check for $1.70 (10 cents per page reproduction charge) payable to the United States Treasury.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–22277 Filed 9–20–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

The National Cooperative Research Act of 1984; CAD Framework Initiative, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on August 16, 1989, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989, 54 FR 10456. On May 17, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on June 22, 1989 (54 FR 26265). A correction to the additional notification was published on August 4, 1989 (54 FR 32141); a further correction was published on August 23, 1989 (54 FR 35091).

The purpose of this notification is to disclose changes in the membership of CFI. The changes consist of the following: (1) The addition of corporate members: Bell Northern Research, NEC Corp., Seiko Instruments USA, Inc., and Silicon Compiler Systems; and (2) the addition of associate members: INESC, Tandem Computer, Forrest Brewer, Michael Haney, Monique Hyvernard, and Jack Warecki.

The following entities are Corporate Members of the CAD Framework Initiative, Inc.:

Advanced Micro Devices, Inc.
Alcatel NV
Apollo Computer, Inc.
AT&T
Bell Northern Research
Bull, S.A.
CADENCE Design Systems, Inc.
Control Data Corp.
Daisy/Cadnetix Inc.
Digital Equipment Corporation
EDA Systems, Inc.
GE Aerospace
General Motors/Delco Electronics
Harris Corp.
Hewlett-Packard Company
Honeywell, Inc.
IBM Corp.
IMEC, VZW
Intergraph Corp.
International Computers Ltd.
Mentor Graphics Corporation
Microelectronics and Computer Technology Corporation
Mitsubishi Electronic Corp.
Motorola, Inc.
NCR Corp.
NEC Corp.
Nixdorf Computer AG
Object Design, Inc.
Objectivity, Inc.
Philips
Plessey Semiconductors Ltd.
Robert Bosch GbmH
SCME Foundation Centers For Micro-Electronics
Seiko Instruments USA, Inc.
SGS Thomson Microelectronics
Siemens AG
Silicon Compiler Systems
Sony Corporation
Sun Microsystems
Texas Instruments, Inc.

Valid Logic Systems, Inc.
VIEWLOGIC Systems, Inc.
VLSI Technology
Westinghouse Electric Corp.
Zycad Corp.

The following entities and individuals are Associate Members of the CAD Framework Initiative, Inc.:

Delft University of Technology
Frauhofer AIS
Gateway Design Automation Corp.
Gesellschaft Fur Mathematik und Datenverarbeitung mbH (GMD)
INESC
Intel Corp.
PTT Research Neher Laboratories
Semiconductor Research Corporation
Tandem Computer
Timothy Andrews
Kenneth Bakalar
Forrest Brewer
Hong-Tai Chou
Daniel Daly
Alan Ford
Michael Haney
Bill Harding
Arding Hsu
Monique Hyvernard
David Jakopac
Marlene Kasmir
Mitch Morey
Moe Shahdad
Jack Warecki
Erwin Warshawsky
Dyson Wilkes

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-22278 Filed 9-20-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Apprenticeship 2000; Executive Summary

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) announces the completion of its Apprenticeship 2000 short-term research projects. This research is a major component in DOL's review of the apprenticeship concept to determine its effective role in meeting future needs for a highly skilled workforce.

ADDRESSES: Copies of the publication consolidating the executive summaries of the reports on the short-term research projects are available to interested parties. Mail requests to James D. Van Erden, Director, Bureau of Apprenticeship and Training, Office of Job Training Programs, Employment and Training Administration, Department of Labor, Room N-4649, 200 Constitution Avenue NW., Washington, DC 20210.

Complete copies of the individual short-term research project reports are available on paper or microfiche from the National Technical Information Service. Send queries to the National Technical Information Service, Springfield, VA 22151. Telephone: (703) 487-4650.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Director, Bureau of Apprenticeship and Training, Office of Job Training Programs, Employment and Training Administration, Department of Labor, Room N-4649, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535-0540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In December 1987, the Department of Labor (DOL) launched its Apprenticeship 2000 initiative with the publication of an issue paper in the **Federal Register** (52 FR 45904; December 2, 1987). The purpose of this initiative is to review the apprenticeship concept of training and to determine its future role in meeting America's needs for a skilled labor force. Publication of that issue paper was followed by three public meetings in February 1988, in San Francisco, CA, Chicago, IL, and Washington, DC. See 53 FR 961 (January 14, 1988). The public was invited to attend and testify on the issues presented in the issue paper.

The results of the written responses and oral testimony were summarized and published by DOL in August 1988, in a report entitled "Apprenticeship 2000: The Public Speaks," (53 FR 34250; September 2, 1988). These responses were analyzed in order to provide direction for the next stages of the apprenticeship review. Based in part on the information garnered from this endeavor, two focus papers were published in the **Federal Register** for public comment (54 FR 3756; January 25, 1989 and 53 FR 40326; October 14, 1988). These papers presented a wide range of options for expansion and change to the apprenticeship system and solicited public input on an array of issues which impact upon expansion of the apprenticeship concept. A summary report of the focus papers has been prepared for public distribution.

The public input into the review was supplemented by a program of short-term research. The purpose of these short-term research projects was to explore a range of issues relating to expansion of the apprenticeship concept. The research was conducted, under competitively awarded contracts with DOL, by a number of experts in fields relating to workforce education and training or labor economics. The researchers were free to make independent findings and recommendations.

The findings from the short-term research, the public dialogue, and analysis of other studies on human resource development have been used to formulate the policy recommendations resulting from the apprenticeship review. This report will be available for public distribution in early fall. In addition, a series of demonstration projects are being launched to test, and further develop, the policy recommendations.

The executive summaries of the short-term research projects have been consolidated into a single publication. This publication will be mailed to all organizations and individuals who previously have received Apprenticeship 2000 publications. Others who wish to receive a copy may do so, free of charge, by sending a written request to DOL at the address set forth under **ADDRESSES.**

A synopsis of each project, by subject and by contractor, follows. DOL does not necessarily endorse these findings and recommendations.

Complete copies of the individual reports are available from the National Technical Information Service (NTIS). Copies are available at cost, on paper or microfiche. Interested persons seeking to order copies, or seeking ordering information, should query directly to NTIS at the address set forth under **ADDRESSES.**

Signed at Washington, DC, this 13th day of September, 1989.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

SYNOPSIS OF SHORT-TERM RESEARCH PROJECTS

1. Issues Relating to Expansion of Apprenticeship to New Industries and Occupations

(a) Dr. Robert Glover, Consulting Labor Economist

This report is one of a series of research projects which examines why labor market forces have not resulted in significant expansion of apprenticeship—especially into occupations and industries in which apprenticeship has not been traditionally used, but where it would seem appropriate. This report first defines apprenticeship, describes its essentials, and identifies the advantage

and benefits of apprenticeship for employers, the economy and workers. It then reviews the range of occupations and industries for which apprenticeship seems appropriate (noting the experience of other industrialized nations and high tech industry).

(b) Stan Markuson, Consultant

This project addressed five specific issues which were identified in the study proposal as major points to be addressed.

1. The shrinking of apprenticeship in terms of relative share.
2. The effect of the diminished role on the employer, the economy and the worker.
3. The barriers that prevent expansion into nontraditional areas.
4. The actions that business, government organizations, and education should take to expand apprenticeship, and
5. The economic, budgetary, political and social effects of these actions.

This report is based primarily on the information obtained through interviews with 26 companies located in the Indianapolis, Indiana metropolitan area. This study is based on a small local sample and cannot be used to represent the national apprenticeship situation. It does, however, provide information that has national application and, in the authors, opinion, does reflect problems and situations relevant to any city or state in the country.

(c) Fedrau and Associates

This report responds to two Apprenticeship 2000 studies requested by the Bureau of Apprenticeship and Training: (1) Barriers to expanding apprenticeship and; (2) Alternative apprenticeship models that might be emulated within the apprenticeship system. The approach to combining these two studies was based on the premise that the entire world of employer-based training is undergoing rapid changes and that, in this shifting environment, apprenticeship (as it currently exists or in an expanded form) is only one of numerous options open to employers in the training "marketplace".

Findings in this report are based primarily on interviews conducted with representatives of employers, unions, schools and related institutions during the Summer of 1988. While this was not a statistically comprehensive study, the authors were able to cover a wide range of industries and occupations including:

—Traditional manufacturing (large and small firms)
—High-tech research (and related manufacturing)
—A wide range of service employers including utilities (energy and telecommunications), banks, hospitals and other health care institutions, auto dealerships (mechanics), construction, opticians, surveyors, hotels, firefighting departments, law enforcement agencies, distribution firms, fast food chains (management training), and express mail courier services.

2. Review Issues and Barriers Relating to Women in Apprenticeship

The Enhancement Group, Inc.

The principal objectives of this study were to identify issues positively and negatively affecting the participation of women in apprenticeship; to identify and document factors, techniques, and programs that increase the number of women apprentices and the likelihood that women will enter apprenticeship; and to develop recommendations for the Bureau of Apprenticeship and Training to consider that might promote greater entry of women into apprenticeship. Other objectives of the study were to review the history of women in the work force and also to review the latest research and literature about women in trades.

3. Financial and Non-Financial Incentives for Apprenticeship Programs

Dr. Robert J. Gitter, Ohio Wesleyan University

This report reviews financial and non-financial incentives for apprenticeship programs. Its purpose is to identify feasible and practical incentives for the increased use of apprenticeship. The programs reviewed were:

1. Direct subsidies to apprentices;
2. Direct subsidies to firms employing apprentices;
3. Tax credits and reduced payroll taxes;
4. Levy-grant systems;
5. Support for training facilities and related instruction;
6. Contract preference; and,
7. Improvements in dissemination of information about apprenticeship.

4. Vocational Education, Counselling and Information Process

(a) Fedrau and Associates

This report responds to the Apprenticeship 2000 study requested by the Bureau of Apprenticeship and Training on linking apprenticeship with the vocational education system. It outlines relevant background trends in apprenticeship and vocational education, identifies and analyzes key barriers and opportunities for linking the two systems, and makes recommendations about how to increase the use of vocational education and attendant counseling systems to supply a reliable source of qualified apprentice applicants.

(b) Meridian Corporation

The Apprenticeship 2000 Initiative established a set of issues to focus the attention of the training community on the growth potential of the apprenticeship system as an integral part of U.S. training policy for the next century. One of the principal issues posed in the initiative is, "How can apprenticeship be more effectively linked to the education system?" This study helps answer that question by investigating and describing linkages between education and apprenticeship.

(c) National Child Labor Committee

This study focused on the status and potential of links between apprenticeship and cooperative education in order to determine the desirability of expending resources to increase and strengthen linkages. It contains a series of recommendations of how to accomplish these objectives.

(d) National Center for Research in Vocational Education

This study takes several different but related approaches to identify ways to better link vocational education with apprenticeship. First, it surveys the existing literature to explore linkages between vocational education and apprenticeship and identifies key issues involved in the relationship between vocational-technical education including guidance, and apprenticeships. Second, it then validates these issues through personal interviews with a sample of state guidance leaders, as well as seeking input from these individuals concerning solutions. Finally based on these data, recommendations are proposed to the Department of Labor in all of the relevant areas which are believed to have an impact toward the improvement of linkages.

5. Issues Relating to EEO Apprenticeship Regulations

The Enhancement Group, Inc.

The questions focused in the study are: (1) Should the Bureau of Apprenticeship and Training (BAT) monitor and enforce EEO compliance of sponsors? (2) Is the present system defective? (3) If so, how should equal opportunity be maintained and enforcement be performed? (4) What agencies should do it? In conducting this study, The Enhancement Group

researched documents and conducted interviews with BAT staff, sponsors, advocacy groups, national associations, unions, apprentices, and state officials. Document were reviewed which are related to EEO laws, regulations and practices, as well as those related to agency roles, current practices, and EEO case histories. Problems and weaknesses in current practices were identified, including overlap and conflicts between the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, and BAT EEO administration.

6. State Role and Responsibilities in Apprenticeship

Meridian Corporation

The report provides the results of a management study of the Federal-State partnership in apprenticeship administration. The report addresses apprenticeship administration in those States in which the Federal Bureau of Apprenticeship and Training (BAT) directly oversees apprenticeship, as well as in those states in which a State Apprenticeship Council (SAC) or other state agency directly discharges this function. Although the report addresses administrative activities in both BAT and SAC states, the principal focus of the effort has been upon the interactions between Federal agency staff and State agency staff within SAC states. The report includes quantitative and qualitative findings and identifies some of the key policy options available to BAT with respect to the federal-state partnership.

7. Ratios

James P. Mitchell, Consultant

The study examines issues relating to establishing the ratio of journey level workers to apprentices within apprenticeship programs. It expores the issue by reviewing the historic context as well as how ratios are set today, and how they impact on training in the workplace. The study contains a number of specific findings and recommendations for policy and regulatory change.

8. Assessing Workplaces as Learning Environments

Stephen F. Hamilton, Associate Professor, Cornell University

This paper's purpose is to identify practices and research questions that will contribute to improving workplaces as learning environments. It reviews past research on the subject and establishes working theories. These working theories are applied to actual case studies. The study makes recommendations on areas for further research.

[FR Doc. 89-22302 Filed 9-20-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,404]

Chromalloy Drilling Fluids; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-21,404, Laredo, Texas; TA-W-21,404A, all other locations in Texas; TA-W-21,404B, all locations in Louisiana; TA-W-21,404C, all locations in Oklahoma.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1988, applicable to all workers of Chromalloy Drilling Fluids, Laredo, Texas.

Based on new information from the company, additional workers were separated from Chromalloy Drilling Fluids in several locations in the States of Texas, Louisiana, and Oklahoma. The notice for Chromalloy Drilling Fluids, therefore, is amended by including workers in the States of Louisiana, Oklahoma, and in other locations of Texas.

The amended notice applicable to TA-W-21,404 is hereby issued as follows:

All workers of Chromalloy Drilling Fluids, Laredo, Texas and in all other locations of Texas and in all locations of Louisiana and Oklahoma who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of September 1989.

Stephen A Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-22303 Filed 9-20-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-A-22,807]

Circle Rubber Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 16, 1989, applicable to all workers of Circle Rubber Corporation, Newark, New Jersey. The notice was published in the **Federal Register** on July 3, 1989 (54 FR 27957).

Based on new information from the company, most of the workers were separated a few weeks prior to the impact date. The notice for Circle Rubber Corporation, therefore, is amended by changing the impact date to November 1, 1988.

The amended notice applicable to TA-W-22,807 is hereby issued as follows:

All workers engaged in the production of condoms and rubber toy balloons at Circle Rubber Corporation Newark, New Jersey who became totally or partially separated form employment on or after November 1, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of September 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-22304 Filed 9-20-89; 8:45 am]

BILLING CODE 4510-30-M

Bonney Forge Corp., et al; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than October 2, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, DC 20213.

Signed at Washington, DC this 11th day of September 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Bonney Forge Corp. (workers)	Allentown, PA	9/11/89	8/25/89	23,354	Steel fittings.
Bridge Oil (USA), Inc. (Company)	Dallas, TX	9/11/89	8/30/89	23,355	Oil & gas.
Brooks Brothers, Inc. (workers)	Paterson, NJ	9/11/89	8/24/89	23,356	Shirts.
Core Fashion Sportcoat, Inc. (ILGWU)	E. Newark, NJ	9/11/89	8/29/89	23,357	Rainwear.
Fresh Pak Candy Co. (workers)	Davenport, IA	9/11/89	8/28/89	23,358	Candy.
K-Lee Dress, Inc. (ILGWU)	Hammonton, NJ	9/05/89	8/28/89	23,359	Ladies' shirts & pants.
Lasercomb (Company)	Towaco, NJ	9/11/89	8/29/89	23,360	Cutting dies.
Mercury Marine (workers)	St. Cloud, FL	9/11/89	8/29/89	23,361	Electronic & plastic parts.
Metrocolor Laboratory (IATSE)	Los Angeles, CA	9/11/89	9/1/89	23,362	Motion picture prints.
Mirande Operation Co. (workers)	Laredo, TX	9/11/89	8/21/89	23,363	Oil & gas.
Model Garment, Inc. (workers)	Frackville, PA	9/11/89	8/15/89	23,364	Ladies' & children's sportswear.
(The) Pullman Group of Companies (workers)	San Antonio, TX	9/11/89	8/2/89	23,365	Oil & gas.
Schindler Elevator Corp. (workers)	Toledo, OH	9/11/89	8/30/89	23,366	Elevators & parts.

[FR Doc. 89-22305 Filed 9-20-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-139-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Emery Mine (I.D. No. 42-00079) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. The affected return aircourses and bleeder entries in the old Main West area of the mine, have experienced and are continuing to experience deterioration of roof and rib conditions. Restoration of this area is nearly impossible, and would require an exorbitant amount of time and work that would be performed under extremely hazardous conditions.

3. As an alternative method, petitioner proposes that—

(a) The main return aircourse for the old Main West area would not be traveled between specific monotoring stations. The monitoring stations would serve as a return aircourse monitoring station for the area not being traveled;

(b) All monitoring stations and the approaches to such stations would, at all times, be maintained in a safe condition;

(c) Tests for methane and the quantity of air would be determined weekly by a certified person at each station; and

(d) The person making such examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book kept on the surface and made available for inspection by interested persons.

[4.] Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested an this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 23, 1989. Copies of the petition are available for inspection at that address.

Dated: September 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-22299 Filed 9-20-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-141-C]

Jentina Coal; Petition for Modification of Application of Mandatory Safety Standard

Jentina Coal, Route 2, Box 327-B, Rockholds, Kentucky 40759 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16529) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cuttng equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hyrdaulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen

detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 23, 1989. Copies of the petition are available for inspection at that address.

Dated: September 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-22300 Filed 9-20-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-138-C]

Wolf-Creek Collieries Co. Petition for Modification of Application of Mandatory Safety Standard

Wolf-Creek Collieries Company, Caller 802, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine No. 4, Longwall Panel J (I.D. No. 15-04020) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires, and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes for a period of two years from the date the No. 4 Longwall begins mining the J Panel and for the completion of retreat mining in any panel where longwall mining has begun during the two year period to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and procedures as outlined in the petition.

3. In support of this request, petitioner states that the longwall mining systems would increase in length and width. Panel length (depth) would not exceed 15,000 feet and the face width would not exceed 1,000 feet. This increase in panel dimensions would reduce the frequency of longwall moves. Fewer longwall lessens the possibility of damaging the electrical, hydraulic, or mechanical integrity of the system. Working with mobile equipment in a confined area to move bulky equipment components is significantly reduced with fewer moves.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in petition office on or before October 23, 1989. Copies of the petition are available for inspection at that address.

Dated: September 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-22301 Filed 9-20-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice; 89-65]

NASA Advisory Council, Space and Science Applications Advisory Committee, Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Physics Subcommittee.

DATES: October 17, 1989, 8:30 a.m. to 5:30 p.m., October 18, 1989, 8:30 a.m. to 5:30 p.m., and October 19, 1989, 8:30 a.m. to 3 p.m.

ADDRESSES: Capital Gallery, West Wing, National Council on the Aging, Room 141, 600 Maryland Avenue SW., Suite 100, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley Shawhan, Code ES, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1676).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Space Physics Subcommittee provides advice to the Space Physics Division and to the SSAAC on operation of the Space Physics Program and on formulation and implementation of the Space Physics research strategy. The Subcommittee will meet to review NASA Research Announcements (NRA), Mission Operations and Data Analysis Plans, Status of Flight Missions, Management Operations Working Group reports, and the Subcommittee Strategy-Implementation Study. The Subcommittee is chaired by Dr. George Siscoe and is composed of 18 members. The meeting will be open to the public up to the capacity of the room (approximately 35 including Subcommittee members).

