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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 595

Physicians Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting as final its interim regulations on Physicians Comparability Allowances (PCA). The interim regulations were issued to comply with the revisions in the Federal Physicians Comparability Allowances Amendments of 1987 (Pub. L. 100–140). The law extended the PCA authority for three years, to September 30, 1990. Physicians Comparability Allowances are paid to physicians in certain situations where an agency is experiencing recruitment and retention problems. The interim regulations increased the maximum allowances and extended the criteria used to determine a physician's allowance category to include certain service as a physician in the Veterans Administration or as a medical officer in the Commissioned Corps of the Public Health Service. In addition, the interim regulations increased the time period for review of agency PCA program plans from 15 calendar days to 45 calendar days.

EFFECTIVE DATE: July 27, 1988.

FOR FURTHER INFORMATION CONTACT: JoAnn Perrini, (202) 632–7184.

SUPPLEMENTARY INFORMATION: Interim regulation changes to the Physicians Comparability Allowances program were published and made effective on March 14, 1988 (53 FR 8141). The public comment period ended May 13, 1988. Two written comments were received—one supported OPM's revised regulations and the other questioned why the time period for review of PCA program plans increased from 15 to 45 days. OMB's efforts to improve management of PCA programs Government-wide require more time for careful review of agency plans. Therefore, the review time was extended. The interim rules are being adopted as final without change.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 595

Government employees, Health professions and wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM adopts as final its interim regulations under 5 CFR Part 595 published on March 14, 1988, at 53 FR 8141.

[FR Doc. 88–14375 Filed 6–24–88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 5470S]

General Administrative Regulations-Standards for Approval; Agency Sales and Service Contract

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) issues a new Subpart M in 7 CFR Part 400 to contain the Standards for Approval; Agency Sales and Service Contract combining the standards for financial approval (7 CFR Part 400, Subpart C) with provisions for operational standards, effective with the 1989 Contract Year beginning on July 1, 1988, and for each succeeding contract year. The intended effect of this rule is to set forth standards for financial approval and provisions of operational standards which must be met in order for a private entity to be eligible for an Agency Sales and Service Contract with FCIC.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an

Environmental Impact Statement is needed.

FCIC herewith issues a new Subpart M to 7 CFR Part 400, to include with minor language changes those financial standards now contained in 7 CFR Part 400, Subpart C, and combine them with standards for operational approval whch must be met by persons wishing to contract with FCIC under an Agency Sales and Service Contract. FCIC has determined that the new Subpart M will be effective for the 1989 contract year which starts July 1, 1988, and for each succeeding contract year thereafter.

The provisions contained in 7 CFR Part 400, Subpart C, the present Standards for Approval; Agency Sales and Service Contract published on September 19, 1986, at 51 FR 33237, will remain in effect for the contract ending June 30, 1988. 7 CFR Part 400, Subpart C is removed and reserved, effective July 1, 1988.

The contract will continue from year to year with an annual renewal date of July 1 for each succeeding year unless the Corporation or the Contractor gives at least ninety (90) days advance notice in writing to the other party that the contract is not to be renewed.

The new contract to be offered, effective July 1, 1988, for the 1989 and subsequent contract years, incorporates requirements with respect to electronic transmission and receiving of information concerning the original executed crop insurance documents.

In order to effectively adminster the electronic system requirements in accordance with the contract continuation provisions of § 400.208, FCIC provided at least 90 days advance notice in writing to present contractors that the present contract for the 1988 contract year would not be renewed and that the new contract would be available on a continuing basis to all present contractors and other interested private entities meeting the standards and requirements set forth in this Part.

A notice was published on Friday, October 30, 1987, in the **Federal Register** at 52 FR 41723, setting forth FCIC's intention not to renew the present contract under the conditions outlined above.

In order for the reader to refer to financial standard approval provisions contained in 7 CFR, Subpart C, FCIC herewith provides a re-designation table to indicate the relocation of such previous provisions in 7 CFR Part 400, Subpart M:

Old	New
7 CFR Part 400, Subpart C	*7 CFR Part 400, Subpart M*
§ 400.27 Applicability of Standards	§ 400.201
§ 400.28 Definitions	§ 400.202
§ 400.29 Certification of submission	§ 400.203
§ 400.30 Notification of deviation from standards	§ 400.204
§ 400.31 Denial or termination of contract, and administrative reassignment of business	§ 400.205
§ 400.32 Financial qualifications for acceptability	§ 400.206
§ 400.33 Representative licensing and certification	§ 400.207
§ 400.34 Term of the Contract	§ 400.208
§ 400.35 Minimum level of business	(1)
§ 400.36 OMB control numbers	§ 400.210

[1] Omitted.

The principal effect of the operational standards for approval is to provide for the electronic transmitting and receiving of information to and from FCIC with respect to the original executed crop insurance document.

In addition, this rule adds fire insurance and allied lines to the types of licenses which a contractor's representative may hold as a current license before selling crop insurance.

Each of the present Agency Sales and Service Contractors under what is referred to as a Master Marketing Agreement (MMA) whose contracts began on July 1, 1987, were made aware of FCIC's intention to institute an electronic transmission and receiving system and sufficient time was provided for other private entities seeking an Agency Sales and Service Contract with FCIC to provide for such a system.

Under the provisions of the Agency Sales and Service Contract, the contractor is required to electronically transmit and receive information relative to the original executed crop insurance document. Before transmitting or receiving electronic information, the Contractor's electronic system is tested and approved by FCIC. Each Contractor must maintain the system, as approved, during the term of the contract.

This rule sets forth the requirements for operational approval of the electronic transmission and receiving system described above.

On Friday, February 19, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register**, at 53 FR 4986, to contain the Standards for Approval; Agency Sales and Service Contract combining the standards for financial approval (7 CFR Part 400, Subpart C) with provisions for operational standards, effective with the 1989 Contract Year beginning on July 1, 1988, and for each succeeding contract year. The rule sets forth standards for financial approval and provisions of operational standards which must be met in order for a private entity to be eligible for an Agency Sales and Service Contract with FCIC.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule.

One comment was received from the National Association of Crop Insurance Agents ("NACIA") supporting the proposed standards as a means of strengthening the agency sales and service delivery system. NACIA proposed one amendment to the rule.

Another response was received from LongView Crop Insurance Agency, Inc. (LongView), presenting several comments dealing with specific portions of the Standards.

The comments, and FCIC's responses, are outlined below and are identified, in the case of LongView's comments, by the respective section of the Standards:

Section 400.202 Definitions.

1. "BELL 208B (or compatible) modem"

This definition requires the use of a BELL 208B (or compatible modem) for dial-up, half duplex 4800 or 9600 bits per second (bps) electronic transmission of data with respect to the original insurance document. LongView recommends reducing this requirement to 2400 bps because this is the maximum speed accepted by some Telenet communications lines. If reduction is not possible, it was suggested that FCIC should adopt an alternative practice of allowing companies to forward diskettes to FCIC by overnight mail.

FCIC Response

FCIC appreciates LongView's concern over modem requirements and draws attention to § 400.210(e)(1) which provide that * * * "The Corporation may approve other compatible specifications if accepted by the Corporation and requested by the Contractor * * *" FCIC records indicate that LongView's modem and support equipment are installed and operative and no record of request for change has been noted. If communications facilities make transmission at the required speed impossible, FCIC will work with the Contractor to establish an effective system.

2. "3780 Protocol"

This defines the data communications protocol (standard) that is a binary synchronous communications (BSC), International Business Systems (IBM)-defined, byte controlled communications protocol, using control characters and synchronized transmission of binary coded data. LongView says that this

system is outdated with limited capabilities and little versatility to assist private companies in the communications process.

FCIC Response

The 3780 Protocol may not be the "state of the art", but it is the system requirement established by FCIC, and it is supported by the Kansas City Computer Center. FCIC has not received complaints from any other MMA contractor in this regard, nor has the protocol been a source of problems. FCIC appreciates LongView's observations and offers assurance that enhancements to the communication system specifications in subsequent years will be given consideration. FCIC will not change the rule.

3. "Contract"

This defines the term "Contract" to include, but is not limited to, the itemized documents comprising the content of the Agency Sales and Service Contract. LongView, noting that the definition does not list FCIC Notices and Memoranda, infers that companies under this contract are not bound by such an internal notice system and suggests that a hardship is imposed on contract holders to operate the program in compliance with FCIC rules, therefore opening the door to contract termination by FCIC without recourse or justification by the contractor. Further, LongView assumes that exclusion of reference in this subsection to FCIC Notices and Memoranda indicates that contractors need not comply with FCIC's electronic transmission system requirements.

FCIC Response

FCIC believes LongView misunderstands this subparagraph and possibly confused it with terms of the contract itself. Such notices and memoranda are normal written communications between FCIC and the contractor. The procedures and notices are the written specifications for operation of the program. The contract requires that the Contractor adhere to these procedures. The contract will continue to specify that contractors must comply with the procedures issued by FCIC.

The establishment of an electronic mail system is currently under review. It may be offered to those contractors with the capability to receive electronic mail. This matter was discussed at a recent MMA meeting and is not a subject of these standards. FCIC contemplates no change to this subparagraph.

4. "Minimum level of business"

This subparagraph defines the minimum level of business that a company under contract must have as being $500,000 measured by base premium for the preceding contact year.

LongView has no objection to this term or its attendant requirements provided that it is administered equally among contractors, especially in cases where a company may be in the process of transferring accounts to a company under a Reinsurance Agreement with FCIC.

FCIC Response

FCIC has consistently administered this requirement equally among contractors affected by these standards (MMA's) However, FCIC, after giving this matter due consideration, has determined to eliminate the requirement that MMA contractors maintain a minimum level of business. The reason was to require that the Contractor produce enough business to justify support from FCIC. The implementation of electronic processing obviates the need for this provision.

Section 400.204 Notification of deviation from standards.

This subparagraph requires the contractor to notify FCIC immediately if the contractor deviates from the standards. FCIC may require the contractor to show compliance with these standards if it is deemed necessary. In this requirement, the contractor is to report such deviations in reference to the published standards.

LongView suggests FCIC issue guidelines as to what constitutes deviation from guidelines of a significant nature to be reportable and further suggests that this provision be made to apply to FCIC, requiring FCIC to issue notifications whenever it makes a judgment not included in the contract.

FCIC Response

As the heading implies, this subparagraph requires the contractor to report deviations from the standards and not necessarily deviation from the contract terms. Since the standards are primarily based on the minimum requirements which FCIC believes to be necessary to provide services, deviation is a severe matter which must be brought to the agency's attention so that appropriate steps may be taken to protect the interest of the Corporation.

What constitutes a deviation is apparent from the language of the standards. FCIC requires the company to inform it whenever deviation from the standards becomes apparent so that FCIC may be of some assistance to the company in compliance and so that FCIC may protect its interests. FCIC contemplates no amendment to this subparagraph based on the comment.

Section 400.205 Denial or termination of contract, and administrative reassignment of business.

LongView complains of FCIC's intention to transfer an MMA contractor's business to itself in the event of contract default and request FCIC publish its intentions in the event of default of a Multi-Peril Crop Insurance Company (MPCI) under a Reinsurance Agreement with the Corporation.

In comparing the MMA Contract with the MPCI Agreement, LongView "doubts that the terms and conditions are equal or even meant to be equal", believing that "MMA contractors should have the same right as MPCI contractors in the execution of transfers, or to sell the business rather than having FCIC take the MMA business and transfer it to an MPCI company in a continued effort to favor the MPCI delivery system." LongView feels that the electronic processing requirements make it "too easy" for FCIC to damage MMA contractors by "excessive" interpretation of power.

FCIC Response

Under § 400.205, the MMA contractor has the right to sell and request administrative re-assignment of a partial or total "book of business" to another MMA contractor. Once a contract terminates, the entity no longer enjoys any right granted under the contract. If terminated, the contractor is prohibited from selling or servicing crop policies, unless service is requested by FCIC through the end of the crop insurance period, and the policies revert to FCIC because such crop policies are the property of FCIC.

The "book of business" recorded to an active contractor can be considered as belonging to the contractor and has value which may be sold. The Standard Reinsurance Agreement (SRA) between private MPCI Companies and FCIC permits the Corporation to refuse to accept additional liability from the Company by providing notice to the Company (Section VII E.) The Companies are subject to law which permits FCIC to cancel the agreement in the event of negligent non-compliance or breach.

Business may not be transferred from a Master Marketer to an MPCI Company. Interdelivery system transfers

are not possible. Reinsured policies and attendant documents must be filed with the individual State Commissioners of Insurance.

When an MPCI contractor is in default, the Standards for Approval which were published in the **Federal Register** on Monday, May 11, 1987, at 52 FR 17540, make comparative provisions.

The provisions of 7 CFR 400.150–400.157, Standard Reinsurance Agreement—Standards for Approval, contain the Financial and Operational Standards applicable to MPCI Companies. Section 400.154 states that FCIC may terminate the Reinsurance Agreement if the Company is out of compliance. In this event, the Company maintains the contracts without FCIC reinsurance. The insurance contracts are the property of the MPCI Company.

What differences there may be between the two separate systems is reflected only in the contracting company's contractual responsibility; individual initiative demonstrated by the company in the market place; and, the volume of business generated by each on its own merit and ability.

The MMA delivery system involves a company under contract with FCIC for the selling and servicing of a Federal crop insurance policy which is issued, owned, and under direct control of FCIC. FCIC establishes and maintains the conditions for conducting business under such a contract. An MPCI company sells its own insurance policy, the terms of which are approved by FCIC, and for which the MPCI company is solely responsible. That policy is then reinsured by FCIC under the terms of the agreement. The MPCI company abides by FCIC rules with respect to licensing, and institutes its own FCIC approved training program. FCIC contemplates no amendment to this subparagraph based on the comment received.

Section 400.207 Representative licensing and certification.

LongView alleges that in § 400.207 of the rule, FCIC is, with respect to soliciting by licensed agents, establishing rules that do not appear to be practical nor are they equally applied to both MMA and MPCI delivery systems.

LongView alleges that the language in § 400.207(b) appears to open to question several FCIC practices regarding what is a "Policy Issuing State." LongView points out that FCIC issues all policies from its offices in Kansas City, MO, and the policies do not establish the requirement that a farmer be living in the same state where such farmer owns or operates a farm. The example was made of a family living (establishing residence) in Colorado, while farming in Nebraska.

Under this example the commentor questions which is the policy issuing State and which State has precedence with respect to a licensed agent, Colorado or Nebraska.

FCIC Response

FCIC regrets LongView's misunderstanding of the dual delivery system and whether FCIC requires licensing and certification equally for both systems. Agents are required to be licensed under both systems. Certification in crops insured is required of MMA's but MPCI's must train their agents in a comparable FCIC approved training course.

Section VI.B.3 of the SRA states in part, "The Company must sell all crop insurance contracts reinsured hereunder through agents who are licensed by the State in which each insurance contract is written and have successfully completed an FCIC-approved training course for each crop written".

FCIC could refuse reinsurance for policies which are sold by unlicensed agents. The only difference in the two systems on certification is that a reinsured company is responsible for certifying their agents in accordance with the company's internal FCIC approved certification program, while an MMA company's agents must successfully complete the FCIC Agents Certification and Testing program.

Logic dictates that if a reinsured company maintains an inadequate certification program, this could lead to poor sales; dissatisfied customers at the time of loss; or, overpaid claims. In the event of unhappy customers, the company loses business to competition. In the event of overpaid claims, the company must reimburse FCIC, an expensive alternative.

The insured's state of residence is immaterial. FCIC insures the crop, not the farmer. Therefore, an agent selling the producer a crop insurance policy on a crop grown in Nebraska, must be licensed to operate as an agent in Nebraska.

In that event, Nebraska is the "policy issuing state", and the Colorado-licensed agent would not be able to sell such a contract, unless such agent was also licensed in Nebraska. FCIC contemplates no amendment to this subparagraph based on the comment received.

Section 400.208 Term of the contract

LongView takes exception to the language on breach of contract or failure to comply with the Standards in this Part which may result in termination of the contract by FCIC. LongView states that FCIC appears to interpret breach of contract as it pleases and has not provided MMA's with a list of actions constituting a breach or the opportunity of appeal. LongView requests that such an appeal be conducted through the Department of Agriculture rather than through FCIC.

FCIC Response

MMA's are afforded recourse in the matter of contract disputes under the U.S. Department of Agriculture's Board of Contract Appeals (AGBCA), whose regulations are found in 7 CFR Part 24.

FCIC provides Appeal Regulations found at 7 CFR Part 400, Subpart J, under which a contractor may seek recourse from any determination made by FCIC with respect to the contract prior to recourse to the AGBCA, as follows:

*(7 CFR 400.92(d) [Appeal is available to:] Any party to a contract who has received notification of a determination by the Corporation regarding any terms or conditions of the contract between the person and the Corporation which the party disputes; * * ** (Emphasis supplied).

The provisions of 7 CFR Part 400, Subpart J, § 400.91 defines a "person" as being an individual, corporation, association, partnership, or other entity." Under either system of appeal, FCIC normally will not take any action against the contractor until the outcome of the appeal has been determined, unless the actions of the contractor are such that suspension of the contractor is warranted to protect the interests of FCIC. FCIC has placed in the contract those provisions it requires for contract performance. The Corporation does not intend to pick and choose or otherwise develop a set of those requirements which it considers more important than others. The Corporation expects its contractors to comply with the provisions of the contract.

FCIC contemplates no amendment to this subparagraph based on the comment received.

Section 400.209 Electronic transmission and receiving system

LongView suggests there should be an amendment allowing a contractor to transmit data on acceptable tape or diskettes by overnight mail, permitting a back-up plan in the event of transmission difficulties, thus avoiding a breach of contract. This concept appears to LongView as much more practical, more accurate, and less costly than electronic transmission.

FCIC response

The full contract language allows for the transmission of data via diskettes or other electronic media acceptable to the Corporation in the event that a contractor cannot transmit for three (3) consecutive days. This is a back-up capability and not intended for normal operations. FCIC contemplates no amendment to this section based on the comment received.

Comment by the National Association of Crop Insurance Agents (NACIA)

NACIA voices concern over timely payment of agents by the contracting company. NACIA repeated its February 10, 1983, comment on the then proposed standards, as follows: * * * "Master Marketers (MMA's) have an obligation to pay their agents the commissions they receive on their agents' behalf from the FCIC * * *. [I]f a master marketer defaults on its financial obligations to its agents, the Federal crop insurance delivery system will suffer serious disruption." NACIA asserts that the observation is as valid now as it was then and that such a requirement should be in either the 1989 MMA contract or in the Standards for MMA contractors.

FCIC Response

FCIC has had isolated complaints from agents, trying to collect commissions from the MMA and asking FCIC for assistance. In turn, FCIC has contacted contractors and asked that this obligation be met in a timely fashion. While FCIC agrees with NACIA, placing this requirement in either the standards or the contract may require FCIC to interpret and enforce contracts between agents and MMA's. In many instances, questions under these agency or employment contracts are valid disputes between the parties. FCIC is in no position to assume the role of judge in these circumstances. FCIC already possesses the authority to suspend or debar any Master Marketer who does not deal fairly and responsibly with its agents. FCIC will take that action in appropriate circumstances.

FCIC also recognizes an agent's ability to take appropriate legal action to protect the agent's interests in this regard. FCIC fully expects all MMA contractors to meet these agent commission payments in a timely fashion and has strongly emphasized this expectation whenever necessary.

Government contractors are urged to review, and become familiar with, the provisions of the suspension and debarment regulations (48 CFR 9.406-2(a)(4) (Debarment) and 48 CFR 9.407-2(a)(4) (Suspension)) with respect to the commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the Goverment contractor or subcontractor. This also applies to the payment of agent commissions.

It is the intention of FCIC to strengthen language in the 1989 Agency Sales and Service Contract to clarify FCIC's authority under the provisions of FAR to review the honesty and integrity of MMA business practices. While this authority does not include power to enforce the provisions of the contract between the MMA's and their agents, it would emphasize FCIC's authority to suspend or debar contractors for improper general business conduct which seriously and directly affects the present responsibility of the contractor.

List of Subjects in 7 CFR Part 400

Crop insurance, Agency sales and service contract, Standards for approval.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation issues a new Subpart M in Part 400 of Title 7 of the Code of Federal Regulations, effective for the contract year beginning July 1, 1988, and for each succeeding contract year.

§§ 400.27 through 400.36 [Removed and Reserved]

1. Subpart C, consisting of §§ 400.27 through 400.36, is removed and reserved.

2. Subpart M is added to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart M—Agency Sales and Service Contract—Standards for Approval

Sec.

400.201 Applicability of standards.
400.202 Definitions.
400.203 Financial statement and certification.
400.204 Notification of deviation from standards.
400.205 Denial or termination of contract, and administrative reassignment of business.
400.206 Financial qualifications for acceptability.
400.207 Representative licensing and certification.
400.208 Term of the Contract.
400.209 Electronic Transmission and Receiving System.
400.210 OMB control numbers.

Subpart M—Agency Sales and Service Contract—Standards for Approval

Authority: 7 U.S.C. 1506, 1516.

§ 400.201 Applicability of standards.

Federal Crop Insurance Corporation will offer an Agency Sales and Service Contract (the Contract) to private entities meeting the requirements set forth in this subpart under which the Corporation will insure producers of agricultural commodities. The Contract will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and the provisions of the regulations of the Corporation found at Chapter IV of Title 7 of the Code of Federal Regulations. The Standards contained herein are required for an entity to be a contractor under the Contract.

§ 400.202 Definitions.

For the purpose of these Standards:

(a) *"Agency Sales and Service Contract or the Contract"* means the written agreement between the Federal Crop Insurance Corporation (Corporation) and a private entity (Contractor) for the purpose of selling and servicing Federal Crop Insurance policies and includes, but is not limited to, the following:

(1) The Agency Sales and Service Contract;

(2) Any Appendix to the Agency Sales and Service Contract issued by the Corporation;

(3) The annual approved Plan or Operation; and

(4) Any amendment adopted by the parties.

(b) *"BELL 208B (or compatible) modem"*—means a modem meeting the standards developed by BELL Laboratories for dial-up, half-duplex, 4800 or 9600 bits per second (bps) transmission of data utilizing 3780 (or 2780) protocol.

(c) "Contract, the" see Agency Sales and Service Contract.

(d) *"Contractor's electronic system (system)"* means the data processing hardware and software, data communications hardware and software, and printers utilized with the system.

(e) *"CPA"* means a Certified Public Accountant who is licensed as such by the State in which the CPA practices.

(f) *"CPA Audit"* means a professional examination conducted by a CPA in accordance with generally accepted auditing standards of a Financial Statement on the basis of which the CPA expresses an independent professional opinion respecting the

fairness of presentation of the Financial Statement.

(g) *"Current Assets"* means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operation cycle of the business or within one year if the operation cycle is shorter than one year.

(h) *"Current Liabilities"* means those liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time, usually one year.

(i) *"Financial Statement"* means the documents submitted to the Corporation by a private entity which portray the financial information of the entity. The financial statement must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and reflect the financial position in the Statement of Financial Condition or Balance Sheet; and the result of operations in the Statement of Profit and Loss or Income Statement.

(j) *"Processing representative"* means a person or organization designated by the Contractor to be responsible for data entry and electronic transmission of data contained on crop insurance documents.

(k) *"Sales"* means new applications and renewals of FCIC policies.

(l) *"Suspended Data Notice"* means a notification of a temporary stop or delay in the processing of data transmitted to the Corporation by the Contractor because the same is incomplete, non-processable, obsolete, or erroneous.

(m) *"3780 protocol"*—means the data communications protocol (standard) that is a binary synchronous communications (BSC), International Business Systems (IBM)-defined, byte controlled communications protocol, using control characters and synchronized transmission of binary coded data.

§ 400.203 Financial statement and certification.

(a) An entity desiring to become or continue as a contractor shall submit to the Corporation a financial statement which is as of a date not more than eighteen (18) months prior to the date of submission.

(b) The financial statement submitted shall be audited by a CPA (CPA Audit); or if a CPA audited financial statement is not available, the statement submitted to the Corporation must be accompanied by a certification of:

(1) The owner, if the business entity is a sole proprietorship; or

(2) At least one of the general partners, if the business entity is a partnership; or

(3) The Chief Executive Officer and Treasurer, if the business entity is a Corporation, that said statement fairly represents the financial condition of the entity on the date of such certification to the Corporation. If the financial statement as certified by the Chief Executive Officer and Treasurer, partner, or owner is submitted, a CPA audited financial statement must be submitted if subsequently available.

§ 400.204 Notification of deviation from standards.

A Contractor shall advise the Corporation immediately if the Contractor deviates from the requirements of these standards. The Corporation may require the Contractor to show compliance with these standards during the contract year if the Corporation determines that such submission is necessary. If the Corporation determines that the deviation is temporary, the Corporation may grant a temporary waiver pending compliance within a specified period of time. A waiver of any provision of these standards will not be granted to an applicant for a contract.

§ 400.205 Denial or termination of contract and administrative reassignment of business.

Non-compliance with these standards will result in:

(a) The denial of a Contract; or

(b) Termination of an existing Contract.

In the event of denial or termination of the Contract, all crop insurance policies of the Corporation sold by the Contractor and all business pertaining thereto may be assumed by the Corporation and may be administratively reassigned by the Corporation to another Contractor.

§ 400.206 Financial qualifications for acceptability.

The financial statement of an entity must show total allowable assets in excess of liabilities and the ability of the entity to meet current liabilities by the use of current assets.

§ 400.207 Representative licensing and certification.

(a) A Contractor must maintain twenty-five (25) licensed and certified Contractor Representatives.

(b) A Contractor's Representative who solicits, sells and services FCIC policies or represents the Contractor in solicitation, sales or service of such policies must hold a license as issued by the State or States in which the policies are issued, which license authorizes the sales of insurance in any one or more of the following lines:

(1) Multiple peril crop insurance;

(2) Crop hail insurance;

(3) Casualty insurance;

(4) Property insurance;

(5) Liability insurance; or

(6) Fire insurance and allied lines.

The Contractor must submit evidence, satisfactory to the Corporation, verifying the type of State license held by each Representative and the date of expiration of each license.

(c) A Contractor's Representative must have achieved certification by the Corporation for each crop upon which the Representative sells and services insurance.

§ 400.208 Term of the contract.

(a) The term of the Contract shall commence on July 1 or when signed. The contract will continue from year to year with an annual renewal date of July 1 for each succeeding year unless the Corporation or the Contractor gives at least ninety (90) days advance notice in writing to the other party that the contract is not to be renewed. Any breach of the contract, or failure to comply with these Standards, by the Contractor, may result in termination of the contract by the Corporation upon written notice of termination to the Contractor. That termination will be effective thirty (30) days after mailing of the notice and termination to the Contractor.

(b) A Contractor who elects to continue under the Contract for a subsequent year must, prior to the month of June, submit a completed Plan of Operation which includes the Certifications as required by § 400.203 of this subpart. The Contractor may not perform under the contract until the Plan of Operation is approved by the Corporation.

§ 400.209 Electronic transmission and receiving system.

Any Contractor under the Contract is required to:

(a) Adopt a plan for the purpose of transmitting and receiving electronically, information to and from the Corporation concerning the original executed crop insurance documents;

(b) Maintain an electronic system which must be tested and approved by the Corporation;

(c) Maintain Corporation approval of the electronic system as a condition to the electronic transmission and reception of data by the Contractor;

(d) Utilize the Corporation approved automated data processing and

electronic data transmission capabilities to process crop insurance documents as required herein; and

(e) Establish and maintain the electronic equipment and computer software program capability to:

(1) Receive and store actuarial data electronically via telecommunications utilizing 3780 protocol and utilizing a BELL 208B or compatible modem at 4800 bits per second (bps);

(2) Enter and store information from original crop insurance documents into electronic format;

(3) Verify electronically stored information recorded from crop insurance documents with electronically stored actuarial information;

(4) Compute and print the data elements in the Summary of Protection;

(5) Transmit crop insurance data electronically, via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps;

(6) Receive electronic acknowledgements, error messages, and other data via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps, and relate error messages to original crop insurance documents; and

(7) Store backup data and physical documents.