Type of Meeting: Opeen

AGENDA:

Tuesday, October 17

8:30 a.m.—Opening Remarks, Agenda

Review, and Chairman's Report.
8:45 a.m.—Space Physics Issues.
9:45 a.m.—Research and Analysis and NASA Research Announcements (NRA).
10:45 a.m.—Mission Operations and Data Analysis Plan Review.
1 p.m.—Report on Astromag.
2 p.m.—Status of Flight Missions.
3 p.m.—Reliability vs. Cost Issues.
3:30 p.m.—Office of Space Science and Applications (OSSA) Information Systems Program.
4:00 p.m.—The Deep Space Network (DSN) problem.
5:30 p.m.—Adjourn.

Wednesday, October 18

8:30 a.m.—Committee Business.
8:45 a.m.—Management Operations Working Group (MOWG) Reports.
9:45 a.m.—Space Physics Subcommittee Strategy-Implementation Study.
1 p.m.—Cluster Missions in the Post-International Solar Terrestrial Physics (ISTP) Era.
2 p.m.—A Proposal for a Space Physics Manpower Assessment Study.
5:30 p.m.—Adjourn.

Thursday, October 19

8:30 a.m.—Working Meeting on the Space Physics Subcommittee Strategy.
3 p.m.—Adjourn.

Dated: September 15, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-22331 Filed 9-20-89; 8:45 am]

BILLING CODE 7510-01-M

[Notice 89-64]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC), Ad Hoc Review Team on Onboard Processing.

DATES: October 11, 1989, 8 a.m. to 6 p.m., and October 12, 1989, 8 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Jet Propulsion Laboratory, Building 180, Room 903, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Dr. Paul H. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2753.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Onboard Processing, chaired by Dr. Donald C. Fraser, is comprised of 11 members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

October 11, 1989

8 a.m.—Introductory Remarks.
8:30 a.m.—Shuttle/Space Station Experience.
9:15 a.m.—Galileo Experience.
10:30 a.m.—Department of Defense Technology Pipeline Approaches.
1 p.m.—Group Discussion.
6 p.m.—Adjourn.

October 12, 1989

8 a.m.—Continuation Group Discussion.
10:30 a.m.—Presentation of Summaries.
1 p.m.—Final Report.
4 p.m.—Adjourn.

Dated: September 14, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-22230 Filed 9-20-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The five Advisory Committees listed below are being renewed until October 1, 1991.

The cognizant officials determined that these Committees are necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration:

—Advisory Committee for Science and Technology Centers Development
—Advisory Committee for Electrical and Communications Systems (formerly designated Advisory Committee for Engineering Science in Electrical, Communications, and Systems Engineering)
—Advisory Committee for Biological and Critical Systems (formerly designated Advisory Committee for Critical Engineering Systems)
—Advisory Committee for Mechanical and Structural Systems (formerly designated Advisory Committee for Engineering Science in Mechanics, Structures and Materials Engineering)
—Advisory Committee for Chemical and Thermal Systems (formerly designated Advisory Committee for Chemical, Biochemical, and Thermal Engineering)

Dated: September 18, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-22256 Filed 9-20-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of the Advisory Panel for Advanced Scientific Computing

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Advanced Scientific Computing

Date and Times: October 16—8:00 a.m.–5:00 p.m., October 17—8:00 a.m.–12:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550

Type of Meeting: Open
October 16—8:00 a.m.–3:15 p.m., October 17—8:00 a.m.–12:00 p.m.
Closed October 16—3:15–5:00 p.m.

Contact Person: Dr. Thomas Weber, Director, Division of Advanced Scientific Computing, Room 417, National Science Foundation, Telephone: 202/357-7558

Minutes: May be obtained from Contact Person

Purpose of Meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing

Agenda:

Open
- DASC Overview
- CISE Overview
- Meeting with NSF Director
- Subcommittee Organization and Functions
- Discussion on High Performance Parallel Computing

Closed—Discussion of Center Renewal Proposal

Reason for Closing: The proposal being discussed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-22257 Filed 9-20-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of the Advisory Panel for the Biophysics Program

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program

Date and Time: October 16 and 17, 1989, from 8:00 a.m. to 6:00 p.m. each day

Place: National Science Foundation, 1800 G Street NW., Room 1242, Washington DC 20550

Type of Meeting: Closed

5Contact Person: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 325, Phone: (202) 357-7777

Minutes: May be obtained from the Contact Person at the above address

Purpose of Meeting: To provide advice and recommendations concerning support for research

Agenda: To review and evaluate research proposals as part of the selection process for award

Reason for Closing: The proposals being reviewed include information of a propriety 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. 552 b(c), Government in the Sunshine Act.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-22258 Filed 9-20-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of the Advisory Panel for Instrumentation and Instrument Development

The National Science Foundation announces the following meeting.

Name: Advisory Panel Meeting for Instrumentation and Instrument Development

Date and Time: Monday, October 16, 1989 from 8:30—6:00, Tuesday, October 17, 1989 from 8:30—6:00

Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037, Rm Gallery Ballroom

Type of Meeting: Closed

Contract Person: Dr. Harold Jones, Program Director, Instrumentation and Instrument Development, Room 312, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7652

Minutes: May be obtained from the Contract Person at the above address

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research equipment

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.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-22259 Filed 9-20-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of the Advisory Panel for Neural Mechanisms of Behavior

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Neural Mechanisms of Behavior.

Date and Time: October 11-13, 1989, 9:00 a.m.-6:00 p.m. each day.

Place: National Science Foundation, 1800 G. Street, NW., Room 536, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Kathie Olsen, Program Director, Behaviorial Neuroendocrinology, 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: Closed—To 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.

[FR Doc. 89-22260 Filed 9-20-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Withdrawal

The Nuclear Regulatory Commission staff is withdrawing Regulatory Guide 1.74, "Quality Assurance Terms and Definitions," because it has become obsolete. The guide endorsed ANSI N45.2.10-1973, "Quality Assurance Terms and Definitions," which has since been incorporated into ANSI/ASME NQA-1, "Quality Assurance Program Requirements for Nuclear Facilities." ANSI/ASME NQA-1 is endorsed by Regulatory Guide 1.28, "Quality Assurance Program Requirements (Design and Construction)."

The withdrawal of Regulatory Guide 1.74 does not alter any prior or existing licensing commitments based on its use. Copies of this guide will continue to be available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory Guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 13th day of September 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89-22311 Filed 9-20-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques

used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 3.50, "Standard Format and Content for a License Application To Store Spent Fuel and High-Level Radioactive Waste," presents a format acceptable to the NRC staff for submitting the information specified in the revised part 72 (53 FR 21651) for a license application to store spent fuel in an independent spent fuel storage installation or to store spent fuel and high-level radioactive waste in a monitored retrievable storage facility.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of September 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89–22312 Filed 9–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–10069, License No. 35–15945–01, EA No. 89–61]

Brand X Perforators, Inc.; Order Imposing Civil Monetary Penalty

I

Brand X Perforators, Inc. (licensee) Woodward, Oklahoma, is the holder of NRC Materials License No. 35–15945–01 last amended in its entirety by the Nuclear Regulatory Commission (NRC/Commission) on April 24, 1989, and scheduled to expire on February 29, 1992. The license authorizes the licensee to use NRC-licensed radioactive materials in accordance with the conditions specified therein to conduct oil and gas well-logging activities.

II

An inspection of the licensee's activities was conducted on February 8, 1989. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 9, 1989. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letters dated June 6 and June 7, 1989. In its responses the licensee denied one violation, admitted the other violations citing extenuating circumstances, and requested that the NRC withdraw the proposed civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support has determined as set forth in the appendix to this Order that the violations occurred as stated, and that a civil penalty in the amount of $750 should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered,* that:

The licensee pay a civil penalty in the amount of $750 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation A.1 in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of all the violations set forth in the Notice, this Order should be sustained.

Dated at Rockville, Maryland, this 11th day of September 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On May 9, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for the violations identified during a February 8, 1989, special, announced inspection of Brand X Perforators, Inc. of Woodward, Oklahoma. In response to the Notice of Violation, Brand X Perforators provided letters dated June 6, 1989, and June 7, 1989. The June 6 letter included the licensee's reply to the violations, the degree to which the violations were admitted or denied, and the corrective actions which had been taken to achieve full compliance. The June 7 letter included the licensee's request that the civil penalty be rescinded in whole, and presented the arguments and bases for this request. The NRC's evaluation and conclusions regarding the licensee's arguments are as follows:

I. Evaluation of Reply to Notice of Violation

Restatement of Violation A.1

Figure 14 of the Radiation Procedures Manual contained with the license application dated September 30, 1986, describes the Radioactive Material Storage facility. This figure shows the door on the facility to be made of 1½-inch thick wood.

Contrary to the above, as of February 8, 1989, only the frame of the door to the Radiation Material Storage facility was made of 1½-inch thick wood. The remainder of the door was observed to be ½-inch badly weathered plywood.

Summary of Licensee's Response

The licensee denied the violation on the grounds that the frame of the storage facility door was of the 1½-inch thickness represented in the license application for the storage facility door itself. The licensee contends that it should have the flexibility to design and build a storage area to its own criteria as long as it adequately protects the licensed material from theft or unauthorized use. The licensee states additionally that further details of storage area design were not included in the license application because of the licensing guide and/or the license reviewers had not required a more detailed description. The licensee admits that the door was weathered but contends that it provided adequate security of licensed material especially in conjunction with the chain link fence surrounding the facility. Finally, the licensee submitted corrective action including replacement of the storage area door.

NRC Evaluation of Licensee's Response

The NRC staff believes the violation occurred as stated in that the license application depicted the door to the storage facility to be 1½-inch thick wood and not just the frame. The ½-inch plywood within the door frame comprised the largest area of the door and was its most vulnerable element. This panel was badly weathered and cracked at the time of the inspection and it is the NRC's view that the door could have been compromised without the use of tools. Therefore, the door did not provide the level of security represented in the license application.

Restatement of Violation A.2

Section III.D of the Radiation Procedures Manual contained with the license application dated September 30, 1986, states, in part, that following receipt of a shipment of radioactive material, the material will be logged in on a log sheet stating the date, isotope, survey, type of material, chemical base and employee who made the log entry (reference Figure 2—RA Receiving and Usage Form).

Contrary to the above, as of February 8, 1989, the above indicated receipt record (log sheet) was not completed following the receipt of 25 millicuries (mCi) of iridium-192 tracer material received on or about July 7, 1988.

Summary of Licensee's Response

The licensee admitted the violation attributing it to infrequent use of tracers and a misunderstanding on the part of the Radiation Safety Officer (RSO) of the need for such a record in addition to supplier invoices.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated. The required form which had not been completed by the licensee contained entry blocks for tracer materials usage which is different from information contained on supplier invoices.

Restatement of Violation A.3

Section VIII.A.3 of the Radiation Procedures Manual states that upon placement of radioactive waste material in the designated area, an entry will be made in a waste disposal log. This log must reflect the date material is placed in the bunker, isotope description, a survey reading in mR/h taken at one yard, and signature of employee (reference Figure 12).

Contrary to the above, as of February 8, 1989, the waste disposal log had not been completed following two tracer operations which had been performed on September 14, 1987, and August 8, 1988.

Summary of Licensee's Response

The licensee admits this violation and attributes it to oversight, conflicting responsibilities of the RSO, and infrequency of jobs.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated.

Restatement of Violation A.4

Section I.B.4 of the Radiation Procedures Manual states, in part, that the Master Radiation Flies will be maintained at the facility by the Radiation Safety Officer (R.S.O.) and will contain, among other records, monthly facility and bunker surveys (reference Figure 14).

Contrary to the above, monthly storage bunker surveys had not been performed from the time of the previous inspection on June 4, 1987, until November 1988, and consequently the Master Radiation Files did not contain, among other records, monthly facility and bunker surveys.

Summary of Licensee's Response

The licensee admits the violation and presents corrective action taken to prevent a recurrence.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated.

Restatement of Violation B

License Condition 12.A requires, in part, that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed 6 months. License Condition 12.B exempts sealed sources in storage from testing until the source is removed from storage for use or transfer to another person and requires such sources to be leak tested before use or transfer.

Contrary to the above, a 5-curie americium-beryllium sealed source was removed from storage and used on December 6, 1987, without having been tested for leakage before use on or within 6 months prior to that date.

Summary of Licensee's Response

The licensee admits this violation and states that the source had been in storage and there was insufficient time to leak test it when the December 6, 1987, job materialized.

NRC Evaluation of Licensee's Response.

The NRC concludes that this violation occurred as stated.

Restatement of Violation C

License Condition 14 requires, in part, that the licensee shall conduct a physical inventory every 6 months to account for all sources and/or devices received and possessed under the license.

Contrary to the above, as of February 8, 1989, physical inventories to account for the licensee's sealed sources had not been performed since the date of the previous NRC inspection on June 4, 1987.

Summary of Licensee's Response

The licensee admits that records of physicial inventories were not maintained but denies that the principle of the physical inventory requirement was violated in that the source storage containers were visually checked every 6 months. The licensee presented corrective action to prevent a recurrence.

NRC Evaluation of Licensee's Response

The NRC maintains that the violation occurred as stated. Further, as documented in NRC Inspection Report 30–10069/89–01, paragraph 6, the current Radiation Safety Officer (RSO) stated during the inspection that physical inventories had not been performed as required. Also no individual user or person responsible for radiation safety could provide information on the last date that a 5-curies americium-beryllium source was verified to be in storage at the licensee's Enid, Oklahoma facility as reported during the inspection. The NRC does not consider undocumented visual checks of source storage containers as fulfilling the principle of physicial inventory requirements.

Restatement of Violation D

10 CFR 39.43(b) requires, in part, that each licensee shall have a program for semiannual visual inspection and routine maintenance of source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars to ensure that the required labeling is legible and that no physical damage is visible.

Contrary to the above, as of February 8, 1989, no semiannual visual inspection and routine maintenance program as stated above existed.

Summary of Licensee's Response

The licensee admits this violation, but states that the tools were not used and were in storage. The licensee further states that the tools must be inspected prior to use to insure their operability.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated and contends that certain equipment covered by this requirement was used on at least three occasions. The inspection requirement also covers storage containers. Performance of the inspection and maintenance program and cognizance of the source container locking requirement may have prevented Violation E.

Restatement of Violation E

10 CFR 39.31(b) requires, in part, that the licensee shall store each source containing licensed material in a storage container or transportation package. The container or package must be locked and physically secured to prevent tampering or removal of licensed material from storage by unauthorized personnel.

Contrary to the above, on February 8, 1989, a 3-curie and a 5-curie americium-beryllium sealed source, in storage, were in containers which were unlocked.

Summary of Licensee's Response

The licensee admits the violation but contends that the sources were in a secure environment in the locked storage facility. The reason for the source containers being unlocked was not known. The containers were locked before the inspectors left the facility. Corrective action to prevent recurrence was submitted including checks after each use by the RSO.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated. Furthermore, if regular visual checks of source storage containers were performed as the licensee claims in response to Violation C, an appropriate question would be why the absence of locks of the containers was not identified and corrected at the time of the visual checks. The locking of the source storage containers during the inspection was at the urging of the NRC inspector.

Restatement of Violation F

10 CFR 39.33(c) requires, in part, that the licensee shall have each radiation survey instrument used to make surveys at temporary jobsites calibrated at intervals not to exceed 6 months.

Contrary to the above, as of February 8, 1989, a survey instrument, Serial Number 2832, used for surveys at a temporary jobsite on August 8, 1988, had not been calibrated since March 1987, an interval exceeding 6 months.

Summary of Licensee's Response

The licensee admits this violation and attributes it to insufficient cash flow to maintain calibrated instruments.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated. It is the NRC position that calibrated survey instruments are necessary to conduct a safe program. If a licensee cannot afford to calibrate its instruments, then it follows that it cannot afford to run a safe program and should not, under these circumstances, be engaged in licensed activities. Typical cost to calibrate a survey instrument is $50.00.

Restatement of Violation G

10 CFR 39.39(c) requires that each licensee shall maintain records for each use of licensed material showing: (1) The make, model number, and a serial number or a description of each sealed source used; (2) in the case of unsealed licensed material used for subsurface tracer studies, the radionuclide and quantity of activity used in a particular well and the disposition of any unused tracer materials; (3) the identify of the logging supervisor who is responsible for the licensed material and the identify of logging assistants present; and (4) the location and date of use of the licensed material.

Contrary to the above, as of February 8, 1989, the above records were not made on December 6, 1987, when a 5-curie americium-beryllium sealed source was used at a jobsite in Oklahoma.

Summary of Licensee's Response

The licensee admits this violation, but states its belief that a record was made but was lost.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated.

Restatement of Violation H

10 CFR 39.67(b) requires that before transporting licensed materials, the licensee shall make a radiation survey of the position occupied by each individual in the vehicle and of the exterior of each vehicle used to transport the licensed material.

Contrary to the above, as of February 8, 1989, such vehicle surveys were not performed on September 14 and December 6, 1987; and August 8, 1988, when licensed materials were transported in licensee vehicles.

Summary of Licensee's Response

The licensee admits that vehicle survey results were not recorded, but contends that they were performed.

NRC Evaluation of Licensee's Response

As documented in NRC Inspection Report 30–10069/89–01, paragraph 7, the licensee's current RSO stated in response to a question that surveys of passenger compartments of vehicles transporting licensed material had not been performed. Given this statement and the lack of any supporting records, the NRC concludes that this violation occurred as stated.

Restatement of Violation I.1

49 CFR 173.415(a)–(d) describe the packages which are authorized for shipment, if they do not contain quantities exceeding A_1 or A_2 values of radionuclides as specified in 49 CFR 173.435. Specifically, each shipper of a U.S. DOT Specification 7A Type A package must maintain on file for at

least 1 year after the latest shipment complete documentation of tests and an engineering evaluation or comparative data showing that the construction methods, package design, and materials of construction comply with the specification.

Contrary to the above, as of February 8, 1989, the licensee had not maintained, for at least 1 year following the latest shipment (August 8, 1988), documentation of tests and engineering evaluations or comparative data showing that the package, labeled DOT Specification 7A Type A used to transport iridium-192 not exceeding A_1 or A_2 values of radionuclides, complied with that specification.

This is a repeat violation.

Summary of Licensee's Response

The licensee admits this violation as an oversight and claims that it was not aware of this requirement.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated. Further, the licensee should have been aware of this requirement because it had been the subject of a violation issued during the previous inspection on June 4, 1987.

Restatement of Violation 1.2

49 CFR 172.200(a) requires, in part, that shipments of radioactive materials be accompained by a shipping paper which includes the information required by 49 CFR 172.202.

Contrary to the above, shipping papers were not prepared for the transport of radioactive materials on September 14, and December 6, 1987; and August 8, 1988.

Summary of Licensee's Response

The licensee admits this violation and attributes it to not being aware of the requirement.

NRC Evaluation of Licensee's Response

The NRC concludes that this violation occurred as stated.

II. Evaluation of Licensee's Request for Mitigation

Summary of Licensee's Request for Mitigation

The licensee makes the following points in requesting full mitigaton of the proposed civil penalty: (1) Most of the violations cited are "paperwork" violations and do not constitute a Severity Level III problem; (2) 50 percent escalation of the base civil penalty for NRC having identified the violations is not "entirely correct" in that two of the violations were corrected even before the inspection was conducted; (3) 50 percent escalation of the base civil penalty for minimal corrective actions is not warranted in that Brand X hired a consultant to audit its programs and to conduct training and in that corrective action for most of the violations amounted to developing the necessary forms; and (4) the licensee "take issue" with the statements of "prior poor performance" (which was another escalating factor).

NRC Evaluation of Licensee's Request for Mitigation

NRC disagrees with the licensee's assertion that the violations do not constitute a Severity level III problem. Supplement VI to the NBC's Enforcement Policy provides the following example of a Severity Level III problem: "Breakdown in the control of licensed activities involving a number of violations that are related or, if isolated, that are recurring violations that collectively represent a potentially significant lack of attention or carelessness toward licensed activities." NRC asserts that the citing of 13 violations of NRC requirements, several of which are related either to the security of licensed radioactive material or to measures that are important to ensure radiation safety, constrates a breadown in the control of licensed activities. As demonstrated by the violations, there were failures or inadequancies in each element of the program to ensure security of licensed material. The NRC views the cumulative effect of these failures and the potential consequences to be more significant from a safety perspective than the individual violations viewed independently.