(The Corporation may approve other compatible specifications if accepted by the Corporation and if requested by the Contractor)

§ 400.210 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

Done in Washington, DC, on May 13, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-14277 Filed 6-24-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 921, 922, and 924

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will authorize expenditures and establish assessment rates under Marketing Order Nos. 921, 922, and 924 for the 1988-89 fiscal year established for each order. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1988, through March 31, 1989 (§ 921.227); April 1, 1988, through March 31, 1989 (§ 922.227); April 1, 1988, through March 31, 1989 (§ 924.228).

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 921 (7 CFR Part 921) regulating the handling of fresh peaches grown in designated counties in Washington; 922 (7 CFR Part 922) regulating the handling of apricots grown in designated counties in Washington; and 924 (7 CFR Part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of Washington peaches, 60 handlers of Washington apricots, and 40 handlers of Washington-Oregon prunes subject to regulation under their respective orders, and approximately 400 Washington peach producers, 200 Washington apricot producers, and 350 Washington-Oregon prune producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Stone Fruit Executive Marketing Committee (SFEMC) met on April 14, 1988, and unanimously recommended

1988–89 marketing order expenditures for Marketing Order Nos. 921, 922, and 924.

For Washington peaches, expenditures of $18,378 and an assessment rate of $2.25 per ton of peaches under M.O. 921 were recommended. In comparison, 1987–88 budgeted expenditures were $25,136 and the assessment rate was $2.00 per ton. On May 27, 1988, the Washington Peach Marketing Committee met and revised their assessment rate to $1.20 per ton of peaches and revised the crop estimate. Assessment income for 1988–89 is estimated at $14,040 based on the revised crop estimate of 11,700 tons of peaches. Committee reserves and other funds will be available to cover the anticipated $4,338 deficit for 1988–89.

For Washington apricots, expenditures of $6,970 and an assessment rate of $2.25 per ton of apricots under M.O. 922 were recommended by the SFEMC. In comparison, 1987–88 budgeted expenditures were $5,802 and the assessment rate was $1.25 per ton. On May 27, 1988, the Washington Apricot Marketing Committee met and revised their assessment rate to $2.00 per ton of apricots. Assessment income for 1988–89 is estimated at $7,000 based on a crop estimate of 3,500 tons of apricots.

For Washington-Oregon prunes, expenditures of $17,342 and an assessment rate of $2.25 per ton of prunes under M.O. 924 were recommended by the SFEMC. In comparison, 1987–88 budgeted expenditures were $29,462 and the assessment rate was $3.00 per ton. On May 27, 1988, the Washington-Oregon Fresh Prune Marketing Committee met and revised their assessment rate to $1.00 per ton of fresh prunes and revised the crop estimate. Assessment income for 1988–89 is estimated at $9,300 based on the revised crop estimate of 9,300 tons of fresh prunes. Committee reserves and other funds will be available to cover the anticipated $8,042 deficit for 1988–89.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 921.227, 922.227, and 924.228, and is based on committee recommendations and other information. A proposed rule was published in the May 13, 1988, issue of the **Federal Register** (53 FR 17056). Comments on the proposed rule were invited from interested persons until May 23, 1988. Comments were received from the Washington Peach Marketing Committee, the Washington Apricot Marketing Committee, and the Washington-Oregon Fresh Prune Marketing Committee, in which they requested the establishment of revised assessment rates and/or crop estimates.

After consideration of the information and recommendations submitted by the committees, the comments received, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 921, 922, and 924

Apricots, Marketing agreements and orders, Oregon, Peaches, Prunes, Washington.

For the reasons set forth in the preamble, new §§ 921.227, 922.227, and 924.228 are added as follows:

Note.—These sections will not appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 921, 922, and 924 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601.674.

2. New §§ 921.227, 922.227, and 924.228 are added to read as follows:

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 921.227 Expenses and assessment rate.

Expenses of $18,378 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $1.20 per ton of assessable peaches is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 922.227 Expenses and assessment rate.

Expenses of $6,970 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $2.00 per ton is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

§ 924.228 Expenses and assessment rate.

Expenses of $17,342 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $1.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: June 22, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–14373 Filed 6–24–88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 51, 70, and 72

General Requirements for Decommissioning Nuclear Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to set forth technical and financial criteria for decommissioning licensed nuclear facilities. The amended regulations address decommissioning planning needs, timing, funding methods, and environmental review requirements. The intent of the amendments is to assure that decommissioning of all licensed facilities will be accomplished in a safe and timely manner and that adequate licensee funds will be available for this purpose. The final rule also contains a response to a petition for rulemaking (PRM–50–22), concerning decommissioning financial assurance, initially filed by the Public Interest

Research Group (PIRG), et al. on July 5, 1977.

EFFECTIVE DATE: July 27, 1988.

FOR FURTHER INFORMATION CONTACT: K. Steyer, C. Feldman, or F. Cardile, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3824.

SUPPLEMENTARY INFORMATION:

Introduction

The NRC is amending its regulations to provide specific requirements for the decommissioning of nuclear facilities. Specifically the regulations establish criteria in the following areas: Acceptable decommissioning alternatives; planning for decommissioning; assurance of the availability of funds for decommissioning; and environmental review requirements related to decommissioning.

Decommissioning as defined in the rule means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license. Decommissioning activities are initiated when a licensee decides to terminate licensed activities. Decommissioning activities do not include the removal and disposal of spent fuel which is considered to be an operational activity or the removal and disposal of nonradioactive structures and materials beyond that necessary to terminate the NRC license. Disposal of nonradioactive hazardous waste not necessary for NRC license termination is not covered by these regulations but would be treated by other appropriate agencies having responsibility over these wastes. If nuclear facilities are to be reused for nuclear purposes, applications for license renewal or amendment or for a new license are submitted according to the appropriate existing regulation. Reuse of a nuclear facility for other nuclear purposes is not considered decommissioning because the facility remains under license.

These amendments apply to the decommissioning of power reactors, nonpower reactors, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, independent spent fuel storage installations, and nonfuel-cycle nuclear facilities. The decommissioning of uranium mills and mill tailings, low-level waste burial facilities, and high-level waste repositories, has been treated in separate regulatory actions. These amendments apply to nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely.

The purpose of these amendments is to assure that decommissionings will be carried out with minimal impact on public and occupational health and safety and the environment. The Commission's objective is that decommissioned facility sites would ultimately be available for unrestricted use for any public or private purpose. The amendments provide a regulatory framework for more efficient and consistent licensing actions related to decommissioning. Although decommissioning is not an imminent health and safety problem, the nuclear industry is maturing, in that nuclear facilities have been operating for a number of years, and the number and complexity of facilities that will require decommissioning is expected to increase in the near future. Inadequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety and environmental impacts. These impacts could lead to increased occupational and public doses, increased amounts of radioactive waste to be disposed of, and an increase in the number of contaminated sites. The regulations make clear that the licensee is responsible for the funding and completion of decommissioning in a manner which protects public health and safety. Current regulations cover the requirements and criteria for decommissioning in a limited way and are not fully adequate to deal with licensee decommissioning requirements effectively. Many licensing activities concerning decommissioning have had to be determined on a case-by-case basis. This procedure results in inconsistency in dealing with licensees and in inefficient and unnecessary administrative effort. With the increased number of decommissionings expected, case-by-case procedures would make licensing difficult and increase NRC and licensee staff resources needed for these activities.

Background

On March 13, 1978, the Commission published an Advance Notice of Proposed Rulemaking in the **Federal Register** (43 FR 10370) stating that the Commission was reevaluating its decommissioning policy and considering amendments to its regulations to provide more specific requirements relating to the decommissioning of nuclear facilities. The plan for the reevaluation included the development of an information base, the preparation of a generic environmental impact statement (GEIS), and based on these, the development of amendments to the regulations. The information base for preparation of the final rule is complete and consists primarily of a series of NUREG/CR reports on studies of the technology, safety, and costs of decommissioning various kinds of nuclear facilities. These reports were prepared by Battelle Pacific Northwest Laboratories (PNL).[1] In addition, preliminary staff positions on the major decommissioning issues have been presented in staff (NUREG) reports. On February 10, 1981, the Commission announced the availability of the draft GEIS for public comment (46 FR 11666). Section 15 of the draft GEIS contains certain policy recommendations. These recommendations, as modified by comments received on the draft GEIS and other sources, provided the basis for the proposed amendments to the Commission's regulations.

On February 11, 1985, the Commission published a Notice of Proposed Rulemaking on Decommissioning Criteria for Nuclear Facilities (50 FR 5600). The proposed amendments covered a number of topics related to decommissioning that would be applicable to 10 CFR Parts 30, 40, 50, 70, and 72 applicants and licensees. The original comment period was due to expire May 13, 1985, but was extended to July 13, 1985 to accommodate requests from interested parties for an extended comment period in order to fully evaluate the issues raised and develop comments on the proposed rule. Public comments received on the proposed rule were docketed and may be examined at the Commission's Public Document Room located at 1717 H Street NW., Washington, DC.

Acceptable levels of residual radioactivity for release of property for unrestricted use were not proposed as part of this rulemaking. Commission staff is participating in an interagency working group, organized by the Environmental Protection Agency (EPA), developing Federal guidance on this subject. Proposed Federal guidelines are anticipated to be published by EPA and EPA has issued an advance notice of proposed rulemaking (51 FR 22264, June 18, 1986). In the interim, NRC is developing interim guidance with respect to residual contamination criteria.

[1] A bibliography of the PNL and NRC staff reports and other background documents is included at the end of the supplementary information. These documents are available for inspection and copying for a fee in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555.

Overview of Comments on Proposed Rule

A total of 143 different organizations and individuals submitted comments on the proposed rule. The commenters represented a variety of interests. Comments were received from Federal government agencies, State agencies (including State public utility commissions), local governments, universities, individuals, electric utilities, material licensees, public groups, utility and industry groups, and financial, legal, and engineering firms. The commenters offered from one to over 50 comments each and presented a diversity of views. The topics addressed by the commenters addressed a wide range of issues and all parts of the rule.

The general response to the rule was varied. A number of commenters specifically expressed support for the rule in general (or that no comment was needed), although some of these made suggestions for improvements. One commenter indicated that the proposed amendments will provide a foundation from which acceptable decommissioning planning and implementation programs can be developed, and another indicated that the Commission's assumptions underlying the proposed rule are reasonable and fair. Many specifically commented on the need for rulemaking. For example, one commenter stated that although some states have begun developing regulations, their efforts are hampered by the lack of Federal guidelines and another commenter urged the Commission to quickly promulgate a comprehensive set of regulations governing the planning, safety, and financing of decommissioning. Others implied the need for rulemaking but felt that the proposed rule was inadequate to satisfy its intent and generally recommended stricter, more detailed regulations. A few of these suggested the rule be redrafted and republished for comment. In contrast, some commenters argued that existing rules were adequate and that this rule was unnecessary, overly prescriptive, and burdensome. For example, one commenter indicated that there is no evidence from experience with power reactors that there would be any adverse impacts in the absence of this rule and that this rule represented an unfair burden to nuclear power facilities compared to other public risks; and another pointed out that decommissioning methods are regulated by public utility commissions and that NRC should only step in to ensure safety.

The detailed rationale supporting these general comments is presented in the succeeding sections of this Supplementary Information. Modifications have been made to the rule as a result of some of these more specific comments. Based on its consideration of the comments, the Commission continues to believe that the rule's approach presents the best available method for assuring that licensees develop plans sufficient to carry out decommissioning in a manner which protects public health and safety.

Major issues contained in the public comments and resulting changes in the rule are discussed below. The detailed responses to individual comments are documented in NUREG–1221 entitled "Summary, Analysis and Response to Public Comments on Proposed Rule Amendments on Decommissioning Criteria for Nuclear Facilities" (Ref. 26). Copies of NUREG–1221 may be purchased through the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Va 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. The discussion of comments in this Supplementary Information is structured according to the general subjects treated by the rule and discussed in the Supplementary Information to the Proposed Rule. These subjects include, in order of discussion, decommissioning alternatives and timing, planning, financial assurance, residual radioactivity limits, environmental review requirements, and other general comments.

Summary and Discussion of Comments on Proposed Rule

A. Decommissioning Alternatives and Timing

Comments received on the subject of decommissioning alternatives covered several areas. These included clarification of the definition of decommissioning, criteria used for the choice of the alternative in particular cases, and general questions as to acceptability of the decommissioning alternatives.

1. Definition of decommissioning. Two commenters indicated that requiring unrestricted use as part of the definition of decommissioning is too restrictive. Reasons given for this comment include the fact that it would inhibit future use of the site and would preclude alternative decommissioning methods which provide reasonable assurance of public health and safety without releasing the site for unrestricted use. In contrast four commenters stated that decommissioning should clearly result in safe unrestricted use of the site.

In response, it is the Commission's belief that there is nothing in the definition which would inhibit future use of the site once the license is terminated. According to amended § 50.2 (and related sections in the other parts) decommissioning is defined as resulting in release of the property for unrestricted use and termination of the license. Unrestricted use refers to the fact that from a radiological standpoint, no hazards exist at the site, the license can be terminated, and the site can be considered an unrestricted area. This definition is consistent with the definition of an unrestricted area as it exists in 10 CFR 20.3 as being "any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials and any area used for residential quarters." The alternatives for decommissioning provide different ways to accomplish decommissioning as defined in the rule, i.e., alternative ways to reduce residual radioactivity to a level permitting release of the property for unrestricted use and termination of license. These alternatives are DECON, SAFSTOR, and ENTOMB which are discussed in more detail below but which primarily consist of activities which either result in prompt dismantlement of the facility or which permit a storage period during which radioactive decay can occur prior to dismantlement of the facility. Each of the alternatives includes all those activities necessary to lead to termination of the NRC license. Once the license is terminated, the facility buildings and site can be used for any other non-nuclear purposes, including industrial purposes. The use made of the facility after termination of the NRC license is independent of the alternative used to decommission the facility. With regard to reuse of the site for nuclear purposes, there is nothing in the rule preventing such reuse. As indicated above, reuse of the nuclear facility for other nuclear purposes is not considered decommissioning. Therefore, a licensee would not be required to submit a decommissioning plan or apply for termination of license.

As noted in Sections A.2 through A.4 of this Supplementary Information, the rule considers the use of alternative decommissioning methods which delay the completion of decommissioning thereby not releasing the site for unrestricted use during a period of radioactive decay. The definition of decommissioning as well as the

definitions of the alternatives contained in the Supplementary Information to the proposed rule indicate that, if permanent cessation of nuclear activity occurs at the facility, the licensee is to propose to NRC the method that it intends to use in decommissioning the facility in a manner ultimately leading to the return of the site to an "unrestricted area" according to the definition of 10 CFR 20.3 and the termination of the facility license. In determining whether a particular site is free from radiological hazards, the Commission will take a hard look at the extent to which the site has been previously used to dispose of low-level radioactive wastes by land burial and will decide what remedial measures, including removal of such waste offsite, are appropriate before the site can be released for unrestricted use and the license terminated.

Six commenters indicated that the rule needed to provide clarification as to what facilities are covered by the decommissioning rule. These commenters indicated that there appeared to be a discrepancy between the proposed § 50.2 which defined decommissioning as removing a facility "safely from service and reducing residual radioactivity to a level that permits release of the property for unrestricted use and termination of license" and the Supplementary Information which indicates that decommissioning means to remove "nuclear facilities" from service including "the site, buildings and contents, and equipment associated with any licensed NRC activity." Two commenters indicated that the rule should clarify that it does not apply to the nonradioactive portion of the facility.

In response to this comment, the definition of decommissioning in § 50.2 clearly defines what is intended by this rulemaking, namely that decommissioning involves those activities necessary to remove a facility safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license. Section 50.82 indicates that a licensee must provide NRC with a plan indicating how these activities will be carried out and that this plan will be approved if it demonstrates that the decommissioning will be performed in a safe manner. Section 50.82(f) indicates that the NRC will terminate the facility license if the terminal radiation survey demonstrates that residual radioactivity has been reduced such that the facility and site are suitable for release for unrestricted use. The definition of decommissioning in § 50.2 is general and its application in any given case will depend on specific circumstances.

The decommissioning rule applies to the site, buildings and contents, and equipment associated with a nuclear facility that are or become contaminated during the time the facility is licensed, and to activities related to the definition of "decommission" in the amended regulations. The decommissioning rule will not apply to the disposal of nonradioactive structures and materials beyond that necessary to terminate the NRC license. Disposal of nonradioactive hazardous waste not necessary for NRC license termination is not covered by these regulations but would be treated by other appropriate agencies having responsibility over these wastes.

2. Criteria used for choice of alternative. A number of commenters indicated that the rule does not contain sufficient criteria that a utility can use in choosing which decommissioning alternative should be used and that can be used in the review and evaluation of that choice. Some of these commenters pointed out that these criteria should factor in important considerations to be made in the choice, including clarifying what is sufficient benefit for delaying decommissioning, and that the choice of alternative be based on a detailed assessment demonstrating that the health and safety of the public is protected. These commenters indicated that better criteria on sufficient benefits should be included in the rule, specifically the degree of reduction in occupational radiation exposure, generation and disposal of waste, assurance that decommissioning will take place, radiation doses to the public, and quality of decommissioning operations. Other commenters mentioned that economic or other factors should also be included as being sufficient benefit, including comparative cost of alternatives, presence of other facilities at the site, development of new decommissioning techniques, and need to store wastes or spent fuel at the site. Some commenters indicated that it was not satisfactory to include criteria on acceptable alternatives in regulatory guides as is proposed in the statement of considerations while other commenters indicated that it is.

In response, it should be noted that the intent of the rule is to provide the necessary guidelines with regard to use of decommissioning alternatives in a manner which protects the public health and safety. Specifically, the rule includes requirements that, at the time of termination of operations, licensees submit a decommissioning plan to the NRC which contains an indication of the decommissioning alternative to be used and a description of the activities involved and the controls and limits on procedures to protect occupational and public health and safety for that alternative. Discussion of how the decommissioning plan and the chosen alternative are evaluated in terms of protecting health and safety is contained below in Section B.2.

In addition, § 50.82 of the proposed rule stipulated that alternatives which significantly delay completion of decommissioning, such as use of a storage period, will be acceptable if sufficient benefit results. This section of the proposed rule has been modified in two ways. The first is to be more definitive in terms of acceptable decommissioning alternatives by permitting power reactors to use alternatives which provide for completion of decommissioning within 60 years. This is consistent with the technical data base developed as part of the rulemaking (Refs. 2 and 3) and with the conclusions of the Supplementary Information to the Proposed Rule. In the Supplementary Information, it was indicated that DECON or SAFSTOR for up to 50 years are reasonable options for decommissioning a light water power reactor. The reason for both of these alternatives being acceptable is that both have benefits and both are capable of being carried out in a manner which protects public health and safety. In selecting 60 years as an acceptable period of time for decommissioning of a nuclear power reactor, the Commission considered the amount of radioactive decay likely to occur during an approximate 50-year storage period and the number of months expected to be needed to dismantle the facility (Refs. 2 and 3). In addition to this change, the modified rule also states that consideration will be given to a decommissioning alternative which provides for completion of decommissioning beyond 60 years for power reactors only when necessary to protect public health and safety. Factors, set out in the modified rule, which would be considered in evaluating an alternative which provides for completion of decommissioning beyond 60 years include unavailability of waste disposal capacity and other site specific factors affecting capability to carry out decommissioning safely, including presence of other nuclear facilities at the site.

Section 50.82(b)(1) of the proposed rule has also been modified for nonpower reactors. Because of the

variety of type of these reactors, specific criteria on time periods for completing decommissioning, such as indicated above for power reactors, are not included for nonpower reactors. However, the proposed rule has been modified to provide additional detail on the factors affecting acceptability of decommissioning alternatives for nonpower reactors. These factors include considerations affecting waste disposal for the different alternatives and other site-specific factors affecting capability to carry out decommissioning operations safely, such as presence of other nuclear facilities at the site and reduction of occupational and public radiation exposures associated with the different alternatives. Other factors not related to protection of health and safety are not included in the consideration of alternatives in the modified rule. In addition, Regulatory Guide 1.86 will be revised to provide additional guidance on the decommissioning alternatives, specifically guidance on the factors affecting delay in completion of decommissioning. Use of the modified rule in conjunction with the regulatory guidance will provide for an expeditious licensing procedure. A licensee's proposed decommissioning alternative will be reviewed based on the criteria and guidance discussed here and in Section B.2 for acceptability in terms of completing decommissioning and protecting public health and safety.

One commenter noted that neither the NRC nor the licensees can properly assess costs and benefits attributable to different alternatives due to the lack of sufficient information on occupational exposure. The commenter noted that NRC had no experience with decommissioning large, aged reactors and that, for example, the experience at the cleanup at TMI-2 had shown the workers were being exposed to radiation levels six times higher than expected. Thus, it is likely the decommissioning estimates of exposure are gross underestimates. In addition, the commenter stated that there is much uncertainty with regard to radiation effects on human health. Furthermore, the commenter indicated that the Generic Environmental Impact Statement on Decommissioning (NUREG-0586) (Ref. 20), which provides a basis for this rulemaking, does not adequately address health and genetic effects. Hence the commenter noted it is difficult to assess the proper alternative and that, in any event, in making assessments NRC should use conservative estimates.

In responding to this comment it should be noted that NRC has had Battelle Pacific Northwest Laboratory (PNL) prepare detailed analyses of the technology, safety, and costs of decommissioning. These reports were prepared for a number of nuclear facilities and are listed in the Reference section. The PNL reports contain estimates of expected occupational radiation exposures based on an analysis of work activities involved in decommissioning and radiation levels expected at the end of reactor life.

While it is true that no large, aged reactors have been decommissioned, the PNL reports represent a reasonable analysis of the occupational dose which would be incurred at decommissioning. They provide sufficient information on which assessment of different alternatives can be made, specifically that DECON can be carried out while maintaining occupational exposures at reasonable levels while SAFSTOR and ENTOMB can result in reduction in occupational exposures. Thus, choice of the alternative can be made.

It should be noted that for any of the alternatives, occupational exposures will be limited by the requirements of 10 CFR Part 20 and that, in particular, licensees should maintain exposures to workers to as low as reasonably achievable levels. Thus, radiation exposure to workers will be kept at acceptable levels for any of the alternatives used. The health impacts of radiation and concerns over whether limits on exposure should be raised or lowered are outside the scope of this rulemaking and are the type of issues being addressed currently in a separate rulemaking that proposes to amend 10 CFR Part 20. The allowed occupational exposures during the decommissioning period will conform to the requirements of 10 CFR Part 20. The Generic Environmental Impact Statement (NUREG-0586) (Ref. 20) analyzed the occupational exposures which would be received during decommissioning and found that over a 4-year decommissioning period they would be similar to that which would be experienced at an operating facility on a yearly basis. Thus, NRC determined that the health impact of decommissioning did not add significantly to the operating plant impact.

In summary, the information currently available provides NRC with a reasonable understanding of the safety aspects involved in decommissioning and also provides sufficient information to evaluate alternatives. As more information becomes available, NRC will factor it into the decision-making process. It is not feasible to compare the increases in the estimates at TMI-2 to decommissioning since the TMI-2 estimates were for a post-accident situation where there was significant contamination and the situation was initially uncertain with regard to contamination levels and cleanup procedures. When licensees prepare their decommissioning plans for submittal to the NRC for approval under the requirements of 10 CFR 50.82, they will have more information about the conditions in the reactor and will provide more up-to-date information about occupational exposures during decommissioning. At that time NRC will be able to evaluate the choice of decommissioning alternative for the specific facility.

3. DECON and SAFSTOR Decommissioning Alternatives. DECON and SAFSTOR are defined in the Supplementary Information to the proposed rule as follows: DECON is the alternative in which the equipment, structures, and portions of a facility and site containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use shortly after cessation of operations; SAFSTOR is the alternative in which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.

A number of commenters expressed opinions on the rule with regard to allowing use of DECON and SAFSTOR. Some commenters favored the use of DECON, one in particular noting that it should be used at a site of high potential for a seismic event. Other commenters noted the problems associated with DECON including the higher occupational exposure involved and problems associated with inability to dispose of wastes. Some commenters noted that site specific factors should come into play and that either DECON or SAFSTOR should be possible. Some commenters noted that because of problems associated with DECON, that SAFSTOR was the best option. Two commenters expressed the opinion that the rule seems to favor use of DECON for reactors.

The NRC is aware of and has considered the issues related to the advantages and disadvantages of the DECON and SAFSTOR options. The studies done for NRC by Battelle Pacific Northwest Laboratory (PNL) considered factors such as cost of the alternative and occupational exposure and waste

volumes associated with each alternative. The PNL studies also considered the effects on decommissioning of interim inability to dispose of wastes offsite. The Generic Environmental Impact Statement on Decommissioning Nuclear Facilities (NUREG–0586) (Ref. 20) prepared by NRC also addressed the advantages and disadvantages of DECON versus SAFSTOR including the fact that DECON releases the site for unrestricted use in a much shorter time period than SAFSTOR, whereas use of SAFSTOR would reduce occupational exposures and waste volumes. Both of these alternatives satisfy the definition of decommissioning in § 50.2. Based on the documents indicated above and on the discussion in the Supplementary Information to the proposed rule, the conclusion of the Supplementary Information regarding these two alternatives is that DECON or 30- to 50-year SAFSTOR are reasonable options for decommissioning light water power reactors. As indicated in Section A.2, the proposed rule has been modified to permit use of DECON or SAFSTOR for up to 60 years as long as it is demonstrated that they will be performed in a manner which protects public health and safety. Use of the 60-year time period in the modified rule is not intended to mean that if DECON is selected that it would be acceptable for it to last that long; periods of 5–10 years would be more reasonable for DECON.

With regard to SAFSTOR, six commenters stated that the rule should contain requirements that if the SAFSTOR alternative is chosen, reactor decommissioning be completed following storage periods of a maximum of 30–50 years because after this time period there will be little benefit in dose or waste volume reduction. In contrast, four commenters stated that even a 100-year period was too restrictive because periods of over 100 years are allowed in waste disposal facilities. Four commenters indicated that the rule should provide criteria by which the appropriate length of time for the storage period of SAFSTOR can be determined, balancing site-specific costs and benefits.

The Commission does not believe it necessary for the rule to contain an absolute time limit on how long SAFSTOR can last. Instead, as noted in Section A.2, modified § 50.82(b) indicates that a power reactor licensee's decommissioning plan must indicate a choice of decommissioning alternative, that DECON or 60-year SAFSTOR is acceptable, and that consideration will be given to alternative methods for decommissioning which provide for completion of decommissioning beyond 60 years when necessary to protect public health and safety. Factors considered in evaluating an alternative which provides for completion of decommissioning beyond 60 years include lack of waste disposal capacity or other factors affecting safety, including presence of other nuclear facilities on the site. The rule does not contain a specific limitation on the length of time for SAFSTOR beyond the time period indicated in the modified rule. The case-by-case considerations, such as shortage of radioactive waste disposal space offsite or presence of an adjacent reactor whose safety might be affected by dismantlement procedures, or other similar site specific considerations, mean that the appropriate delay for a specific facility must be based on factors unique to that facility and could result in extension of completion of decommissioning beyond 60 years. Based on this, the NRC considers the setting of an absolute time limit on SAFSTOR to be impractical and unnecessary. In addition, the expected revisions to Regulatory Guide 1.86 setting out guidance on the factors discussed above will provide the NRC the flexibility to consider specific cases while still providing assurance that the health and safety of the public is protected.