While NRC agrees that Violation A.4. was corrected prior to the inspection conducted by NRC, we do not agree that the same can be said for Violation F. in that a survey instrument that had not been calibrated in accordance with requirements had been used in February 1989. Nonetheless, the issue here is whether the licensee was identifying and correcting these violations by virtue of its own programmatic audits or efforts to ensure compliance with its NRC license. NRC concludes that it was not and that the 50 percent escalation applied under the "Identification and Reporting" factor is warranted.

NRC has reviewed the licensee's arguments regarding escalation of the penalty under the "Corrective Action to Prevent Recurrence" factor. In addition, we have taken into account a factor that the licensee did not point out—that the licensee voluntarily suspended its operations following the enforcement conference and stipulated that the suspension would remain in effect until the violations were corrected and the NRC agreed to permit a resumption of licensed work, a period of six weeks. In proposing escalation under this factor, NRC had considered essentially only those actions taken between the time of the inspection and the time of the enforcement conference. Given that the licensee did no work involving licensed material during that time, that work was voluntarily suspended from that time forward, that the licensee amended its license following the enforcement conference to provide for a new Radiation Safety Officer, and that the licensee hired a consultant to assist in restoring its program to compliance, NRC has reconsidered its position and concluded that the 50 percent escalation originally applied for this factor should be withdrawn.

In regard to "Past Performance," a factor that resulted in a 25 percent increase in the proposed civil penalty, NRC has given additional consideration to this escalating factor and concludes that the 25 percent escalation originally applied for this factor should be withdrawn. We base this on a reconsideration of the significance of the repetitive violations that caused us to originally increase the penalty. On balance, the licensee's past performance is average and neither escalation nor mitigation of the civil penalty is warranted.

NRC Conclusion

NRC concludes that the violations occurred as stated in the original Notice of Violation, that the violations constituted a Severity Level III problem in accordance with Supplement VI of the NRC's Enforcement Policy, and that a civil penalty is warranted. However, NRC has given additional consideration to the licensee's corrective actions following the enforcement conference, including its voluntary commitment to suspend licensed activities pending the correction of the violations, and has reconsidered the adjustment of the civil penalty based on "Corrective Action to Prevent Recurrence," and "Past Performance." Having done so, NRC concludes that the proposed civil penalty of $1,125 should be reduced and a civil penalty of $750 imposed by order.

[FR Doc. 89-22310 Filed 9-20-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-446]

Texas Utilities Electric Co., et al [1]; Issuance of Corrected Amendment to Construction Permit

On August 29, 1989 (54 FR 37063) the U.S. Nuclear Regulatory Commission (the Commission) issued Amendment No. 10 to Construction Permit No. CPPR-127 for the Comanche Peak Steam Electric Station (CPSES), Unit 2, to show a change in ownership interest.

Due to an administrative error, this amendment did not make clear that the ownership transfer from Tex-La Electric Cooperative of Texas, Inc. to Texas Utilities Electric Company authorized by the amendment was applicable to Unit 2 and Construction Permit CPPR-127.

The Commission has issued a corrected amendment to correctly specify the unit number in one place and the construction permit number in another.

Dated at Rockville, Maryland, this 14th day of September 1989.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-22313 Filed 9-20-89; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Indianapolis, will hold a public meeting at 9:30 a.m. e.s.t., Wednesday, October 18, 1989, at Indiana University-Purdue University, School of Business, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Indiana District Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 578, Indianapolis, Indiana 46204-1584, phone (317) 226-7275.

Dated: September 18, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-22328 Filed 9-20-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting

The Small Business Administration Region VIII Advisory council, located in the geographical area of Helena, Montana, will hold a public meeting at 9 a.m. on Friday, October 13, in the board room of Northwest Bank, 21 3rd St. N., Great Falls, MT, to discuss such matters as may be presented by members, staff of the U.S. Business Administration, or other present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626-0054—(406) 449-5381.

Dated: September 18, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-22329 Filed 9-20-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1132]

Determination Regarding Missions of Panama in the United States

Pursuant to the authority of the President of the United States to conduct foreign affairs under Article II of the United States Constitution, including his authority to receive ambassadors, and the authority vested in the Secretary of State by the Foreign Missions Act, 22 U.S.C. 4301 *et seq.* ("the Act") and delegated to the Under Secretary for Management in Department of State Delegation of Authority Number 147, dated September 13, 1982, I hereby make the following findings and determinations.

1. As of September 1, 1989, the term of office of the constitutionally elected head of the Government of Panama, President Eric Arturo Delvalle, will come to an end pursuant to the constitution of the Republic of Panama. Because, as of that date, there will exist no constitutional head of government recognized as such by the United States, the Embassy of Panama has requested that the Department take custody of Panama's diplomatic and consular property in the United States in order to protect and preserve this property for the benefit of the people of Panama. The imposition of the following terms, conditions and restrictions concerning the property and operation of foreign missions of Panama in the United States is reasonably necessary in order to comply with the Embassy's request, to fulfill the international legal obligations of the United States to preserve and protect property of the Republic of Panama, and to accomplish the purposes set forth in 22 U.S.C. 4301(c) and 4304(b), including protecting the interests of the United States.

2. Effective September 1, 1989, all property, real or personal, tangible or intangible, wherever located in the United States, which is at present owned by the Government of Panama currently recognized by the United States, and which is used for the conduct of bilateral diplomatic or consular relations, including residential properties, shall be subject to the control and custody of the Office of Foreign Missions for the purposes of protecting and preserving such property until further notice. This custody and control shall not extend, however, either to bank accounts registered in the names of individuals accredited as of August 31, 1989, as diplomatic or consular personnel of the Panama, or their dependents, provided that such accounts are not held for the benefit of the Government of Panama, or to property used exclusively in connection with representation of the Republic of Panama before any international organization.

3. The Office of Foreign Missions is hereby authorized to administer and manage the aforesaid properties in such a manner and through such procedures as it deems proper to fulfill the international legal obligations of the United States with respect thereto. In addition, to the fullest extent possible, the Office of Foreign Missions shall endeavor to avoid the expenditure of United States Government funds in connection with these properties. Accordingly, the Office of Foreign Missions may, if financial exigencies relating to the property in question so dictate, rent or dispose of any of the properties, real or personal, pursuant to 22 U.S.C. 4305(c)(2). Funds resulting from such rental or disposition shall be used for the maintenance of Panamanian diplomatic or consular property, or, if exceeding the amount necessary for this purpose, held for the account of the Republic of Panama. In light of the fact that all property in the United States owned or controlled by the Government of Panama is "blocked" pursuant to Executive Order 12635 and the International Emergency Economic Powers Act, 50 U.S.C. 1601 *et seq.*, any

[1] The current Construction Permit holders for the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company (TU Electric) and Texas Municipal Power Agency (TMPA). Transfer of ownership interest form TMPA to TU Electric was previously authorized by Amendments No. 9 and No. 8 to Construction Permits CPPR-126 and CPPR-127, respectively, on August 25, 1988 to take place in 10 installments as set forth in the Agreement attached to the application for amendment dated March 4, 1988. At the completion thereof, TMPA is no longer an applicant or construction permit holder.

such rental or disposition, and the management of any funds resulting therefrom, shall conform to any regulations and licenses issued pursuant to these authorities.

4. Permitting the operation of a foreign mission in the United States by any unrecognized authority purporting to be the Government of Panama would be contrary to the purposes of the Act, including protecting the interests of the United States. Therefore, effective September 1, 1989, any and all benefits, as defined in 22 U.S.C. 4302(a)(1), provided to any entity that has been or is hereafter designated by the Secretary of State or his delegate as a foreign mission of Panama in the United States, as defined in 22 U.S.C. 4302(a)(4), shall be provided exclusively by and through the Director of the Office of Foreign Missions, under such terms and conditions as the Director may hereafter prescribe, pursuant to 22 U.S.C. 4304. This provision shall not apply to missions representing Panama to international organizations.

5. In order to achieve the objective of preventing the operation in the United States of a foreign mission of any unrecognized authority purporting to be the Government of Panama, I hereby designate as a benefit, pursuant to 22 U.S.C. 4302(a)(1), employment of any agent or employee by any entity that has been or is hereafter designated by the Secretary of State or his delegate as a foreign mission of Panama in the United States, and determine that it is reasonably necessary to accomplish the purposes set forth in the Act to require any such entity to forego the acquisition or use of this benefit. This prohibition, however, shall not apply to members of a mission of Panama to an international organization, provided that:

(a) Such individual members have been duly accredited to and accepted by an international organization as *bona fide* members of such mission; and

(b) Such individual members confine their activities to matters and activities directly and exclusively related to representation before the relevant international organization and do not in any manner engage in other activities, including, but not limited to, public relations, lobbying, propaganda, consular, commercial, economic, or political activities in the United States.

6. Notice is hereby given that, pursuant to 22 U.S.C. 4311(a), it shall be unlawful, for any person to make available any benefit to any entity that has been or is hereafter designated by the Secretary of State or his delegate as a foreign mission of Panama in the United States in any manner contrary to the provisions and restrictions set forth in this Determination.

7. Pursuant to 22 U.S.C. 4308(b), compliance by any person with the provisions of this Determination shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court or administrative proceeding for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on any provision of this Determination or any instruction or requirement hereafter promulgated by the Director of the Office of Foreign Missions in the implementaion hereof.

8. Pursuant to 22 U.S.C. 304(c) and (d), the Director of the Office of Foreign Missions is hereby designated as the agent for all foreign missions of Panama within the United States for the purposes of effectuating any waiver of recourse by such a mission, or the assignee or beneficiary of such a mission, which may be required in the implementation of this Determination. Wherever relevant and necessary, the granting of such a waiver of recourse by a mission of Panama in the United States is hereby expressly made a term and condition of receiving any benefit pursuant to this Determination or the Act in general.

Dated: August 31, 1989.

Jill Kent,

Acting Under Secretary of State for Management.

[FR Doc. 89-22279 Filed 9-20-89; 8:45 am]

BILLING CODE 4710-08-M

OFFICE OF THRIFT SUPERVISION

American Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for American Savings and Loan Association, F.A., Salt Lake City, Utah ("Association") with the Resolution Trust Corporation as sole receiver for the Association on September 7, 1989.

Dated: September 15, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-22241 Filed 9-20-89; 8:45 am]

BILLING CODE 6720-01-M

American Savings; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(a) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institution Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole conservator for American Savings, A Federal Savings and Loan Association, Salt Lake City, Utah ("Association") on September 7, 1989.

Dated: September 15, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-22240 Filed 9-20-89; 8:45 am]

BILLING CODE 6720-01-M

[OTS No. 2720]

First Federal Savings Bank La Crosse—Madison; Approved of Conversion Application

September 13, 1989.

Notice is hereby given that on September 8, 1989, General Counsel, Office of the Thrift Supervision, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings Bank La Crosse—Madison, La Crosse, Wisconsin, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and Supervisory Agent, Office of Thrift Supervision, Chicago District Office, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-22242 Filed 9-20-89; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 182
Thursday, September 21, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 89–21867.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 21, 1989, 2:00 p.m.

By direction of the Federal Election Commission, the Open Meeting scheduled for Thursday, September 21, 1989, at 2:00 p.m., has been cancelled.

DATE AND TIME: Tuesday, September 26, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 28, 1989, 10:00 p.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings
Correction and Approval of Minutes
Draft Advisory Opinion 1989–19
Mr. Oscar Johnson
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89–22477 Filed 9–19–89; 3:34 pm]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 27, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 19, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–22472 Filed 9–19–89; 3:19 pm]
BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 54, No.182
Thursday, September 21, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

DEPARTMENT OF JUSTICE

Agreement to Delegate Certain Civil Rights Compliance Responsibilities for Elementary and Secondary Schools and Institutions of Higher Education

Correction

In notice document 89-19780 beginning on page 35048 in the issue of Wednesday, August 23, 1989, the heading to the document should have read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 320

[Docket No. 85N-0214]

Abbreviated New Drug Application Regulations

Correction

In proposed rule document 89-16024 beginning on page 28872 in the issue of Monday, July 10, 1989, make the following correction:

§ 320.23 [Corrected]

1. On page 28938, in the third column, prior to the heading for § 320.1, remove "329".

2. On page 28940, in the second column, in § 320.23(a)(1), in the fifth line, remove "338".

BILLING CODE 1505-01-D

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Early Seasons, Bag and Possession Limits of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands

Correction

In rule document 89-20385 beginning on page 36008 in the issue of Wednesday, August 30, 1989, make the following corrections:

§ 20.103 [Corrected]

1. On page 36011, in the second column, in § 20.103, under "Rhode Island" insert "sunrise to sunset" in front of "Oct. 21-Nov. 25 and Dec. 27-Jan. 15".

§ 20.104 [Corrected]

2. On page 36014, in the third column of the table, in § 20.104, the third line should read "Sept. 1-Nov. 9".

3. On the same page, in the fourth column of the table, in the same section, the ninth line should read, "Oct. 14-Nov. 17".

4. On the same page, in the same column of the table, in the same section, the 14th line should read, "Oct. 21-Nov. 11".

5. On the same page, in the first column of the table, in the same section, under the entry "Seasons in the Pacific Flyway" the third line should read "New Mexico(7)(12)...Oct. 7-Oct. 22 & Nov. 25-Jan. 6"

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee of Commercial Operations of the U.S. Customs Service

Correction

In notice document 89-20720 beginning on page 36933 in the issue of Tuesday, September 5, 1989, make the following correction:

On page 36933, in the third column, under **SUPPLEMENTARY INFORMATION** in the fifth line "June 22, 1989" should read "September 22, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds

Correction

In notice document 89-21476 beginning on page 37862 in the issue of Wednesday, September 13, 1989, make the following corrections:

1. On page 37862, in the third column, in the first complete paragraph, in the fourth line, "$3,166,000" should read "$2,166,000".

2. On the same page in the same column, in the file line at the end of the document, "FR Doc. 89-21476" should read "FR Doc. 89-21475".

BILLING CODE 1505-01-D

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8262]

RIN 1545-AN43

Treaty-Based Return Positions

Correction

In rule document 89-21201 beginning on page 37451, in the issue of Monday, September 11, 1989, make the following corrections:

1. On page 37452, in the first column, in the third line from the top, "2 CFR" should read "26 CFR".

§ 301.6114-1T [Corrected]

2. On page 37453, in the 2nd column, in § 301.6114-1T(e), in the 16th line, "January 10, 1990" should read "March 10, 1990".

BILLING CODE 1505-01-D

federal register

Thursday
September 21, 1989

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

Elevated Temperature Materials; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

[Docket No. HM-198A, Notice No. 89-6]

RIN 2137-AB31

Elevated Temperature Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA is proposing to regulate materials which pose a hazard due to their being offered for transportation or transported at elevated temperatures. Materials would include those in a liquid phase having temperatures at or above 212 °F (100 °C) and materials in a solid phase having temperatures at or above 464 °F (240 °C). RSPA is also proposing to regulate, as flammable liquids, materials in a liquid phase with flash points at or above 100 °F (37.8 °C) which are offered for transportation or transported at or above their flash points. The proposed changes to the Hazardous Materials Regulations (HMR; 49 CFR parts 171-179) would communicate the hazards of these elevated temperature materials by means of marking, shipping papers and placarding, and would prescribe package requirements. The proposed changes are necessary to provide notice to the public and alert emergency response personnel concerning the risk presented by such materials and to specify minimum levels of packaging.

DATES: *Comments.* Comments must be received by November 20, 1989.

ADDRESS: *Comments.* Address comments to Dockets Unit (DHM-30), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notices mumbers 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, except public holidays.

FOR FURTHER INFORMATION CONTACT: Beth Romo, Standards Division, (202) 366-4488, or James K. O'Steen, Technical Division, (202) 366-4545, Office of Hazardous Materials Transportation, 400 Seventh St SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

In several previous rulemaking actions, RAPA has endeavored to develop appropriate definitions and regulatory controls for flammable solids, including materials offered for transportation or transported at elevated temperatures. In an ANPRM published under Docket HM-178 on May 7, 1981, (46 FR 25492), RSPA requested comments on making the definition of a flammable solid more specific and proposed methods for testing which would enable shippers to determine if their products were flammable solids for purposes of transportation. The ANPRM addressed solids or molten materials shipped at temperatures exceeding 600 °F (315 °C) because of the potential of these materials to ignite combustible materials. The ANPRM also solicited comments on types of packaging controls for these materials. In a subsequent rulemaking action, RSPA has incorporated criteria for distinguishing between liquid and solid materials. A final rule published April 20, 1987 (Docket HM-166U; 52 FR 13634), added definitions for "liquid" and "solid" to § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR parts 100-179). The definitions are based on American Society for Testing and Materials (ASTM) D 4359-84 entitled, "Standard" Test Method for Determining whether a Material is a Liquid or Solid".

On January 19, 1985, a tractor with two tank trailers filled with molten sulfur collided with the concrete median barrier on the southbound lanes of Interstate 680 on the Benecia-Martinez Bridge in Benecia, California. The molten sulfur ignited and sprayed onto other vehicles traveling in the northbound lanes. As a result of the fire and smoke from the burning sulfur, two persons died, 26 persons were taken to local hospitals, surrounding areas were evacuated, and the roadway was closed for 15 hours. Because molten sulfur was not subject to the Hazardous Materials Regulations, the hazards of the material were not communicated to emergency responders, hampering emergency response efforts. As a result to its investigation into this accident, the National Transportation Safety Board (NTSB) issued Safety Recommendation I-85-19 on August 12, 1985, which recommended that RSPA (1) regulate molten materials, as appropriate, as hazardous materials; (2) prescribe packaging and handling standards; and (3) incorporate information relating to the hazards of these materials into warning devices and publications available to emergency responders and others involved in the transportation of molten materials. The NTSB expressed concern that unregulated molten materials in the transportation system pose a substantial risk to persons and property, and could cause major disruptions to communities.

In a subsequent comment, the NTSB referenced an October 21, 1986, accident that occurred near Berrien Springs, Michigan, which involved, a load of molten aluminum and resulted in two fatalities. The drivier of a tractor trailer hauling a crucible of molten aluminum failed to negotiate a right-hand curve. The vehicle crossed the center line and overturned in the oncoming lanes. The tractor collided with an automobile, pushing if off the road and into a gully. Despite the overturn, the molten aluminum crucible remained chained to the trailer, and the lid of the vat remained bolted in place. However, one of the hinges on the top lid broke upon impact, allowing the molten aluminum to leak into the gully. The molten aluminum flowed underneath the automobile, igniting gasoline in the fuel tank. Subsequent autopsies indicate the two passengers died of smoke inhalation before extensive tissue damage caused by the hot metal or injuries due to the accident or explosion could casuse death. As a result of this accident, the NTSB recommended that DOT consider the hazards posed by molten materials in the various transportation modes.

On November 21, 1986, RSPA published an NPRM in the **Federal Register** (Docket HM-198; Notice No. 86-6; 51 FR 42114), proposing to regulate molten sulfur as a hazardous material and soliciting information concerning other molten materials. A final rulemaking on molten sulfur was published in May 13, 1988 (51 FR 42114), and included the announcement that RSPA would address other molten materials in a future rulemaking action.

RSPA received thirty-eight comments in response to Notice 86-6. Of this total, twenty-one comments specifically addressed molten sulfur; the remaining seventeen comments encompassed other materials transported at elevated temperatures.

Of the seventeen commenters addressing elevated temperature materials, over one-half (9) supported some form of general regulation of elevated temperature materials. In addition, four commenters supported regulation of specific materials, with two of the four recommending regulation only for materials with temperatures greater than 1000 °F (537 °C).

The majority of commenters (13) favored improved identification and communication procedures for these materials. Only five of the commenters addressed hazard classification for elevated temperature materials. Two commenters recommended the ORM–C class for these materials, two proposed a separate hazard class, and one commenter recommended that they be classed as flammable solids.

Eleven commenters addressed the need for packaging regulations. Eight commenters indicated that packagings currently in use are sufficient. Three commenters (two state highway patrol agencies and one county fire and rescue department) stated that specification packaging is necessary to improve transportation safety for molten materials.

Based on information provided in the comments, elevated temperature materials which are transported include molten aluminum, molten steel and certain asphalts, oils, epoxies, resins, and waxes. Elevated temperature materials are primarily shipped in bulk packagings by rail or highway. Comments indicated that packagings used are cargo tanks, tank cars, IM portable tanks, and crucibles. No reference was made in the comments to any non-bulk packaging. Quantities shipped range from 16,000 pounds in crucibles to 490,000 pounds in hot metal ("bottle") rail cars, 27,540 to 49,180 pounds for tank trucks, and 149,000 to 181,400 pounds for tank cars. Indicated hazards include thermal burns, ignition of combustible materials, and the release of flammable vapors. Crucibles used as packagings for molten aluminum were identified by aluminium industry commenters as having specific design criteria to minimize loss of lading due to collision or overturn. Commenters did not identify any known industry packaging standards for other elevated temperature materials.

The consensus of those commenters opposing or offering only limited support for the regulation of elevated temperature materials was that a material should not be regulated simply because of its elevated temperature. These commenters maintained that any regulatory control should be restricted to those materials with temperatures exceeding 1000 °F (537 °C). They asserted that present shipping experience does not warrant regulation based on the potential thermal hazard, but acknowledged that an exception might pertain to those metals transported above 1000 °F (537 °C).

In this proposed rule, RSPA uses the term "elevated temperature materials" in place of "molten materials" to more precisely describe the nature of the hazard posed by these materials in transportation. Not all molten (i.e., melted) materials are very hot; for example, toluene diisocyanate becomes molten between 67 °F (19 °C) and 71 °F (22 °C). Additionally, there are materials transported at high temperatures which pose significant thermal hazards but are either solid during transportation, or are liquids at both ambient and elevated temperatures.

Categories of Materials Addressed

Liquid Elevated Temperature Materials. In this notice, RSPA is proposing that 212 °F (100 °C) be the defining temperature for elevated temperature materials when offered for transportation or transported in a liquid phase. Liquid phase means a material that meets the definition of "liquid" in Section 171.8 when evaluated at the maximum temperature at which it is offered for transportation or transported. RSPA recognzies that thermal burns can occur at temperatures below 212 °F (100 °C). However, the defining temperature of 212 °F (100 °C) for materials in a liquid phase is based on the presence of sufficient thermal energy in the material to rapidly damage or destroy human tissue and the tendency of these materials to flow away from the release site. Also, the threat of package rupture from expanding vapors is present when liquids are transported at elevated temperatures.

Solid Elevated Temperature Materials. The defining temperature of 464°F (240°C) is proposed for elevated temperature materials when offered for transportation or transported in a solid phase. This temperature is slightly above the minimum ignition temperature for paper and many hydrocarbons. Solid materials transported at temperatures at or above 464°F (240°C) not only pose the hazard of thermal damage or destruction of human tissue, but also contain sufficient energy to serve as an ignition source for many common combustible materials. Hot solid materials transported below 464°F (240°C) do not pose a threat of igniting combustible materials and pose a very limited thermal hazard because they do not flow in the event of a release. Therefore, they would not be subject to regulation.

Materials Transported At or Above Their Flash Points. Another category of materials addressed in this proposal are liquids with flash points at or above 100°F which are offered for transportation or transported at temperatures at or above their flash points. In this case, the hazard is the greater tendency of the material to burn in the presence of an ignition source. The safety factor realized by transporting materials at temperatures well below their flash points is therefore lost, since the material will only need to be exposed to an ignition source and no longer needs to be heated to generate flammable vapors above the liquid. Therefore, transportation of liquid materials at or above their flash points presents essentially the same hazard as common flammable materials transported at or above their flash points.

Classification

Currently-Regulated Materials. Under this proposal, the hazard class of a currently-regulated material which meets the definition of an elevated temperature material would remain unchanged, except for materials in the ORM-E hazard class. For example, a material classed as a corrosive liquid or a Poison B material would continue to be so classed and described.

ORM-E and Newly-Regulated Materials. Materials not currently regulated or materials regulated in the ORM-E hazard class which meet the proposed definition of an elevated temperature material would be classified as ORM-C materials. RSPA believes the ORM-C hazard classification for these elevated temperature materials provides an appropriate level of regulation and is consistent with the recent regulation of molten sulfur.

Materials Transported At or Above Their Flash Points. RSPA proposes to classify materials in a liquid phase with flash points at or above 100°F (37.8°C), which are offered for transportation or transported at or above their flash points as flammable liquids. RSPA had proposed to regulate these materials as combustible liquids in Notice 87–7 under Docket HM–181 (52 FR 16482). However, RSPA believes the flammable liquid classification more accurately identifies the hazard of materials transported at or above their flash points. Therefore, this proposal supersedes the corresponding proposal under HM–181. Materials already regulated in other hazard classes of lower precedence would be reclassified as flammable liquids if offered for transportation or transported at or above their flash points.

Hazard Communication

Elevated Temperature Materials. For currently-regulated materials, information identifying the material as an elevated temperature material would be conveyed through requirements to add the word "HOT" to shipping papers

and package markings. Newly-regulated elevated temperature materials would now require shipping papers. Two new entries, "Elevated temperature materials, liquid (or solid), n.o.s.", would be added to the Hazardous Materials Table in § 172.101 to provide a generic shipping description for these materials. Package markings applicable to ORM-C materials, as well as the addition of the word "HOT" to shipping papers and package markings would also be required.

Materials Transported At or Above Their Flash Points. Newly-regulated materials and regulated materials which have been reclassified as flammable liquids would be subject to all shipping paper, marking, labeling, and placarding requirements applicable to flammable liquids. In addition, these materials would have the "HOT" included as part of the description requirements if they also meet the definition of an elevated temperature material.

Packaging

Currently-Regulated Materials. Except for ORM-classed materials, currently regulated materials which meet the definition of an elevated temperature material would continue to be subject to specific packaging requirements of part 173, as well as general packaging requirements of § 173.24. As part of this proposal, § 173.24(a)(2) would be revised to clarify that a package's effectiveness must be maintained, with respect to impact resistance, strength, compatibility, etc., for the minimum and maximum temperatures encountered during transportation.

Newly-Regulated and ORM-Classed Materials. Packagings for elevated temperature materials classified as ORM-C materials and other ORM-classed materials meeting the definition of an elevated temperature material would be specified under bulk packaging standards in § 173.990. These standards would include requirements for all openings to be securely closed during transport, be leak tight, and be designed to withstand static pressure developed by the lading.

Materials Transported At or Above Their Flash Points. All newly-regulated materials and all materials reclassified as flammable liquids would be subject to the flammable liquid bulk packaging requirements of § 173.119.

Ramifications of Imposing Packaging Standards. RSPA believes that the packaging standards proposed in this notice would not impose an undue burden upon industry by requiring extensive equipment modification or replacement. RSPA believes that most packagings currently in use would meet the proposed packaging standards; where changes are needed, a three-year transition period would be provided. Packagings in dedicated service prior to the effective date of the final rule would remain in service but would have to meet the packaging requirements of § 173.119 or § 173.990, as appropriate, no later than three years after the effective date of the final rule. For new construction, packagings would have to meet the requirements of § 173.119 or § 173.990, as appropriate, beginning six months after the effective date of the final rule.

Potential Impacts of this Proposal

RSPA's goal is to ensure that elevated temperature materials and materials transported at or above their flash points are adequately described and packaged for safety during transportation. Potential impacts of this proposed rulemaking include the regulation of a number of materials not currently addressed by the HMR, particularly those materials offered for transportation or transported at temperatures at or above their flash points. In addition to compliance with the packaging requirements outlined in this proposal, shippers of newly-regulated materials would be required to prepare shipping papers, mark packages and, for materials transported at or above their flash points, affix placards. Shippers of currently-regulated materials which now meet the definition of an elevated temperature material or a flammable liquid would be required to indicate the thermal hazard of the material through additional shipping paper and marking requirements. Other requirements imposed on shippers and carriers of previously unregulated materials would include incident reporting (for carriers); and, for flammable liquids, unloading/loading and attendance requirements, coupler vertical restraint systems on tank cars, and train placement of placarded rail cars. In-depth, substantive comments to this rulemaking which identify and describe packagings presently in use for elevated temperature materials and materials transported at or above their flash points, as well as detailed information and estimated costs of package modification, are particularly encouraged. In order to further understand the scope and potential impact of this proposed rulemaking, RSPA solicits comments concerning the following questions:

1. What elevated temperature materials (as defined in this notice) are currently transported? Please furnish technical name and proper shipping name (if different), hazard class, and identification number for each material which is currently regulated and the technical name of each material that would be newly regulated.

2. At what temperatures are elevated temperature materials being offered for transportation or transported?

3. What materials with flash points at or above 100°F are currently offered for transportation or transported at temperatures at or above their flash points? What are the flash points of these materials and at what temperatures are they offered for transportation or transported?

4. What is the impact of requiring liquids transported at or above their flash points to be packaged in those specification packagings presently authorized for flammable liquids? Please be specific as to what modifications would be required and the estimated cost.

5. What modes of transport (i.e., highway, rail, water, air) are being used for materials offered for transportation or transported at elevated temperatures at or above their flash points?

6. What are the quantities and frequency of shipments for each material? Are any shipments made in non-bulk (e.g., less than 450 liter capacity) packagings?

7. What is the average shipment distance for each material? What percentage of total shipments are transported by carriers engaged solely in intrastate transportation?

8. What is the shipping experience of materials transported at elevated temperatures? Please provide incident or accident data relating to injuries, deaths, or property damage incurred by the transport of these materials.

9. What specialized equipment, if any, is currently used for transportation of elevated temperature materials? Is this equipment in dedicated service?

10. Which packagings currently used do not meet the proposed packaging requirements? What is the accident damage history for these packagings? How many of these packagings would require conversion or replacement, and what would be the estimated cost?

11. What additional costs would be incurred for training, hazard communication, or special handling requirements?

II. Administrative Notices

A. Executive Order 12291

The RSPA has determined that this rulemaking: (1) Is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory

policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A preliminary regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612 and, based on the information available to it at this time, RSPA does not believe that the proposed rule would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposal has no substantial direct impact on the States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this proposed rulemaking contains no policies with Federalism implications as defined in Executive Order 12612.

C. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely affected, I certify that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Hazardous materials table, Marking, Placarding.

49 CFR Part 173

Hazardous materials transportation, Packaging.

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR part 1, unless otherwise noted.

2. In § 171.8, the following definitions would be added in appropriate alphabetical sequence:

§ 171.8 Definitions and Abbreviations.

* * * * *

Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(a) Is in a liquid phase and at a temperature at or above 212 °F (100 °C); or

(b) Is in a solid phase and at a temperature at or above 464 °F (240 °C).

* * * * *

Liquid phase means a material that meets the definition of "liquid" when evaluated at the maximum temperature at which it is offered for transportation or transported.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATION REGULATIONS

3. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

4. Section 172.101 would be amended by adding paragraph (g)(2) as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(g) * * *

(2) Each reference to a section in Column 5(b) for an ORM–A, B, C, or E that meets the definition of an elevated temperature material is modified to read § 173.990.

* * * * *

5. In § 172.101, the Hazardous Materials Table would be amended by revising the entry for "asphalt" and adding the following entries in appropriate alphabetical sequence:

§ 172.101 Hazardous materials table.

(1)	(2)	(3)	(3A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water shipments		
+/A/W	Hazardous materials descriptions and proper shipping names	Hazard Class	Identification number	Label(s) required (if not excepted)	Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Passenger vessel	Other requirements
					(a)	(b)	(a)	(b)	(a)	(b)	(c)
	(Revise) Asphalt (*at or above its flash point*)	Flammable Liquid	NA1999	Flammable Liquid	None	173.119	Forbidden	Forbidden	1	5	When applicable, no fire or residue thereof may be present in the furnace heating the substance while the vehicle is on board a cargo vehicle
	(Add) Elevated temperature material, liquid, n.o.s. (*at or above 212°F*)	ORM-C	NA9259	None	None	173.990	Forbidden	Forbidden	1	1	Stow away from combustibles, flammables, or living qtrs
	Elevated temperature material, solid, n.o.s. (*at or above 464°F*)	ORM-C	NA9260	None	None	173.990	Forbidden	Forbidden	1	1	Stow away from combustibles, flammables, or living qtrs

6. In § 172.203, paragraph (m) would be added to read as follows:

§ 172.203 Additional descriptions requirements.

* * * * *

(m) *Elevated temperature materials.* If a liquid or solid material in a package meets the definition of an elevated temperature material in § 171.8 of this subchapter, and the fact that it is an elevated temperature material is not disclosed in the shipping name, the word "HOT" must immediately precede the proper shipping name of the material on the shipping paper.

7. Section 172.325 would be added to read as follows:

§ 172.325 Elevated temperature materials.

Except for molten sulfur, which must be marked as required in § 173.1080 of this subchapter, a bulk packaging containing an elevated temperature material must be marked on each side and each end with the word "HOT" in black or white Gothic lettering on a contrasting background. The letters in the marking must be at least 4 inches (101.6 mm) in height for rail cars and at least 2 inches (50 mm) in height for all other bulk packagings. The marking must be displayed on the bulk packaging itself or on a white square-on-point configuration having the same outside dimensions as a placard.

PART 173—SHIPPERS—GENERAL REQUIREMENT FOR SHIPMENTS AND PACKAGINGS

8. The authority citation for part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, and 1808; 49 CFR part 1, unless otherwise noted.

9. In § 173.24, paragraph (a)(2) would be revised to read as follows:

§ 173.24 Standard requirements for all packages.

* * * * *

(a) * * *

(2) The effectiveness of the package will not be substantially reduced; for example, impact resistance, strength, packaging compatibility, etc. must be maintained for the minimum and maximum temperatures encountered during transportation.

* * * * *

10. In § 173.29, paragraph (d) would be amended by adding the following sentence:

§ 173.29 Empty packagings.

* * * * *

(d) * * * A package which previously contained an elevated temperature material may remain marked in the same manner as when it contained a greater quantity of the material even though it no longer meets the definition in § 171.8 of this subchapter for an elevated temperature material.

* * * * *

11. In § 173.115, paragraph (a) would be revised to read as follows:

§ 173.115 Flammable, combustible, and pyrophoric Liquids; definitions.

* * * * *

(a) *Flammable liquid*—(1) *Definitions.* Except as provided in paragraph (a)(2) of this section, a flammable liquid means—

(i) Any liquid having a flash point below 100°F (37.8°C); or

(ii) Any material in a liquid phase with a flash point at or above 100°F (37.8°C) which is offered for

transportation or transported at or above its flash point.

(2) *Exceptions.* (i) The following materials are not flammable liquids:

(A) Any liquid meeting one of the definitions for gases in § 173.300;

(B) Any mixture having one component or more with a flash point of 100 °F (37.8 °C) or higher, that makes up at least 99 percent of the total volume of the mixture, if the mixture is not offered for transportation or transported at or above its flash point.

(ii) For the purposes of this subchapter, a distilled spirit of 140 proof or lower is considered to have a flash point of no lower than 73 °F.

* * * * *

12. Section 173.990 would be added to read as follows:

§ 173.990 Elevated temperature material.

(a) When § 172.101 of this subchapter specifies that an elevated temperature material (see § 171.8 of this subchapter) be packaged under this section, only bulk packagings which conform to the requirements of this section are authorized.

(b) *General requirements.* Bulk packagings must conform to the following requirements:

(1) Pressure and vacuum control equipment, when required, must prevent the rupture or collapse of the package from heating, including fire engulfment, or cooling, and prevent any significant release of lading in the event the package is overturned. Pressure and vacuum controls are required as follows:

(i) Provision for pressure control must be provided on packagings where the lading can develop, as a result of fire and heating, pressure increases of greater than 10 percent from normal operating conditions.

(ii) Provision for vacuum control must be provided on packages where the lading can develop, as a result of cooling, pressure decreases of greater than 10 percent from normal operating conditions.

(2) *Closures.* All openings must be securely closed during transportation. Packages must be leak tight in any orientation.

(3) *Strength.* At operating temperatures, each package and closure must be designed and constructed to withstand without substantial deformation twice the static loading produced by the lading in any orientation.

(4) *Compatibility.* The packaging and lading must be compatible over the entire operating temperature range.

(5) *Markings.* In addition to any other markings required by this subchapter, each package must be marked with the manufacturer's name, nominal capacity, design temperature range, and maximum product weight.

(6) *Accident damage protection.* For transportation by highway, external loading and unloading valves, if any, and closures must be protected from impact damage resulting from collision or overturn.

(c) *Authorized packagings.* The following bulk packagings are authorized:

(1) DOT specification cargo tanks, tank cars, and intermodal portable tanks;

(2) AAR Specification 203W, 206A, and 211A tank cars;

(3) Nonspecification cargo tanks, tank cars and portable tanks which are equivalent in structural design and accident damage resistance to the packagings prescribed in paragraph (c)(1) of this section, except for alternative pressure and vacuum control equipment;

(4) Nonspecification crucibles designed and constructed such that the stress in the packaging does not exceed one fourth of the strength of the packaging at any temperature within the design temperature range. Stress is determined under a load equal to the sum of the static or working pressures in combination with the loads developed from accelerations and decelerations incident to normal transportation. For highway transportation, these forces are assumed to be 1.7 g's vertical, 0.75 g's longitudinal, and 0.4 g's transverse, in reference to the axes of the transport vehicle. Each accelerative or decelerative load may be considered separately;

(5) Nonspecification packagings conforming to the provisions of paragraph (b) of this section for materials that are solids when offered for transportation or transported at temperatures at or above 464 °F (240 °C); and

(6) Until three years from the effective date of a final rule, packagings which do not conform to the provisions of paragraph (b) of this section but were manufactured and used for the transportation of elevated temperature materials prior to the effective date of a final rule.

* * * * *

13. In § 173.1080, paragraph (b)(1) would be revised to read as follows:

§ 173.1080 Sulfur, molten or solid.

* * * * *

(b) * * *

(1) Conform to the requirements of § 173.990; and

* * * * *

Issued in Washington, DC, on September 15, 1989, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-22249 Filed 9-20-89; 8:45 am]

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federal register

Thursday
September 21, 1989

Part III

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Revisions to Vinyl Chloride; Equipment Leaks of Volatile Hazardous Air Pollutants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3509-9]

National Emission Standards for Hazardous Air Pollutants; Revisions to Vinyl Chloride; Equipment Leaks of Volatile Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and public hearing; petition for reconsideration.

SUMMARY: On November 26, 1986, the Society of the Plastics Industry, Inc. (SPI) filed with EPA a petition for stay of enforcement and administrative reconsideration of seven provisions in the final rule revising the national emission standard for VC (September 30, 1986, 51 FR 34904). The SPI and three manufacturers (Dow Chemical Company, Georgia Gulf Corporation, and Vista Chemical Company) concurrently filed a petition for review of the revisions to the VC standard with the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners requested review of the definitions of "ethylene dichloride purification," "leak," "exhaust gas," "relief valve discharge," and "3-hour period;" the scope of the relief valve discharge provisions; and the leak detection and elimination provisions (area monitoring). The EPA has evaluated the petitions, and the Administrator proposes to grant the petitioners' request for clarification of certain of these provisions. Minor revisions are being proposed to correct ambiguities in several definitions and in the applicability of certain regulatory requirements in the VC standards. The proposed revisions would not increase the emissions (and the associated health risks) allowed by the standards as promulgated in September 1986. No changes, however, will be made with regard to area monitoring requirements or the relief valve discharge standard. This action provides EPA's responses to petitioners' requests, and the resulting minor proposed revisions to the standards are set forth in this notice.

This action also serves as notice that the petitioners' request for stay of the 1986 revised provisions is being denied.