Although the final rule does not contain specific restrictions on the time period involved for delay in completion of decommissioning, the Supplementary Information to the proposed rule does indicate that this period should be on the order of 100 years because this is considered a reasonable time period for reliance on institutional control. Although commenters refer to longer periods of storage for waste disposal facilities there are some differences between these two situations which must be considered, including the fact that in the case of the waste disposal facility the NRC transfers the license for the facility to the State or Federal government agency that owns the disposal site following satisfactory site closure whereas the reactor facility would remain licensed by a private organization, and that there are only a small number of disposal facilities compared to possibly over 100 reactor facilities.

4. The ENTOMB Alternative. ENTOMB was defined in the Supplementary Information to the proposed rule as the alternative in which radioactive contaminants are encased in a structurally long-lived material, such as concrete; the entombed structure is appropriately maintained and continued surveillance is carried out until the radioactivity decays to a level permitting unrestricted release of the property.

A number of commenters indicated that the rule should expressly prohibit the use of ENTOMB as a decommissioning alternative for reactors. Several reasons were advanced for this statement including the following: The ENTOMB alternative could cause environmental damage due to the presence of long-lived radionuclides which would be radioactive beyond the life of any concrete structure; the Supplementary Information to the proposed rule indicates ENTOMB is not viable yet the rule does not explicitly prohibit it; ENTOMB is inconsistent with the definition of decommissioning requiring release for unrestricted use; and some reactors are located in highly populous areas. In contrast several commenters stated that the ENTOMB alternative should be left as a possible option and that in addition the 100-year period discussed in the Supplementary Information as the time period in which ENTOMB should be completed was too restrictive. Some commenters indicated that ENTOMB had certain advantages including reduced occupational exposure and waste volumes while some noted that no options should be precluded at this time due to the developing nature of decommissioning technology.

It is the Commission's belief that the ENTOMB alternative for decommissioning should not be specifically precluded in the rule because there may be instances in which it would be an allowable alternative in protecting public health and safety and common defense and security. By not prohibiting ENTOMB, the rule is more flexible in enabling NRC to deal with these instances. These instances might include smaller reactor facilities, reactors which do not run to the end of their lifetimes, or other situations where long-lived isotopes do not build up to significant levels or where there are other site specific factors affecting the safe decommissioning of the facility, as for example, presence of other nuclear facilities at the site for extended periods. In addition there is potential for variations on the ENTOMB option where, for example, some decontamination has already been performed, thereby making the ENTOMB option more viable. Analysis of the ENTOMB alternative in the PNL reports (Refs. 2, 3) and in the GEIS (Ref.

20) indicates that it can be carried out safely and that it can have some benefit in the reduction of occupational exposure and waste requiring disposal.

As noted above, concerns were expressed by the commenters that the ENTOMB option would cause environmental damage due to the presence of long-lived radionuclides which would be radioactive beyond the life of any concrete structure, that it is inconsistent with the definition of decommissioning requiring unrestricted release, and that some reactors are located in highly populous areas. In addition, the Supplementary Information to the proposed rule indicated, in general, that there may be difficulties with the use of ENTOMB, in particular in demonstrating that the radioactivity in the entombed structure had decayed to levels permitting unrestricted release of the property in a period on the order of 100 years. In response, the rule contains requirements that a licensee must submit an alternative for decommissioning to the NRC for approval and that consideration will be given to an alternative which provides for completion of decommissioning beyond 60 years only when necessary to protect health and safety. This provides the Commission with both sufficient leverage and flexibility to ensure that if the ENTOMB option is chosen by the licensee it will only be used in situations where it is reasonable and consistent with the definition of decommissioning which requires that decommissioning lead to unrestricted release. As indicated above, analysis of ENTOMB indicates that it can be carried out safely and with minimal environmental effect for the time periods presented in this Supplementary Information and in the guidance under preparation. However, based on the difficulties with ENTOMB described in the Supplementary Information to the proposed rule and by the commenters, use of ENTOMB by a licensee would be carefully evaluated by NRC according to the requirements of the rule before its use is permitted. Regulatory Guides currently in preparation will provide more guidance in this area.

B. Planning for Decommissioning

Comments received on the subject of decommissioning planning covered several areas. These included the licensing scheme for the decommissioning process; the criteria for conducting and evaluating decommissioning plans and activities and license termination, occupational exposure, safeguards, and quality assurance during decommissioning; recordkeeping and facilitation; and the effect of the rule on shutdown reactors.

1. Licensing scheme for decommissioning. Several commenters found the proposed rule vague in the areas of what type of license is in effect during reactor decommissioning, how Part 70 applies to reactors during decommissioning, when the license terminates, procedural criteria for the termination process, and the restrictions and requirements that apply to a "possession-only license." One commenter indicated that there might be loopholes which would be exploited by the industry resulting in adverse impacts to the public and the environment and another commenter indicated that explicit procedural criteria would remove a needless burden on applicants and result in a more cost and time effective licensing process.

In response, it should be noted that application for termination of license occurs at the time of initiation of decommissioning which may be many years before actual termination of license is granted, that decommissioning is carried out under an amended license in accordance with the terms of a decommissioning order, and that the license is terminated only after the Commission is satisfied that decommissioning has been properly completed. Normally, an amended Part 50 license authorizing possession only will be issued prior to the decommissioning order to confirm the nonoperating status of the plant and to reduce some requirements which are important only for operation prior to finalization of decommissioning plans. The authority to possess radioactive materials under Parts 30, 40, and/or 70, as appropriate, continues to be incorporated in the modified Part 50 license, as it is during operation. Subsequent license amendments will be issued as appropriate. The Commission will follow its customary procedures, set out in 10 CFR Part 2 of the NRC Rules of Practice, in amending Part 50 licenses to implement the decommissioning process. In the past, the period of safe storage or that following entombment has been covered by an amended "possession-only" Part 50 license which does not authorize facility operation, with the term "order" used only in the case of a dismantling order, due to the more active nature of this stage of decommissioning. Except for the use of the term "decommissioning order," there has been no change from past practice. The term "decommissioning order" is used in lieu of the term "dismantling order" because, according to the amendments, the overall approach to decommissioning must now be approved shortly after the end of operation rather than an amended "possession-only" Part 50 license being issued without plans for ultimate disposition.

As with any license, the authority to operate or to carry on licensed activities ceases at the expiration date unless the license is being renewed. However, the license and the responsibility to protect health and safety and promote the common defense and security continues until the Commission terminates the license. Section 50.82(f) clearly indicates the license is terminated by a determination of the Commission after the decommissioning has been performed and it has been adequately demonstrated that the facility and site are suitable for release for unrestricted use. Because decommissioning, including any change from the original operating license, requires Commission approval, there are no "loopholes" which would allow adverse impacts to the public or environment.

For clarification, it is noted that the term "decommissioning plan" refers to the plan submitted at the time the licensee decides to terminate the license, while the term "decommissioning funding plan" refers to plan submitted early in facility life which indicates the licensee's financial assurance provisions.

2. Criteria for decommissioning activities and license termination. Many commenters were concerned with the lack of specific requirements applicable to the process of decommissioning, particularly in the case of reactors, and suggested that strong guidelines on requirements for conducting and evaluating decommissioning plans and activities and terminating licenses are necessary to protect public, occupational, and environmental safety. Some suggest that the rule establish certain safety criteria and the ways in which the utility will meet these criteria. A few commenters were specifically concerned with clarifying requirements during the "safe storage" period, such as those for security, inspection, reporting, and monitoring. Many were not clear as to whether the suggested "guidance" should be in the rule or if Regulatory Guides would be considered appropriate. Two commenters indicated that without more specific criteria for acceptability of decommissioning plans, the Commission would exercise little authority over licensee actions during decommissioning and one commenter indicated that the licensees could conduct decommissioning with "virtually complete independence." Two commenters indicated that the rule

"assumed" that utilities would follow basic safety criteria.

In response, it should be noted that continuing authority to possess a reactor in a decommissioned status is governed by the provisions in 10 CFR Part 50 governing operating licenses, as appropriate. As discussed earlier, it is the intent of the rule to provide the necessary guidelines to assure that decommissioning is carried out in a manner which protects the public health and safety. To this end, the rule contains requirements that a decommissioning plan contain a description of the following: The choice of the alternative for decommissioning and the activities involved; the controls and limits on procedures and equipment to protect occupational and public health and safety; a description of the planned final radiation survey; quality assurance and safeguards provisions, if appropriate; and a plan for assuring the availability of funds for decommissioning. Based on this requirement the licensee submits the necessary information to the NRC in the decommissioning plan. The NRC's evaluation of the information contained in this plan and the licensee's subsequent conduct of decommissioning activities is based on existing regulations applicable to reactors and other facilities undergoing decommissioning. These regulations include 10 CFR Parts 20, 50, 61, 70, 71, and 73.

Part 20 contains the basic standards for protection against radiation and is applicable to all licensees during operation as well as decommissioning, including the storage period. Part 20 contains requirements for limits on both occupational and public exposure, including limits on radiation exposure and concentrations of radioactive material in both restricted and unrestricted areas. In addition to the general limitations on exposure contained in Part 20, 10 CFR 20.1(c) indicates that radiation exposures, and releases of radioactive materials in effluents to unrestricted areas, should be as low as reasonably achievable (ALARA). Part 20 also contains, among other things, requirements on radiation monitoring, personnel monitoring, precautionary procedures, and reporting. Part 50, Appendix B contains broad requirements on quality assurance provisions which can be used, as appropriate, to the extent commensurate with the safety functions to be performed by facility structures, systems, and components during decommissioning activities. Part 50 also contains guidelines on radioactive waste system design. Part 61 contains requirements on land disposal of radioactive waste including criteria for classification and characteristics of waste acceptable for disposal. Part 71 contains requirements for the packaging and transportation of radioactive material. Parts 70 and 73 contain requirements for physical protection of plants and materials. Although all of these parts do not specifically mention decommissioning activities, the criteria of these parts would apply, as appropriate, to decommissioning. In addition, regulatory guides, many of which already exist and some of which are under consideration, can provide additional guidance for planning and conducting decommissioning in accordance with the applicable regulations. For example, Regulatory Guide 8.8 provides guidance on ensuring that occupational exposures are ALARA and Regulatory Guide 1.143 provides guidance on radioactive waste treatment systems. Also, as noted below in Sections B.4 and B.5, guidance is being considered on safeguards and on quality assurance provisions during decommissioning and on procedures to be considered for facilitating decommissioning by reducing radiation dose based on NUREG/CR-3587 (Ref. 25).

The primary means of protecting the health and safety of the public and workers during decommissioning is through implementation of the decommissioning plan. The decommissioning plan would contain the licensee's means for complying with parts of the regulations discussed above which are applicable to non-operating facilities.

All amendments to the operating license which the licensee holds at the time the decommissioning plan is submitted are subject to Commission approval. Amendments to the license are needed because many of the prescriptive requirements of an operating license are for the purpose of assuring safe operation and are no longer necessary during decommissioning. The decommissioning plan and the associated approval process provide an adequate legal framework for the regulation of facilities undergoing decommissioning. Therefore, the licensee would not have independence in conducting decommissioning. The Commission does not merely assume the utilities will follow basic safety criteria. The licensing offices will review decommissioning plans based on the applicable criteria and guidance and the inspection and enforcement staff will monitor the carrying out of the plans. This approach should provide enough flexibility to accommodate the varied nature of activities which are possible.

The proposed rule has been modified to provide some additional detail on the scope of decommissioning plans in the final rule. A proposed regulatory guide on contents of decommissioning plans for materials facilities has been published; a similar Regulatory Guide for reactors is being developed to provide guidance on the information which should be submitted to conform to the rule. In addition, Regulatory Guide 1.86 provides guidance on conducting decommissioning activities, including storage periods, in a manner to meet applicable requirements. This Regulatory Guide is currently being revised to be fully consistent with the regulations. Regulatory Guides have been used successfully to provide uniform application of requirements while affording Commission staff flexibility to consider unique factors in any situation. In addition, the staff would use standard review plans (SRPs) which contain review procedures and the acceptance criteria used in evaluating licensee applications, including decommissioning plans. These SRPs would be available and contain the bases for the acceptance criteria.

One commenter noted that it was unclear what activities should not be started prior to approval of decommissioning plans. Other commenters requested that the regulations be clarified in order to delineate those activities related to decommissioning that could proceed without approval of the decommissioning plan if those activities are allowed by the operating license and § 50.59.

In response it should be noted that § 50.59 permits a holder of an operating license to carry out certain activities without prior Commission approval unless these activities involve a change in the technical specifications or an unreviewed safety question. However, when there is a change in the technical specifications or an unreviewed safety question, § 50.59 requires the holder of an operating license to submit an application for amendment to the license pursuant to § 50.90. Section 50.59(a)(2) contains criteria as to what is deemed to be an unreviewed safety issue. The amendments contained in this rulemaking do not alter a licensee's capability to conduct activities under § 50.59. Although the Commission must approve the decommissioning alternative and major structural changes to radioactive components of the facility or other major changes, the licensee

may proceed with some activities such as decontamination, minor component disassembly, and shipment and storage of spent fuel if these activities are permitted by the operating license and/or § 50.59. These matters will be further discussed in a revision to Regulatory Guide 1.86 under consideration.

3. Occupational exposure during decommissioning. Many commenters emphasized the importance of worker protection. Many of these suggested more specific criteria to minimize worker exposure. A number were concerned that the rule did not specifically address radiation monitoring. One felt that reporting of all phases to NRC should be required. One felt that strict enforcement of safety standards should be required, and also indicated that experience at TMI and Shippingport would indicate that total occupational exposures are apt to be substantially higher than estimated. Another believed that exposures during decommissioning will be substantially higher than from operations. One commenter suggested specific requirements such as training of workers prior to work in highly radioactive areas.

In response, minimizing worker exposure during decommissioning is one of the main goals of this rulemaking and of the guidance being developed in connection with this rulemaking. Detailed plans for decommissioning are the primary means of minimizing worker exposure. Procedures for carrying out decommissioning will be evaluated by NRC staff for adequacy of occupational exposure control; plans for appropriate training are an area of review. Basic radiation protection, monitoring, and reporting requirements need not be developed specifically for decommissioning because generally applicable criteria are already contained in 10 CFR Part 20. The radiation levels to which workers will be exposed will be similar to levels of major maintenance activities conducted during operations. If total exposures prove to be higher than estimated, this could be factored into decisions concerning alternatives and approaches in the future. Also contributing to the minimization of worker exposure are the recordkeeping requirements of this rule. Other aspects of facilitation of decommissioning will be considered in the review of license applications.

4. Safeguards during decommissioning. A commenter pointed out that the applicability of safeguards requirements to decommissioning is unclear. In response, as noted above in Section B.2, the existing regulations on safeguards for nuclear facilities are considered to contain criteria applicable to the decommissioning process. Therefore it is not considered necessary to amend those regulations. However, the Commission has modified the proposed rule to indicate that safeguards provisions during decommissioning are to be described, as appropriate, in the decommissioning plan. In addition, appropriate guidance documents will be issued identifying which of the current operating requirements on safeguards are to apply during decommissioning.

5. Quality assurance during decommissioning. Many commenters were concerned that the proposed regulation did not include mention of quality assurance and/or quality control for decommissioning. Some of these indicated that QA/QC requirements need to be clearly specified. A few comments indicated the need for a separate or independent QA/QC staff. Two commenters suggested some specific procedures which should be subject to Q/A and two others refer to problems with decontamination activities at Saxton because of lack of QA.

The Commission agrees that quality assurance is important for decommissioning. The intent to include QA in decommissioning plans was mentioned in the statement of considerations of the proposed rule, but the scope of plans in the regulation itself was very general. The final rule indicates that QA provisions during decommissioning are to be described, as appropriate, in the decommissioning plan. A large part of the QA program for operating reactors pertains to equipment and procedures necessary for the safe operation of the plant; the equipment and procedures requiring QA procedures during decommissioning is much more limited. It is not considered necessary to detail these requirements in the regulations because of the limited nature of the QA requirements. As noted above in Section B.2, information in the decommissioning plan would describe QA provisions as they comply with 10 CFR Part 50, Appendix B to the extent commensurate with the safety functions to be performed by facility structures, systems and components during decommissioning activities. Guidance is being considered to assist in the development and review of the quality assurance provisions of decommissioning plans.

6. Recordkeeping and facilitation. Commenter opinions concerning the recordkeeping requirements proposed was mixed. Several thought it was important enough to include specific support for the requirements as proposed indicating why such records were important. Other commenters indicated that existing recordkeeping requirements are sufficient. One commenter suggested that records might be limited to those events resulting in the spread of contamination outside of radiologically controlled areas identified in the updated FSAR.

The Commission is retaining recordkeeping requirements for decommissioning. Experience has shown that incomplete knowledge of facility design and history can result in significant difficulties and greatly underestimated costs at the time of decommissioning. Although many of the records, particularly in the case of reactors, would be kept for other purposes, it is expected that an improvement in assurance of availability of the records will result from the amendments. The amendments have been written to minimize the additional effort required, that is, requiring only centralized reference to pertinent records and their location rather than duplication of the records and, if drawings are referenced, not requiring that each relevant document be indexed individually.

Some comments were submitted concerning facilitation of decommissioning. The commenters favored consideration of facilitation except for one who indicated that additional plant design requirements and operating procedures to facilitate decommissioning are not necessary. One commenter discussed how design facilitation and improvements in the technology of decommissioning (such as robots and remote devices) can reduce the costs, time, and exposures of decommissioning. Other commenters recommended that specific requirements for facilitation of decommissioning in design and operating procedures be included in the regulations.

In preparing the proposed rule, the Commission did not conclude that additional plant design requirements and operating procedures to facilitate decommissioning are unnecessary but rather that, other than recordkeeping, no specific design feature nor operating procedure need be required specifically for all licensees at this time. As noted in the Supplementary Information to the proposed rule, although no specific requirements are being imposed at this time, the effects of facilitation on design of facilities and operational procedures can be considered under general criteria contained in existing regulations in 10 CFR Parts 20, 30, 40, 50, 70 and 72. To

the extent that design features or operational techniques are of known value in facilitating decommissioning, the Commission staff may consider these factors in reviewing applications for construction permits or operating licenses under the more general criteria contained in the regulations. The Commission has done some preliminary studies to identify possible beneficial features and techniques (NUREG/CR-3587, Reference 25).

7. Shutdown reactors. A number of commenters were concerned about the exemption of reactors permanently shut down prior to issuance of the rule from the requirement to submit decommissioning plans. Some thought that this would mean a lower level of protection for the public living near such a plant. One commenter suggested that those licensees be required to review their plans within a set time after the effective date of the rule and submit any revisions necessary to make their plans consistent with the new regulations and two commenters suggested an exemption procedure in the regulations would be better than a blanket exemption.

In response to this comment, it should be noted that reactors which are permanently shut down prior to the effective date of this rule, have had their status reviewed by applying for a possession-only license (a few had obtained a materials license only). These plants are being adequately controlled under their modified license and license conditions to protect the health and safety of the public while in this decommissioning mode. Any further delay in completion of decommissioning would have to be considered formally if an extension is requested beyond the expiration of the possession-only license. Detailed plans for ultimate dismantlement of reactors currently in safe storage would be deferred under the provisions of this rule. Requiring a decommissioning plan for these reactors at this time, or an application for exemption, would involve administrative efforts on the part of these licensees with no significant impact on health and safety. Funding and recordkeeping requirements in the amendments apply to these reactors since they possess an "operating license," albeit modified. Details concerning financial assurance, primarily the time period for accumulating funds not set aside during operation, would be decided on a case-by-case basis.

C. Financial Assurance

Comments received on the issue of assuring the availability of funds for decommissioning included questions regarding costs of decommissioning, use of certification of a specified amount and funding plans for reactors, acceptable funding methods, submittal of funding plans, specific comments on funding for material licensees, funding for Federal licensees, and general questions concerning need for funding requirements and relationship of the rule to the functions of other regulatory agencies.

1. Cost of decommissioning. A number of commenters questioned the Battelle Pacific Northwest Laboratory (PNL) estimates of the cost of decommissioning as discussed in the Supplementary Information to the proposed rule. A variety of alternative estimates and reasons for questioning the estimates were given. A summary of these are as follows:

(a) Commenters indicated that other estimates have been made which make the PNL studies appear to be too low. Commenters from the nuclear industry indicated costs are more likely in the range of $126 to $178 million. Other commenters cited estimates which range from $600 million to as high as $3 billion. The variety of estimates are cited by some commenters as being indicative of the uncertainty of estimates. One commenter indicated that the estimates in the PNL studies were high.

(b) The data base of the PNL reports is limited because the reports are based on small research reactors and on the Elk River reactor. In particular, Elk River and Saxton operated at low power loads and for only a very short time, not long enough for long-lived radionuclides to build up. Thus, necessary experience to make accurate cost estimates does not exist and commenters quote the PNL reports as stating that "extrapolations from these experiences to large commercial reactors are considered to be generally unreasonable." Moreover commenters stated that the PNL studies are outdated. Some commenters point out that certain necessary data for estimating costs does not exist. These data include information on concrete contamination, activated vessel components and biological shield and soil contamination and uncertain status of requirements regarding occupational dose, waste disposal, and residual radioactivity.

(c) Shippingport, a 65 MWe reactor, has been estimated to cost $98 million to decommission. Larger reactors would likely cost significantly more than this, perhaps more than three times as much. In addition, Shippingport cost estimates are probably lower than typical because the reactor vessel will be removed intact and the wastes will be disposed of in a Federal Repository. Other estimates at Saxton and Humboldt Bay (which the commenter indicated as being $600 million in 2015 dollars) indicate PNL estimates are too low.

(d) Estimates of costs of other activities such as reactor construction, TMI-2 cleanup, and Saxton decommissioning have been greatly underestimated. Costs of decommissioning will likely escalate much higher than estimated today.

(e) The cost of decommissioning a reactor will likely equal the cost of construction of the plant.

The following is a discussion of the response to these concerns.

NRC, as part of its efforts on rulemaking for decommissioning, contracted with Battelle Pacific Northwest Labs (PNL) to develop an analysis of estimated costs of decommissioning various nuclear facilities, including PWRs and BWRs, on a generic basis, based on an engineering evaluation of activities involved in decommissioning. As indicated above, certain of the commenters disputed the accuracy of the PNL studies to varying degrees.

The PNL reports on decommissioning a reference PWR and reference BWR are detailed engineering studies of the conceptual decommissioning of a large PWR (the 1175 MWe Trojan Nuclear Plant is used as the reference plant) and a large BWR (the 1150 MWe WNP-2 plant is used as reference). The PNL reports consider: (1) The detailed plant design and layout of the reference plant; (2) estimated conditions in the plant at the time of shutdown (just prior to decommissioning) including estimates of radionuclide inventory and radiation dose rates; (3) techniques for decontamination and dismantling which are current and proven; and (4) radiation protection requirements for workers and the public. Based on these considerations, the PNL reports present detailed work plans and time schedules to accomplish decommissioning, including those for planning and preparation, decontamination, and component disassembly and transport. In making cost estimates of decommissioning, the PNL reports include work scheduling estimates, staffing requirements, specialty contractors, essential systems, radioactive materials disposal, supplies, etc.

The PNL reactor decommissioning studies were performed during the period 1976-1979 and PNL has since prepared updates of the original PWR and BWR studies (NUREG/CR-0130

(Ref. 2) and NUREG/CR-0672 (Ref. 3), respectively) in which the earlier estimates were adjusted for inflation due to increases in labor costs, waste disposal charges, and other general cost increases since the original studies. In addition to inflation, several aspects not considered in the original studies were examined: the use of a general decommissioning contractor in place of the utility acting as its own contractor; the use of an external engineering firm to develop the detailed plans and procedures for accomplishing decommissioning; and the addition of sufficient staff to assure that radiation doses to decommissioning workers do not exceed 5 rem per year.

Based on the above factors and adjustments, PNL estimates of power reactor decommissioning in January 1986 dollars are in the range of $105–$135 million. A breakdown of these costs is contained in the Final Generic Environmental Impact Statement on Decommissioning Nuclear Facilities (Ref. 20). The PNL costs do not include the cost of demolition and removal of noncontaminated structures, storage and shipment of spent fuel, or restoration of the site.

Although it may be difficult to make simple comparisons between different cost estimates for different plants because of site-specific considerations, it can be said that the PNL estimates represent a reasonable approximation of the range of decommissioning costs, in particular because they use engineering assumptions and are based on decommissioning experience. Other estimates made independently from PNL and made using engineering assumptions are in the same general cost range as PNL. Estimates in the range of $600 million to $3 billion appear to be unreasonably high. The $600 million figure is for decommissioning Humboldt Bay and is in year 2015 dollars and hence includes the assumed effects of price escalation between 1984 and 2015 which could be substantial. No specific bases or data are presented by the commenter to justify the $3 billion figure. It may be based on comparisons of construction and decommissioning costs. However, this is not necessarily a valid comparison as discussed below.

Explanation of differences between the PNL cost estimate range and that cited by the nuclear industry of $126 to $176 million rests partly with site-specific differences and partly with differing assumptions regarding labor necessary to complete certain decommissioning tasks and differing assumptions regarding waste disposal volumes and charges. These different assumptions come about based partially on the uncertainty inherent in making these cost estimates at this time. Further analysis in revisions to the estimates to account for recent technical information obtained since the original PNL studies were prepared may well reduce the differences in the assumptions and estimates. For example, the NRC has research programs underway to obtain data from the decommissioning of the Shippingport reactor. The rule amendments provide for these differences by allowing the use of site-specific cost estimates in financial assurance provisions.

The commenters in (b) above questioned the PNL data base because it used small reactors as a basis. As discussed below, the primary use of information from earlier decommissionings of small reactors like Elk River was to gain a perspective on the types of operations necessary and the types of tooling appropriate to accomplish dismantlement.

The fact that the activation levels experienced in Elk River were lower than those anticipated in a reactor after a full lifetime of operation has little effect on the PNL analyses, because components that are highly activated are generally disassembled under water. With water shielding, still higher activation levels will not influence the approach and methods of disassembly and packaging in any significant way.

With respect to the lack of data on contamination and activation levels throughout the plants at the end of life, the activation levels were calculated using well-proven methods and the contamination levels were based on data from actual operating plants after 3 to 6 years of operation. These values are not unreasonable estimates of end-of-life conditions because current operating practice is to perform system and surface decontaminations periodically as required to keep occupational radiation doses to operations personnel within reasonable bounds.

The quotation from the PNL report to the effect that "extrapolations of these experiences to large commercial reactors are considered to be unreasonable" needs to consider the remainder of the discussion contained in the PNL report for the proper context. The statement in the PNL report was not intended to imply that reasonable analyses could not be made for the large reactors. The statement was intended instead to discourage persons from performing linear extrapolations of the Elk River decommissioning costs to a large power reactor by using the ratio of their power levels. In fact, the PNL studies go on to state in Section 4.3 of NUREG/CR-0672 that "the primary value of past decommissioning experience is in identification of the methods and technologies of decommissioning." In Section 4.3.3, NUREG/CR-0672 describes some of the lessons learned from past decommissionings, including the fact that "Past decommissionings have demonstrated some of the aspects of the practicality and acceptability of the various decommissioning approaches. The necessary technology not only exists, but has been safely and successfully applied numerous times to a wide variety of nuclear installations." As can be seen in Appendix G of NUREG/CR-0672, information on techniques and methods from earlier decommissionings, gathered from various sources, is used in considering which techniques are applicable to larger facilities. Some examples are decontamination, physical cleaning, removal of structural material, and equipment disassembly. Thus, as discussed in NUREG/CR-0672, direct extrapolation or comparison of decommissioning the small facilities is not used by PNL in evaluating costs of decommissioning for the larger reference facilities, but rather the usefulness of the earlier decommissionings is in their demonstration of available and successful decommissioning methods and techniques to accomplish specific tasks.

PNL utilizes this information, where applicable to large reactors, and also considers the design and plant layout of the large reactors, and the estimated conditions in the reactor at the time of shutdown, including estimates of radionuclide inventory and radiation dose rates, as well as decontamination techniques and radiation protection measures more appropriate for large reactors. Based on these considerations, the PNL studies developed detailed work plans and time schedules to accomplish decommissioning which are described in more detail in Sections 4.2 and 9 and Appendices F and G of NUREG/CR-0130 and Sections 3 and 9 and Appendices G, H, and I of NUREG/CR-0672.

The commenters in (c) questioned the PNL estimates due to the costs of the Shipping decommissioning. In response, first, it should be noted that the Shippingport reactor has all of the components of a large commercial reactor and, in addition, the ratio of the physical size of components at Shippingport compared to the physical size of components at a large commercial reactor is much larger than

the ratio of power levels. Thus, the kinds and numbers of operations required to accomplish dismantlement are very similar. The cost of assembling and paying a crew for the decommissioning is high and makes up a large fraction of the cost of decommissioning. Even for smaller facilities, a crew must still be assembled and must perform a number of tasks similar to those in large reactors such as decontamination of piping loops, decontamination of concrete surfaces, vessel and pipe cutting, etc. The costs of staff labor for these activities is significant in each case.

Second, the specific situations at Shippingport must be considered. In particular, the Shippingport dismantlement is being conducted as a learning exercise and an information/technology transfer opportunity for the nuclear industry. More time and effort are being devoted to planning, executing, and documenting each task than would otherwise be necessary during a commercial reactor decommissioning project. Thus, the costs should be greater than expected for a plant of that size. In addition, the Shippingport cost estimate is escalated to real dollars spent during the active decommissioning period up to 1990 which is a reasonable estimation method because DOE needs to project actual year dollar costs for budget purposes. However, this is different from the method used in the PNL estimates which was to use constant 1984 dollars in the proposed rule. To make a valid comparison, both estimates would have to be in the same year dollars. Inflation over this period may be an important factor. Another factor in the difference in cost is that the Shippingport estimates include cost of demolition of certain facility structures and site restoration, which are not included in the PNL estimates. In addition to these factors, DOE indicated the existence of certain unique items in the Shippingport decommissioning include: The testing of certain decommissioning methods to determine if they fit particular applications; efforts involved to share technology with utilities; and efforts involved in considering the presence of the nearby operating Beaver Valley plants during decommissioning.

The commenters in (d) questioned the cost estimates due to earlier underestimates of construction costs at nuclear plants and cleanup costs at TMI-2. In response, while there is no doubt that decommissioning costs will continue to escalate in step with general price increases, it does not follow that because reactor construction costs exceeded original estimates, decommissioning cost estimates will also be greatly exceeded. Cost overruns in the construction of nuclear plants reflected the regulatory requirements necessary to license a reactor for construction and operation, the cost of interest to borrow money during protracted delays, and other site-specific problems rather than a basic inability to project the technological costs. Decommissioning cost estimates do not include a number of the factors involved in obtaining an operating license and should not necessarily be subject to such increases. The cleanup at TMI-2 is a first-of-a-kind endeavor with potential for increased costs. The initial cost estimates were based on very limited knowledge of the actual conditions to be overcome, and in addition, there were delays in the program caused by technical and regulatory problems.

The cost estimate for cleanup at TMI-2 has not increased appreciably since 1981 due in part to a better understanding of the work scope. The cleanup following an accident is not comparable to a normal decommissioning in terms of either technology or cost and the conditions for a reactor decommissioning can be much more sharply defined than could the conditions for TMI-2 cleanup. Also, the activities needed to decommission are not first-of-a-kind, but reflect direct applications of developed techniques and equipment. Thus, cost increases of the magnitude experienced by the TMI-2 cleanup effort are unlikely to occur for a normal decommissioning effort.

The commenters in (e) indicated that the cost of decommissioning would likely equal the cost of construction of the plant, i.e., with costs of construction running at $3 billion, the cost of decommissioning would be $3 billion. First, there have been no detailed analyses presented to indicate that decommissioning costs will equal construction costs and, in fact, there is not a specifically defined or fixed relationship between these two costs. The PNL studies on decommissioning (NUREG/CR-0672 and NUREG/CR-0130) have not identified a specific relationship between construction costs and decommissioning costs. As can be seen in Section 10 of NUREG/CR-0672, decommissioning costs depend on various specific factors such as costs of staff labor to accomplish decommissioning tasks, costs of disposal of waste, special tools and equipment, miscellaneous supplies, etc. Cost of construction includes several items which have little or no effect on decommissioning costs such as licensing, extensive quality assurance procedures during construction, site preparations, installation and testing of instrumentation, control and electrical systems, the cost of interest on the money used during construction, etc. This discussion does not attempt to define or provide costs of these and other items, but to point out the differing nature of many of the construction costs versus decommissioning cost items, and why there was no identification of a defined relationship between them in the Battle-PNL reports.

Secondly, in any comparison of costs it is necessary to place the costs in the same year's dollars in order to have a meaningful basis for comparison. Certainly in about 30-40 years when the reactors are decommissioned, inflation may well drive the decommissioning costs towards the current cost of construction. However, the decommissioning rule amendments, which will require maintenance of funds by methods which keep pace with inflation and periodic adjustment of funds to account for effects of inflation, will provide assurance that funds are available to pay for decommissioning when needed.

2. Use of certification of a specified amount and funding plans for reactors. The proposed rule contained provisions that a utility applicant or licensee may submit a certification that financial assurance for decommissioning will be provided in a prescribed amount stipulated in the regulations as $100 million (in 1984 dollars). The proposed rule also indicated that this value is to be adjusted annually using an inflation rate twice that indicated by the change in the Consumer Price Index. The following were comments received on this issue:

(a) A number of commenters objected to the use of certification for the following general reasons:

(1) The use of site specific estimates is preferable to a prescribed amount because they will be more realistic and accurate and able to account for site-specific factors.

(2) Commenters generally felt that because of the wide range of site specific cost estimates, any one value would not be accurate and not be representative of most plants and therefore the number of licensees using certification would be low. Most commenters argued that $100 million was too low while a few argued that it was too high.

(3) The use of a prescribed amount will not decrease utility efforts because they will still have to prepare site specific cost studies for the rate

regulators regardless of the certification procedure. Commenters noted that the use of the $100 million figure or other similar prescribed amount will be viewed by state and Federal rate regulators as a limiting value, thus placing a burden on utilities to justify to the rate regulators an alternative funding level even if site specific studies show the prescribed amount to be inappropriate for that plant. Some commenters noted that this situation had already occurred in specific situations.

(4) The use of a specific prescribed amount as stated in the certification was seen by some commenters as setting a revenue requirement which is a function for state and Federal rate regulators.

(5) The inflation factor contained in the proposed rule was considered to be inaccurate because there was no basis to expect the decommissioning cost to increase at twice the CPI in the future, and the factor could be subject to misuse as noted above in (c).

(b) Some commenters indicated that if certification is retained that it should be revised and clarified. The following suggestions were made as to what should be done if certification is kept:

(1) The certification requirement should be clarified to indicate that it is not intended to and does not represent the actual cost of decommissioning, that it is not fixed but is for reference purposes only, that it is only intended to insure minimum financial responsibility and that it is not intended to bind regulatory ratemaking bodies to that figure either as a minimum or maximum.

(2) The amount should be increased to the $120 to $170 million range so that it is sufficiently high to include realistic decommissioning costs.

(3) Indicate that, despite the allowance of certification, use of a site specific study is preferable and should be used if available. Only allow use of certification in certain cases when it can be shown that costs are less than $100 million.

(4) There should be consideration given to include means to adjust the certification numbers to account for such things as plant size, design, other site specific factors, BWR vs PWR, pre- or post-TMI units, decommissioning alternative, two-unit site savings, etc.

(5) Clarification should be included as to what the $100 million includes, namely whether it covers both radioactive and nonradioactive structures, whether it includes contingencies, whether it is per unit.

(6) The use of the inflation factor should be clarified, in particular that it is not intended to reflect the actual rate of increase of decommissioning costs, and the inflation factor should be modified using other escalators, for example, Handy-Whitman indexes for labor and materials and separate data sources for waste disposal.

(c) With regard to funding plans, several commenters indicated that there needed to be more specific or quantitative description of NRC's criteria for approval of cost estimates in power reactor funding plans and that lack of criteria could result in confusion.

In responding to these comments it should be noted that, as discussed in the Supplementary Information to the proposed rule, the intent of the use of certification is to minimize the administrative effort of licensees and the Commission while still providing reasonable assurance that funds will be available to carry out decommissioning in a manner which protects public health and safety. The certification amount was base on the significant data base on decommissioning development as part of the policy evaluation. The intent expressed in the proposed rule remains valid, however, it appears from the comments that the intent and proposed use of certification has been misunderstood. Thus, the retention of certification requires clarification and adjustment for it to be useful in the manner it was intended. These points are discussed in the following paragraphs.

First, it is still expected that a proper certification method would provide clear criteria and would minimize the amount of administrative effort that the NRC and licensees must expend in establishing reasonable financial assurance for decommissioning. The certification is also intended to minimize NRC involvement in the rate regulatory process, which is an area outside of NRC jurisdiction. The fact that site specific cost estimates may still have to be prepared for rate regulators is outside the scope of this rulemaking.

Second, the comments that a site specific cost estimate is preferable as noted in (a)(1) above, that the prescribed amount in the certification is not representative of most plants as noted in (a)(2) above, and that the use of the prescribed amount will be viewed as a limiting upper value by rate regulators as noted in (a)(3) above, indicates the certification method in the proposed rule has been misunderstood. The proposed rule stated that a utility could submit a certification that finanicial assurance for decommissioning will be provided in an amount *at least equal to* $100,000,000 (Emphasis added). Accordingly, the proposed rule did not intend to prevent site specific cost estimates from being done and amounts greater than the prescribed amount being estimated and used for financial assurance planning as long as the estimate exceeded the prescribed amount. Under the provisions of the proposed rule, licensees could prepare a site specific cost estimate and if it exceeded the prescribed amount, which would be acting as a threshold review level, the estimate would not be a matter for NRC consideration. The amount listed as the prescribed amount does not represent the actual cost of decommissioning for specific reactors but rather is a reference level established to assure that licensees demonstrate adequate financial responsibility that the bulk of the funds necessary for a safe decommissioning are being considered and planned for early in facility life, thus providing adequate assurance at that time that the facility would not become a risk to public health and safety when it is decommissioned. It is not intended to bind ratemaking bodies to that specific figure. The text of the final rule states that, if a site specific cost evaluation is prepared, it can form the basis for the certification and the licensee may indicate that provisions are being made for an amount greater than the prescribed amount.

Use of the certification approach is a first step in providing reasonable assurance of funds for decommissioning from the Commission's perspective. The second step is that the amendments require the licensee, five years prior to the expected end of operations, to submit a cost estimate for decommissioning based on an up-to-date assessment of the actions necessary for decommissioning and plans for adjusting levels of funds assured for decommissioning. As noted in the Supplementary Information to the proposed rule, this estimate would be based on a then current assessment of major factors that could affect decommissioning costs and would include relevant, up-to-date information. These factors could include site specific factors as well as then current information on such issues as disposal of waste, residual radioactivity criteria, etc., and would present a realistic appraisal of the decommissioning of the specific reactor, taking into account actual factors and details specific to the reactor and the time period.

Combination of these steps, first establishing a general level of adequate financial responsibility for decommissioning early in life, followed by periodic adjustment, and then evaluation of specific provisions close to the time of decommissioning, will provide reasonable assurance that the

Commission's objective is met, namely that at the time of permanent end of operations sufficient funds are available to decommission the facility in a manner which protects public health and safety. More detailed consideration by NRC early in life beyond the certification is not considered necessary because of the steps discussed above. In addition, because public utility commissions are to set a utility's rates such that all reasonable costs of serving the public may be recovered and because NRC requirements concerning termination of a license are part of the reasonable cost of having operated a reactor, it is reasonable to assume that added costs beyond those in the prescribed amount could be obtained if the latter were too low as suggested by the commenters.

Based on the above discussion, the level of review contained in this decommissioning rule provides reasonable assurance for funding. In response to those commenters who were concerned that the criteria for evaluation of power reactor funding plans were not sufficiently specific or quantitative, the certification process provides clear requirements and will achieve the objective or reasonable assurance of funding while minimizing associated administrative effort. Therefore, the amendments do not contain requirements for a cost estimate early in reactor life. The more detailed review 5 years prior to end of life is consistent with the requirements for non-reactor facilities who are required to submit updated plans at the time of license renewal (which occurs every five years).

As discussed above, the intent of the amendments is that there be reasonable assurance of funds for decommissioning. Other issues normally outside NRC's jurisdiction such as rate of collection and whether a funding method is equitable should be considered by utilities and their ratemaking bodies. For example, to be more equitable to ratepayers, the utilities and ratemaking bodies may want to consider whether amounts should be collected based on a site specific cost estimate which exceeds the prescribed amount rather than the stepwise approach discussed above. The final rule contains text recognizing that funding for decommissioning of electric utilities is also subject to the regulation of agencies having jurisdiction over rates, and that the NRC requirements are in addition to, and not substitution for, other requirements, and are not intended to be used, by themselves, by other agencies to establish rates. Hence, NRC will not become involved in the rate regulation process as it relates to decommissioning.

Based on these considerations, the certification requirement has been retained. However, it has been modified in several ways to incorporate public comments to clarify its purpose and use as follows:

(1) As noted above, the text of the rule has been revised to indicate clearly that a licensee may use a site specific decommissioning cost estimate to indicate that provisions are being made for an amount greater than the prescribed amount and to delineate the correct usage of the certification.

(2) As indicated in § 50.75(c), the amount has been increased. The revised amount is based on recent evaluations done for NRC by its contractor Battelle Pacific Northwest Laboratory. As discussed in Section C.1, these estimates are considered to represent a reasonable engineering estimate of the range of decommissioning costs. In preparation of the final rule, the original PNL estimates were reevaluated and compared with other estimates and updated estimates were developed based on recent information.

(3) In response to the public comments, the rule text has been revised to clarify what would be covered by the prescribed amount and provisions have been included in the rule to adjust the amount for such factors as plant size and reactor type. This adjustment for plant size is based on PNL's generic evaluation of the effect of plant size on decommissioning cost and overall review of a number of plant cost estimates. An indication of the bases for the prescribed amounts and for the adjustment is contained in addenda to NUREG/CR-0130 and NUREG/CR-0672.

(4) The final rule text also indicates that amounts are based on activities related to the definition of "decommission" in 10 CFR 50.2 and do not include the cost of removal and disposal of spent fuel or of non-radioactive structures and materials beyond that necessary to terminate the NRC license. Costs of disposal of nonradioactive hazardous wastes not necessary for NRC license termination are not included in the prescribed amounts.

(5) In response to a number of comments, the escalation factor contained in the proposed rule has been revised to better account for factors affecting increases in decommissioning cost. The factors for labor, energy, and waste burial are indicated separately and are based on the addenda to NUREG/CR-0130 and NUREG/CR-0672 and on NUREG-1307 (Ref. 27).

3. Acceptable funding methods. The proposed rule listed internal reserve as one of the funding methods considered acceptable in providing assurance of funds for decommissioning. In internal reserve, funds are placed into an account or reserve which is not segregated from licensee assets and is within the licensee's administrative control. A number of commenters either disagreed with or favored the inclusion of internal reserve as an acceptable method. The following were comments received on this issue:

(a) Those that disagreed with inclusion of internal reserve did so for the following principal reasons:

(1) There may be problems with liquidity of the internal reserve if the acquired assets and investments do not preserve value over time and there may be problems in issuing bonds against these assets to pay for decommissioning. In particular, funds could be used for new nuclear construction or other uses such as accident cleanup. With this method one cannot insure that money taken from customers will be available in the future for decommissioning. This could cause serious cash flow problems at the time of decommissioning, especially if utilities are replacing old plants with new ones at the same time decommissioning takes place.

(2) The future financial viability of utilities cannot be assured and the potential exists for utility instability and insolvency. The commenters expressed concern that the utilities could not raise funds for decommissioning if they were having severe financial problems or were facing insolvency. Commenters cited examples of potential situations.

(3) The level of assurance provided is inadequate and the generation of insufficient funds could compromise safety, cause delays, and cause rate boosts. Nuclear power should pay its way fairly. In addition, by not requiring external funds NRC has not responded to the petition for rulemaking made by the Public Interest Research Group in 1977 or to GAO's concern that decommissioning costs be paid by current beneficiaries, not future generations. One commenter's analysis indicated that internal reserve costs exceed external reserve costs when they are adjusted to equalize relative risk with respect to the availability of funds.

(b) The commenters who agreed with the inclusion of internal reserve as an acceptable funding method did so for the following principal reasons:

(1) The use of internal reserve would enhance utilities' financial positions by

reducing external financing needs. In addition, utilities have investments, cash flow, and annual earnings which are large compared to decommissioning costs.

(2) The likelihood of instability and insolvency is remote and utilities are good investments and have large assets. Commenters noted that utilities whose rates are regulated are essentially guaranteed a minimum return on investment and have an obligation under the ratemaking system to pay for decommissioning. Commenters also noted that in times of financial difficulty, an internal reserve is sufficient because it is unlikely that electric generation service would not be provided and, even in the case of insolvency, there will be a successor to the insolvent utility who would retain the obligation to decommission.

(3) Several commenters supported internal reserve because it can earn a higher rate of return, reduces revenue requirements, and provides a reasonable balance between cost and assurance. Also, commenters noted that there are financial risks associated with external reserve.

In developing the Proposed Rule, the Commission considered the question of the use of internal reserve in several documents. These include NUREG-0584, Revs. 1-3, "Assuring the Availability of Funds for Decommissioning Nuclear Facilities," (Ref. 14), NUREG/CR-1481, "Financing Strategies for Nuclear Power Plant Decommissioning," (Ref. 15) and NUREG/CR-3899, "Utility Financial Stability and the Availability of Funds for Decommissioning" (Ref. 18). In addition, the Commission held a meeting soliciting public and industry views on decommissioning on September 19, 1984 and the NRC staff reviewed comments in the area of financial assurance submitted on NUREG-0586 "Draft Generic Environmental Impact Statement on Decommissioning Nuclear Facilities" (Ref. 20). These reports and meetings considered several factors regarding availability of funds for public utilities in the United States. One factor is that utilities are large, very heavily capitalized enterprises whose rates are comprehensively regulated by the State Public Utility Commissions (PUC) and the Federal Energy Regulatory Commission (FERC). This factor permits the utilities to charge reasonable rates subject to reasonable regulation and rules. In addition, the Commission has taken action recently in the promulgation of 10 CFR 50.54(w) to set requirements to establish onsite property damage insurance for use after an accident. Although these insurance proceeds would not be used directly for decommissioning, they would reduce the risk of a utility being hit by a large demand for funds after an accident. Most utilities are now carrying insurance well in excess of $1 billion. Other factors considered are the long time period before decommissioning takes place during which time reasonable assurance of funds for decommissioning must be maintained, as well as concerns regarding utility solvency and potential problems regarding availability of funds which may occur as a result of bankruptcy.

Before publication of the proposed rule, the NRC evaluated the adequacy of various funding methods in light of financial problems encountered by some utilities which, faced with lower growth in electricity demand than they projected and rapidly increasing costs of construction, had been forced to cancel nuclear plants in advanced stages of construction and the ramifications these conditions, as well as issues related to bankruptcy, could have on a utility's ultimate ability to pay for decommissioning. Details of this evaluation are contained in NUREG/CR-3899, (Ref. 18) prepared by an NRC consultant, Dr. J. Siegel of the Wharton School, University of Pennsylvania.

Based on the results of NUREG/CR-3899 in which it is indicated that internal reserve can be a valid funding method and on the considerations discussed in the Supplementary Information to the Proposed Rule, the proposed decommissioning rule permitted a range of options, including internal reserve, for providing assurance that sufficient funds are available for decommissioning. However, the Supplementary Information to the proposed rule noted that the regulatory approach for assuring funds for decommissioning had been particularly difficult to resolve and specifically requested additional information and comments in this area. In particular, the Supplementary Information stated that:

> More specifically, Commissioners Asselstine and Bernthal continue to be concerned about the vulnerability of the internal funding mechanism for decommissioning funds, particularly where the funds are used to purchase assets or reduce existing debt.

Based on this concern, Commissioners Asselstine and Bernthal requested "public comments on the need to consider the possibility of insolvency and its impact on the continued availability of decommissioning funds."

Although commenters did not generally refer specifically to the separate request for comment by Commissioners Asselstine and Bernthal, a number of comments, noted above, were received in this area. Those who disagreed with the inclusion of internal reserve in the rule cited problems with liquidity of the internal reserve and with the future financial viability of utilities with resultant problems in providing decommissioning funds, and stated that the level of assurance is inadequate. In contrast, other commenters agreed with the use of internal reserve citing the fact that the likelihood of instability and insolvency is remote, that utilities have investments, cash flow, and annual earnings which are large in comparison to decommissioning cost, and that the internal reserve does provide reasonable assurance.

As part of the review of the comments, NRC has had NUREG/CR-3899 updated to consider the current situation in the utility industry. This analysis is contained in NUREG/CR-3899, Supplement 1, (Ref. 18) which reviewed six utilities which have been subject to severe financial distress. Based on the analysis, NUREG/CR-3899, Supp. 1 indicates that, since NUREG/CR-3899 was published in 1984, the financial health of the nuclear utilities has improved, with the exception of Public Service of New Hampshire (PSNH), and that from a financial standpoint, use of internal reserve currently provides sufficient assurance of funds for decommissioning. The basis for this conclusion is the fact that the likelihood of future crises developing, although not impossible, is extremely remote; that the total market value of the securities of each of the six utilities studied substantially exceeds its decommissioning costs; that it is not necessarily true that bankruptcy of a utility is tantamount to default on decommissioning obligations; and the potential that the costs of decommissioning would be recognized as a prior obligation with regard to creditors.

Despite these conclusions, NUREG/CR-3899, Supp. 1, notes that PSNH has said that, unless it undergoes financial restructuring and gets the rate increase it is seeking, it probably would become the first major utility to seek protection under the Bankruptcy Act in nearly 50 years. (Subsequent to the preparation of the analysis of NUREG/CR-3899, Supplement 1, PSNH filed a petition in bankruptcy under Chapter 11 of the U.S. Bankruptcy code.) In addition, Supplement 1 notes that if PSNH's Seabrook plant becomes operational, the prospects for PSNH greatly improve although bankruptcy still cannot be precluded as a possibility due to the

potential for large rate hikes and resultant defections from its electric system. Hence Supplement 1 concludes that internal reserve should not be allowed for Seabrook until the financial prospects of the utility are clarified and the viability of the corporation insured.

In addition, NUREG/CR-3899, Supp. 1, noted that it is imperative that, in the case of the sale or other disposition of utility assets, no monies are distributed to any security holders until a fund is established to assure payment for decommissioning. Supplement 1 also recommended changes in Federal and State bankruptcy laws relating to utilities and the inclusion in the prospectus of newly issued securities of an explicit statement of the utility's financial obligations to provide adequate funds for decommissioning. Further, Supplement 1 noted that because of changing economic and financial conditions, the NRC should conduct periodic reviews of the overall financial health of utilities with ongoing and prospective nuclear facilities. If such a review indicates the financial condition of utilities taken as a whole or individually is such that internal reserve does not provide reasonable assurance of funds for decommissioning, then additional rulemaking or other steps should be taken to insure availability of these funds.

The Commission has considered the conclusions in NUREG/CR-3899, Supp. 1, as well as the public comments received on the issue. The Commission's review in this area is confined to its statutory mandate to protect the radiological health and safety of the public and promote the common defense and security which stems principally from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. In carrying out its licensing and related regulatory responsibilities under these acts, the NRC has determined that there is a significant radiation hazard associated with nondecommissioned nuclear reactors. The NRC has also determined that the public health and safety can best be protected if its regulations require licensees to use methods which provide reasonable assurance that, at the time of termination of operations, adequate funds are available so that decommissioning can be carried out in a safe and timely manner and that lack of funds does not result in delays that may cause potential health and safety problems. Although the Atomic Energy Act and the Energy Reorganization Act do not permit the NRC to regulate rates or to supersede the decisions of State or Federal agencies respecting the economics of nuclear power, they do authorize the NRC to take whatever regulatory actions may be necessary to protect the public health and safety, including the promulgation of rules prescribing allowable funding methods for meeting decommissioning costs. (See Pacific Gas & Electric v. State Energy Resources Conservation & Development Commission, 461 U.S. 190, 212-13, 217-19 (1983); see also United Nuclear Corporation v Cannon, 553 F. Supp. 1220, 1230-32 (D.R.I. 1982) and cases cited therein.)

For the foregoing reasons, the Commission continues to be concerned with the use of an internal reserve. The Commission notes the concerns expressed in NUREG/CR-3899, Supp. 1 regarding bankruptcy at PSNH as well as the changing economic and financial conditions discussed in NUREG/CR-3899, Supp. 1. The Commission also notes that many utilities are engaging in diversified financial activities which involve more financial risk and believes therefore it is increasingly important to provide that decommissioning funds be provided on a more assured basis.

In addition, to the extent that a utility is having severe financial difficulties at the time of decommissioning, it may have difficulty in funding an internal reserve when needed for decommissioning. The Commission recognizes that the market value of the stock of those utilities studied in NUREG/CR-3899 has exceeded decommissioning cost. However, although the law in this area is not fully developed, in the event of bankruptcy there is not reasonable assurance that either unsegregated or segregated internal reserves can be effectively protected from claims of creditors and therefore internal reserves cannot be made legally secure. In addition, because of the nature of the internal reserve, the funds collected are not isolated for use for decommissioning. Instead the utility may use the funds for other unrelated purposes.

For the above reasons, the Commission concludes that the internal reserve does not provide reasonable assurance that funds will be available when needed to pay the costs of decommissioning and hence does not provide reasonable assurance that decommissioning will be carried out in a manner which protects public health and safety. Accordingly, the proposed rule has been modified to eliminate the internal reserve as a possible method of providing funds for decommissioning.

In reaching its conclusion not to permit use of internal reserve for decommissioning, the Commission believes it important not to impose inordinate financial burdens on licensees. The modification to the proposed rule is not expected to impose such a burden for several reasons. First, licensees have 2 years from the effective date of the final rule before they have to submit information regarding financial assurance. Second, the external reserve is a sinking fund accumulated over a period of time. Third, a number of states (accounting for almost 50% of power reactors) already require external funding methods. Fourth, recent changes in the tax laws allowing current deductions for external reserves may reduce the cost differential between internal reserve and external reserve. Finally, the rule does not require funds accumulated to date in internal reserves to be transferred to external reserves, however those existing funds if left in internal reserves would not be acceptable for use in meeting the requirements of § 50.75(e) (1) and (3).

In a related comment, several commenters discussed the funding methods they preferred over internal reserve. These included principally the use of prepayment of the funds or the use of an external fund coupled with insurance against premature decommissioning. Principal reasons for favoring these methods include the fact that there may be shutdown of a reactor before the date of its expected end of life due to either an accident or problems with reactor aging or obsolescence. Consequently, sufficient funds for decommissioning might not have been collected by a method which accumulates funds over projected reactor life. Conversely, several commenters indicated that it is appropriate to rely on the property damage insurance requirements of 10 CFR 50.54(w) to supplement decommissioning funding methods. They argue that, with the substantial amount of property insurance required, even in the highly improbable event of an accident-related, premature decommissioning, the utility will still have sufficient resources available after the decontamination process to carry out decommissioning. Some of the commenters recognized the possible difficulties in obtaining non-accident premature decommissioning insurance. One commenter stated that surety bonds or insurance are not viable alternatives for normal decommissioning or premature decommissioning not associated with an accident. The commenter noted that nuclear property insurance would be available only if an insured event necessitated premature

decommissioning and only in the amount necessary to repair the plant for damages caused by the accident. Premature decommissioning due to regulatory mandate would not be covered. The commenter also noted that surety bonds in the amount of $100 million are not generally available.