In addition, this notice is not intended to address the recent decision by the D.C. Circuit Court on the VC standards, *Natural Resources Defense Council, Inc. v. EPA*, 824 F.2d 1146 (1987). Any response to that decision will be made in a future notice in the **Federal Register**.

A public hearing will be held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed revisions.

DATES: *Comments.* Comments must be received on or before November 20, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 11, 1989, a public hearing will be held on October 18, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ann Eleanor at (919) 541-5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by October 11, 1989.

ADDRESSES: *Comments.* Comments should be submitted in duplicate (if possible) to: Central Docket Section (LE-131), Attention: Docket No. A-81-21, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

Docket. A docket, number A-81-21, containing information considered by EPA in the development of the promulgated standards and the petition for stay and reconsideration, to which this notice is responding, is available for public inspection between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and interpretations of applicability, compliance requirements, and reporting aspects of the revised standards, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4. For further information on the background for the proposed revised standards, contact Ms. Shirley Tabler, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5256.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, EPA designated VC as a hazardous air pollutant under section 112 of the Clean Air Act (42 U.S.C. 7412) and promulgated final rules for VC on October 21, 1976 (40 CFR 61.60-61.71). The standards limit emissions of VC from plants producing ethylene dichloride (EDC) via oxychlorination, VC, and polyvinyl chloride (PVC) or other polymers containing VC. These plants are subject to a combination of emission limits, equipment, and work practice requirements at numerous points in the manufacturing processes.

On September 30, 1986 (51 FR 34904), EPA promulgated several administrative and clarifying revisions to the national emission standard for VC. Subsequently, on November 26, 1986, SPI filed with EPA a petition for stay and administrative reconsideration of seven provisions in the final revisions to the VC standard. The SPI, Dow Chemical Company, Georgia Gulf Corporation, and Vista Chemical Company concurrently filed a petition for review of several provisions of the revised standard with the U.S. Court of Appeals for the D.C. Circuit. The SPI is a nonprofit corporation whose members include processors and manufacturers of plastics or plastic products, suppliers of raw materials, processors and converters of plastic resins, and manufacturers of accessory equipment for the plastics industry. The Vinyl Institute, a division of SPI, represents the major domestic producers of VC and PVC.

II. Summary of SPI's Petition for Stay/Reconsideration and EPA's Response

The SPI requested that EPA issue a stay of the 1986 revisions to the VC standard pending review of those revised provisions. Their request for a stay was based on the following factors: (1) Certain provisions of the 1985 proposal were changed without adequate notice or justification by EPA; (2) industry members represented by SPI would suffer irreparable harm if the effectiveness of the 1986 revisions are not stayed during the review period; and (3) a stay will cause no harm to other parties or the public interest.

The EPA has considered the factors presented by SPI in support of their request for stay of the 1986 VC revisions pending EPA's review of the revisions. Having considered the likelihood of SPI's success on the merits of its petition for reconsideration, the likelihood that SPI would be irreparably harmed absent a stay, the prospect that others would be

harmed in the event of a stay, and the public interest, the Administrator has not stayed the 1986 revisions of the VC standard at issue here. This is consistent with long-standing EPA policy to continue to enforce an existing regulation until and unless a revision becomes formally effective. The EPA's policy has been consistently approved by the courts in the context of State Implementation Plans. See *Train* v. *NRDC*, 421 U.S. 60, 92 (1975) ("This litigation, however, is carried out on the polluter's time not the public's, for during [the pendency of a SIP revision] the original regulations remain in effect, and the polluter's failure to comply may subject him to a variety of enforcement procedures.") The rationale in *Train* applies with equal force to regulations promulgated under section 112. Therefore, EPA hereby denies SPI's request for a stay pending EPA's reconsideration of the VC standard.

In the petition for review of the revised standard, SPI claimed that the 1986 promulgated revisions differed significantly from the revisions that were proposed on January 9, 1985 (50 FR 1182).

The SPI asserted that without adequate notice, EPA's 1986 revisions changed key provisions of the VC standard in a manner that: (1) Violated case law; (2) imposed new penalties; (3) created multiple penalties for the same event; and (4) expanded the types of equipment subject to the standard. The following discussion summarizes their concerns and EPA's responses.

Definition of "Exhaust Gas"

The SPI requested a review of several definitions in the VC standard. According to SPI, the 1986 final definition of "exhaust gas," 40 CFR 61.61(x), deleted a key sentence from the proposed definition without adequate explanation. By omitting the sentence, "A leak * * * is not an exhaust gas," SPI was concerned that leak emissions could result in violations of the exhaust gas standard if more than 10 ppm of VC are emitted. Reconsideration was requested because leaks from equipment in VC service would exceed the 10 ppm emission limitation for exhaust gases, thereby subjecting industries to a potential fine of $25,000 per day for each leak.

It was not EPA's intent to categorize every leak of greater than 10 ppm as an exhaust gas. The sentence was omitted in the final definition because some emissions which are required to be vented to a control device cannot be automatically categorized as either a leak or exhaust gas by a general definition. As stated in the promulgation BID for the revised standards (pp. 2–54 and 2–55), the facts of the situation resulting in these emissions needed to be considered when deciding which part of the VC standard applied. Upon reconsideration, EPA agrees with SPI's concern that the final definition of "exhaust gas" does not provide for exemption from the exhaust gas standard (10 ppm) when such an emission is judged to be a leak. Therefore, EPA is proposing to modify the definition by adding two sentences which clarify that a leak is not an exhaust gas, and that equipment containing exhaust gas must comply with § 61.65(b)(8) requiring leak detection and prevention, whether or not that equipment contains 10 percent by volume VC. This proposed addition assures that leaks from exhaust gas streams are subject to the leak detection and elimination requirements, but that such leaks will not also be classified as "exhaust gas."

Definition of "Relief Valve Discharge"

The SPI objected to a sentence added to the 1986 final definition of "relief valve discharge," 40 CFR 61.61(y), which stated that a relief valve discharge would be exempt from regulation if vented to a control device, but only if the control device meets the 10 ppm emission limit. The SPI pointed out that a double violation could occur (i.e., of the relief valve discharge and exhaust gas standards) if a relief valve discharge is vented to a control device not meeting 10 ppm. If interpreted to impose double penalties, this provision, in SPI's view, would exceed EPA's statutory authority and unlawfully increase the maximum statutory penalty set by Congress for a single event that leads to a violation of a NESHAP. The SPI believes that owners/operators of regulated facilities have sufficient economic incentive (preventing releases of their product) to ensure that pressure relief valves work as designed, regardless of the standard promulgated. Moreover, the final definition contradicts past regulatory interpretation that relief valve discharges ducted to flares and other control devices are exempt from the exhaust gas standard.

The EPA agrees that venting a relief valve discharge (RVD) to a combustion device achieves significant emission reduction benefits. These devices, when properly designed and operated, generally have efficiencies of 98 percent or greater. The use of combustion devices are not expected to increase the number of RVD's. Thus, because regulated facilities do have some economic incentive to ensure that RVD's are minimized, the net RVD emission reduction resulting from the use of combustion devices should approach 98 percent or more. Therefore, minor revisions to the definition of "relief valve discharge" and to the RVD provisions (§ 61.65(a)) are being proposed to clarify that an RVD routed to a properly designed and operated control device would be exempted from the provisions of the RVD standard. This change would prevent misinterpretation of the regulatory requirements and imposition of a double penalty.

In addition, new provisions (§ 61.65(d)) have been added for an RVD that is ducted to a control device that is continually operating while emissions from the release are present at the device. An RVD that is ducted to a control device, other than a flare, would be subject to the 10 ppm limit and the continuous emission monitoring system requirement contained in § 61.68 and to the reporting requirements of § 61.70. In the case of flares, emission monitoring is not possible. Therefore, for RVD's routed to a flare, the design requirements for flares (40 CFR 60.18) would apply. The EPA recognizes that measurement of relief valve discharge volumetric flow rates and gas stream composition is not possible using the methods set forth in § 60.18 (f)(3) and (f)(4). Estimates of these parameters will, therefore, need to be based on empirical or other bases, subject to EPA approval. Flare operations would be monitored in accordance with the requirements of §§ 60.18(d) and 60.18(f)(2). For the purpose of § 60.18(d), the volume and component concentration of each RVD would be estimated and calculations would be made to verify ongoing compliance with the design and operating requirements of § 60.18 (c)(3) through (c)(6). If more than one relief valve is discharged simultaneously to a single flare, these calculations would account for the cumulative effect on all such RVD's. If the results of the monitoring contained in § 60.18(f)(2) or any other information show that the pilot flame is not present 100 percent of the time during which an RVD is routed to a flare, the RVD is subject to the provisions of § 61.65(a). A report describing the flare design must be provided to the Administrator not later than 90 days after the adoption of this provision or within 30 days of the installation of a flare system for control of RVD's, whichever is later.

Definition of a "Leak"

The SPI objected to EPA's defining "indications of liquid dripping" as a "leak," 40 CFR 61.61(w). The SPI

requested that the phrase be deleted or revised to refer to VC since dripping liquids may not always contain VC.

In the VC standard, the portion of the leak definition referring to "indications of liquid dripping" applies only to pumps in VC service. The EPA believes that "indications of liquid dripping" are an appropriate criterion for requiring repair actions on double mechanical seal pumps in VC service and, therefore, should be included in the definition of a leak. As stated in the BID for the 1986 promulgated revisions, visible leakage from all types of pump seals, including double mechanical seals required by the VC standard, is generally indicative of seal wear even if no VC is present in the leaking fluid. To prevent further seal wear resulting in major seal failure allowing VC emissions into the atmosphere, the seals should be repaired soon after leakage is initially detected. After further consideration of SPI's concern, however, EPA agrees that some amount of barrier fluid leakage is normal. Therefore, EPA proposes to revise the standards for pumps (§ 61.242–2(d)) to clarify the requirements for pump seal drips. Section 61.242–2(d)(4) addresses drips from pump seals that contain VC, and § 61.242–2(d)(6) addresses drips from pump seals that do not contain VC.

The proposed revised provisions of § 61.242–2(d) are designed to accomplish two purposes. One is to ensure that VC leaks from pump seals are detected and eliminated. This is accomplished by paragraphs (d)(4) (i), (ii), and (iii). The other purpose is to identify and prevent pump seal failures by causing abnormal dripping (even when VC is not contained in the dripping liquid) to be detected and repairs to be made. This is accomplished by paragraphs (d)(6) (i), (ii), (iii), and (iv). These paragraphs require the facility owner/operator to establish criteria associated with normal operation.

The intent of the proposed revised provisions is identical to the existing provisions. The difference is that the proposed § 61.242.2(d)(6)(i) allows an owner/operator to take into account the small number of liquid drips that may occur when new seals are in place or are otherwise associated with normal operation.

Definition of "3-hour Period"

The SPI noted that, in the September 1986 final rule, EPA added a definition of "3-hour period" 40 CFR 61.61(z), to clarify that the emission limits in the exhaust gas standard (10 ppm) is a 3-hour average. The definition creates "rolling" averages (24 3-hour averages per day) rather than "block" averages (8 3-hour averages). The SPI objected that a single, 1-hour 10 ppm exceedance could result in three violations of the 10 ppm exhaust gas standard, under the revised definition of "3-hour period." This could lead to double or triple penalties, "thereby exceeding the maximum penalty permissible under the Clean Air Act."

Upon reconsideration, EPA proposes to further revise the definition of "3-hour period" to ensure that a single event of 1-hour or less at 10 ppm or greater could result in no more than a single violation of the exhaust gas standard. A phrase has been added to the definition in 61.61(z) to accomplish this. The EPA did not intend to penalize a plant three times whenever a 10 ppm event occurs within 1 hour. Rather, EPA wanted to ensure that a combination of two or more 10 ppm events which would result in a 3-hour exceedance do not go unpenalized just because they occurred over two separate 3-hour "blocks." The proposed revised definition of "3-hour period" satisfies EPA's intent without unintentionally subjecting a plant owner/operator to multiple violations.

Definition of "Ethylene Dichloride Purification"

According to SPI, the 1986 final revisions changed the definition of EDC purification, 40 CFR 61.61(o). The promulgated definition excluded product storage following the final VC finishing column, and thus exempted such storage from the exhaust gas standard. The SPI believes that EPA intended to exclude not only EDC final product storage but also intermediate product storage (before the final finishing column) based on EPA's response to comments contained in the BID (pp. 2–43 and 2–44) and in the BID summary of changes since proposal (pp. 1–2). Although it supports the exemption of final EDC product storage from the definition, SPI requested that EPA also exempt intermediate EDC product storage. In addition, one SPI company, a major producer of VC monomer and PVC polymer, provided information on nine crude and intermediate storage tanks at one of its facilities. The information included tank sizes, design, emissions estimates, and costs. This company requested EPA to exclude intermediate and crude, as well as final EDC storage tanks, from the definition.

The EPA agrees that it intended to exempt crude and intermediate storage tanks from the exhaust gas standard. The definition of "EDC purification" has been revised to clarify that emissions from crude, intermediate, and final storage tanks following EDC formation are not subject to the standards. In addition, § 61.65(b)(6), Opening of equipment, has also been revised to clarify that the requirements in this section do not apply to crude, intermediate, or final EDC storage tanks. As stated in the BID response (pp. 2–43 through 2–45), EPA evaluated the reasonableness of regulating EDC storage tanks under the VC standard. Based on emissions data submitted by the commenters, uncontrolled VC emissions from intermediate and final EDC storage tanks at a typical EDC/VC plant were estimated to be 0.1 to 2 Mg/yr. An emission reduction as high as 14 Mg/yr from all plants would be achieved based on venting existing EDC storage tanks to an existing primary control device (incinerators). Prior to the September 1986 rule, EPA concluded that regulation of these tanks under the VC standard was not warranted.

In response to SPI's petition for reconsideration, EPA has evaluated the data submitted by one SPI company (Docket Entry No. VI–B–4) for nine crude and intermediate EDC storage tanks before the final finishing column at one of its facilities. These tanks are currently uncontrolled. The data included tank sizes, design, emissions estimates, and costs. The company's estimates of the total uncontrolled emissions (0.002 to 0.323 Mg/yr VC) for the nine crude and intermediate tanks fall at the low end of the range of individual VC tank emission estimates made by EPA for EDC final product storage tanks. This information is consistent with EPA's position that the regulation of crude and intermediate storage tanks is unnecessary because emissions are extremely low.

Leak Detection and Elimination

Under the 1976 VC standard, 40 CFR 61.65(b)(8), companies installed area monitors and developed plant-specific leak detection and elimination programs that included the routine use of portable monitors. Subsequently, EPA developed a generic leak detection and elimination program (subpart V, 40 CFR 61.240—61.247) based on equipment and data for the organic chemical and petroleum industries. Tne 1986 revisions incorporated the subpart V provisions into the VC standard. The SPI opposes the addition of the subpart V provisions to the VC standard. The SPI argued that existing programs are effective without the subpart V provisions and that EPA's decision to retain area monitoring requirements from the 1976 standard is questionable since they have not been required for other industries subject to subpart V. In addition, according to SPI, no justification has been given for

requiring retention of area monitors in addition to subpart V. Although a program under § 61.65(b)(8) demonstrating less than 2 percent of valves leaking is considered "effective," such a program is exempt only from certain parts of subpart V. For these reasons, SPI requests reinstatement of the leak detection and elimination requirements contained in the 1976 VC standard.

Upon reconsideration, EPA proposes to make no changes in the application of subpart V to the VC standard and the requirements for fixed area monitoring (§ 61.65(b)(8)(i)). The basis for adding subpart V to the VC standard was explained in detail in the preamble to the proposed revisions (50 FR 1190–1192, January 9, 1985), and the justification for those requirements has not changed since that time. The EPA believes that the area monitoring and subpart V approaches both have benefits and are not redundant. In particular, area monitors allow for quick detection of certain large VC leaks that might otherwise go undetected until the next routine portable monitoring screening, as well as detection of large leaks from equipment not affected by subpart V (e.g., agitators). The area monitors have already been purchased by subject facilities and the additional cost of monitor operation is relatively small. Therefore, a comparison to other industries is not relevant. Also, area monitoring is often used as part of a program to reduce leaks to below 2 percent, and therefore, as discussed below, an owner/operator does not have to conduct the leak detection and repair provisions of subpart V.

Any plant with an effective existing program under § 61.65(b)(8) for detecting and repairing leaks can control equipment leaks without complying with the subpart V provisions. Specifically, if an owner/operator can demonstrate that less than 2.0 percent of valves are leaking in any process unit, then that process unit is exempt from §§ 61.242–1(d) (marking), 61.242–7(a) (monitoring), 61.246 (recordkeeping), and 61.247 (reporting). To demonstrate that less than 2.0 percent of valves are leaking, the owner/operator must conduct a performance test initially, annually, and at any other times requested by the Administrator. If, during any performance test, the percentage of leaking valves exceeds 2.0 percent, then the owner/operator must comply with subpart V within 90 days. This exemption only applies to the standards for valves (§ 61.242–7(a)(b)(c)) because the other standards in subpart V interface with specific equipment requirements/performance measures in the VC standard (e.g., leaks from relief valves, § 61.65(b)(4) and rotating pumps, § 61.65(b)(3)(i)). However, this exemption includes all of the recordkeeping and reporting requirements of §§ 61.246 and 61.247 because these requirements mainly affect valves. The exemption for marking, recordkeeping, and reporting applies to the entire process unit. The exemptions (provided in the VC standard) to subpart V were designed, based on comments made during the public comment period, to avoid unnecessary changes to existing leak detection plans which are effective in detecting and repairing VC leaks.

Scope of Relief Valve Discharge Provisions

The SPI opposes EPA's withdrawal of the 1985 proposed numerical limits for relief valve discharges and has requested that EPA reconsider its decision to retain the emergency discharge Provision of the 1976 standard, 40 CFR 61.65(a). The SPI claimed that the 1976 standard "impermissibly delegates rulemaking authority to enforcement personnel and is unconstitutionally vague and that, as applied, the regulation is unfair, unlawful, arbitrary and capricious." The SPI prefers the proposed numerical limits because they would remedy these problems and reduce the administrative burden on EPA and industry. The SPI also believes that the proposed numerical limits are stricter than the 1976 emergency discharge provision because "each discharge causing an exceedance of any numerical limit * * * would be considered a violation without regard to whether any individual discharge was preventable."

The EPA has reviewed the basis for the decision not to promulgate numerical limits for RVD's and has decided that the 1976 standard is still reasonable and appropriate. The 1976 standard permits only "emergency" RVD's, those that could not have been avoided by taking measures to prevent the discharge.

A detailed discussion of the basis for not promulgating the numerical limits for RVD's is contained in the preamble for the promulgated amendments (51 FR 34905–34906, September 30, 1986), and SPI has not provided any new information that would affect EPA's decision. In summary, the decision to retain the original 1976 RVD standard was made after considering the revisions in light of public comments on the numerical limits, and after review of the basis for the decision to reformat the standard.

In particular, several public comments on the 1985 proposed amendments expressed concern that preventable RVD's would be allowed under the revised standard and that the performance allowed under the revised standard could be inconsistent with that allowed under the original standard. Other comments expressed concern that the revised standard included no mechanism for regulating very large RVD's. The basis for the statement that a large EPA resource commitment is required for enforcing the 1976 RVD standard was also questioned.

The EPA's review revealed that the burden on its resources had diminished as experience with the implementation of the standard increased and as the industry's understanding of the provisions of the existing standard became clearer. Thus, it was not necessary to revise the format of the RVD standard. Compared to the 1985 proposal, the existing standard also has the advantages of affecting all preventable RVD's and providing better regulation of large volume RVD's. Therefore, for the reasons stated, EPA's review of the record supports the existing standard.

Based on the EPA's experience with administering the VC standard of § 61.65(a), one major deficiency with the type of information submitted in many of the 10-day reports of RVD's has been recognized. This concerns that information required to be reported by the standard regarding, "the action that was taken to prevent the discharge." For purposes of clarification, this portion of the standard requires information on the action taken to prevent or address the cause leading up to the RVD release and not only the action taken after an event or cause occurs that results in an RVD release.