The Commission notes that these comments must be considered within the context of Commission requirements for onsite property damage insurance, the proceeds from which could be used to decontaminate a reactor after an accident. Although these insurance proceeds would not be used directly for decommissioning, they would reduce the risk of a utility being subject to a tremendous demand for funds after an accident. The Commission has implemented its proposed requirement in 10 CFR 50.54(w) for slightly over $1 billion of insurance. An important consideration in selecting an acceptable method for providing funds for decommissioning is that the method be reasonably cost effective. Prepayment of funds has been recognized by several studies as being significantly more costly than the other methods. In view of the unlikely nature of the events and the potential problems being considered, prepayment generally has a cost too high for the benefit that would be realized. Use of insurance for non-accident related decommissioning was found in an earlier study performed for the NRC, NUREG/CR-2370 (Ref. 16), to have potentially serious problems of insurability and moral hazard and is not currently available. (Moral hazard is a term used in the insurance industry to indicate a situation of laxity with respect to loss prevention or loss control where those insured have access to risk prevention.) Finally, earlier studies in NUREG-0584 found that surety bonds were not generally available in the amounts necessary for decommissioning power reactors.

In light of the factors considered, including the assurance provided by the various methods, the unlikely nature of the various events and the cost and practicality of providing more absolute assurance by certain methods, the Commission has concluded that the funding methods listed in the rule as modified by the exclusion of internal reserve are adequate.

Two commenters stated that well capitalized, firmly established private organizations operating research and test reactors should be allowed to guarantee compliance with financial assurance requirements by use of the certification process which is permitted for government entities. In response to this comment, it is noted that certain government licensees are permitted in the amendments to meet the funding requirements of the rule by submitting a statement of intent that the appropriate government entity will be guarantor of decommissioning funds. Private organizations were not afforded that option in the proposed rule. The different treatment arises because there is reasonable assurance that the appropriate government entity, which has the power of taxation, will provide adequate funding in the future to decommission the facility in a manner which protects public health whereas this is not necessarily the case with private organizations even if they are currently adequately capitalized. If they have no funds for decommissioning there can be problems with completion of decommissioning. As noted in Section C.5 below, use of parent company guarantees backed up by financial tests will be permitted for private organizations operating research and test reactors.

Four commenters indicated agreement with proposed § 50.82(c)(1) which would require a licensee planning to delay completion of decommissioning by including a period of safe storage or long-term surveillance to place funds into an external fund or use a surety or certification method, while four commenters disagreed with the proposal indicating that utilities should not be required to shift to external funding. In response, as noted in the response to a previous comment, the proposed rule has been modified to delete internal reserve as an acceptable funding method. Because there is as great or greater need for assurance of funds over the extended timeframe involved with a facility in SAFSTOR when the facility is no longer a revenue producing asset, the proposed requirement in § 50.82(c)(1) for external funding during SAFSTOR remains.

4. Funding plans. A number of commenters indicated that it was important for the funding plan to be updated over the operating life of the facility because there would be increases in costs over facility life. Some commenters indicated that there should be periodic adjustments of the funding level, and most said, there should be a specific frequency indicated in the regulations with most saying frequencies of 5 years and some indicating it should be more frequent.

In response, the Commission agrees with the importance of updating the funding plan over the operating life of the plant. This was recognized in the proposed rule which requires that a funding plan include "means of adjusting cost estimates and associated funding levels over the life of the facility" and which also requires each reactor licensee to update his cost estimate "at or about 5 years prior to the projected end of operations." In order to clarify that the updates should take place over the course of the facility lifetime, the proposed rule has been modified to indicate that a funding plan include means of adjusting cost estimates and associated funding levels periodically over the life of the facility. The frequency for these updates is not included in the rule but would be included in regulatory guidance under consideration. This will provide more flexibility in dealing with different types of licensees and financial considerations. It is expected that regulatory guidance will indicate the frequency of adjustment for cost estimate and funding levels.

A number of commenters objected to the requirement in the rule that submittals of reactor funding plans be a condition of license. The commenters indicated that by doing so any change in the funding plan could be interpreted as a license amendment. The commenters argued that this was unnecessary since the funding requirements do not have a direct impact on the safe operation of the plant. This could have a negative effect on continued plant operations even though there was no safety concern. Most commenters argued that the requirements would be better promulgated as regulations which would not decrease NRC's enforcement authority. The Commission has considered these comments in light of the need to provide reasonable assurance of the availability of funds for decommissioning and, in response, in order to build flexibility into the rule, has modified the proposed rule to make the reactor funding requirements a specific regulatory requirement in § 50.75 instead of a license condition.

5. Funding requirements for material licensees. For material licensees, the proposed rule contained provisions that an applicant or licensee may submit a certification that financial assurance for decommissioning will be provided in a prescribed amount stipulated in proposed 10 CFR Parts 30, 40, and 70. The amount is dependent on the quantity of licensed material which the licensee possesses. Two commenters indicated that the cost amounts prescribed in the regulations for 10 CFR Parts 30, 40, and 70 licensees are too high for the quantities of material listed and that the prescribed cost amounts should be set more realistically or the

prescribed radioactivity levels should be increased. One of the two commenters who felt the estimates were too high noted that the multiples of Appendix C quantities prescribed in the rule for some isotopes amount to absolute quantities of less than a curie and the commenter did not think that the decommissioning costs for such a license would amount to the sums prescribed in the proposed rule. The other commenter indicated as an example that the amount of Am-241 in unsealed form requiring a decommissioning cost of $500,000 is 10 millicuries. Three other commenters felt that the prescribed amounts appeared to be too low and cited specific examples to support their claim. These included the following: Cleanup of a U.S. Army building which had burned cost over $300,000; cleanup of the extensive contamination at a USAEC contractor facility at Weldon Spring cost $200,000,000; cleanup of four igloos at the Seneca Army Depot by the U.S. Army cost $300,000 to $1,000,000; cleanup and storage of contaminated soil by DOE in the vicinity of the W.R. Grace and Stepan Chemical facilities cost $2-4 million. In addition, one of the commenters pointed out that use of contractors to perform the work could increase costs.

In response to the commenters who felt the estimates were too high, it is the opinion of the Commission, based on the data base cited in the Supplementary Information to the proposed rule, that the prescribed amounts are reasonable estimates and that it is not the rule's intent that the indicated costs be used in every situation. The purpose of setting the amounts is to provide an approach which minimizes the burden on the majority of licensees and on the NRC while providing assurance of funds for decommissioning. If, in a particular case, the prescribed cost amounts are too high, the licensee has the option of submitting a funding plan with a facility specific cost estimate.

In response to the commenters who felt the estimates were too low, certain points must be considered in assessing the comments and the examples cited. Some of the examples appear to be cases where there was accidental spread of contamination beyond that normally encountered. The funding assurance provisions of the proposed rule are not intended to address the costs of cleanup resulting from an accident. Provisions for funding cleanup of accidental releases of radioactive material were noted as being under consideration in a separate rulemaking (see Advanced Notice of Proposed Rulemaking published June 7, 1985, 50 FR 23960).

Another point to consider is that certain facilities contain larger quantities of radioactive material than are specified in the sections of the rule amendments (i.e., §§ 30.35, 40.36, and 70.25) permitting use of a prescribed funding amount. Licensees of these facilities would be required to submit a decommissioning funding plan containing a cost estimate specific to those larger facilities. Under the provisions of the appropriate sections, licensees of these larger facilities would be permitted to initially use a prescribed amount of $750,000 in their financial assurance planning. However, use of this prescribed amount is only a temporary action which is intended to reduce the administrative effort associated with implementation of the rule amendments and these licensees are required by the indicated section of the rule to eventually submit a funding plan (with the facility decommissioning cost estimate) at the time of application for license renewal.

PNL has provided updated decommissioning cost estimates to NRC for use in the Final Generic Environmental Impact Statement. Appropriate information has been taken from those updates for use in the final rule to account for factors such as inflation. The cost estimates for material licensees do not specifically include the assumed use of contractor costs because, based on the PNL studies, the prescribed amounts listed in the rule are considered reasonable in providing adequate funds so that a facility does not become a concern to public health and safety. The additional expense associated with requiring all material licensees to set aside in their funding method the added costs of assuming use of a contractor is not justified compared to the small number of licensees expected to have to use contractors.

The estimated cost of decommissioning is based on activities related to the definition of "decommission" in 10 CFR 30.2 (and similar sections in other parts) and does not include the cost of removal and disposal of nonradioactive structures and materials beyond that necessary to terminate the NRC license. Disposal of nonradioactive hazardous waste not necessary for NRC license termination is not covered by these regulations but would be treated by appropriate agencies having responsibility over these wastes.

Several comments were received on the proposed rule sections which list funding methods that 10 CFR Part 30, 40, and 70 applicants and licensees may use and that are considered to provide reasonable assurance of the availability of funds for decommissioning. Five commenters indicated that this list was too restrictive and that financial tests of licensees should be utilized in determining acceptable funding methods for materials licensees. These commenters argued that use of financial tests on a case-by-case basis would improve the degree of financial assurance and eliminate unnecessary cost burdens for many non-utility, non-government entities. As precedents and examples of tests which could be used by NRC, commenters generally referred to the financial tests contained in 40 CFR Parts 264 and 265 for hazardous waste facilities regulated by EPA. The commenters indicated that these tests could be used alone or combined with licensee guarantees of funds, with self-insurance or with internal reserve as acceptable methods for assuring funds for decommissioning. One commenter indicated that letters of credit provided a cost-effective method for his operations.

The Commission did not include the financial test as an acceptable funding method for materials facilities in the proposed rule. It was felt that because of the potential for changing licensee financial conditions and the fairly lengthy time period involved before decommissioning would take place that the financial test would not provide sufficient assurance of the availability of funds for decommissioning. Also, additional staff time could be necessary to monitor the financial status of a number of licensees. This position and the funding methods listed in the proposed decommissioning rule were consistent with the funding methods listed in earlier NRC promulgated rules in 10 CFR Part 40, Appendix A, regarding requirements for funding the decontamination and decommissioning of uranium mills and tailings, and in 10 CFR Part 61 regarding funding for closure of low-level-waste burial grounds.

The commenters point out that the Environmental Protection Agency permits the use of financial tests when accompanied by corporate guarantees for its hazardous waste facilities and recommended that the NRC use similar financial tests for meeting financial assurance requirements. The staff recognizes that financial tests may be useful in certain situations and can minimize impacts on licensees. Hence, the regulation has been modified in the final rule to specifically permit licensees to use parent company guarantees with

accompanying financial tests to meet the financial assurance requirements of the regulation. The use of the parent company guarantee and financial test is taken from the U.S. Environmental Protection Agency's regulations 40 CFR Parts 264 and 265. Use of the parent company guarantee and financial test provides assurance in that the company will provide an independent commitment beyond that of the licensee to expend funds. This requirement is consistent with the NRC's Policy Guidance Regarding Parent Company and Licensee Guarantees for Uranium Recovery Licensees issued in December 1985. A parent company guarantee may not be used in combination with the other financial methods listed in the rule to satisfy the requirements of this section.

Other funding methods, including letters of credit, will continue to be acceptable for providing assurance of funding. Use of prepayment or other external trust funds is different in approach from use of a surety bond, insurance or other guarantee method. With prepayment, the licensee is actually using the instrument to pay for decommissioning of the facility, while with the second approach, a financial instrument is used as backup to pay for decommissioning in the event that the licensee is unable to complete these activities. If a surety, insurance, or other guarantee method is used to actually pay for decommissioning, the licensee is still fully responsible for all of its decommissioning requirements.

NRC intends to periodically review the overall financial status of licensees to assess the effectiveness of the funding methods permitted in the regulations.

One commenter was concerned that, in the case of licensees having materials licensed under more than one part of 10 CFR and used within common facilities, the rule would require a separate decommissioning plan for each license and recommended that a consolidated plan be allowed. In response to this comment, in some cases where byproduct, source, and/or special nuclear material are used in the same facilities, it would be very difficult to develop separate decommissioning or funding plans for terminating each license, in particular where there is interdependence of facilities, operations, or projected decommissioning activities. Consolidated plans based on a combined analysis of the facility decommissioning would be permitted. If a licensee operates multiple independent facilities and/or sites under a single license, a consolidated decommissioning or funding plan would have to delineate procedures and cost estimates for each facility/site. The regulatory guides currently under consideration would include further details concerning these situations. The rule is broad enough to encompass these situations.

Two commenters expressed concern regarding the licensee's responsibility for decommissioning. One commenter indicated that it was not clear in the proposed rule whether financial assurance requirements apply to each license, each licensee, or each facility and recommended that the licensee be specified as the responsible unit. The other commenter expressed the concern that there exists the potential for reducing companies' liability for decontamination activities should the NRC approved funding plan be inadequate.

In response to these comments, it should be noted that amended 10 CFR Parts 30, 40, and 70 require that each holder of a specific license provide financial assurance for decommissioning thus specifically indicating that the licensee is the responsible party for financial assurance. Funding and decommissioning plans submitted by a holder of multiple materials licenses may be consolidated. It is expected that the requirements contained is amended 10 CFR Parts 30, 40, and 70 will provide reasonable assurance that funds are available for decommissioning nuclear facilities. Specifically, § 30.35 (and related sections in other parts) requires submittal of a funding plan containing an estimate of the cost of decommissioning or use of a certification of an amount prescribed in the regulations. The cost estimate contained in the funding plan will be based on site conditions and can use, as a base, information developed by Battelle Pacific Northwest Laboratory (PNL) in a series of reports on technology, safety, and costs of decommissioning nuclear facilities. NRC's review and evaluation of the estimate can use not only the PNL reports but experience gained at other materials facility decommissionings. Section 30.35 also provides that the licensee include provisions in the funding plan for adjusting decommissioning cost estimates and associated funding levels over the life of the facility to take into account changing economic and technical conditions. Even in the event that these efforts result in a shortfall of funds at decommissioning, a matter which concerns the commenter, the regulations specifically state that it is the licensee's responsibility to fund and carry out decommissioning in a manner which protects public health and safety. Accordingly, the licensee would be under a continuing obligation to find the means for completing decommissioning.

6. Funding requirements for Federal licensees. One commenter, the Department of the Army, indicated that the proposed requirements for Federal agencies, specifically proposed sections in Parts 30, 40, 50, 70, and 72, requiring a certification that the appropriate government entity will be guarantor of decommissioning funds, appear inconsistent with Federal statute. The commenter suggested either NRC should spearhead statutory relief or establish a Federal agency funding strategy in order to satisfy the intent of the NRC proposed rule.

The Commission, in responding to this comment, notes that it is based on the provisons of the Anti-Deficiency Act, 31 U.S.C. 1341. The Anti-Deficiency Act prohibits the creation of an obligation or the expenditure of funds in excess of appropriations unless the contract or obligation is authorized by law. The purpose of the Act is to "keep all departments of the Government, in the matter of incurring obligations for expenditures, within the limits and purposes of appropriations annually provided for conducting their lawful functions." 42 Comp. Gen. 272, 275 (1962). The Act applies to transactions among government agencies as well as transactions between the government and the private sector. See 59 Comp. Gen. 386, 389 (1980).

While the Anti-Deficiency Act might prohibit the expenditure of funds for decommissioning in the absence of an appropriation, nothing in the Anti-Deficiency Act prevents a government agency from seeking appropriations for future obligations. Nor is there anything in the Act that bars a government agency from obligating appropriated funds for the purpose of complying with rules imposed by other government agencies at the time those rules require an expenditure of funds. Thus, in practice, use could be made of other funding methods besides the certification option such as external funding.

As discussed in the Supplementary Information to the proposed rule, the purpose of the proposed sections with which the commenter is concerned is to permit licensees to obtain a guarantee that a government agency will assume financial responsibility for decommissioning the facility. This would most likely be possible when the licensee is a State or Federal agency or

a State-affiliated organization such as a university or hospital. This provision of the rule recognizes that these licensees should be capable of providing funds for decommissioning. The intention of the proposed rule is that these State and Federal licensees should, early in their facilities' lifetime, be aware of the eventual decommissioning of the facility, specifically its cost, and make their funding bodies aware of those eventual costs. The provisions of the rule requiring naming a guarantor of funds may be subject to misinterpretation. Accordingly, the proposed rule is being modified to indicate that Federal and State licensees should provide a statement of intent that they have an estimate of the cost to decommission their facilities and that they will obtain funds when necessary for decommissioning. This modification should satisfy the need for assurance from these facilities within the constraints of governmental budgetary policies.

7. General comments on financial assurance. A number of commenters disagreed specifically with the need for the funding provisions contained in the proposed rule for electric utilities. The primary reasons cited by the commenters for the disagreement were the following: Utilities are regulated by State and Federal rate regulators who are bound to set a utility's rates such that reasonable costs of serving the public are recovered; NRC has recently eliminated financial qualifications requirements for reactors and this is a similar situation; most utilities already recover decommissioning costs in rates; utilities recognize that those who benefit from the plant should pay for decommissioning; and that the proposed rule will impose a financial penalty on utilities and will complicate the existing process.

In contrast, a number of other commenters indicated that there was a need for rules in this area because they had several concerns over whether adequate funds will be available for decommissioning. Several commenters expressed concern that there must be a clear statement with regard to the responsibility for decommissioning and that utilities should not be able to evade liability for funding of decommissioning costs. In particular one commenter indicated that a utility could avoid liability for decommissioning by forming "holding companies" which would protect assets from the liability of a shutdown reactor. The commenter indicated that these holding companies could diversify into new ventures outside the scope of Federal and State regulation, could take funds the power company, and thus leave the electric utility portion of the company in a financially weak condition. This financially weak utility might find it very difficult to fund decommissioning and therefore become a threat to public health and safety. The commenter indicated that the rule should provide guidelines to address these issues otherwise ratepayers would be stuck with this problem and radiological hazards may exist.

Several commenters addressed the issue of the proper roles of NRC and State and Federal ratemaking agencies in establishing funding methods. Some commenters indicated that the rule as presented is satisfactory as long as it is clear in allowing other involved State and Federal authorities to decide issues related to the ratemaking impact of decommissioning fund accumulation. The commenters also stated that the rule should not go any further in applying more prescriptive requirements of pre-empting State laws and that the specific funding method should not be prescribed by the rule but should be determined by the ratemaking authorities because they are in the best position to determine the most effective and economic method to arrive at the least cost option, taking into account taxation, accounting, financial and other local considerations. One commenter indicated that the rule should explicitly permit State and Federal ratemaking agencies to apply more stringent funding requirements. Commenters indicated that NRC's jurisdictional responsibility and therefore its principal concern should be that decommissioning is carried out in a safe manner and that ratemaking bodies should have responsibility for choosing cost-effective funding methods. One commenter expressed concern that there may be serious jurisdictional problems and disputes with NRC's rule in that NRC is seeking to exercise control over economic matters related to decommissioning expense. The commenter indicated that the NRC should make it clear what functions of other ratemaking agencies it intends to supplant and how its regulations will fit with existing State and Federal regulation of decommissioning costs. One commenter questioned how NRC will implement the rule in the case of licensee whose rate regulator does not allow the licensee to recover funds in its rates and set up a decommissioning fund.

In response to these comments it should be noted that the Commission's statutory mandate to protect the radiological health and safety of the public and promote the common defense and security stems principally from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. In carrying out its licensing and related regulatory responsibilities under these acts, the NRC has determined that this regulation is needed because there is a significant radiation hazard associated with nondecommissioned nuclear facilities. The NRC has also determined that the public health and safety can best be protected by promulgating a rule requiring reasonable assurance that at the time of termination of operations adequate funds are available so that decommissioning can be carried out in a safe and timely manner and that lack of funds does not result in delays that may cause potential health and safety problems. Although these Acts do not permit the NRC to regulate rates or to interfere with the decisions of State or Federal agencies respecting the economics of nuclear power, they do authorize the NRC to take whatever regulatory actions may be necessary to protect the public health and safety, including the promulgation of rules prescribing allowable funding methods for meeting decommissioning costs. (See *Pacific Gas & Electric* v. *State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 212–13, 217–19 (1983); see also *United Nuclear Corporation* v. *Cannon*, 553 F. Supp. 1220, 1230–32 (D.R.I. 1982) and cases cited therein.) The fact that these regulatory actions may have an economic impact does not mean that they lie outside NRC's jurisdiction.

The Commission has considered the roles of the state Public Utility Commissions (PUCs) and the Federal Energy Regulatory Commission (FERC), as well as the NRC, in establishing acceptable methods available to nuclear power reactor licensees for accumulating funds for decommissioning. Each of these agenices has a role in this area. The Federal Energy Regulatory Commission has the responsibility for setting rates for the transmission and sale (wholesale) of electricity by investor-owned utilities in interstate commerce and authorizes the conditions, rates, and charges for interconnections among electric utilities. The sales of electricity for which FERC would set rates are small, comprising about 13 percent of total U.S. electricity sales. State public utility commissions have the responsibility for setting rates for retail sales of electricity to homeowners and companies doing business in their

states. The NRC staff has had contact with staff of the Federal Energy Regulatory Commission and with State agencies. These agencies indicated that they recognize the NRC's role in setting standards with respect to health and safety, and, in particular, that they support the rule as it was promulgated with certain modifications as long as it is understood that states may choose among the funding alternatives based on their specific responsibilities for protecting the interests of consumers by developing reasonable rates for providing public utility services. Under the existing statutory scheme the NRC has the authority to require specific funding arrangements in order to protect public health and safety whereas the other agencies do not. NRC's rule amendments permit a State or Federal rate regulatory agency to choose from among the funding alternatives listed in the final rule and to choose levels of funding based on specific considerations related to their ratemaking responsibilities, as for example cost and equitability for early ratepayers versus later ratepayers.

In response to comments that there should not be funding requirements for decommissioning because financial qualification requirements for construction have been eliminated, it is NRC's view that the elimination of financial qualification requirements does not eliminate the need for providing reasonable assurance of funds for decommissioning. When the rule on elimination of financial qualifications was proposed, the Commission stated that decommissioning was more properly dealt with in the separate rulemaking then underway. In promulgating the proposed rule on decommissioning, Commissioner Bernthal drew a distinction between decommissioning assurance and the rule on eliminating the financial qualification review at the licensing stage. Factors cited by the commenters, such as the presence of rate regulators or recognition that those who benefit from plants should pay all costs, do not provide reasonable assurance in and of themselves that health and safety will be protected.

Some commenters stated that the proposed rule would impose a financial penalty on utilities and complicate the existing regulatory process. The NRC staff does not believe that this will occur. The proposed rule has the narrow focus of protecting public health and safety by having in place basic minimum standards for funding methods which provide reasonable assurance of funding for decommissioning in a safe and timely manner. The methods allowed include a variety of methods currently available to licensees. As noted in the response to a comment in Section C.3, the proposed rule has been modified to delete internal reserve as an acceptable funding method, however, this is not expected to add significantly to licensee's burden for the reasons discussed in Section C.3. As noted in Section C.2 the certification of funding levels which may be more than but not less than amounts prescribed in the rule is included as a means for minimizing licensee burden in complying with the amended regulations. The rule, and the NRC's implementation of it, does not deal with financial ratemaking issues such as rate of fund collection, procedures for fund collection, cost to ratepayers, taxation effects, equitability between early and later ratepayers, accounting procedures; ratepayer versus stockholder considerations, responsiveness to change and other similar concerns. In addition, the rule does not deal with costs of demolition of nonradioactive structures and equipment or with site restoration after termination of the NRC license. These matters are outside NRC's jurisdiction and are the responsibility of the State PUC's and FERC. As outlined above, considering the distinct roles that the NRC and the ratemaking agencies have, NRC will not become involved in the rate regulation process as it related to decommissioning. Based on the above discussion, the Commission believes that the rule is an equitable means of requiring reasonable assurance of funding for decommissioning without imposing an undue burden on licensees.

With regard to the specific concern regarding formation of holding companies, the NRC could condition the approval of the decommissioning plan by requiring the licensee to include sufficient funds in the establishment of the holding company. In other words, the NRC would not approve the decommissioning plan unless the holding company had sufficient assets to meet its obligations pursuant to the decommissioning plan in addition to its normal obligations. Thus, the licensee could not sequester assets and liabilities in a manner which would defeat the decommissioning plan. The NRC would have sufficient authority under the Atomic Energy Act and its existing regulations that, if a utility were to try to reorganize in order to evade its decommissioning obligations, the Commission would be able to take action to prevent any adverse health and safety impacts.

The commenters also indicated that there must be a clear statement with regard to the responsibility for decommissioning. The Supplementary Information to the proposed rule states that "The licensee is responsible for completing decommissioning in a manner that protects health and safety." In addition, the Supplementary Information and the text of the rule make clear that the licensee must take responsibility for planning for decommissioning by providing a reasonable level of assurance that funds are available for decommissioning and, at the time of permanent termination of operations, by submitting a decommissioning plan which addresses the choice of decommissioning alternatives, methods to control occupational and public health and safety, the planned final radiation survey, and funding for decommissioning. These provisions make clear that the licensee has the legal responsibility to plan for and accomplish decommissioning of the facility by preparing the property for release for unrestricted use and that this responsibility cannot be evaded.

D. Residual Radioactivity

Commenters expressed concerns about the absence of residual radioactivity limits, and urged the NRC to develop such levels as quickly as possible. Reasons given were health and safety concerns, difficulty of decommissioning planning, and commonality of objectives concerning waste burial and decommissioning requiring a deminimis level. Several commenters made specific comments on the numeric value of the residual limit and how it should be chosen. Commenters also expressed concern that this rule should not be issued until the rule on residual radioactivity level is issued because without it one cannot plan or estimate cost and entirely satisfy financial assurance requirements. Commenters also indicated that the value of residual radioactivity limits will impact cost for non-power reactors.

The Commission is participating in an EPA organized interagency working group which is developing Federal guidance on acceptable residual radioactivity levels which would permit property to be released for unrestricted use. Proposed Federal guidance is anticipated to be published by EPA. NRC is planning to implement this guidance as soon as possible. The selection of an acceptable level is outside the scope of this rulemaking. Currently, criteria for residual contamination levels do exist and

research and test reactors are being decommissioned using present guidance contained in Regulatory Guide 1.86 for surface contamination plus case-by-case considerations for direct radiation. As an example, NRC provided such criteria in letters to Stanford University, dated 3/17/81 and 4/21/82 providing "Radiation criteria for release of the dismantled Stanford Research Reactor to unrestricted access." The NRC is currently developing interim guidance with respect to residual contamination criteria. The cost estimate in a funding plan can be based on current criteria and guidance regarding residual radioactivity levels for unrestricted use. The information in the studies by Battelle Northwest Laboratory (Refs. 2 thru 13) and Oak Ridge National Laboratory (Refs. 17 and 19) on decommissioning have indicated that in any reasonable range of residual radioactivity limits, the cost of decommissioning is relatively insensitive to the radioactivity level and use of cost data based on current criteria should provide a reasonable estimate. Even in situations where the residual radioactivity level might have an effect on decommissioning cost, with the update provision in the rule it is expected that the decommissioning fund available at the end of facility life will approximate closely the actual cost of decommissioning.

It is imperative that decommissioning regulations in 10 CFR Parts 30, 40, 50, 70, and 72 be issued at this time because it is important to establish financial assurance provisions, as well as other decommissioning planning provisions, as soon as possible so that funds will be available to carry out decommissioning in a manner which protects public health and safety. Based on the need for the decommissioning rule to supplement provisions currently existing with those contained in the rule amendments, the Commission believes that the rule can and should be issued now.

E. Environmental Review Requirements

A number of commenters were concerned that the proposed rule would not require the preparation of an environmental impact statement (EIS) in connection with each decommissioning of a reactor but would require only an environmental assessment (EA) unless the assessment showed that an EIS should be prepared in a particular case, while other commenters made specific comments supporting this aspect of the proposed rule. Of the commenters opposed, several thought that the proposed rule violated the National Environmental Policy Act, one commenter felt that there needed to be more successful experience at decommissioning various types of reactors before it could be decided that an EA was sufficient, another suggested that an EIS should be prepared for major facilities such as power reactors and fuel fabrication facilities but an EA would be appropriate for smaller facilities, and one commenter suggested that there should be an EIS but that reference to the GEIS could be allowed if careful study or testing or both at a given facility showed that the generic approach was adequate.

A number of commenters who opposed the elimination of the requirement for a site-specific EIS argued that the EIS at licensing could not adequately estimate impacts in detail because much could change in the 30 to 40 years before decommissioning. Although the proposed rule discussed the fact that EIS's at licensing should address the impacts of decommissioning, the analysis of those impacts at that time is not considered to take the place of evaluating environmental impacts at the time of decommissioning. At the time of decommissioning, a large quantity of waste must be handled and disposed of; this waste is essentially a result of having operated. The NRC action to be taken at the time of decommissioning is to approve an appropriate method of handling this waste. Alternative methods of handling this waste will have different impacts which can be systematically assessed.

The Commission's primary reason for eliminating a mandatory EIS for decommissioning is that the impacts have been considered generically in a GEIS. The Commission determined that examination of these impacts and their cumulative effect on the environment and their integration into the waste disposal process could best be examined generically. A final, updated GEIS has been issued (Ref. 20). The GEIS shows that the difference in impacts among the basic alternatives for decommissioning is small, and the dose impact of decommissioning is small, whatever alternative is chosen, in comparison with the impact accepted from 40 years of licensed operation. The relative impacts are expected to be similar from plant to plant, so that a site-specific EIS would result in the same conclusions as the GEIS with regard to methods of decommissioning. Although some commenters correctly point out that an EA is much less detailed in its assessment of impacts than an EIS, if the impacts for a particular plant are significantly different from those studied generically because of site-specific considerations, the environmental assessment would discover those and lay the foundation for the preparation of an EIS. If the impacts for a particular plant are not significantly different, a Finding of No Significant Impact would be prepared. In answer to the comment concerning violation of NEPA, the Commission's rules concerning EA's and EIS's comply with case law and Council on Environmental Quality regulations. In response to the concern that decisions on decommissioning will be made without public input, decommissioning involves amendment of the operating license and the NRC rules provide an avenue for public input with respect to license amendment.

F. Other General Comments

A number of comments of a general nature, some of which were outside the scope of the regulation, were received. Detailed responses to individual comments are contained in NUREG-1221. General comments discussed below include questions regarding applicability of the regulations to different licensees and those regarding waste disposal.

1. Applicability of regulation to different licensees. Some commenters were concerned that the regulations may have been drafted with power reactors in mind and applied to non-power reactors without adequate realization or consideration of the differences in the level of difficulty in decommissioning between these classes of facilities. They suggested that the rule should distinguish between reactor types and make requirements appropriate for non-power reactors. One commenter pointed out that the costs of decommissioning research reactors are considerably less than those for power reactors and also that there was considerable experience in decommissioning research reactors and that there were no uncertainties. Another commenter indicated that adequate budgets were difficult to obtain, that the "existence of research reactors at universities hangs on a thin thread," and that the burden of additional requirements could cause these threads to be cut. One commenter suggested that the health and safety of the public is better protected if research reactors are operating and effective rather than to have them shut down or made ineffective and that additional rules which result in "nonproductive" work and costs take resources needed for effective research centers.

In response, it should be noted that the Commission has not drafted the rule amendments for power reactors and

then applied it to non-power reactors without taking into consideration the differences. The data base included a contractor study addressing the technology, safety, and costs of decommissioning research and test reactors (Ref. 4). The comments concerning lower costs, more experience, fewer hazards, and open-ended operating life are true, however, these factors have been considered. The rule does distinguish between power and non-power reactors in the methods allowed for financial assurance. The methods allowed for non-power reactors are the same as for materials licensees and require commitment or guarantee at startup of the total amount of funds needed for decommissioning, whereas power reactor licensees have the option of building up the fund over facility life. As a means of minimizing the burden, Federal or State government licensees may provide a statement of intent indicating that funds for decommissioning will be obtained when necessary. The burden of providing financial assurance in the case of private non-power reactors is unavoidably greater, but will be in line with the projected costs for the particular reactor. The remarks of the commenter concerned about existence of research reactors hanging on a thin thread, in fact, support the conclusion that financial assurance is needed in the case of research reactors.

In regard to decommissioning plans, non-power reactors were never exempted from submitting "dismantlement plans." The rule sets out the contents of decommissioning plans with no distinction for classes of reactors. However, the level of effort in developing plans and in the amount of material submitted will vary in practice commensurate with the level of effort required for the decommissioning. The Commission has attempted to minimize the burden of complying with these rules to the extent possible.

2. Waste disposal considerations related to decommissioning. A number of commenters indicated that NRC must carefully study wastes resulting from decommissioning and provide proper classification of these wastes. Commenters stated that decommissioning standards should include clear definitions of high-level (including spent fuel), low-level, and "intermediate level" wastes and consideration should be given to means of transport and proper disposal for different types of decommissioning wastes so that wastes are not placed into burial grounds for which they are not suited. Also, consideration should be given to availability of disposal capacity for the different classes of decommissioning wastes. In particular, long lived activation products, such as Ni-59 or Nb-94, should not be classified as low-level waste nor buried at LLW disposal sites. Commenters suggested that long lived wastes and wastes containing intense emitters be classified as high level waste. Also "intermediate level" wastes containing long lived isotopes should not be buried in low-level waste disposal sites. Concern was expressed by four commenters that without availability of disposal capacity there could be problems with carrying out decommissioning, in particular lack of high-level waste sites could cause problems.

In response to these comments it should be noted that criteria for wastes needing to be disposed of at the time of decommissioning are contained in existing regulations and are beyond the scope of this rulemaking action. Disposal of spent fuel will be via geologic repository pursuant to requirements set forth in NRC's regulation 10 CFR Part 60. Disposal of low-level wastes is covered under NRC's regulation 10 CFR Part 61. Because low-level wastes cover a wide range in radionuclide types and activities, 10 CFR Part 61 includes a waste classification system that establishes three classes of waste generally suitable for near-surface disposal: Class A, Class B, and Class C. This classification system provides for successively stricter disposal requirements so that the potential risks from disposal of each class of waste are essentially equivalent to one another. In particular, the classification system limits to safe levels the concentrations of both short- and long-lived radionuclides of concern to low-level waste disposal. The radionuclides considered in the waste classification system of 10 CFR Part 61 include long-lived activation products such as Ni-59 or Nb-94, as well as "intense emitters" such as Co-60.

Wastes exceeding Class C limits are considered to be not generally suitable for near-surface disposal, and those small quantities currently being generated are being safely stored pending development of disposal capacity. The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240, approved January 15, 1986, 99 Stat. 1842) provides that disposal of wastes exceeding Class C concentrations is the responsibility of the Federal government. These wastes may be considered to basically correspond to the "intermediate-waste" designation suggested by commenters.

As far as decommissioning wastes are concerned, technical studies coupled with practical experience from decommissioning of small reactor units indicate that wastes from future decommissionings of large power reactors will have very similar physical and radiological characteristics to those currently being generated from reactor operations. Two of the studies performed by NRC include NUREG/CR-0130, Addendum 3, (Ref. 2) and NUREG/CR-0672, Addendum 2, (Ref. 3) which specifically address classification of wastes from decommissioning large pressurized water reactor (PWR) and large boiling water reactor (BWR) nuclear power stations. These studies indicate that the classification of low-level decommissioning wastes from power reactors will be roughly as follows:

Waste class	PWR (volume percent)	BWR (volume percent)
A	98.0	97.5
B	1.2	2.0
C	0.1	0.3
Above C	0.7	0.2

As shown, the great majority of the waste volume from decommissioning will be classified as Class A waste. Only a small fraction of the wastes will exceed Class C limits.

Transportation of decommissioning wastes will involve no additional technical considerations beyond those for transportation of existing radioactive material. Existing regulations covering transportation of radioactive material are covered under NRC regulations in 10 CFR Parts 20, 71, and 73, and Department of Transportation regulations in 49 CFR Parts 170-189.

Disposal capacity for Class A, Class B, and Class C wastes currently exists. Development of new disposal capacity under the State compacting process is covered under the Low-Level Radioactive Waste Policy Amendments Act referenced above. This Act provides for incentives for development of such capacity, as well as penalties for failure to develop such capacity. NRC staff expects that Congress will provide guidance for development of disposal capacity for wastes exceeding Class C concentrations. For spent fuel, which although not included as a decommissioning activity could nevertheless impact on the decommissioning schedule, a detailed schedule for development of monitored

retrievable storage and geologic disposal capacity is provided in the Nuclear Waste Policy Act of 1982.

Licensees will have to assess the situation with regard to waste disposal as part of the decommissioning plan which they submit according to the requirements of 10 CFR 30.36, 40.42, 50.82, 70.38 and 72.38. In addition, the rule amendments require that at or about five years prior to the projected end of operation, each reactor licensee submit a preliminary decommissioning plan containing a cost estimate for decommissioning and an up-to-date assessment of the actions necessary for decommissioning. The Supplementary Information of the proposed rule indicated that this requirement would assure that consideration be given to relevant, up-to-date information which could be important to adequate planning and funding for decommissioning well before decommissioning actually begins. These considerations include an assessment of the current waste disposal conditions. If for any reason disposal capacity for decommissioning wastes were unavailable, there are provisions in § 50.82 to allow delay in completion of decommissioning which would permit temporary safe storage of decommissioning waste. In addition, § 50.82 contains requirements to ensure that adequate funding is available for completion of delayed decommissioning.

The Supplementary Information to the proposed rule indicated that the DECON decommissioning alternative assumes availability of capacity to dispose of waste. Alternative methods of decommissioning are available including delay in completion of decommissioning during which time there can be storage of wastes. Delay in decommissioning can result in a reduction of occupational dose and waste volume due to radioactive decay.

PIRG, et al., Petition for Rulemaking, Docket No. PRM-50-22

On July 5, 1977, as supplemented October 7, 1977, and January 3, 1978 the Public Interest Research Group (PIRG), Arizonans for Safe Energy, Citizens United Against Radioactive Environment, Community Action Research Group, Critical Mass Energy Project, Environmental Action Foundation, Environmental Action, Inc., New Mexico Public Interest Research Group, New York Public Interest Research Group, North Anna Environmental Coalition, Texas Public Interest Research Group, and National Consumer Law Center Energy Project (hereinafter the "petitioners"), petitioned the Commission to initiate rulemaking to promulgate regulations for nuclear power plant decommissioning which would require plant operators to post bonds, to be held in escrow, to ensure that funds would be available for proper and adequate isolation of radioactive material upon each plant's decommissioning.

On June 22, 1979, the Commission published in the **Federal Register** (44 FR 36523) a partial denial of the petitioners' request. In this notice the Commission specifically denied the petitioners' request to immediately initiate rulemaking to implement a specific decommissioning funding plan that would require nuclear power plant operators to post surety bonds to cover decommissioning costs. The Commission granted the petitioners' request to reconsider the adequacy of its regulations on decommissioning. The Commission indicated that other issues and funding alternatives raised by the petitioners would be considered within the context of the NRC decommissioning rulemaking proceedings.

In addition to surety bonds, the petitioners advanced two other options to finance nuclear power reactor decommissioning: (1) Funds in an amount sufficient to pay for projected decommissioning would be set aside in an escrow account before commencing reactor operations, and (2) funds would be accumulated in a sinking fund during the life of the plant supplemented by a surety arrangement as necessary to allow for the risk of a licensed utility going bankrupt before the sinking fund had accumulated sufficient funds. The petitioners indicated that the requirements should apply to existing licensees as well as future licensees. The petitioners also raised the issue of the Commission's jurisdiction to regulate the arrangements for decommissioning. The original petitioners joined by others, submitted comments in response to the **Federal Register** notice (44 FR 36523, June 22, 1979). These comments were received on November 21, 1979. The comments discussed NRC's jurisdiction to promulgate rules mandating specific requirements covering decommissioning costs, the need for NRC to establish a rule requiring its licensees to make specific financial plans to meet decommissioning costs, surety bonds as a supplementary option, and the disadvantage of unfunded alternatives.

The PIRG petition and the petitioners' supplementary comments were considered in the development of this rule. The Commission agrees that its regulations should be amended to require that licensees plan for decommissioning and provide reasonable assurance that funds will be available to cover decommissioning costs when needed. For reasons discussed in the previous sections, the Commission does not believe it is necessary, or desirable, to require a specific financial method for collecting decommissioning funds beyond the listing in the modified proposed rule. The amendments require licensees to submit a report indicating the level of funding and the funding method for assuring that funds will be available for decommissioning. Acceptable methods are indicated in the amendments. This procedure covers all applicants for operating licenses and existing licensees under Part 50. To the extent that the petitioners would require promulgation of a specific method for financing power reactor decommissioning, the petition is denied. To the extent that the proposed amendments would allow consideration of the petitioners' suggested financing methods, including surety bonds if they are available, the petition is granted. This action completes NRC consideration of the issues raised in PRM-50-22.

References

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Draft copies of reference Items 18, 20, 26, and 27 and of Addendum 4 of Reference 2 and Addendum 3 of Reference 3 are available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. These items are to be published in the near future as NUREGs. After publication, these items will also be made available through the U.S. Government Printing Office and the National Technical Information Service.

Copies of all other referenced documents may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington DC 20555.

Environmental Impact Statement: Availability

As required by the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR Part 51, the NRC has prepared a final generic environmental impact statement on the decommissioning of nuclear facilities.

A draft of the final generic environmental impact statement (FGEIS) is available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. The FGEIS is to be published in the near future as a NUREG. After publication, the FGEIS will also be available by purchase from the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget under approval numbers: Part 30-3150-0017; Part 40-3150-0020; Part 50-3150-0011; Part 70-3150-0009; and Part 72-3150-0132.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final 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, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from C. Feldman, or F. Cardile, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3883.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC has carefully considered the effect on small entities in developing the final rule and has attempted to tier the requirements to reduce the impact on small entities to the extent possible while adequately protecting health and safety.

Based on the information available, it is not expected that this rule will have a significant economic impact on a substantial number of small entities. The rule broadly affects all Commission applicants and licensees and, because Agreement States will be required to maintain compatibility with the proposed changes, the rule also affects Agreement State applicants and licensees. There are approximately 9,000 Commission licenses, which include about 5,200 byproduct material licenses under Parts 30 through 34, 2,500 medical licenses under Part 35, 400 source material licenses under Part 40, 200 production and utilization licenses (including approximately 50 applications in various stages of review) under Part 50, 700 special nuclear material licenses under Part 70, and 1 license and approximately 5 potential applicants under Part 72. Between 11,000 and 12,000 Agreement States' licensees are also affected.

The Commission estimates that approximately 40 percent of its licensees are considered small entities under the recently adopted NRC size standards (51 FR 50241; December 9, 1985). The NRC size standards for entities to be considered as small businesses are as follows:

- For most licensees, annual billings of $3.5 million or less
- For private practice physicians, annual billing of $1 million or less
- For State or public education institutions, the institution is supported by a jurisdiction with a population of 50,000 or less
- For other educational institutions, the institution has 500 or fewer employees.

Licensees under 10 CFR Parts 50 and 72 are not considered small entities.

All licensees including small entities will be required to keep records important to decommissioning. In general, for small licensees, such recordkeeping is "good practice" and should not constitute a significant change in operation. Generally, keeping records important to decommissioning reduces both the costs and health and safety impacts of decommissioning and can also result in savings in doses or costs during operation. Costs of recordkeeping would tend to be recouped either in operation or at decommissioning.

The changes contained in this rule at the time of termination of license affect few small entities. These changes consist primarily of specifying in more detail contents of decommissioning plans, presently called "decontamination plans" in 10 CFR Parts 30, 40, and 70. Although more detailed plans may be required than have been considered acceptable in the past, there will also be a reduction in administrative effort because there will be less uncertainty as to what is expected. Overall, these changes are not expected to have a significant impact.

The most significant impact of this rule on licensees is likely to result from the financial assurance requirements. A cost estimate for decommissioning and a method of providing assurance of funds for decommissioning will be required of roughly 830 Commission licensees of which few if any will be small entities. Roughly another 660 Commission licensees including about 280 small entities will have the option of providing financial assurance in a prescribed amount and submitting a certification to that effect or submitting a funding plan to support a lower amount. A similar number of Agreement State licensees would also be affected. Those small entities affected would be almost exclusively industrial licensees. Because the historical information indicates that small industrial licensees are the most likely to default, it is particularly important that financial assurance be provided by these licensees. The rule allows as much flexibility as possible to licensees for providing financial assurance, in order to reduce the impact. Also, the economic impact of making cost estimates can be reduced by using the data base which has been developed.

The cost of this requirement depends on the method used. A surety or insurance method is likely to be used by small entities; it is estimated to cost approximately 1 to 2% of the face value, or 1 to 2% of decommissioning costs annually, plus the administrative cost of either developing a cost estimate and reporting on the funding methods to NRC or of making a certification. The cost of a surety using the prescribed amounts proposed in the rule would thus be in the range of $500–$10,000 per year. For a few small entities affected this would be a significant economic impact, however, these cases would present the highest risk of default.

A more detailed analysis of impacts to small entities is included in the Regulatory Analysis.

Backfit Analysis

The Commission has determined, on the basis of the record in this rulemaking, that the backfits which will be imposed as a result of this rule are necessary to ensure the adequate protection of public health and safety. Therefore, under section (a)(3) of the backfit rule, 10 CFR 50.109, neither a backfit analysis nor application of the backfit rule's cost-benefit standards is required for this rule. The regulatory analysis of these amendments constitutes the documented evaluation required by section (a)(4) of the backfit rule. This analysis contains the objectives of, and reasons for, the backfits entailed by these amendments and provides the basis for claiming that these backfits are necessary to ensure adequate protection to public health and safety.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

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

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping

requirements, Security measures, Spent fuel.

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. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 40, 50, 51, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 30.3, 30.34(b) and (c), 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.9, 30.36, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 30.4 is amended by adding a new paragraph (aa) to read as follows:

§ 30.4 Definitions

* * * * *

(aa) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

3. Section 30.32 is amended by adding a new paragraph (h) to read as follows:

§ 30.32 Application for specific licenses.

* * * * *

(h) As provided by § 30.35, certain applications for specific licenses filed under this part and Parts 32 through 35 of this chapter must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before July 27, 1990, this submittal may follow the renewal application but must be submitted on or before July 27, 1990.

4. A new § 30.35 is added to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

(a) Each applicant for a specific license authorizing the possession and use of unsealed byproduct material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix C to 10 CFR Part 20 shall submit a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix C.

(b) Each applicant for a specific license authorizing possession and use of byproduct material of half-life greater than 120 days and in quantities specified in paragraph (d) of this section shall either—

(1) Submit a decommissioning funding plan as described in paragraph (e) of this section; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section is to be submitted to NRC.

(c) (1) Each holder of a specific license issued on or after July 27, 1990, which is of a type described in paragraph (a) or (b) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(d) Table of required amounts of financial assurance for decommissioning by quantity of material.

greater than 10^4 but less than or equal to 10^5 times the applicable quantities of Appendix C of Part 20 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a), divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.)	$750,000
greater than 10^3 but less than or equal to 10^4 times the applicable quantities of Appendix C of Part 20 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1.)	$150,000
greater than 10^{10} times the applicable quantities of Appendix C of Part 20 in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in § 30.35(a), divided by 10^{10} is greater than 1).	$75,000

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(f) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based

on a financial test may be used if the guarantee and test are as contained in Appendix A to this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety method or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions must be as stated in paragraph (f)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in paragraph (d) of this section, and indicating that funds for decommissioning will be obtained when necessary.

(g) Each person licensed under this part or Parts 32 through 35 of this chapter shall keep records of information important to the safe and effective decommissioning of the facility in an indentified location until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

5. Section 30.36 is revised to read as follows:

§ 30.36 Expiration and termination of licenses.

(a) Except as provided in § 30.37(b) and paragraph (e) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(b) Each licensee shall notify the Commission promptly, in writing under § 30.6, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (c)(1)(iv) and (v) of this section and a plan for completion of decommissioning if required by paragraph (c)(2) of this section or by license condition.

(c)(1) If a licensee does not submit an application for license renewal under § 30.37, the licensee shall on or before the expiration date specified in the license—

(i) Terminate use of byproduct material;

(ii) Remove radioactive contamination to the extent practicable except for those procedures covered by paragraph (c)(2)(i) of this section;

(iii) Properly dispose of byproduct material;

(iv) Submit a completed form NRC-314, which certifies information concerning the disposition of materials; and

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate—

(A) Report levels of radiation in units of microrads per hour of beta and gamma radiation at one centimeter and gamma radiation at one meter from surfaces, and report levels of radioactivity, including alpha, in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

(B) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(2)(i) In addition to the information required under paragraphs (c)(1)(iv) and (v) of this section, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the NRC and could increase potential health and safety impacts to workers or to the public such as in any of the following cases:

(A) Procedures would involve techniques not applied routinely during cleanup or maintenance operations; or

(B) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(C) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(ii) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(iii) The proposed decommissioning plan, if required by paragraph (c)(2)(i) of this section or by license condition, must include—

(A) Description of planned decommissioning activities;

(B) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) A description of the planned final radiation survey; and

(D) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(iv) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section and shall certify the disposition of accumulated wastes from decommissioning.

(d) If the information submitted under paragraphs (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the Commission will inform the licensee of the appropriate further actions required for termination of license.

(e) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of residual byproduct material present as contamination until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving byproduct material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the Commission notifies the licensee in writing that the license is terminated.

(f) Specific licenses will be terminated by written notice to the licensee when the Commission determines that—

(1) Byproduct material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

6. A new Appendix A is added to Part 30 to read as follows:

Appendix A—Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This appendix establishes criteria for passing the financial test and for obtaining the parent company guarantee.

II. Financial Test

A. To pass the financial test, the parent company must meet the criteria of either paragraph A.1 or A.2 of this section:

1. The parent company must have:

(i) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(ii) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used); and

(iii) Tangible net worth of at least $10 million; and

(iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used).

2. The parent company must have:

(i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(ii) Tangible net worth at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

(iii) Tangible net worth of at least $10 million; and

(iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if certification is used).

B. The parent company's independent certified public accountant must have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

C. 1. After the initial financial test, the parent company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

2. If the parent company no longer meets the requirements of paragraph A of this section, the licensee must send notice to the Commission of intent to establish alternate financial assurance as specified in the Commission's regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Parent Company Guarantee

The terms of a parent company guarantee which an applicant or licensee obtains must provide that:

A. The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Commission. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Commission, as evidenced by the return receipts.

B. If the licensee fails to provide alternate financial assurance as specified in the Commission's regulations within 90 days after receipt by the licensee and Commission of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

C. The parent company guarantee and financial test provisions must remain in effect until the Commission has terminated the license.

D. If a trust is established for decommissioning costs, the trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

7. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2)), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31 (g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)), and §§ 40.5, 40.9, 40.25(c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Section 40.4 is amended by adding a new paragraph (s) to read as follows:

§ 40.4 Definitions.

* * * * *

(s) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

9. Section 40.31 is amended by adding a new paragraph (i) to read as follows:

§ 40.31 Applications for specific licenses.

* * * * *

(i) As provided by § 40.36, certain applications for specific licenses filed under this part must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before July 27, 1990, this submittal may follow the renewal application but must be submitted on or before July 27, 1990.

10. A new § 40.36 is added to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

Except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or byproduct material at sites formerly associated with such milling, for which financial assurance requirements are set forth in Appendix A of this part, criteria for providing financial assurance for decommissioning are as follows:

(a) Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in paragraph (d) of this section.

(b) Each applicant for a specific license authorizing possession and use of quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either—

(1) Submit a decommissioning funding plan as described in paragraph (d) of this section; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $150,000 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section is to be submitted to NRC.

(c) (1) Each holder of a specific license issued on or after July 27, 1990, which is covered by paragraph (a) or (b) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(2) Each holder of a specific license issued before July 27, 1990, and covered by paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan or certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and covered by paragraph (b) of this section shall submit, on or before July 27, 1990, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(e) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety method or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually,

coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provision must be as stated in paragraph (e)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on paragraph (b) of this section, and indicating that funds for decommissioning will be obtained when necessary.

(f) Each person licensed under this part shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

11. Section 40.42 is revised to read as follows:

§ 40.42 Expiration and termination of licenses.

(a) Except as provided in § 40.43(b) and paragraph (e) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(b) Each licensee shall notify the Commission promptly, in writing under § 40.5, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (c)(1) (iv) and (v) of this section and a plan for completion of decommissioning, if required by paragraph (c)(2) of this section or by license condition.

(c)(1) If a licensee does not submit an application for license renewal under § 40.43, the licensee shall on or before the expiration date specified in the license—

(i) Terminate use of source material;

(ii) Remove radioactive contamination to the extent practicable except for those procedures covered by paragraph (c)(2)(i) of this section;

(iii) Properly dispose of source material;

(iv) Submit a completed form NRC-314, which certifies information concerning the disposition of materials; and

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate—

(A) Report levels of radiation in units of microrads per hour of beta and gamma radiation at one centimeter and gamma radiation at one meter from surfaces, and report levels of radioactivity, including alpha, in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

(B) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(2)(i) In addition to the information required under paragraphs (c)(1) (iv) and (v) of this section, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the NRC and could increase potential health and safety impacts to workers or to the public such as in any of the following cases:

(A) Procedures would involve techniques not applied routinely during cleanup or maintenance operations; or

(B) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(C) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(ii) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(iii) The proposed decommissioning plan, if required by paragraph (c)(2)(i) of this section or by license condition, must include—

(A) Description of planned decommissioning activities;

(B) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) A description of the planned final radiation survey; and

(D) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(iv) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section and

shall certify the disposition of accumulated wastes from decommissioning.

(d) If the information submitted under paragraph (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the Commission will inform the licensee of the appropriate further actions required for termination of license.

(e) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of residual source material present as contamination until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving source material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the Commission notifies the licensee in writing that the license is terminated.

(f) Specific licenses will be terminated by written notice to the licensee when the Commission determines that—

(1) Source material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

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

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

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

13. A new definition is added to § 50.2 in appropriate alphabetical order to read as follows:

§ 50.2 Definitions.

* * * * *

"Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

* * * * *

14. Section 50.33 is amended by republishing the introductory text of paragraph (f), revising paragraphs (f)(2) and (4), and adding paragraph (k) to read as follows:

§ 50.33 Contents of applications; general information.

Each application shall state:

* * * * *

(f) Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following should be provided:

* * * * *

(2) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs. An application to renew or extend the term of an operating license must include the same financial information as is required in an application for an initial license.

* * * * *

(4) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

* * * * *

(k) (1) For an application for an operating license for a production or utilization facility, information in the form of a report, as described in § 50.75 of this part, indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

(2) On or before July 26, 1990, each holder of an operating license for a production or utilization facility in effect on July 27, 1990, shall submit information in the form of a report as described in § 50.75 of this part, indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

15. Section 50.51 is revised to read as follows:

§ 50.51 Duration of license, renewal.

Each license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from the date of issuance. Where the operation of a facility is involved the Commission will issue the license for the term requested by the applicant or for the estimated useful life of the facility if the Commission determines that the estimated useful life is less than the term requested. Where construction of a facility is involved, the Commission may specify in the construction permit the period for which the license will be issued if approved pursuant to § 50.56. Licenses may be renewed by the Commission upon the expiration of the period. Application for termination of license is to be made pursuant to § 50.82.