Emission Monitoring Clarification

In addition to the changes made in response to the petition for reconsideration, a minor clarification has been made in § 61.68, Emission monitoring. The existing regulation, § 61.68(b), states that the VC monitoring system(s) that is used to meet the continuous monitoring requirements in paragraph (a) (of § 61.68) for emissions from sources for which emission limits are prescribed is to be a device which obtains air samples on a continuous sequential basis and analyzes them. Since it is obvious that paragraph (a) of § 61.68 calls for the monitoring of the emissions from prescribed sources for vinyl chloride and not ambient air sampling as required under § 61.65(b)(8) for leak detection/elimination, § 61.68(b)

has been clarified to require that representative (not air) samples from one or more applicable emission points be obtained and analyzed. This revision more accurately reflects the original intent.

III. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify readily and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review materials (section 307(d)(7)(A)).

C. Office of Management and Budget Reviews

1. *Paperwork Reduction Act.* There are no information collection requirements associated with this proposed rulemaking.

2. Under Executive Order 12291, EPA must judge whether a regulatory action is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This proposed rulemaking is not major because it makes minor clarifying revisions to an existing regulation and, therefore, results in none of the significant adverse economic effects described in the Order.

This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are included in Docket No. A–81–21. The docket is available for public inspection at EPA's Central Docket Section that is listed under the **ADDRESSES** section of this notice.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these proposed minor revisions impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: September 12, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, it is proposed to amend 40 CFR part 61 as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, 301, Clean Air Act as amended; 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.61 is amended by revising paragraphs (o), (w), (x), (y), and (z) to read as follows:

§ 61.61 Definitions.

* * * * *

(o) *Ethylene dichloride purification* includes any part of the process of ethylene dichloride purification following ethylene dichloride formation, but excludes crude, intermediate, and final ethylene dichloride storage tanks.

* * * * *

(w) *Leak* means any of several events that indicate interruption of confinement of vinyl chloride within process equipment. Leaks include events regulated under subpart V of this part such as:

(1) An instrument reading of 10,000 ppm or greater measured according to Method 21 (see appendix A of 40 CFR part 60);

(2) A sensor detection of failure of a seal system, failure of a barrier fluid system, or both;

(3) Detectable emissions as indicated by an instrument reading of greater than 500 ppm above background for equipment designated for no detectable emissions measured according to Test Method 21 (see appendix A of 40 CFR part 60); and

(4) In the case of pump seals regulated under § 61.242–2, indications of liquid dripping constituting a leak under § 61.242–2.

Leaks also include events regulated under § 61.65(b)(8)(i) for detection of ambient concentrations in excess of background concentrations. A relief valve discharge is not a leak.

(x) *Exhaust gas* means any offgas (the constituents of which may consist of any fluids, either as a liquid and/or gas) discharged directly or ultimately to the atmosphere that was initially contained in or was in direct contact with the equipment for which exhaust gas limits are prescribed in § 61.62 (a) and (b); § 61.63(a); § 61.64 (a)(1), (b), (c), and (d); § 61.65 (b)(1)(ii), (b)(2), (b)(3), (b)(5), (b)(6)(ii), (b)(7) and (b)(9)(ii); and § 61.65(d). A leak as defined in paragraph (w) of this section is not an exhaust gas. Equipment which contains exhaust gas is subject to § 61.65(b)(8), whether or not that equipment contains 10 percent by volume vinyl chloride.

(y) *Relief Valve Discharge* means any nonleak discharge through a relief valve.

(z) *3-hour period* means any three consecutive 1-hour periods (each commencing on the hour), provided that the number of 3-hour periods during which the vinyl chloride concentration exceeds 10 ppm does not exceed the number of 1-hour periods during which the vinyl chloride concentration exceeds 10 ppm.

3. Section 61.65 is amended by revising paragraphs (a) and (b)(6) introductory text, and adding paragraph (d) to read as follows:

§ 61.65 Emission standard for ethylene dichloride, vinyl chloride and polyvinyl chloride plants.

* * * * *

(a) *Relief valve discharge.* Except for an emergency relief discharge, and except as provided in § 61.65(d), there is to be no discharge to the atmosphere from any relief valve on any equipment in vinyl chloride service. An emergency relief discharge means a discharge which could not have been avoided by taking measures to prevent the discharge. Within 10 days of any relief valve discharge, except for those subject to § 61.65(d), the owner or operator of the source from which the relief valve discharge occurs shall submit to the Administrator a report in writing

containing information on the source, nature and cause of the discharge, the date and time of the discharge, the approximate total vinyl chloride loss during the discharge, the method used for determining the vinyl chloride loss (the calculation of the vinyl chloride loss), the action that was taken to prevent the discharge, and measures adopted to prevent future discharges.

(b) * * *

(6) *Opening of equipment.* Vinyl chloride emissions from opening of equipment (excluding crude, intermediate, and final EDC storage tanks, but including prepolymerization reactors used in the manufacture of bulk resins and loading or unloading lines that are not opened to the atmosphere after each loading or unloading operation) are to be minimized as follows:

* * * * *

(d) A RVD that is ducted to a control device that is continually operating while emissions from the release are present at the device is subject to the following requirements:

(1) A discharge from a control device other than a flare shall not exceed 10 ppm (average over a 3-hour period) as determined by the continuous emission monitor system required under § 61.68. Such a discharge is subject to the requirements of § 61.70.

(2) For a discharge routed to a flare, the flare shall comply with the requirements of § 60.18.

(i) Flare operations shall be monitored in accordance with the requirements of §§ 60.18(d) and 60.18(f)(2). For the purposes of § 60.18(d), the volume and component concentration of each relief valve discharge shall be estimated and calculations shall be made to verify ongoing compliance with the design and operating requirements of §§ 60.18 (c)(3) through (c)(6). If more than one relief valve is discharged simultaneously to a single flare, these calculations shall account for the cumulative effect of all such relief valve discharges. These calculations shall be made and reported quarterly for all discharges within the quarter. Failure to comply with any of the requirements of this paragraph will be a violation of § 61.65(d)(2). Monitoring for the presence of a flare pilot flame shall be conducted in accordance with § 60.18(f)(2). If the results of this monitoring or any other information shows that the pilot flame is not present 100 percent of the time during which a relief valve discharge is routed to the flare, the relief valve discharge is subject to the provisions of § 61.65(a).

(ii) A report describing the flare design shall be provided to the Administrator not later than 90 days after the adoption of this provision or within 30 days of the installation of a flare system for control of relief valve discharge whichever is later. The flare design report shall include calculations based upon expected relief valve discharge component concentrations and net heating values (for PVC this calculation shall be based on values expected if a release occurred at the instant the polymerization starts); and estimated maximum exit velocities based upon the design throat capacity of the gas in the relief valve.

4. Section 61.68 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 61.68 Emission monitoring.

* * * * *

(b) The vinyl chloride monitoring system(s) used to meet the requirement in paragraph (a) of this section is to be a device which obtains representative samples from one or more applicable emission points on a continuous sequential basis and analyzes the samples with gas chromotography or, if the owner or operator assumes that all hydrocarbons measured are vinyl chloride, with infrared spectrophotometry, flame ion detection, or an alternative method. * * *

* * * * *

5. Section 61.242–2 of subpart V is amended by revising paragraph (d) introductory text, (d)(5) and (d)(6) and by adding paragraphs (d)(4) (i), (ii) and (iii) to read as follows:

§ 61.242–2 Standards: Pumps.

* * * * *

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraphs (a) and (b) of this section, provided the following requirements are met:

(4) * * *

(i) If there are indications of liquid dripping from the pump seal at the time of the weekly inspection, the pump shall be monitored as specified in § 61.245 to determine the presence of VOC and VHAP in the barrier fluid.

(ii) If the monitor reading (taking into account any background readings) indicates the presence of VHAP, a leak is detected. For the purpose of this paragraph, the monitor may be calibrated with VHAP, or may employ a gas chromatography column to limit the response of the monitor to VHAP, at the option of the owner or operator.

(iii) If an instrument reading of 10,000 ppm or greater (total VOC) is measured, a leak is detected.

(5) Each sensor as described in paragraph (d)(3) of this section is checked daily or is equipped with an audible alarm.

(6)(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both.

(ii) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (d)(6)(i) of this section, or if, based on the criteria established in paragraph (d)(6)(i) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(iii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.242–10.

(iv) A first attempt at repair shall be made no later than five calendar days after each leak is detected.

* * * * *

[FR Doc. 89–22187 Filed 9–20–89; 8:45 am]
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federal register

Thursday
September 21, 1989

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Dicerandra christmanii, Small-Anthered Bittercress and Queen Alexandra's Birdwing Butterfly; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Dicerandra christmanii (Garrett's Mint) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: *Dicerandra frutescens* (Lamiaceae), native to Florida, is an endangered species on the List of Endangered and Threatened Plants (List). A newly published taxonomic analysis shows that *Dicerandra frutescens*, as it was delimited when added to the List, actually consists of two distinct species, one retaining the name *Dicerandra frutescens* (scrub mint), the other newly named *Dicerandra christmanii* (Garrett's mint). The plants that are transferred to *Dicerandra christmanii* retain the protection of the Endangered Species Act that they were given under their previous name. This rule gives public notice to adoption of the new name by the Fish and Wildlife Service.

EFFECTIVE DATE: September 21, 1989.

ADDRESSES: David J. Wesley, Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Phone: 904/791-2580 or FTS 946-2580.

SUPPLEMENTARY INFORMATION:

Effective Date

The usual 30-day delay between date of publication of a final rule and its effective date may be waived for cause, as provided by 50 CFR 424.18(b)(1) and by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). The Service finds that this period be waived for this rule because the rule's only purpose is to make a technical correction to the List of Endangered and Threatened Plants.

Background

Dicerandra frutescens (scrub mint) was listed as an endangered species on November 1, 1985 (50 FR 45621) under the provisions of the Endangered Species Act of 1973, as amended. A recently published taxonomic analysis (Huck et al. 1989) finds that plants belonging to two populations in the northern part of the range of *Dicerandra frutescens* are clearly distinct from plants from the southern populations in "anther and corolla color, essential oils, average leaf length, and anther connective glandularity." These differences are very evident on live plants, but not on herbarium specimens, explaining why they had not been noticed earlier. The northern populations are now designated as a distinct species under the new name *Dicerandra christmanii* Huck & Judd (Huck et al. 1989). The nomenclatural transfer of these populations to a new species does not affect their protected status under the Endangered Species Act.

The Fish and Wildlife Service uses the most recently accepted scientific names for listed plants (50 CFR 17.12(b)); accordingly, the List of Endangered and Threatened Plants is being revised to include the name *Dicerandra christmanii* (common name: Garrett's mint). Other information provided for *Dicerandra christmanii* in the List will be identical to the information for *Dicerandra frutescens*, which remains in the List with its entries unaltered. This adoption of a current scientific name is nonregulatory in nature (50 CFR 17.12(d)). This rule is published to clarify the reason for Service's adoption of the new name and to provide a record of the change in nomenclature in the "when listed" column of the List for future reference.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Reference Cited

Huck, R.B., W.S. Judd, W.M. Whitten, J.D. Skean, Jr., R.P. Wunderlin, and K. DeLaney. 1989. A new *Dicerandra* (Labiatae) from the Lake Wales Ridge of Florida, with a Cladistic Analysis and Discussion of Endemism. Systematic Botany 14(2): 197-213.

Author

The primary author of this final rule is David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 is revised to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Public Law 99-625, 100 Stat. 3500; unless otherwise noted.

2. The authority citation for subpart J, part 17, is removed.

3. Amend § 17.12(h) by adding the following, in alphabetical order under the family Lamiaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Lamiaceae-Mint family:						
Dicerandra christmanii	Garrett's mint	U.S.A. (FL)	E	207,361	NA	NA
Dicerandra frutescens	Scrub mint	U.S.A. (FL)	E	207,361	NA	NA

Dated: September 11, 1989.

David L. Olsen,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-22337 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB 23

Endangered and Threatened Wildlife and Plants; Small Anthered Bittercress Determined To Be Endangered

AGENCY: Fish and Wildlife Service. Interior.

ACTION: Final rule.

SUMMARY: The Service Determines *Cardamine micranthera* (small-anthered bittercress), a perennial herb limited to four populations in North Carolina, to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Cardamine micranthera* is endemic to Stokes and Forsyth Counties, North Carolina, and is endangered by conversion of habitat for agricultural and silvicultural purposes, floods, stream channelization and impoundment, and encroachment of exotic plants. This action implements Federal protection provided by the Act for *Cardamine micranthera.*

EFFECTIVE DATE: October 23, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock, at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Cardamine micranthera, first described by R. C. Rollins (1940) from material collected in North Carolina in 1939, is an erect, slender, perennial herb with fibrous roots and one (or rarely more) simple or branched stem growing 2 to 4 decimeters tall. Basal leaves are 1 to 2 centimeters (cm) long, 0.5 to 0.6 cm wide, crenate, with one (or rarely two) pair of small lateral lobes. The stem leaves are alternate and mostly unlobed, 1 to 1.5 cm long, crenate and cuneate. Flowers and fruits are borne in April and May. The flowers, subtended by leafy bracts, have four white petals, six stamens, and small, round anthers. The fruit is a silique 0.8 to 1.2 cm long and approximately 1 millimeter (mm) in diameter with a beak 1 to 1.2 mm long. The brown seeds are approximately 1 mm long.

Cardamine micranthera can be distinguished from its most similar relative, *Cardamine rotundifolia*, by its much smaller, nearly orbicular (instead of oblong) anthers, smaller flowers, and more angulate leaves. In *Cardamine micranthera* the anthers are about 0.5 mm long, and the petals are 1.2 to 2 mm wide; whereas in *Cardamine rotundifolia*, the narrowly oblong anthers measure from 1.2 to 1.6 mm long, and the petals are 2.5 to 3.5 mm wide. Growth habits of the two species differ as well, *Cardamine rotundifolia* has decumbent stems with proliferating branches arising both from the main axis and often from the inflorescences. *Cardamine micranthera* has erect or only basally decumbent stems with no proliferating branches. Also, the siliques and styles of *Cardamine micranthera* are only about half as long as those of *Cardamine rotundifolia* (Rollins 1940, Cooper *et al.* 1977, Radford *et al.* 1964).

Cardamine micranthera is endemic to seepages, streambanks, and moist woods along a few small streams in Stokes and Forsyth Counties, North Carolina. The single population in Forsyth County was destroyed when the site was converted to cattle pasture in the early 1960s. Repeated searches for the single population known at that time from Stokes County were unsuccessful, and the species was presumed extinct (Cooper *et al.* 1977). In 1985, nearly 30 years after the species had last been seen, it was again located in Stokes County by S. W. Leonard (1986). Subsequent searches by A. Weakley (North Carolina Natural Heritage Program) and N. Murdock (Service) resulted in the discovery of three more populations in Stokes County. All four remaining poulations are located on privately owned lands. The continued existence of this species is threated by conversion of its habitat to pasture, habitat destruction and/or desiccation associated with logging, encroachment by aggressive nonnative species such as Japanese honeysuckle *Lonicera japonica* Thunberg), impoundment or channelization of the small stream corridors it occupies, and flooding and associated scouring of its streambank habitat.

The remaining populations are small in numbers of plants and extent of occupied habitat. The smallest population consists of only 3 plants; the largest, consisting of about 200 plants, occupies less than a tenth of a mile of streambank. With all four remaining sites in private ownership, the species is extremely vulnerable to extirpation resulting from habitat alteration.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document Number 94-51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of its intention thereby to review the status of the plant taxa named within. *Cardamine micranthera* was included in the July 1, 1975, notice of review. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480). *Cardamine micranthera* was included in that notice as a category 1 species. Category 1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened species. A revision of the 1980 notice that maintained *Cardamine micranthera* in this category was published on September 27, 1985 (50 FR 39526).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This is the case for *Cardamine micranthera* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, 1984, 1985, 1986, and 1987, the Service found that the petitioned listing of *Cardamine micranthera* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats was still being gathered. The February 1, 1989, proposal of *Cardamine micranthera* to be endagered (54 FR 5095) constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the February 1, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Danbury Reporter" on February 22, 1989.

Four comments were received, all of which expressed support for the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cardamine micranthera* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cardamine micranthera* Rollins (small-anthered bittercress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Four populations of *Cardamine micranthera* are known to exist in Stokes County, North Carolina. One other historically known population has been extirpated due to conversion of the habitat to cattle pasture. The four remaining populations are located in privately owned lands and are small and extremely vulnerable to extirpation. Activities that could further threaten the continued existence of *Cardamine micranthera*, if not undertaken in a manner consistent with protection of the species, include impoundment, channelization, conversion of the habitat to pasture, logging, encroachment of exotic species such as *Lonicera japonica*, and flooding (which will be discussed in detail under Factor E below).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Cardamine micranthera* is not currently a significant component of the commercial trade in native plants. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific publicity.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms.* On September 1, 1989. *Cardamine micranthera* was added as an endangered species to the State list of endangered species in North Carolina (R. Sutter, North Carolina Plant Protection Program, personal communication, 1989). The plant is afforded legal protection in that State by North Carolina General Statutes, sections 106–202.12 to 106–202.19, which provide for protection from intrastate trade (without a permit), monitoring and management of State-listed species, and prohibition against taking plants without written permission of landowners. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat, such as channelization, impoundment, or conversion for agricultural or silvicultural use. Section 404 of the Federal Water Pollution Control Act could potentially provide some protection for the habitat of *Cardamine micranthera*; however, most, of not all, of the sites where it occurs do not meet the wetlands criteria of the Federal Water Pollution Control Act. The Endangered Species Act would provide additional protection and encouragement of active management for *Cardamine micranthera*.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this final rule, the four remaining populations of this species are small in numbers of individual stems and in area covered by the plants. In some cases aggressive exotic species such as *Lonicera japonica* have invaded adjacent areas and threaten to invade this species' habitat, which could result in the elimination of *Cardamine micranthera*. The natural habitat of this species consists of small streambank seeps and, secondarily, adjacent sandbars and stream edges. At one of the remaining populations, the original seep habitat can no longer be found, and the surviving plants now exist only in the streambed on two small sandbars. In this situation, the species is highly vulnerable to natural catastrophes such as floods, which could scour the streambed and eliminate the few remaining plants. In unaltered habitat, where most of the plants occupy the seepages above the actual stream channel, flooding and scouring of the streambed is not as potentially threatening to the species as in altered habitats. In unaltered habitats, scoured areas where plants have been eliminated are readily recolonized by the populations in the seeps.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cardamine micranthera* as endangered. With only four populations remaining in existence (one having already been eliminated) and with all the remaining populations being small, highly vulnerable, and located in privately owned land, the species definitely warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing the four remaining populations. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, *Cardamine micranthera* is threatened by taking and vandalism. These activities are difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or

damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. None of the remaining populations of this species occurs on Federal lands, and in any case such provisions are difficult to enforce. Publication of critical habitat descriptions and maps would make *Cardamine micranthera* more vulnerable and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Cardamine micranthera*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Cardamine micranthera* and its habitat in the future include, but are not limited to, channelization of streams, construction of impoundments, and issuance of permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Cardamine micranthera* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since *Cardamine micranthera* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203 (703/358-2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cooper, J., S. Robinson, and J. Funderburg. 1977. Endangered and threatened plants and animals of North Carolina: proceedings of the symposium on endangered and threatened biota of North Carolina. North Carolina State Museum of Natural History, Raleigh, North Carolina. Pp. 101-102.

Leonard, S. 1986. Pursuing the small-anthered bittercress. North Carolina Wildflower Preservation Society, Spring Newsletter. Pp. 8-10.

Radford, A., H. Ahles, and C. Bell. 1964. Manual of the vascular flora of the Carolinas. UNC Press, Chapel Hill. Pp. 507-508.

Rollins, R.C. 1940. A new *Cardamine* from North Carolina. Castanea 5(5):87-88.

Author

The primary author of this final rule is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family						
*	*	*	*	*		
Cardamine micranthera	Small-anthered bittercress	U.S.A. (NC)	E	362	NA	NA
*	*	*	*	*		

Dated: September 11, 1989.

David L. Olsen,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-22338 Filed 9-20-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Queen Alexandra's Birdwing Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for Queen Alexandra's birdwing butterfly (*Troides* (=*Ornithoptera*) *alexandrae*). This species, the world's largest butterfly, occurs only in a small part of Papua New Guinea, where it is rare and is losing its restricted forest habitat to logging and agricultural activity. This rule implements the protection of the Endangered Species Act of 1973, as amended, for this butterfly.

EFFECTIVE DATE: October 23, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, Mail Stop: Arlington Square, Room 725, U.S. Fish and Wildlife Service, Washington, DC 20240 (703-358-1708 or FTS 358-1708).

SUPPLEMENTARY INFORMATION:

Background

Queen Alexandra's birdwing butterfly was discovered in 1906. Its distribution is restricted to primary and advanced secondary lowland rain forest in or near the Popondetta Plain, a small area in the Northern Province of Papua New Guinea (Collins and Morris 1985). For many years it was known scientifically as *Ornithoptera alexandrae*, but recently Miller (1987) synonymized the genus *Ornithoptera* with *Troides*.

Troides alexandrae is the largest butterfly in the world. The females have a wingspan of up to 10 inches (250 millimeters) and are dark brown in color. The males have a wingspan of 6½ to 7½ inches (170 to 190 millimeters) and are light blue, yellow, green, and black (Collins and Morris 1985).

Because of its restricted range, the destruction of much of its habitat by human activity, and its commercial value, *T. alexandrae* has been classified as endangered by the International Union for Conservation of Nature (Collins and Morris 1985; Wells, Pyle, and Collins 1983). The IUCN's Species Survival Commission selected it as one of the 12 most endangered animals in the world (Fitter 1985). It also has been placed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

On March 30, 1988, the Service received a petition from Ms. Marion Kelly Murphy, requesting that *T. alexandrae* be added to the U.S. List of Endangered and Threatened Wildlife. On July 1, 1988, the Service made a finding that this petition had presented substantial information. The Service also gathered other information through its own status review of the species. In the **Federal Register** of March 1, 1989 (54 FR 8574), the Service announced its finding that listing of *T. alexandrae* was warranted and also issued a proposed rule to determine endangered status for the species. In that proposal, and associated notifications, all interested parties were requested to submit comments and information that might contribute to development of a final rule. No responses were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Queen Alexandra's birdwing butterfly should be classified as endangered. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Queen Alexandrae's birdwing butterfly (*Troides alexandrae*) are as follows (information from Collins and Morris 1985).

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The greatest current danger is the expanding oil palm industry in the Popondetta region of Papua New Guinea, though development of cocoa and rubber plantations has also been a problem. These activities eliminate the natural forest required by *T. alexandrae*, and have already claimed large tracts of its restricted habitat. Local disappearances of the species are occuring because of clearing of forest to make food gardens. Negotiations to exploit reserves of timber in the region are also underway.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. T. alexandrae* is the world's largest butterfly and is aesthetically very attractive. Birdwing butterflies have long been held in high esteem by insect collectors and are in great demand worldwide. Species such as *T. alexandrae*, which are not only impressive, but restricted in range and hard to obtain, realize extremely high prices. Some illegal trade in *T. alexandrae* has undoubtedly occurred.

C. *Disease or predation.* Adults are subject to little predation, but eggs are attacked by ants and heteropterous bugs. The larvae are preyed upon by toads, lizards, and birds. Parasitism of larvae by unidentified flies, and of pupae by parasitic wasps, has been reported.

D. *The inadequacy of existing regulatory mechanisms. T. alexandrae* is completely protected from collection by the laws of Papua New Guinea, and a large wildlife management area has been established within its range, but it is not yet clear that these measures have helped prevent habitat loss, which is the main threat confronting the species.

E. *Other natural or manmade factors affecting its continued existence.* None now known.

The decision to determine endangered status for *T. alexandrae* was based on

an assessment of the best available scientific and commercial information concerning past, present, and probable future threats to the species. A decision to take no action would exclude this butterfly from benefits provided by the Endangered Species Act. A decision to determine only threatened status would not adequately reflect the evident rarity and mutiplicity of problems confronting the species. Critical habitat is not being determined, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR Part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. The Service has not identified any ongoing or proposed projects with Federal involvement that may affect Queen Alexandra's birdwing butterfly.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (within the United States or on the high seas), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

Collins, N.M., and M.G. Morris. 1985. Threatened swallowtail butterflies of the world. The IUCN Red Data Book. Gland, Switzerland, 401 pp.

Fitter, M. 1985. Choosing the 24 most endangered species. IUCN Species Survival Commission Newsletter, no. 5, pp. 17–19.

Miller, J.S. 1987. Phylogenetic studies in the Papilioninae (Lepidoptera: Papilionidae). Bull. Amer. Mus. Nat. Hist. 186:365–512.

Wells, S.M., R.M. Pyle, and N.M. Collins. 1983. The IUCN invertebrate Red Data Book. Gland, Switzerland, 632 pp.

Author

The primary author of this rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "INSECTS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
*	*	*	*	*	*		
Butterfly, Queen Alexandra's birdwing.	Troides (=*Ornithoptera*) *alexandrae*.	Papua New Guinea	NA	E	363	NA	NA
*	*	*	*	*	*		

Dated: September 11, 1989.

David L. Olsen,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–22339 Filed 9–2–89; 8:45am]

BILLING CODE 4310–55–M

federal register

Thursday
September 21, 1989

Part V

Department of Commerce

International Trade Administration

Export Trade Certificate of Review; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, 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 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–A0012."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 88–00012, which was issued on October 18, 1988 (53 FR 43140), October 25, 1988).

Summary of Application

Applicant: National Tooling Machining Association ("NTMA") 9300 Livingston Road, Ft. Washington, Maryland 20744, Contact: John A. Cox, Jr., Manager, Government Affairs, Telephone: 301/248–6200.

Application No.: 88–A0012.

Date Deemed Submitted: September 6, 1989.

Request For Amended Conduct: NTMA seeks to amend its Certificate to:

1. Add each of the companies listed in appendix A as a "Member" of the Certificate. See appendix A.

2. Delete each of companies listed in appendix B as a "Member" of the Certificate. See appendix B.

Dated: September 18, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

Appendix A

A & D Engineering
A M G Engineering & Machining, Inc.
A. T. S. Steels, Inc.
Abernathy Tool & Die, Inc.
Accurate Grinding & Mfg. Corp.
Machining Excellence, Inc.
Ace Clearwater Enterprises
Ackrit Tool
Acme Precision Products, Inc.
Acuturn Machining
Advanced Honing Company
Advantage Engineering
Aero Comm Machining
Aero Machine Company, Inc.
Aircraft Gear Corporation
Albright Tool & Manufacturing, Inc.
Allendale Machine Company, Inc.
Alloy Tool Steel, Inc.
Alltech Tool & Mold
American Grinding & Machine Company
Anchor Tool & Die Company
Anglo-American Mold, Inc.
Aram Precision Tool & Die, Inc.
Arbiser Machine Building Company
Arden Engineering, Inc.
Arizona Gear & Mfg. Co.
Arnett Tool, Inc.
Aro Metal Stamping Company, Inc.
Arrow Fabricating Company
Associated Machine
Associated Toolmakers
Astro-Cut Engineering Company
Austin Machine Company, Inc.
Automation Devices, Inc.
B & L Machine Company
B K Tool & Manufacturing Co., Inc.
B–Y Machine Company, Inc.
Ball Glide Products
Barrett Firearms Manufacturing
Bear Machine
Benish Tool and Manufacturing Co.
Bernal's M.B.G.
Bohn Engineering, Inc.
Breiner Machine Company, Inc.
Brittain Machine, Inc.
Brooks Machine & Tooling Company
Burgess & Associates Manufacturing
Burn-A-Rod
C & C Machine Company
C & R Grinding, Inc.
C M S Welding and Machining Corp.
California Mold
Cam Tool Co., Inc.
Cardinal Tool Corporation
Cavaform, Inc.
Century Die Casting
Certified Welding & Engineering
Charmilles Technologies
Clark Engineering & Manufacturing
The Cleveland Steel Tool Company
Colonial Machine & Tool Co., Inc.
Commercial Tooling, Inc.
Component Repair Technologies, Inc.
Componex Corporation
Comtech Machine Corporation
Connection Mold
Corfu Machine Co., Inc.
Corver Engineering Company, Inc.
Creative Machining & Manufacturing
Crenshaw Die & Manufacturing Corp.
Crown Machine, Inc.
Custom Jig Grinding Company
Cutco, Inc.
D & B Tool & Engineering
D & D Gear, Inc.
D & T Products
D C D Company
Dace & Dace, Inc.
Dadson Manufacturing Corporation
Danex Industries, Inc.
Dayton Machine Tool Company
Delta Design & Mfg. Co., Inc.
Dependable Machine Company, Inc.
Dexter Magnetic Materials
Diamond Tool & Engineering
Dickerson Machine and Tool, Inc.
Diversamation, Inc.
Diversified Techniques
Douglas Machine & Engineering Co.
E D M of Garland, Inc.
Eagle Precision Company
Eagle Tool & Engineering, Inc.
Eastern Rochester Manufacturing
Ecko Tool & Die, Inc.
Elba Electronetics, Inc.
Engineered Machine & Tool Co., Inc.
Engineered Pump Services, Inc.
Everest Valve Company
EWT–REF, Inc.
Exacta Tech Inc.
Express Machine Products, Inc.
F & F Surface Grinding, Inc.
F M Industries
Fay & Quartermaine
Fayette Tool & Engineering, Inc.
Florida Machining Center
Forgash Precision Products Corp.
Fortville Feeders, Inc.
Frog Hollow Works

Fulton Industries, Inc.
G. H. Tool & Mold, Inc.
Gage Grinding Company
Gallard Industries
Gardner Machine Products
Gear Manufacturing, Inc.
Gear Supply and Broaching, Inc.
Gilmore Valve Company
L K Goodwin Company Inc.
Graham Tool & Machine, Inc.
Granby Mold
Grand Rapids Metal Tek, Inc.
Grover Gundrilling, Inc.
H & H Dynamics
H & H Engineering, Inc.
H & H Machine & Tool Company
H & M Machine & Mechanical Works
Hofley Manufacturing Company
Hartwick Metal Fabricators, Inc.
Hauck & Eller Tool & Die
Hawkins Manufacturing, Inc.
Hi-Ridge Manufacturing Company
Hi-Tech Tool & Cutter Sharpening
Hood Precision Machine Products
Horizon Carbide Tool, Inc.
Houston Boring & Machine
Hudson Hone & Machine, Inc.
Huetter Machine & Tool Co., Inc.
The Hutchinson Corporation
Injection Transfer Compression
J & L Machining, Inc.
J & L Tool & Manufacturing Co., Inc.
J. E. Engineering
J P Machine
Jakobsen Tool Company, Inc.
Jerl Machine, Inc.
Jet Stream Water Cutting
Johnson Manufacturing Company
Joint Venture Tool & Mold
Jorgensen Machining Corporation
K & G Manufacturing
K A F Manufacturing
K M G Tool & Machine Co., Inc.
K. M. S. Machine Works, Inc.
K-Ter Imagineering, Inc.
Kaga (U.S.A.) Inc.
Kapco Tool & Engineering, Inc.
Karrais Machine & Tool Co., Inc.
Kedco Enterprises, Inc.
Kelley Industries, Inc.
Kleen Cut Tool & Engineering
Kleine Steel Fabrication, Inc.
Knise & Krick, Inc.
Koch Systems, Inc.
Krav Precision Tool & Die Corp.
L & L Works
L & W Engineering Co., Inc.
L M E
L S Technologies
Lakewood Precision Corporation
Langenau Manufacturing Company
Lavelle Machine & Tool Co., Inc.
Leever's Grinding, Inc.
Lemco Machine, Inc.
LenSon Machine, Inc.
Leopold Machine and Tool Co., Inc.
Lindenmaier Precision Company
Lindquist Machine Corporation
Little Rhody Machine & Electric
M C M
M C Mold & Machine, Inc.
M P Technologies, Inc.
Machine Center, Inc.
Machine Turning, Inc.
Maine Parts & Machine, Inc.
Maness Engineering
Manufacturing Solutions, Inc.
Maris Systems Design, Inc.
Mars Manufacturing
Master Tool Company, Inc.
Mc Roberts Machine, Inc.
McFerron Tool & Machine Co., Inc.
McGough & Kilguss
McLellan Page, Inc.
Mechanical Designs of Virginia
Mercury Gage Company
Mercury Tool & Mold
Micro Matic Tool, Inc.
Micro Precision Deburring
Mikulin Machine, Inc.
Mimco
Mires Machine Company, Inc.
Modern Innovation, Inc.
Mold & Machine Company
Moldex Tool & Design Company
Jim Monahan Company
Monark Design and Mfg., Inc.
Morison Engineering
Morsch Machine Works
N C Dynamics, Inc.
Nardon Acquisition Corp.
National Chain Company
New England Honing Specialists
New Technology Machining, Inc.
New World Machining Inc.
Nibarger Tool Service, Inc.
Nor-Cal Machining
Omega Corporation
Owens Specialty Company, Inc.
Parcon Technology Inc.
Parker Manufacturing
Patkus Machine Company
The Pearson Manufacturing Co., Inc.
Peninsula Metal Fabrication, Inc.
Perfekta, Inc.
Pittsfield Machine/Tool & Welding
Pivot Punch Corporation
Portage Mold & Die Company
Precision Deburring Services
Precision Engineering
Precision Industrial Products, Inc.
Precision Machine & Instrument Co.
Precision Machine Co., Inc.
Precision Machine Specialist
Precision Mold & Tool Company, Inc.
Precision Products Performance
Precision Products
Precision Slicing Company
Precision Tooling
Premier Tool & Die, Inc.
Production Attachment Co., Inc.
Professional Machine & Tool, Inc.
Progressive Design & Machine
Progressive Metallizing & Machine
Progressive Tool & Die Co., Inc.
Progressive Turnings, Inc.
Proto Stamping
Puehler Tool Company
Quad City Engineering Company
Quality Tool & Mold, Inc.
Quick Turn Machine Company
R. I. Technical Plating, Inc.
R W Machine, Inc.
Ram Tool, Inc.
Ramar Engineering, Inc.
Ranic Machine & Tool, Inc.
Rapidie Corporation
REHCO, Inc.
Reliable Tool & Die Corporation
Reliance Machine Works, Inc.
Repco Tool & Machine Co., Inc.
Reynolds Manufacturing Co., Inc.
Rhode Island Centerless, Inc.
Richland Machine & Pump Company
River City Machine
Rocky's Wire E.D.M.
Rohder Machine & Tool, Inc.
Rozal Industries, Inc.
S & B Machine Works, Inc.
S & F Machine Company, Inc.
S. C. T., Inc.
SafeWay Hydraulics, Inc.
Samax Tool
Schoitz Engineering, Inc.
Seminole Mold of Florida, Inc.
Seneca Metal Products, Inc.
Service & Sales, Inc.
Service Metal Fabricators, Inc.
Sheets Tool & Manufacturing, Inc.
Shepherd Precision, Inc.
Sherlock Machine Company
Silver Tool, Inc.
Smith Welding Works, Inc.
Smokey Mountain Machine, Inc.
Southern California Metals Joining
Southern Tool & Machine Company
Southwest Replacement Parts
Spring Engineers, Inc.
Spun Metals, Inc.
Spur Gear, Inc.
Standard Die Supply, Inc.
Star Precision Machine Company
State Industrial Repair, Inc.
Stefan Sydor Optics, Inc.
Stellar Engineering
Stevenson Machine Shop
Summit Machine Company
Sun Coast Design Service, Inc.
Sun Valley Tool, Inc.
Suncoast Tool & Gage Industries
Superior Electromechanical
T R B Precision Machine Corp.
Talent Tool & Die, Inc.
Talsco, Inc.
Tasco Molds, Inc.
Teachman-Perry, Inc.
Techmetals, Inc.
Technical Sales, Inc.
Texas Enterprise Manufacturing &
Thompson Industries
Tool Tech, Inc.
Tool Technology, Inc.
Tracer Tool & Die Company
Turbine Controls, Inc.
U F E Incorporated
Ugm, Inc.

Uni-Hydro, Inc.
Union Tool & Die Company
United Stainless & Alloy Corp.
United Technical Industries, Inc.
V. H. Machine & Welding
V R C, Inc.
Valley Tool Room, Inc.
Venture Tool & Die, Inc.
Viking Machine & Design, Inc.
W M C Grinding, Inc.
W W G, Inc.
Walker Spring & Stamping Corp.
Walworth Machine & Mfg. Co., Inc.
Watertown Jig Bore
Welch Machine, Inc.
Welding Metallurgy, Inc.
Weltec
Williams Machine, Inc.
Willyard Company, Inc.
Wilson Greatbatch
Winchester Industries, Inc.
Wolverine Tool & Engineering
Wyatt Automatic Products
Zinola Manufacturing

Appendix B

A & H Machine & Tool Company
A B C Manufacturing
A M I Industries, Inc.
A M Precision Machining, Inc.
A R Industries, Inc.
Able Fabricating & Company
Accu-Prompt Manufacturing
Accurate Grinding Corporation
Acrodie, Inc.
Adams Russell Elec.-Brazonics Div.
Advanced Machine Service
Aeromold Plastics, Inc.
Aim Incorporated
Aircraft Welding & Manufacturing
Al-Tech
Al's Tool & Die Enterprises
Alco Machine Corporation
Alco Manufacturing, Inc.
Aldan, Inc.
Alfa Foundry, Inc.
All Mold, Inc.
All-Con Tool & Mold, Inc.
Allegheny Tool & Manufacturing Co.
Allied Atlantic Industries, Inc.
Alloy Machine & Tool Company, Inc.
Alloy Tool and Engineering
Alloy Tool Steel, Inc.
Alpa Centerless Products
Alpine Manufacturing, Inc.
Alpine Tool & Die
American Dies, Inc.
American E D M & Tooling, Inc.
American Engraving, Inc.
American Machine & Supply, Inc.
American Mold Corporation
American Precision Machining, Inc
Amrein Machine Shop, Inc.
Anderson Precision, Inc.
Andrews Machine Works
Animatics Corporation
Anro Metals Manufacturing
Anthony Machine
Apex Corporation
Aponte Tool & Manufacturing, Inc.
Argus Manufacturing Company
Arizona Plasma Welding
Arrow Tool, Inc.
Associated Tool & Die, Inc.
Ayers Gear & Machine
B & G Machine Company
B & G Machine Products
B & H Machine, Inc.
B & H Tool & Machine Corporation
B A K Precision Industries
B H Instrument Company, Inc.
B. T. C. Production
Ball Glide Products
Ballard Machine Tool Service
Ballos Precision Machine
Barroncast, Inc.
Beaulieu Tool & Die Co., Inc.
Beckwith Grinding, Inc.
J L Behmer Corporation
Berg Tool & Machine Company, Inc.
Bernal Rotary Systems, Inc.
Bernal's M.B.G.
Birmingham Benders Company
Blanchard Grinding Service, Inc.
Blanchard Metals Processing Company
Blanda, Incorporated
Blandford Machine & Tool Co., Inc.
Blitz Tool & Die
Bollinger Tool & Die, Inc.
BoMar Machine
Boos Products
Breeze's Precision Boring Company
Breiner Machine Company, Inc.
Brighton N C Machine Corporation
Broadway Mold, Inc.
Brown Manufacturing Company, Inc.
Bruce Machine & Tool Co., inc.
Buchanan Products, Inc.
Bulgrin Mold & Machine
C & C Manufacturing Company
C and L Custom Tooling
C. M. I. Product Development
Cal-Disc Grinding Company
Cal-Royal Aerotech
Calcortec, Inc.
California Fineblanking Corporation
California Gundrilling, Inc.
Cam Basic
Cambridge Special
Cavaform, Inc.
Caval Tool & Machine Company
Century Tool & Manufacturing Co.
Charlotte Cutting Tool
Charlton Engineering Corporation
Charmilles Technologies
Chase Machine Company, Inc.
Checker Machine, Inc.
Cleveland Punch & Die Company
Clifford Manufacturing Company
Clifton Automatic Screw
Cloud Company
Colmar Corporation
Columbia Screw Co., Inc.
Component Repair Technologies, Inc.
Composite Mold Corporation
Compu Die, Inc.
Computerized Machining Services,
Contract Products
Controlled Turning, Inc.
Converse, Inc.
Convex Mold, Inc.
J L Cook Company, Inc.
Cook Tool & Die, Co.
Cooney Tool, Inc.
Co-Op Machine & Tool
Cordell Machine Corporation
Corfu Machine Co., Inc.
Correa Machine & Tool Company, Inc
Cox Machine Company, Inc.
Coy Machine Company
Cramers Precision Grinding, Inc.
Custom Etch Inc.
Cyma Tool Corporation
D C Design, Inc.
D C Machine Shop
D M C International, Inc.
D/A Machine Products
Damen Tool & Engineering Co., Inc.
Dap Tool & Mold Inc.
Dar Machine & Manufacturing, Inc.
Darotek, Inc.
Dayton Drill Bushing Company
Dayton Machine Tool Company
Deep South Automotive, Inc.
Delto Tool Company
Demaich Industries, Inc.
Demark Industries, Inc.
Demmer Corporation
Design Tool & Machine Company
Die Supply Corporation
Die-Tech Manufacturing, Inc.
Die-Tron-Die-Cam, Inc.
Dillon Industries, Inc.
Discovery Tool & Manufacturing
Ditool-Division Of Foundry
Diversamation, Inc.
Diversified Tool Corporation
Dot Machine & Tool Company
Double Disc Grinding of Hauppauge,
Dyko Tool Corporation
Dynacorp, Inc.
Dynamic Tool and Die, Inc.
Dynamic Tool & Die Company
E F S Fabrication, Inc.
E K Machine Tool, Inc.
E R I Division
E S L Corporation
Eastford Tool & Die Co.
Edel-Brown Tool & Die Company
Edgerton Machine & Gear, Inc.
Edinger Manufacturing, Inc.
Electro Machine & Tool, Inc.
Electro Mold Company
Electronics Tool & Die
Elgin Machine Corporation
Empire Machine Shop, Inc.
Everest Valve Company
Excel Tech Machine Repair &
F & M Machine Corporation
Fabritek Company, Inc.
Fabro Engineering, Inc.
Ferrex Industries
Ferriot Inc.
Finntech, Inc.
Fischer Tool & Die Corporation
Fluke Metal Products, Inc.