16. A new § 50.75 is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

(a) This section establishes requirements for indicating to NRC how reasonable assurance will be provided that funds will be available for decommissioning. For electric utilities it consists of a step-wise procedure as

provided in paragraphs (b), (c), (e), and (f) of this section. Funding for decommissioning of electric utilities is also subject to the regulation of agencies (e.g., Federal Energy Regulatory Commission (FERC) and State Public Utility Commissions) having jurisdiction over rate regulation. The requirements of this section, in particular paragraph (c), are in addition to, and not substitution for, other requirements, and are not intended to be used, by themselves, by other agencies to establish rates.

(b) Each electric utility applicant for or holder of an operating license for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k) of this part containing a certification that financial assurance for decommissioning will be provided in an amount which may be more but not less than the amount stated in the table in paragraph (c)(1) of this section, adjusted annually using a rate at least equal to that stated in paragraph (c)(2) of this section, by one or more of the methods described in paragraph (e) of this section as acceptable to the Commission. The amount stated in the applicant's or licensee's certification may be based on a cost estimate for decommissioning the facility. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section is to be submitted to NRC.

(c) Table of minimum amounts (January 1986 dollars) required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level, P (in MWt); adjustment factor.[1]

	Millions
(1)(i) For a PWR:	
greater than or equal to 3400 MWt	$105
between 1200 MWt and 3400 MWt (For a PWR of less than 1200 MWt, use P=1200 MWt)	$(75+0.0088P)
(ii) For a BWR:	
greater than or equal to 3400 MWt	$135
between 1200 MWt and 3400 MWt (For a BWR of less than 1200 MWt, use P=1200 MWt)	$(104+0.009P)

[1] Amounts are based on activities related to the definition of "Decommission" in § 50.2 of this part and do not include the cost of removal and disposal of spent fuel or of nonradioactive structures and materials beyond that necessary to terminate the license.

(2) An adjustment factor at least equal to 0.65 L + 0.13 E + 0.22 B is to be used where L and E are escalation factors for labor and energy, respectively, and are to be taken from regional data of U.S. Department of Labor Bureau of Labor Statistics and B is an escalation factor for waste burial and is to be taken from NRC report NUREG-1307, "Report on Waste Burial Charges."

(d) Each non-electric utility applicant for or holder of an operating license for a production or utilization facility shall submit a decommissioning report as required by § 50.33(k) of this part containing a cost estimate for decommissioning the facility, an indication of which method or methods described in paragraph (e) of this section as acceptable to the Commission will be used to provide funds for decommissioning, and a description of the means of adjusting the cost estimate and associated funding level periodically over the life of the facility.

(e)(1) As provided in paragraphs (e)(2) and (3) of this section, financial assurance is to be provided by the following methods:

(i) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(ii) External sinking fund. An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(iii) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to provide financial insurance for decommissioning must contain the following conditions:

(A) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(B) The surety or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(C) The surety method or insurance must remain in effect until the Commission has terminated the license.

(2) For a licensee other than an electric utility, acceptable methods of providing financial assurance for decommissioning are—

(i) Prepayment;

(ii) An external sinking fund, in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund,

(iii) A surety method, insurance, or other guarantee method. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section.

(iv) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning, and indicating that funds for decommissioning will be obtained when necessary.

(3) For an electric utility, acceptable methods of providing financial assurance for decommissioning are—

(i) Prepayment;

(ii) An external sinking fund in which deposits are made at least annually;

(iii) A surety method or insurance; and

(iv) In the case of Federal government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on paragraph (c) of this section, and

indicating that funds for decommissioning will be obtained when necessary.

(f) Each licensee shall at or about 5 years prior to the projected end of operation submit a preliminary decommissioning plan containing a cost estimate for decommissioning and an up-to-date assessment of the major technical factors that could affect planning for decommissioning. Factors to be considered in submitting this information include—

(1) The decommissioning alternative anticipated to be used. The requirements of § 50.82(b)(1) must be considered at this time;

(2) Major technical actions necessary to carry out decommissioning safely;

(3) The current situation with regard to disposal of high-level and low-level radioactive waste;

(4) Residual radioactivity criteria;

(5) Other site specific factors which could affect decommissioning planning and cost.

If necessary, this submittal shall also include plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the costs of decommissioning.

(g) Each licensee shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when significant contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

17. Section 50.82 is revised to read as follows:

§ 50.82 Application for termination of license.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission the facility. For a facility that permanently ceases operation after July 27, 1988, this application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the operating license. Each application for termination of license must be accompanied, or preceded, by a proposed decommissioning plan. For a facility which has permanently ceased operation prior to July 27, 1988, requirements for contents of the decommissioning plan as specified in paragraphs (b) through (d) of this section may be modified with approval of the Commission to reflect the fact that the decommissioning process has been initiated previously.

(b) The proposed decommissioning plan must include—

(1) The choice of the alternative for decommissioning with a description of activities involved.

(i) For an electric utility licensee, an alternative is acceptable if it provides for completion of decommissioning within 60 years. Consideration will be given to an alternative which provides for completion of decommissioning beyond 60 years only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for completion of decommissioning beyond 60 years are set out in paragraph (b)(1)(iii) of this section.

(ii) For a licensee other than an electric utility, an alternative is acceptable if it provides for completion of decommissioning without significant delay. Consideration will be given to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning are set out in paragraph (b)(1)(iii) of this section.

(iii) Factors to be considered in making the evaluations required by paragraphs (b)(1)(i) and (b)(1)(ii) of this section include unavailability of waste disposal capacity and other site specific factors affecting the licensee's capability to carry out decommissioning safely, including presence of other nuclear facilities at the site.

(2) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

(3) A description of the planned final radiation survey;

(4) An updated cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(5) A description of technical specifications, quality assurance provisions and physical security plan provisions in place during decommissioning.

(c) Decommissioning plans which propose an alternative that delays completion of decommissioning by including a period of storage or long-term surveillance must provide that—

(1) Funds needed to complete decommissioning be placed into an account segregated from licensee assets and outside the licensee's administrative control during the storage or surveillance period, or a surety method or fund statement of intent be maintained in accordance with the criteria of § 50.75(e), and

(2) Means be included for adjusting cost estimates and associated funding levels over the storage or surveillance period.

(d) For decommissioning plans in which the major dismantlement activities are delayed by first placing the facility in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of these activities.

(e) If the decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to such conditions and limitations as it deems appropriate and necessary and issue an order authorizing the decommissioning.

(f) The Commission will terminate the license if it determines that—

(1) The decommissioning has been performed in accordance with the approved decommissioning plan and the order authorizing decommissioning; and

(2) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release for unrestricted use.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

18. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

§ 51.20 [Amended]

19. Section 51.20 is amended by removing and reserving paragraphs (b)(5) and (10).

20. In § 51.53, paragraph (b) is revised to read as follows:

§ 51.53 Supplement to environmental report.

* * * * *

(b) *Post operating license stage.* Each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20 and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Supplement to Applicant's Environmental Report—Post Operating License Stage," which will update "Applicant's Environmental Report—Operating License Stage," as appropriate, to reflect any new information or significant environmental change associated with the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), the applicant shall only address the environmental impact of spent fuel storage for the term of the license applied for. The "Supplement to Applicant's Environmental Report—Post Operating License Stage" may incorporate by reference any information contained in "Applicant's Environmental Report—Construction Permit Stage," "Supplement to Applicant's Environmental Report—Operating License Stage," final environmental impact statement, supplement to final environmental impact statement of records of decision previously prepared in connection with the construction permit or operating license.

21. In § 51.55, paragraph (a) is revised to read as follows:

§ 51.55 Environmental report—number of copies; distribution.

(a) Each applicant for a license to construct and operate a production or utilization facility covered by paragraphs (b)(1), (b)(2), (b)(3) or (b)(4) of § 51.20 and each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20, and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit to the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, forty-one (41) copies of an environmental report, or any supplement to an environmental report. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceeding, Federal, State, and local officials and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate.

* * * * *

22. Section 51.60 is amended by revising paragraph (a) to read as follows:

§ 51.60 Environmental report—materials licenses.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 32, 33, 34, 35, 39, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1) through (b)(6) of this section, shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66, of a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. The "Applicant's Environmental Report" shall contain the information specified in § 51.45. If the application is for an amendment to or a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities.

* * * * *

23. In § 51.95, paragraph (b) is revised to read as follows:

§ 51.95 Supplement to final environmental impact statement.

* * * * *

(b) *Post operating license stage.* In connection with the amendment of an operating license to authorize the decommissioning of a production or utilization facility covered by § 51.20 or with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, which will update the prior environmental review. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement, the supplement to the final environmental impact statement—operating license stage, or in the records of decision prepared in connection with the construction permit or the operating license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

24. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57(b) and (d), and 70.58(a)-(g)(3), and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

25. Section 70.4 is amended by adding a new paragraph (bb) to read as follows:

§ 70.4 Definitions.

* * * * *

(bb) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

26. Section 70.22 is amended by adding a new paragraph (a)(9) to read as follows:

§ 70.22 Contents of applications.

(a) Each application for a license shall contain the following information:

* * * * *

(9) As provided by § 70.25, certain applications for specific licenses filed under this part must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before July 27, 1990, this submittal may follow the renewal application but must be submitted on or before ———.

* * * * *

27. A new § 70.25 is added to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

(a) Each applicant for a specific license authorizing the possession and use of unsealed special nuclear material in quantities exceeding 10^5 times the applicable quantities set forth in Appendix C to 10 CFR Part 20 shall submit a decommissioning funding plan as described in paragraph (e) of this section. A decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix C.

(b) Each applicant for a specific license authorizing possession and use of unsealed special nuclear material in quantities specified in paragraph (d) of this section shall either—

(1) Submit a decommissioning funding plan as described in paragraph (e) of this section; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section is to be submitted to NRC.

(c) (1) Each holder of a specific license issued on or after July 27, 1990, which is of a type described in paragraph (a) or (b) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan or certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(d) Table of required amounts of financial assurance for decommissioning by quantity of material.

greater than 10^4 but less than or equal to 10^5 times the applicable quantities of Appendix C of Part 20. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.)	$750,000
greater than 10^3 but less than or equal to 10^4 times the applicable quantities of Appendix C of Part 20. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1.)	$150,000

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(f) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Any surety method or insurance used to provide financial

assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issurer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety method or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licenssee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions must be as stated in paragraph (f)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in paragraph (d) of this section, and indicating that funds for decommissioning will be obtained when necessary.

(g) Each person licensed under this part shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

28. Section 70.38 is revised to read as follows:

§ 70.38 Expiration and termination of licenses.

(a) Except as provided in § 70.33(b) and paragraph (e) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(b) Each licensee shall notify the Commission promptly, in writing under § 70.5, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (c)(1)(iv) and (v) of this section and a plan for completion of decommissioning if required by paragraph (c)(2) of this section or by license condition.

(c)(1) If a licensee does not submit an application for license under § 70.33, the licensee shall on or before the expiration date specified in the license—

(i) Terminate use of special nuclear material;

(ii) Remove radioactive contamination to the extent practicable except for those procedures covered by paragraph (c)(2)(i) of this section;

(iii) Properly dispose of special nuclear material;

(iv) Submit a completed form NRC-314, which certifies information concerning the disposition of materials; and

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate—

(A) Report levels of radiation in units of microrads per hour of beta and gamma radiation at one centimeter and gamma radiation at one meter from surfaces, and report levels of radioactivity, including alpha, in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

(B) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(2)(i) In addition to the information required under paragraphs (c)(1) (iv) and (v) of this section, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the NRC and could increase potential health and safety impacts to workers or to the public such as in any of the following cases:

(A) Procedures would involve techniques not applied routinely during cleanup or maintenance operations; or

(B) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encounterd during operation; or

(C) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(ii) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(iii) The proposed decommissioning plan, if required by paragraph (c)(2)(i) of

this section or by license condition, must include—

(A) Description of planned decommissioning activities;

(B) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) A description of the planned final radiation survey; and

(D) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(E) A description of the physical security plan and material control and accounting plan provisions in place during decommissioning.

(iv) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section and shall certify the disposition of accumulated wastes from decommissioning.

(d) If the information submitted under paragraphs (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the Commission will inform the licensee of the appropriate further actions required for termination of license.

(e) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of residual special nuclear material present as contamination until the Commission notifies the licensee in writing that the license is terminated. During this time, the license shall—

(1) Limit actions involving special nuclear material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the Commission notifies the licensee in writing that the license is terminated.

(f) Specific licenses will be terminated by written notice to the licensee when the Commission determines that—

(1) Special nuclear material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present, and

(3) (i) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

29. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332).

Section 72.34 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.14, 72.15, 72.17(d), 72.19, 72.33(b)(1), (4), (5), (e), (f), and 72.36(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10, 72.15, 72.17(d), 72.33(c), (d)(1), (2), (e), 72.81, 72.83, 72.84(a), and 72.91 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.9a, 72.33(b)(3), (d)(3), (f), 72.35(b), 72.50-72.52, 72.53(a), 72.54(a), 72.55, 72.56, 72.80(c), and 72.84(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

30. Section 72.3 is amended by adding a new paragraph (y) to read as follows:

§ 72.3 Definitions.

* * * * *

(y) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

31. Section 72.14 is amended by revising paragrpah (e)(3) to read as follows:

§ 72.14 Contents of application: General and financial information.

* * * * *

(e) * * *

(3) Estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that decommissioning will be carried out after the removal of spent fuel from storage.

32. Section 72.18 is revised by revising the section heading and paragraph (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 72.18 Decommissioning planning, including financing and recordkeeping.

* * * * *

(b) The decommissioning funding plan must contain information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI. This information must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (c) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI.

(c) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the

expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety of insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provision must be as stated in paragraph (c)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning, and indicating that funds for decommissioning will be obtained when necessary.

(5) In the case of electric utility licensees, the methods of § 50.74(e) (1) and (3) of this chapter.

(d) Each licensee shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

33. Section 72.38 is revised to read as follows:

§ 72.38 Application for termination of license.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission the ISFSI. This application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the license. Each application for termination of license must be accompanied, or preceded, by a proposed final decommissioning plan.

(b) The proposed final decommissioning plan must include—

(1) The choice of the alternative for decommissioning with a description of activities involved. An alternative is acceptable if it provides for completion of decommissioning without significant delay. Consideration will be given to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning include unavailability of waste disposal capacity and other site specific factors affecting the licensee's capability to carry out decommissioning safely, including presence of other nuclear facilities at the site.

(2) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

(3) A description of the planned final radiation survey; and

(4) An updated detailed cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning including means for adjusting cost estimates and associated funding levels over any storage or surveillance period.

(5) A description of technical specifications and quality assurance provisions in place during decommissioning,

(c) For final decommissioning plans in which the major dismantlement activities are delayed by first placing the ISFSI in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of such activities.

(d) If the final decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to such conditions and limitations as it deems appropriate and necessary and issue an order authorizing the decommissioning.

(e) The Commission will terminate the license if it determines that—

(1) The decommissioning has been performed in accordance with the approved final decommissioning plan and the order authorizing decommissioning; and

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI and site are suitable for release for unrestricted use.

Dated at Rockville, MD, this 17th day of June 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-14333 Filed 6-24-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM87-26-001; Order No. 494-A]

Filing Fees Under the Independent Offices Appropriations Act of 1952; Order Denying Rehearing

Issued June 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing in the final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing of its final rule (Order No. 494, 53 FR 15374 (Apr. 29, 1988), III FERC Stats. & Regs. ¶ 30,809 (Apr. 6, 1988) that amended the Commission's regulations concerning filing fees assessed under the authority of the Independent Offices Appropriations Act of 1952 (IOAA). The IOAA authorized the Commission to establish fees for specific services it renders to identifiable beneficiaries (31 U.S.C. 9701 (1982)). In addition, the Commission established two new filing fees and revised several existing filing fees and procedures.

EFFECTIVE DATE: June 6, 1988.

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

SUPPLEMENTARY INFORMATION:

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

I. Introduction

On April 6, 1988, the Federal Energy Regulatory Commission (Commission) issued Order No. 494, a final rule amending the Commission's regulations concerning filing fees assessed under the authority of the Independent Offices Appropriations Act of 1952 (IOAA).[1] The IOAA authorizes the Commission to establish fees for specific services it renders to identifiable beneficiaries.[2] In Order No. 494, the Commission established two new filing fees and revised several existing filing fees and procedures.

Central Illinois Public Service and four other electric utilities (CIPS)[3] filed a joint request for rehearing of Order No. 494, as did a group of eleven associations of oil and gas producers (Producer Associations).[4]

II. Discussion

A. Rehearing Request by CIPS

CIPS focuses its request for rehearing on several aspects of the Commission's electric rate filing fees. It requests rehearing of the Commission's decision in Order No. 494 to consolidate the former Class 2 and Class 3 fee categories for electric rate filings into a single category. In addition, CIPS requests rehearing of the Commission's treatment of electric rate filings which propose service to new customers under previously accepted rates and a clarification of the appropriate filing fee category for a certificate of concurrence.

1. Consolidation of Electric Rate Filing Fees

In Order No. 435, which became effective November 4, 1985, the Commission established three categories of electric rate filings under sections 205 and 206 of the Federal Power Act (FPA) for the purpose of assessing filing fees.[5] These categories, based on the general complexity and, therefore, the average amount of Commission staff time required for processing, were:

Class 1 Filings having no effect on the rate the utility charges or involving only rate decreases.

Class 2 Filings that have an effect on the rate the utility charges and that are not supported by Period II data.

Class 3 Filings that involve the submission of Period II cost of service data.[6]

In Order No. 494, the Commission eliminated fees for electric rate filings that would have no effect on rates or would involve only rate decreases (formerly "Class 1 rate schedule filings") and consolidated all other rate schedule filings under sections 205 and 206 of the FPA into a single fee category.[7]

CIPS argues that a single fee for electric rate filings under sections 205 and 206 of the FPA cannot be reconciled with the requirements of the IOAA, particularly the requirement that a fee be based on "as small a category of service as practical". CIPS states that cost data for the three former filing fee categories is readily available and accessible and notes that the Commission provided no explanation of why the fee must be established beyond doubt at the time a filing is received. CIPS suggests that the Commission's claim that a three-tiered system is administratively unworkable is undermined by the establishment through Order No. 494 of a *de facto* two-category system (no fee for former class 1 filings, single fee for former class 2 and 3 filings) and by the fact that the former class 3 filings were easily distinguishable through the inclusion of Period II data. CIPS also argues that the single fee scheme is inequitable because it provides a subsidy for the former class 3 filings at the expense of the former class 2 filings, citing data from prior years that demonstrates that class 3 filings have required significantly more staff time to process than class 2 filings.[8]

The Commission replaced the three-tiered classification scheme because it was administratively unworkable due to difficulty in making a prompt and accurate determination of the correct class of a rate filing upon receipt of that filing. Classification was difficult because the Commission frequently received multiple rate filings under single cover and rate filings which were mislabeled or ambiguous. The Commission sought a system under which the correct fee could readily be determined by docket room personnel at the time of filing. The Commission believes that it is important to make a rapid determination of the correct fee. A filing that is not accompanied by the correct fee is deficient and the Commission will not process a deficient filing.[9] The Commission has an

[1] Filing Fees Under the Independent Offices Appropriations Act of 1952, Order No. 494, 53 FR 15374 (Apr. 29, 1988), III FERC Stats. & Regs. ¶ 30,809 (Apr. 6, 1988).

[2] 31 U.S.C. 9701 (1982).

[3] The other electric utilities are: Central Power and Light Company, Commonwealth Edison Company, Southwestern Electric Power Company, and West Texas Utilities Company.

[4] The producer associations are: Independent Petroleum Association of America, California Independent Producers Association, East Texas Producers & Royalty Owners Association, Energy Consumers & Producers Association, Independent Oil and Gas Association of New York, Independent Petroleum Association of Mountain States, Independent Petroleum Association of New Mexico, North Texas Oil & Gas Association, Panhandle Producers and Royalty Owners Association, Permian Basin Petroleum Association, and West Central Texas Oil and Gas Association.

[5] Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, Order No. 435, 50 FR 40347 (Oct. 3, 1985), FERC Statutes and Regulations, Regulations Preambles 1982-1985, ¶ 30,663 (Sept. 30, 1985).

[6] *See* former 18 CFR 381.502 through 381.504.

[7] 53 FR at 15379-80 (Apr. 29, 1988) (to be codified at 18 CFR 381.502).

[8] CIPS Request for Rehearing and Motion for Clarification, at 8-16.

[9] 18 CFR 381.103 (1987).

obligation to establish a fee structure that is workable and efficient, with categories that can be clearly identified upon receipt.

The Commission concludes that elimination of fees for filings that would have no effect on rates or would involve only rate decreases and consolidating all other rate schedule filings under sections 205 and 206 of the FPA into a single fee category was an appropriate course under the IOAA because it is based on as small a category of service as practical.

2. Extension of Service to a New Customer Under a Previously Approved Rate

CIPS states that the Commission has historically viewed the extension of service to a new customer under a previously approved rate to be a simple filing, requiring a minimum of Commission staff time. It claims that the Commission has recently assessed Class 2 filing fees for such extension filings and suggests that the Commission has reinterpreted its regulations on these filings without notice.

The Commission has previously rejected suggestions that no additional fee should be imposed for adding another purchaser to a rate schedule. The Commission reasoned that those filings require staff analysis and processing resources and are appropriately subject to a fee. Such filings require staff to determine whether the new customers will be provided the same service as existing customers and to ensure that pertinent cost or market considerations have not changed significantly.[10] The Commission recently reaffirmed this position in an Order Denying Appeal from Staff Action decided in April 1988.[11]

CIPS may be correct in its suggestion that certain types of electric rate filings which had been accepted by the Office of the Secretary when accompanied by a Class 1 fee have recently been subject to Class 2 filing fees. As discussed in Order No. 494, the Commission and the staff of the Dockets Branch have experienced some difficulty in correctly categorizing electric rate filings upon receipt. To improve its procedure to determine appropriate fee categories, the Commission initiated early review of those filings by technical staff in the Office of Electric Power Regulation (OEPR) in April 1987. OEPR staff consistently applied the criteria of the three filing fee categories from April 1987 through the end of the three-tiered classification system in May 1988. In particular, OEPR staff has determined and the Commission has upheld that filings documenting an extension of service to a new customer do have an impact on rates. OEPR staff is continuing this reviewing function under the modified fee regulations established in Order No. 494.

3. Certificates of Concurrence

CIPS requests an affirmative statement by the Commission that the filing of a certificate of concurrence be exempt from a filing fee. A certificate of concurrence is an instrument stating agreement with the terms of another rate schedule filing, and filed in lieu of a full rate schedule filing.[12]

In Order No. 435, the Commission stated that, since each utility must support the rate schedule with its own data, the Commission must perform an entirely separate review of the rate schedule for each utility providing service under the schedule. It further stated that review of the cost support data underlying a certificate of concurrence takes the same amount of time and resources as does review of the support for the principal rate schedule filing. The Commission therefore concluded that it is appropriate to treat a certificate of concurrence as an ordinary rate filing and to assess the filing fee applicable to the rate schedule agreed to in the certificate.[13] The Commission reaffirmed this conclusion in denying a request for rehearing in Order No. 435-A.[14] The same reasoning applies today and the Commission declines to declare that the filing of a certificate of concurrence is exempt from a filing fee.

B. Rehearing Request by Producer Associations

Producer Associations also filed a request for rehearing of Order No. 494. It argues that the Commission erred in Order No. 494 by failing to consider the comments of Producer Associations filed in response to the Notice of Proposed Rulemaking (NOPR). To the extent that the Commission failed to discuss relevant issues raised by Producer Associations, the Commission addresses them in this order. The Commission also notes that it need not discuss in detail every item included in the comments submitted to it.[15]

1. Impact of Filing Fees on Independent Producers

Producer Associations claims that filing fees adversely affect independent producers. It argues that independent producers cannot pass the cost of filing fees through to their customers because of their competitive netback-priced markets. In addition, Producer Associations complains that filing fees are regressive because they are constant over transactions of varying sizes. Producer Associations contends that the availability of a fee waiver procedure provides little relief because of the high threshold for granting a waiver, the cost of preparing a request for waiver, and the delay inherent in processing a waiver request.

Fees are assessed against firms and individuals who submit various filings which provide specific benefits and are based on the average cost of processing such filings. The ability or inability of the filer to pass on the costs of its filing fees is irrelevant. Filing fees are based on the average cost to the Commission of processing particular types of filings and not on the size of the transaction and are assessed against those who make such filings. The Commission does grant waivers of filing fees in appropriate cases.[16]

2. Fees for an Opinion Letter or Declaratory Order

Producer Associations suggests that there should be a categorical exemption from fees for those cases in which a party requests a written opinion of the General Counsel or a declaratory order disclaiming jurisdiction. The Commission rejects this suggestion on two grounds. The applicant derives a special benefit from clarification of the issue in those cases and it is not practical to subdivide those product categories.

Producer Associations also suggest that, since the costs of processing declaratory orders relating to Part I of

[10] Fees Applicable to Electric Utilities, Cogenerator, and Small Power Producers, Order No. 435-A (Order Denying Rehearing and Clarifying Final Rule), 51 FR 35547 (Oct. 3, 1986) III FERC Stats. & Regs. ¶ 30,713 (Sept. 29, 1986).

[11] West Texas Utilities Company, 43 FERC ¶ 61,047 (Apr. 7, 1988).

[12] When two or more jurisdictional utilities are parties to the same rate schedule, each utility must post the rate schedule with the Commission "or the rate schedule may be filed by one such public utility and all other parties having an obligation to file may post and file a certificate of concurrence * * *". A certificate of concurrence is an administrative convenience allowing one public utility to avoid executing, filing, and posting duplicative agreements or schedules of changes. However, a public utility filing a certificate of concurrence remains obligated to submit the data supporting its schedule, as required by 18 CFR 35.12(a) and 35.13(a).

[13] 50 FR at 40348 (Oct. 3, 1985).

[14] 51 FR at 35349-50 (Oct. 3, 1986).

[15] General Telephone Co. vs. United States, 499 F.2d 846, 862 (5th Cir. 1971).

[16] *See* Travis M. Davis Gas Account, 42 FERC ¶ 62,248 (Mar. 31, 1988).

the Federal Power Act (FPA) are recovered through annual charges, the costs of processing all declaratory order requests should be recovered through annual charges rather than through filing fees. The recovery of costs of processing declaratory orders under Part I of the FPA is mandated by section 10(e) of the FPA.[17] Applicants for other declaratory orders receive a special benefit, and assessment of a filing fee under the IOAA is therefore appropriate.

3. Miscellaneous Issues

Producer Associations argues that filing fees include *pro rata* costs of relevant support activities, including travel, transport, rent, printing supplies, and equipment, which should be recovered through annual charges. A portion of those support costs is appropriately attributed to the services for which the filing fees are assessed. This methodology has been upheld by the Tenth Circuit.[18]

The Commission rejects the suggestion of Producer Associations that a technical conference would be beneficial to clarify cost allocation issues such as treatment of telephone-close-out opinions of the Office of the General Counsel.[19]

III. Conclusion

For the reasons set forth above, the Commission denies rehearing of Order No. 494.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14406 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[17] 16 U.S.C. 803(e) (1982).

[18] Phillips Petroleum Company v. FERC, 786 F.2d 370 (10th Cir. 1986).