Flying Machines
Fordees Engineering
Formative Products
Frederick's Machine Shop
J F Fredericks Tool Company, Inc.
G & G Machine Technology's Inc.
G & H Mechanical Laboratory, Inc.
G & J Machine Shop, Inc.
G & L Machine, Inc.
G & L Machining, Inc.
G & R Enterprises
G & W Industries, Inc.
G & W Tool & Die Company, Inc.
G & Z N/C Machining Company
G B Tool Company
G. H. Tool & Mold, Inc.
G M Tool Corporation
G N R Plastic Co., Inc.
G P Precision Metal West
Galger Engineering & Manufacturing
General Machine Products
General Machine & Tool
General Machine Works
Genesee Tool & Engineering, Inc.
Geyer Precision Machining Company
Global Flange & Mfg., Inc.
Goffs Industrial Aid Machining Inc.
Goguen Industries
Great Lakes Grinding, Inc.
Greenwell Machine & Tool, Inc.
Gremco Machine & Tool
Grimes Walker, Inc.
Grind-All, Inc.
H & H Machine
H & K Tool & Machine Company
H M Dunn Company, Inc.
H P A S Inc.
Haemer Tool & Die
Hallum Tooling, Inc.
Hamden Tool & Die Co., Inc.
Hammond and Barrie
Hammond Tool, Inc.
Harrington Machine & Tool, Inc.
Heacock Metal and Machine, Inc.
Heise Industries, Inc.
Helac Corporation
Helio, Inc.
Hellebusch Tool & Die, Inc.
Herzog Tool & Die Company, Inc.
Hess Die Mold, Inc.
Hi-Tech Mold & Tool, Inc.
Hi-Tech Mold & Engineering, Inc.
Hilton Industries
Holden Machine Company, Inc.
Holland Engineering Company
Hollis Industries, Inc.
Hone Lap Company, Inc.
Hopco
R. D. Hopkin Machine Corporation
Hopwood Tool & Die
Husky Cutter Grinding, Inc.
Roy A. Hutchins Company
The Hutchinson Corporation
Hyland Machine Company
Hytrol Manufacturing, Inc.
Ideal Engineering, Inc.
Ideal Thread & Gage Company, Inc.
Imperial Machine & Tool, Inc.
IndTool, Inc.
Industrial Bearings & Supply, Inc.
Industrial Engravers, Inc.
Industrial Equipment Repair Co.
Industrial Machine Company
Industrial Molds, Inc.
Industrial Park Rebuild
Industrial Tooling, Inc.
Innovative Concept Engineering &
Inter-City Manufacturing, Inc.
Isimac Machine Company, Inc.
J & B Tool
J & L Machining, Inc.
J & M Machine Products, Inc.
J & R Boring & Machine
J & R Machine Company
J G R Manufacturing Corporation
J T Machine Company
J W Tool & Die Company, Inc.
Jandi Machine & Tool
Jimco, Inc.
Joeal Tool Company, Inc.
Johnson Controls, Inc.
Johnson Precision Machining, Inc.
Johnson's Machine & Tool, Inc.
Jomar Machining, Inc.
K & K Grinding Company, Inc.
K & R Machine Company, Inc.
K & S Tool & Die, Inc.
K A F Manufacturing
Karman Tool & Plastic Manufacturing
Karrais Machine & Tool Co., Inc.
Karsten Engineering
Kasco Metal Products Corporation
Kay's Precision Manufacturing Corp.
Kays Engineering
Keegan's Machine & Fabricating
Keen Machine Company
KENLAB
Keyes Machine Works, Inc.
Kindex, Inc.
Kinematic Corporation
Knise & Krick, Inc.
Ko-Gar Machine Company
Koch's Machine & Tool Company
Koning Machine & Tool Company
Kreichbaum Machine & Tool
Kremin, Inc.
Krizman, Inc.
L & S Corporation
L A B Quality Machining
Lakeland Tool & Engineering, Inc.
Lamson Products Company
Landry Specialty Welding, Inc.
Lane Punch Corporation
L-B-L Corporation
Laneko Precision Corporation
Laser Fare, Ltd.
Leblanc Grinding Company
Leemax Mfg. Corp.
Lewis Machine & Fabricating Company
Linke Tool Die & Engineering Co.
Lloyd Tool & Manufacturing Corp.
Long-Stanton Manufacturing Company
Lonner Industries, Inc.
Look Precision, Inc.
Lorenzen's Tool & Dies, Inc.
Louisville Machine Mfg. Corporation
M & H Precision/Christech
M & S Welding Company, Inc.
M G W Precision Small Parts
Mac Law Tool & Aircraft
Mac Machine Company, Inc.
Machine Turning, Inc.
Mackenzie Machine & Marine Works
Macnab Manufacturing, Inc.
Macor, Inc.
Manco, Inc.
Manda Machine Company, Inc.
Mar-Tech Industries, Inc.
Mardon Enterprises, Inc.
Mark Concepts, Inc.
Marquardt Engineering, Inc.
Martco, Inc.
Martin Machine, Inc.
Master Metal Engineering, Inc.
Maurer Metalcraft, Inc.
Maxwell Bailer Corporation
Mayday Manufacturing Company
Mayfield Machine Shop, Inc.
Mc Roberts Machine, Inc.
McLellan Page, Inc.
McNeal Enterprises, Inc.
McPherson Implement, Inc.
Melvin Tool & Die, Inc.
Meriden Manufacturing
Meridian Products Corporation
Merlone Metal Spinning, Inc.
Metal Hans, Inc.
Metal-Tech Machine, Inc.
Micro-Tech Production Machine Co.
Mid West Mold
Mid-Central Manufacturing, Inc.
Midwest Machine & Manufacturing Co.
Mil-Tech Machine, Inc.
Minnotte Cleveland Corporation
Mo-Tech Corporation
Modern Metal Manufacturing, Inc.
Modern Molds, Inc.
Moldex Tool & Design Company
Monarch Valve Corporation
Monroe Tool & Die Company
Monterey Precision, Inc.
Montgomery Brothers Machine
Company
Morris Machine Company, Inc.
Morris Precision
Morsch Machine Works
Morton & Company, Inc.
Moulding Specialists, Inc.
Mountain Machine Services
N C S, Inc.
Nardon Manufacturing Company, Inc.
Nelson Brothers & Strom Co., Inc.
Nelson Engineering Company, Inc.
New Age Manufacturing Co., Inc.
New England Tool Company
New Ulm Precision Tool
Newington Manufacturing, Inc.
Newport Controls, Inc.
Newport Tool & Die, Inc.
Nicolson Cutter
Norris Precision Manufacturing
North Coast Machining
North Star Design, Inc.
Numeric Machine Products
Numerical Precision, Inc.
Numerical Productions, Inc.

NuTec Tooling Systems, Inc.
Nutmeg Precision Company
O–A, Inc.
Ohlinger Industries, Inc.
Olmsted Engineering Company
Osborn Fabricators, Inc.
OTMI, Inc.
P & D Machine Company
P & K Tool & Production Company
P & M Screw Machine Products
P T L Manufacturing, Inc.
Pacific Sky Supply, Inc.
Pak Devices, Inc.
Palmer Custom Machinery Corp.
Palmetto Fine Machining
Pan-Tec, Inc.
Paragon Machine, Inc.
Parcon Technology Inc.
J C Parry & Sons Co., Inc.
Pegasus, Inc.
Pentagon Die & Manufacturing, Inc.
Peraza Tool and Mold, Inc.
Perfect Mold Company, Inc.
Perfect-A-Tec Corporation
Performance Plastics East
Perry Tool & Research Company
Petersen Precision Engineering Co.
Phillips Bros. Tool & Die, Inc.
Piece-Maker Company
Piedmont Tool & Mfg. Co., Inc.
Pier Tool & Die, Inc.
Pivot Punch Corporation
Pivot Punch Corporation
POFCO
Pol-Tek Industries, Ltd.
Polyphase Machine Company, Inc.
Practical Mechanics Inc.
Preac Tool Company, Inc.
Precise Jig Grinding, Inc.
Precise Products Company
Precision Aerospace Manufacturing
Precision Deburring Services
Precision Drilling & Tapping
Precision Electronic Metal
Precision Engineering & Mfg. Co.
Precision Fabricating, Inc.
Precision Fluid Power, Inc.
Precision Industrial Products, Inc.
Precision Machine & Welding
Precision Machine Co., Inc.
Precision Machine Specialist
Precision Machine & Tool Co., Inc.
Precision Manufacturing Company
Precision Metalcraft
Precision Mold & Tool Company, Inc.
Precision Mold Welding, Inc.
Precision Molds, Inc.
Precision Products Performance
Precision Technology Corp.
Precision Tubedraw & Machining
Production Metal Cutting, Inc.
Progressive Die Company
Quality Circle Corporation
Quality Die & Mold Corporation
Quality Plus, Inc.
Quality Precision Machine Works
Quality Tool & Die Inc.
R & D Machine Corporation
R & R Machine
R & R Tool & Machine, Inc.
R and R Machine Company
R. L. Barry, Inc./ Amic Division
Ralee Engineering Company
Rams Rockford Products, Inc.
Ramsay Welding Research Co., Inc.
Ran-Bro Tool Company
Randolph Machine Company
Raybon Manufacturing Co., Inc.
Rayco Machine Company
Red Line Base, Inc.
Rehrig Pacific Company
Reid Industries, Inc.
Reidville Tool & Manufacturing Co.
Reliable E D M Company
Reliable Sharpening Service, Inc.
Reliable Tool & Die Corporation
Reliable Tool & Die, Inc.
Reliance Machine Works, Inc.
Reliance Mold & Tool, Inc.
Riggins Engineering, Inc.
Ripley Machine Company, Inc.
Ritchie Brothers Research
Rite-Way Tool & Engineering Company
Ritsema Grinding Company
Rival Precision, Inc.
River City Machine
Riverpoint Tool Company, Inc.
Riverside Tool & Die, Inc.
Rochester Precision, Inc.
Rockford Engineered Products Co.
Rocon Manufacturing Corporation
Rodak Plastics Company, Inc.
Carl Rogers
Roson Plastics, Inc.
Royal Industries, Inc.
Royal Manufacturing Company
J Ryall Machine Works
S & F Machine Company, Inc.
Saginaw Tool & Die & Precision
Samson Manufacturing Company
Satellite Tool & Machine Co., Inc.
Schafer Gear Works, Inc.
Schucker-Deco Machine, Inc.
Sharp Grinding Company, Inc.
Shell Die Mold, Inc.
Sibo Tool & Die Company
Sidney Machine Service, Inc.
Skyline Manufacturing Corporation
Skylock Industries, Inc.
Skyway Precision Inc.
Slankers, Inc.
Slantco Machine & Tool
Smith Welding Works, Inc.
Smith-West
Southern Numerics, Inc.
Space Craft Manufacturing Co., Inc.
Spaceonics Industries
Spalding & Day Tool & Die Company
Spark Technologies, Inc.
Sparro Machine Products, Inc.
Spartan Carbide, Inc.
Spaulding Machine Co.
Spearhead Automated Systems, Inc.
Special Machine & Engineering, Inc.
St. George Machine Tool
St. Mary Manufacturing Corporation
Star S Manufacturing
Steel Products Corp of Akron, Inc.
Stefco Precision, Inc.
Jack Stewart Kellering
Stillion Industries
Stines Machine
Stinson Machine & Manufacturing Inc.
Stinson Manufacturing Company
Stuart Industries, Inc.
Stugart Industries, Inc.
Stuhr Manufacturing Company
Sun Up Wireforms, Inc.
Sutco Manufacturing Company
Syn-Tech Mold, Inc.
T M F Tool Company
Talan Machine & Tool, Inc.
Taurus Machine, Inc.
Taylor Tool & Die Company, Inc.
Teachman-Perry, Inc.
Tech Ridge, Inc.
Tennessee Precision, Inc.
Terrill Motor Machine, Inc.
Teston Machine Corporation
Tex-Tool Company
Thompson Industries
Three D Manufacturing Corporation
Thurm-A-Matic
Tiburzi Machine & Tool Company
Tiger Enterprises, Inc.
Tiger Industries, Inc.
Tiller Tool & Die, Inc.
Tomco Die & Kellering Company
Tool & Die Specialties, Inc.
Tool Tech, Inc.
Toolcraft, Inc.
Toolex Manufacturing Corporation
Tri City Tool & Die Company
Tri-State Tool & Saw, Inc.
Tri-Wire, Inc.
Tricon Machine & Tool, Inc.
Trimetric Specialists, Inc.
Trisan Manufacturing, Inc.
Trowbridge Machine
True Precision, Inc.
Trueline Tool & Machine, Inc.
Twoson Tool Mfg. Company, Inc.
TYMAR Machining
U F E Incorporated
U. S. Axle, Inc.
U S Die & Mold Company, Inc.
Ultimate Precision, Inc.
The Ultimate Tool & Gage Company
Ultra Cut, Inc.
Ultra Engraving & Machining
Union Machine
Universal Machine Rebuilders, Inc.
Universal Machine Products
Vanguard Technology Corporation
Variety Stamping Corporation
Variety Tool & Die, Inc.
Varispace Division
Versa-Mil, Inc.
Vi-Tec Manufacturing
Victory Machine Tools
Voshage Machine, Inc.
Voss Manufacturing, Inc.
W B Tool & Die
Wacker Development, Inc.
Waggoner Brighton, Inc.
Walbrun Tool, Inc.

Waltz Brothers, Inc.
Washington Scientific Industries
Weaver Machine & Tool Company, Inc.
Weld Lab
Welding Metallurgy, Inc.
Weldments of Florida
Wells Machine Company, Inc.
West Georgia Tool & Die, Inc.
West Point Foundry and Machine
West Warwick Machine Company, Inc.
Westco Manufacturing Co., Inc.
Western Machine & Manufacturing
Westwood Precision, Inc.
Wesval, Inc.
Wetmore Cutting Tools
Whip's Tool & Cutter Grinding
Whitco Manufacturing
Whitehead Tool & Die, Inc.
The Will-Burt Company
Will-Mor Engineering Company, Inc.
Williams Machine Company, Inc.
Witte Machine Products, Inc.
Y Tec Manufacturing, Inc.
Youngwood Electric Metals West

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Reader Aids

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Thursday, September 21, 1989

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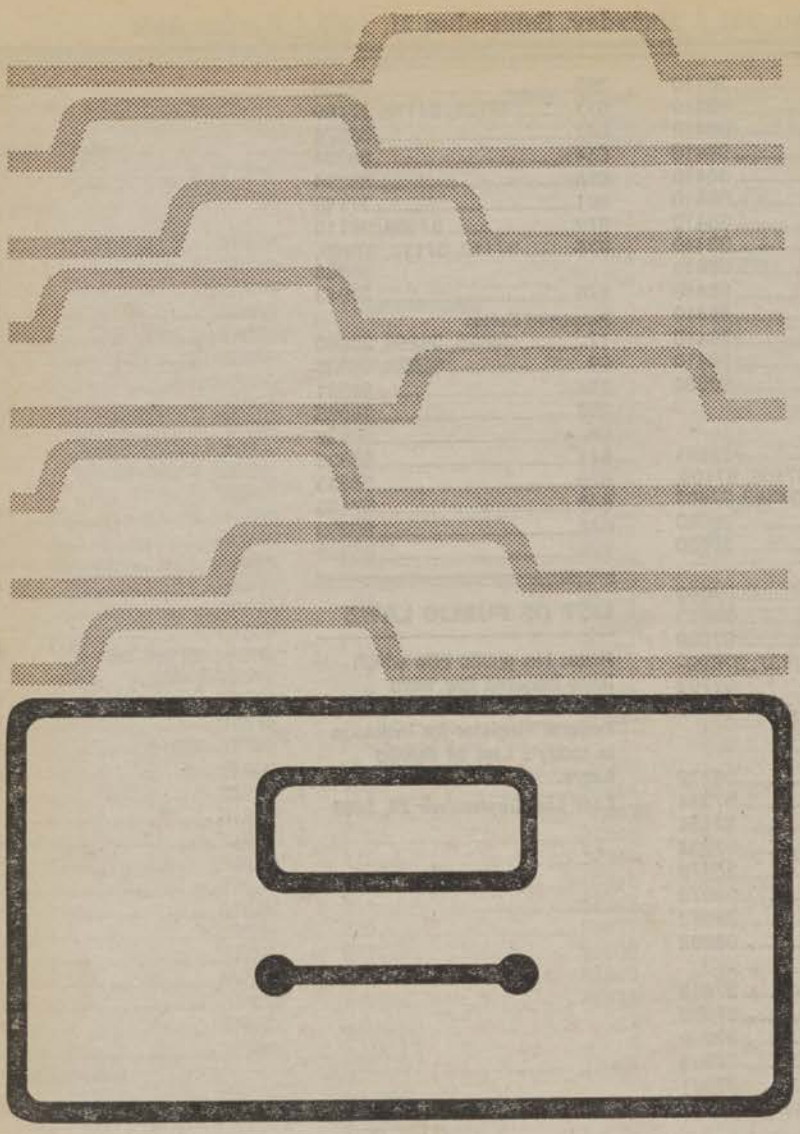

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1989

The GUIDE to record retention requirements is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal record-keeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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