[19] Comments of Producer Associations at 6.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 88-35]

Change in the Customs Service Field Organization—Chicago, IL; Cleveland, OH; Fort Wayne, IN

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to change the Customs Field organization by changing the boundaries of the Chicago and Cleveland Customs Districts, and by designating the newly approved Customs facility at Fort Wayne, Indiana, as a Customs station. The change will place the entire service area of the Fort Wayne station within the Cleveland District under the supervision of the Indianapolis, Indiana, port of entry. These changes are part of Customs continuing effort to obtain more efficient use of personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: July 27, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control (202-566-9425).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers, and the public, Customs published a notice in the **Federal Register** on December 17, 1987 (52 FR 47948), proposing to amend §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3, 101.4), to change the Customs field organization by changing the boundaries of the Chicago and Cleveland Districts, and by designating the newly approved Customs facility at Fort Wayne, Indiana, as a Customs station. A correction to that document was published in the **Federal Register** on February 1, 1988 (53 FR 2767), to correct the wording of the proposed boundary change for the Cleveland, Ohio, Customs District. The changes in boundaries are necessary to ensure that all the territory serviced by the Fort Wayne facility is entirely within one Customs district. The service area of the new Fort Wayne facility, prior to this change, lay within both the Cleveland and Chicago Districts. Since the closest existing ports, Dayton, Ohio, and Indianapolis, Indiana, are in the Cleveland District, it was decided to place Fort Wayne in that district and under the supervision of the Indianapolis, Indiana, port of entry.

A port of entry is a Customs location (seaport, airport, or land border port) where Customs officers or employees are assigned to accept entries of merchandise, collect duties, clear passengers, vehicles, vessels, and aircraft, examine baggage, and enforce the Customs and related laws. A port of entry is a division of a Customs district which, in turn, is a division of a region.

Similar activities take place at Customs stations as at ports of entry. However, the significant differences between ports of entry and stations is that at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry and clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for services rendered in connection with the entry or delivery of merchandise.

Also, the Fort Wayne station will service a new user fee airport which is being established at Baer Field in Fort Wayne. User fee airports are those which, while not qualifying for designation as an international or landing rights airport, have been approved by the Commissioner to receive the services of Customs officers for processing aircraft entering the U.S. Inasmuch as the volume of business anticipated at these airports is insufficient to justify their designation as an international or landing rights airport, the availability of Customs services is not paid for out of the Customs appropriations from the general treasury of the U.S. Instead the services of the Customs officers are provided on a fully reimbursable basis to be paid for by the user fee airports on behalf of the recipients of the services.

Comments

No comments were received in response to the proposed rule, as amended. After further review, we have concluded that the realignment of district boundaries and the creating of a new station, as proposed, should be adopted as a final rule.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document. Customs routinely makes adjustments to its field organization throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the changes may have a limited effect upon small entities in the areas affected, they are not expected to be significant because adjusting the field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the amendment relates to the Customs field organization, and will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Authority

These changes are made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to the authority provided by Treasury Department Order No. 101–05 dated February 17, 1987 (52 FR 6282).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

Part 101, Customs Regulations (19 CFR Part 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Headnote 11), 1624, Reorganization Plan 1 of 1965: 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. The list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by altering the geographic descriptions of the Chicago, Illinois, and the Cleveland, Ohio, Customs Districts, which come under the administrative jurisdiction of Customs North Central Region, as set forth below:

a. In the North Central Region, under the column headed "Area", directly opposite "Chicago, Ill.", the description is revised to read as follows:

"The State of Illinois lying north of latitude 39° N; that part of the State of Indiana north of Latitude 41° N and west of longitude 86° W; and the States of Iowa and Nebraska."

b. In the North Central Region, under the column headed "Area", directly opposite "Cleveland, Ohio", the description is revised to read as follows:

"The States of Ohio, Kentucky; that part of the State of Indiana lying south of latitude 41° N; that part of the state of Indiana lying east of longitude 86° W; and the county of Erie in the State of Pennsylvania."

§ 101.4 [Amended]

3. The list of Customs districts, stations, and ports of entry having supervision, in § 101.4(c), Customs Regulations (19 CFR 101.4(c)) is amended by inserting, in appropriate alphabetical order, in the listings for "Cleveland, Ohio," under the "District" column, "Fort Wayne, Indiana," in the column headed "Customs stations", and on the same line, "Indianapolis" in the column headed "Port of entry having supervision".

Approved: May 26, 1988.

William von Raab,
Commissioner of Customs.
Francis A. Keating II,
Assistant Secretary of the Treasury.

[FR Doc. 88–14400 Filed 6–24–88; 8:45 am]
BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8211]

Income Taxes; Income of Foreign Governments and International Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to current taxation of income of foreign governments from investment sources within the United States. 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 DATE: These temporary regulations are to be effective for taxable years beginning after June 30, 1986.

FOR FURTHER INFORMATION CONTACT: David A. Juster 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:LR:T) (202–566–6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is 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 this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1053. The estimated average burden associated with the collection of information in this regulation is 15 hours per respondent.

For further information concerning this collection of information, and where to submit comments on this collection of information and 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 elsewhere in this issue of the **Federal Register.**

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under sections 892 and 1441 of the Internal Revenue Code of 1986.

Need for Temporary Regulations

The proper application of sections 892 and 1441 is dependent upon the Internal Revenue Service's detailed specifications 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 to section 892 by section 1247 of the Act of October 22, 1986 (Pub. L. 99–514, 100 Stat. 2085, 2583).

Explanation of Provisions

Paragraph (a) of §1.892–1T sets forth the purpose and scope of the regulations. Paragraph (b) sets forth the effective date of the regulations

Paragraph (a) of § 1.892–2T generally defines the term "foreign government." Paragraph (b) provides when income of a foreign government will be deemed to inure to the benefit of private persons. Paragraph (c) provides rules when pension trusts will be considered foreign governments. Paragraph (d) extends the rules that apply to foreign governments to political subdivisions and transnational entities.

Paragraph (a) of § 1.892–3T describes the types of income that generally qualify for exemption and certain limitations on the exemption. Paragraph (b) illustrates through examples the principles set forth in paragraph (a).

Section 1.892–4T provides rules concerning the characterization of activities as either commercial or noncommercial activities. Paragraph (a) sets forth the reason for determining whether an activity is commercial or noncommercial in nature for section 892 purposes. Paragraph (b) defines when an activity will be considered commercial. Paragraph (c) sets forth rules concerning when activities will be considered noncommercial.

Section 1.892–5T sets forth rules concerning controlled commercial entities. Paragraph (a) defines the term "controlled commercial entity." Paragraph (b) sets forth rules for determining when an entity will be considered to be engaged in commercial activity. Paragraph (c) sets forth rules for determining whether a foreign government controls an entity. Paragraph (d) sets forth rules with regard to income earned by related entities.

Section 1.892–6T provides rules concerning the manner of taxing international organizations. Paragraph (a) indicates to what extent income of an international organization from sources within the U.S. will qualify for exemption from taxation. Paragraph (b) sets forth to what extent income received by an organization, prior to Presidential designation, will be exempt from taxation.

Section 1.892–7T sets forth the relationship of section 892 to other Internal Revenue Code sections. Paragraph (a) sets forth the relationship between sections 892 and 893. Paragraph (b) sets forth the relationship between section 892 and 895. Paragraph (c) sets forth the relationship between sections 892 and 883(b). Paragraph (d) sets forth the relationship between section 892 and 884. Paragraph (e) sets forth the relationship between sections 892, 1441 and 1442.

Paragraph (a) § 1.441–8T sets forth the rule that withholding is not required under § 1.144–1 with regard to any item of income which is exempt from taxation under section 892. Paragraph (b) of § 1.1441–8T sets forth that a statement must be filed with the withholding agent in order to avoid withholding with regard to income which is exempt from taxation under section 892 and sets forth what information must be contained in the statement.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations.

Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is David A. Juster of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

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 1.1441–1 to 1.1465–1

Income taxes, Aliens, Foreign corporations.

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

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Sections 1.892–1T through 1.892–7T also issued under 26 U.S.C. 892(c). * * *

Par. 2. Sections 1.892–1 and 1.892–2 are removed and new §§ 1.892–1T through 1.892–7T are added in their place to read as follows:

§ 1.892–1T Purpose and scope of regulations (Temporary regulations).

(a) *In general.* These regulations provide guidance with respect to the taxation of income derived by foreign governments and international organizations from sources within the United States. Under section 892, certain specific types of income received by foreign governments are excluded from gross income and are exempt, unless derived from the conduct of a commercial activity or received from or by a controlled commercial entity. This section sets forth the effective date of the regulations. Section 1.892–2T defines a foreign government. In particular it describes the extent to which either an integral part of a foreign sovereign or an entity which is not an integral part of a foreign sovereign will be treated as a foreign government for purposes of section 892. Section 1.982–3T describes the types of income that generally qualify for exemption and certain limitations on the exemption. Section 1.892–4T provides rules concerning the characterization of activities as commercial activities. Section 1.892–5T defines a controlled commercial entity. Section 1.892–6T sets forth the extent to which income of international organizations from sources within the United States is excluded from gross income and is exempt from taxation. Section 1.892–7T sets forth the relationship of section 892 to other Internal Revenue Code sections.

(b) *Effective date.* The regulations set forth in §§ 1.892–1T through 1.892–7T apply to income received by a foreign government on or after July 1, 1986. No amount of income shall be required to be deducted and withheld, by reason of the amendment of section 892 by section 1247 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2583) from any payment made before October 22, 1986.

§ 1.892–2T Foreign government defined (Temporary regulations).

(a) *Foreign government*—(1) *Definition.* The term "foreign government" means only the integral parts or controlled entities of a foreign sovereign.

(2) *Integral part.* An "integral part" of a foreign sovereign is any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country. The net earnings of the governing authority must be credited to its own account or to other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity. Consideration of all the facts and circumstances will determine whether an individual is acting in a private or personal capacity.

(3) *Controlled entity.* The term "controlled entity" means an entity that is separated in form from a foreign sovereign or otherwise constitute a separate juridical entity if it satisfies the following requirements:

(i) It is wholly owned and controlled by a foreign sovereign directly or indirectly through one or more controlled entities;

(ii) It is organized under the laws of the foreign sovereign by which owned;

(iii) Its net earnings are credited to its own account or to other accounts of the foreign sovereign, with no portion of its income inuring to the benefit of any private person; and

(iv) Its assets vest in the foreign sovereign upon dissolution.

A controlled entity does not include partnerships or any other entity owned and controlled by more than one foreign sovereign. Thus, a foreign financial organization organized and wholly owned and controlled by several foreign sovereigns to foster economic, financial, and technical cooperation between various foreign nations is not a controlled entity for purposes of this section

(b) *Inurement to the benefit of private persons.* For purposes of this section, income will be presumed not to inure to the benefit of private persons if such persons (within the meaning of section 7701(a)(1)) are the intended beneficiaries of a governmental program which is carried on by the foreign sovereign and the activities of which constitute governmental functions (within the meaning of § 1.892-4T(c)(4)). Income will be considered to inure to the benefit of private persons if such income benefits:

(1) Private persons through the use of a governmental entity as a conduit for personal investment; or

(2) Private persons who divert such income from its intended use by the exertion of influence or control through means explicitly or implicitly approved of by the foreign sovereign.

(c) *Pension trusts*—(1) *In general.* A controlled entity includes a separately organized pension trust if it meets the following requirements:

(i) The trust is established exclusively for the benefit of (A) employees or former employees of a foreign government or (B) employees or former employees of a foreign government and non-governmental employees or former employees that perform or performed governmental or social services;

(ii) The funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;

(iii) The trust forming a part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered; and

(iv) Income of the trust satisfies the obligations of the foreign government to participants under the plan, rather than inuring to the benefit of a private person.

Income of a pension trust is subject to the rules of § 1.892-5T(b)(3) regarding the application of the rules for controlled commercial entities to pension trusts. Income of a superannuation or similar pension fund of an integral part or controlled entity (which is not a separate pension trust as defined in this paragraph (c)(1)) is subject to the rules that generally apply to a foreign sovereign. Such a pension fund may also benefit non-governmental employees or former employees that perform or performed governmental or social services.

(2) *Illustrations.* The following examples illustrate the application of paragraph (c)(1).

Example (1). The Ministry of Welfare (MW), an integral part of foreign sovereign FC, instituted a retirement plan for FC's employees and former employees. Retirement benefits under the plan are based on a percentage of the final year's salary paid to an individual, times the number of years of government service. Pursuant to the plan, contributions are made by MW to a pension trust managed by persons appointed by MW to the extent actuarially necessary to fund accrued pension liabilities. The pension trust in turn invests such contributions partially in United States Treasury obligations. The income of the trust is credited to the trust's account and subsequently used to satisfy the pension plan's obligations to retired employees. Under these circumstances, the income of the trust is not deemed to inure to the benefit of private persons. Accordingly, the trust is considered a controlled entity of FC.

Example (2). The facts are the same as in *Example* (1), except that the retirement plan also benefits employees performing governmental or social services for the following non-government institutions: (i) A university in a local jurisdiction; (ii) a harbor commission; and (iii) a library system. The retirement benefits under the plan are based on the total amounts credited to an individual's account over the term of his or her employment. MW makes annual contributions to each covered employee's account equal to a percentage of annual compensation. In addition, the income derived from investment of the annual contributions is credited annually to individual accounts. The annual contributions do not exceed an amount that is determined to be actuarially necessary to provide the employee with reasonable retirement benefits. Notwithstanding that retirement benefits vary depending upon the investment experience of the trust, no portion of the income of the trust is deemed to inure to the benefit of private persons. Accordingly, the trust is considered a controlled entity of FC.

Example (3). The facts are the same as in *Example* (1), except that employees are allowed to make unlimited contributions to the trust, and such contributions are credited to the employee's account as well as interest accrued on such contributions. Retirement benefits will reflect the amounts credited to the individual accounts in addition to the usual annuity computation based on the final year's salary and years of service. A pension plan established under these rules is in part acting as an investment conduit. As a result, the income of the trust is deemed to inure to the benefit of private persons. Accordingly, the trust is not considered a controlled entity of FC.

Example (4). (a) The facts are the same as in *Example* (2), except that MW establishes a pension fund rather than a separate pension trust. A pension fund is merely assets of an integral part or controlled entity allocated to a separate account and held and invested for purposes of providing retirement benefits. Under these circumstances, the income of the pension fund is not deemed to inure to the benefit of private persons. Accordingly, income earned from the United States Treasury obligations by the pension fund is considered to be received by a foreign government and is exempt from taxation under section 892.

(b) The facts are the same as in *Example* (4)(a), except that MW is a controlled entity of foreign sovereign FC. The result is the same as in *Example* (4)(a). However, should MW engage in commercial activities (whether within or outside the United States), the income from the Treasury obligations earned by the pension fund will not be exempt from taxation under section 892 since MW will be considered a controlled commercial entity within the meaning of § 1.892-5T(a).

(d) *Political subdivision and transnational entity.* The rules that apply to a foreign sovereign apply to political subdivisions of a foreign country and to transnational entities. A transnational entity is an organization created by more than one foreign sovereign that has broad powers over external and domestic affairs of all participating foreign countries stretching beyond economic subjects to those concerning legal relations and transcending state or political boundaries.

§ 1.892-3T Income of foreign governments (Temporary regulations).

(a) *Types of income exempt*—(1) *In general.* Subject to the exceptions contained in §§ 1.892-4T and 1.892-5T for income derived from the conduct of a commercial activity or received from or by a controlled commercial entity, the following types of income derived by a foreign government (as defined in § 1.892-2T) are not included in gross income and are exempt:

(i) Income from investments in the United States in stocks, bonds, or other securities;

(ii) Income from investments in the United States in financial instruments

held in the execution of governmental financial or monetary policy; and

(iii) Interest on deposits in banks in the United States of moneys belonging to such foreign government.

Income derived from sources other than described in this paragraph (such as income earned from a U.S. real property interest described in section 897(c)(1)(A)(i)) is not exempt from taxation under section 892. Furthermore, any gain derived from the disposition a U.S. real property interest defined in section 897(c)(1)(A)(i) shall in no event qualify for exemption under section 892.

(2) *Income from investments.* For purposes of paragraph (a) of this section, income from investments in stocks, bonds or other securities includes gain from their disposition and income earned from engaging in section 1058 securities lending transactions. Gain on the disposition of an interest in a partnership or a trust is not exempt from taxation under section 892.

(3) *Securities.* For purposes of paragraph (a) of this section, the term "other securities" includes any note or other evidence of indebtedness. Thus, an annuity contract, a mortgage, a banker's acceptance or a loan are securities for purposes of this section.

However, the term "other securities" does not include partnership interests (with the exception of publicly traded partnerships within the meaning of section 7704) or trust interests. The term also does not include commodity forward or futures contracts and commodity options unless they constitute securities for purposes of section 864(b)(2)(A).

(4) *Financial instrument.* For purposes of paragraph (a) of this section, the term "financial instrument" includes any forward, futures, options contract, swap agreement or similar instrument in a functional or nonfunctional currency (see section 985(b) for the definition of functional currency) or in precious metals when held by a foreign government or central bank of issue (as defined in § 1.895–1(b)). Nonfunctional currency or gold shall be considered a "financial instrument" also when physically held by a central bank of issue.

(5) *Execution of financial or monetary policy*—(i) *Rule.* A financial instrument shall be deemed held in the execution of governmental financial or monetary policy if the primary purpose for holding the instrument is to implement or effectuate such policy.

(ii) *Illustration.* The following example illustrates the application of this paragraph (a)(5).

Example. In order to ensure sufficient currency reserves, the monetary authority of foreign country FC issues short-term government obligations. The amount received from the obligations is invested in U.S. financial instruments. Since the primary purpose for obtaining the U.S. financial instruments is to implement FC's monetary policy, the income received from the financial instruments is exempt from taxation under section 892.

(b) *Illustrations.* The principles of paragraph (a) of this section may be illustrated by the following examples.

Example (1). X, a foreign corporation not engaged in commercial activity anywhere in the world, is a controlled entity of a foreign sovereign within the meaning of § 1.892–2T(a)(3). X is not a Central bank of issue as defined in § 1.895–1(b). In 1987, X received the following items of income from investments in the United States: (i) Dividends from a portfolio of publicly traded stocks in U.S. corporations in which X owns less than 50 percent of the stock; (ii) dividends from BTB Corporation, an automobile manufacturer, in which X owns 50 percent of the stock; (iii) interest from bonds issued by noncontrolled entities and from interest-bearing bank deposits in noncontrolled entities; (iv) rents from a net lease on real property; (v) gains from silver futures contracts; (vi) gains from wheat futures contracts; (vii) gains from spot sales of nonfunctional foreign currency in X's possession; (viii) gains from the disposition of a publicly traded partnership interest, and (ix) gains from the disposition of the stock of Z Corporation, a United States real property holding company as defined in section 897, of which X owns 12 percent of the stock. Only income derived from sources described in paragraph (a)(1) of this section is treated as income of a foreign government eligible for exemption from taxation. Accordingly, only income received by X from items (i), (iii), (v) provided that the silver futures contracts are held in the execution of governmental financial or monetary policy, and (ix) is exempt from taxation under section 892.

Example (2). The facts are the same as in *Example* (1), except that X is also a central bank of issue within the meaning of section 895. Since physical possession of nonfunctional foreign currency when held by a central bank of issue is considered a financial instrument, the item (vii) gains from spot sales of nonfunctional foreign currency are exempt from taxation under paragraph (a)(1) of this section, if physical possession of the currency was an essential part of X's reserve policy in the execution of its governmental financial or monetary policy.

Example (3). State Concert Bureau, an integral part of a foreign sovereign within the meaning of § 1.892–2T(a)(2), entered into an agreement with a U.S. corporation engaged in the business of promoting international cultural programs. Under the agreement the State Concert Bureau agreed to send a ballet troupe on tour for 5 weeks in the United States. The Bureau received approximately $60,000 from the performances. Regardless of whether the performances themselves constitute commercial activities under § 1.892–4T, the income received by the Bureau is not exempt from taxation under section 892 since the income is from sources other than described in paragraph (a)(1) of this section.

§ 1.892–4T Commercial activities (Temporary regulations).

(A) *Purpose.* The exemption generally applicable to a foreign government (as defined in § 1.892–2T) for income described in § 1.892–3T does not apply to income derived from the conduct of a commercial activity or income received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity. This section provides rules for determining whether income is derived from the conduct of a commercial activity. These rules also apply in determining under § 1.892–5T whether an entity is a controlled commercial entity.

(b) *In general.* Except as provided in paragraph (c) of this section, all activities (whether conducted within or outside the United States) which are ordinarily conducted by the taxpayer or by other persons with a view towards the current or future production of income or gain are commercial activities. An activity may be considered a commercial activity even if such activity does not constitute the conduct of a trade or business in the United States under section 864(b).

(c) *Activities that are not commercial*—(1) *Investments*—(i) *In general.* Subject to the provisions of paragraphs (ii) and (iii) of this paragraph (c)(1), the following are not commercial activities: Investments in stocks, bonds, and other securities; loans; investments in financial instruments held in the execution of governmental financial or monetary policy; the holding of net leases on real property or land which is not producing income (other than on its sale or from an investment in net leases on real property); and the holding of bank deposits in banks. Transferring securities under a loan agreement which meets the requirements of section 1058 is an investment for purposes of this paragraph (c)(1)(i). An activity will not cease to be an investment solely because of the volume of transactions of that activity or because of other unrelated activities.

(ii) *Trading.* Effecting transactions in stocks, securities, or commodities for a foreign government's own account does not constitute a commercial activity regardless of whether such activities constitute a trade or business for purposes of section 162 or a U.S. trade or business for purposes of section 864. Such transactions are not commercial activities regardless of whether they are

effected by the foreign government through its employees or through a broker, commission agent, custodian, or other independent agent and regardless of whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. An activity undertaken as a dealer, however, as defined in § 1.864-2(c)(2)(iv)(*a*) will not be an investment for purposes of this paragraph (c)(1)(i). For purposes of this paragraph (c)(1)(ii), the term "commodities" means commodities of a kind customarily dealt in on an organized commodity exchange but only if the transaction is of a kind customarily consummated at such place.

(iii) *Banking, financing, etc.* Investments (including loans) made by a banking, financing, or similar buisness constitute commercial activities, even if the income derived from such investments is not considered to be income effectively connected to the active conduct of a banking, financing, or similar business in the U.S. by reason of the application of § 1.864-4(c)(5).

(2) *Cultural events.* Performances and exhibitions within or outside the United States of amateur athletic events and events devoted to the promotion of the arts by cultural organizations are not commercial activities.

(3) *Non-profit activities.* Activities that are not customarily attributable to or carried on by private enterprise for profit are not commercial activities. The fact that in some instances Federal, State, or local governments of the United States also are engaged in the same or similar activity does not mean necessarily that it is a non-profit activity. For example, even though the United States Government may be engaged in the activity of operating a railroad, operating a railroad is not a non-profit activity.

(4) *Governmental functions.* Governmental functions are not commercial activities. The term "governmental functions" shall be determined under U.S. standards. In general, activities performed for the general public with respect to the common welfare or which relate to the administration of some phase of government will be considered governmental functions. For example, the operation of libraries, toll bridges, or local transportation services and activities substantially equivalent to the Federal Aviation Authority, Interstate Commerce Commission, or United States Postal Service will all be considered governmental functions for purposes of this section.

(5) *Purchasing.* The mere purchasing of goods for the use of a foreign government is not a commercial activity.

§ 1.892-5T Controlled commercial entity (Temporary regulations).

(a) *In general.* The exemption generally applicable to a foreign government (as defined in § 1.892-2T) for income described in § 1.892-3T does not apply to income received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity. The term "controlled commercial entity" means any entity engaged in commercial activities as defined in § 1.892-4T (whether conducted within or outside the United States) if the government—

(1) Holds (directly or indirectly) any interest in such entity which (by value or voting power) is 50 percent or more of the total of such interests in such entity, or

(2) Holds (directly or indirectly) a sufficient interest (by value or voting power) or any other interest in such entity which provides the foreign government with effective practical control of such entity.

For purposes of this paragraph, the term "entity" encompasses corporations and trusts (including pension trusts described in § 1.892-2T(c)) and estates.

(b) Entities treated as engaged in commercial activity—(1) *U.S. real property holding corporations.* A United States real property holding corporation, as defined in section 897(c)(2) or a foreign corporation that would be a United States real property holding corporation if it was a United States corporation, shall be treated as engaged in commercial activity and, therefore, is a controlled commercial entity if the requirements of paragraph (a)(1) or (a)(2) of this section are satisfied.

(2) *Central banks.* Notwithstanding paragraph (a) of this section, a central bank of issue (as defined in § 1.895-1(b)) shall be treated as a controlled commercial entity only if it engages in commercial activities within the United States.

(3) *Pension trusts.* A pension trust, described in § 1.892-2T(c), which engages in commercial activities within or outside the United States, shall be treated as a controlled commercial entity. Income derived by such a pension trust is not income of a foreign government for purposes of the exemption from taxation provided in section 892. A pension trust described in § 1.892-2T(c) shall not be treated as a controlled commercial entity if such trust solely earns income which would not be unrelated business taxable income (as defined in section 512(a)(1)) if the trust were a qualified trust described in section 401(a). However, only income derived by a pension trust that is described in § 1.892-3T and which is not from commercial activities as defined in § 1.892-4T is exempt from taxation under section 892.

(c) *Control*—(1) *Attribution*—(i) *Rule.* In determining for purposes of paragraph (a) of this section the interest held by a foreign government, any interest in an entity (whether or not engaged in commercial activity) owned directly or indirectly by an integral part or controlled entity of a foreign sovereign shall be treated as actually owned by such foreign sovereign.

(ii) *Illustration.* The following example illustrates the application of paragraph (c)(1)(i) of this section.

Example. FX, a controlled entity of foreign sovereign FC, owns 20 percent of the stock of Corp 1. Neither FX nor Corp 1 is engaged in commercial activity anywhere in the world. Corp 1 owns 60 percent of the stock of Corp 2, which is engaged in commercial activity. The remaining 40 percent of Corp 2's stock is owned by Bureau, an integral part of foreign sovereign FC. For purposes of determining whether Corp 2 is a controlled commercial entity of FC, Bureau will be treated as actually owning the 12 percent of Corp 2's stock indirectly owned by FX. Therefore, since Bureau directly and indirectly owns 52 percent of the stock of Corp 2, Corp 2 is a controlled commercial entity of FC within the meaning of paragraph (a) of this section. Accordingly, dividends or other income received, directly or indirectly, from Corp 2 by either Bureau or FX will not be exempt from taxation under section 892. Furthermore, dividends from Corp 1 to the extent attributable to dividends from Corp 2 will not be exempt from taxation. Thus, a distribution from Corp 1 to FX shall be exempt only to the extent such distribution exceeds Corp 1's earnings and profits attributable to the Corp 2 dividend amount received by Corp 1.

(2) *Effective practical control.* An entity engaged in commercial activity may be treated as a controlled commercial entity if a foreign government holds sufficient interests in such entity to give it "effective practical control" over the entity. Effective practical control may be achieved through a minority interest which is sufficiently large to achieve effective control, or through creditor, contractual, or regulatory relationships which, together with ownership interests held by the foreign government, achieve effective control. For example, an entity engaged in commercial activity may be treated as a controlled commercial entity if a foreign government, in addition to holding a small minority interest (by value or voting power), is also a substantial creditor of the entity or controls a strategic natural resource which such entity uses in the conduct of its trade or business, giving the foreign government effective practical control over the entity.

(d) *Related controlled entities*—(1) *Brother/sister entities.* Commercial activities of a controlled entity are not attributed to such entity's other brother/sister related entities. Thus, investment income described in § 1.892-2T that is derived by a controlled entity that is not itself engaged in commercial activity within or outside the United States is exempt from taxation notwithstanding the fact that such entity's brother/sister related entity is a controlled commercial entity.

(2) *Parent/subsidiary entities*—(i) *Subsidiary to parent attribution.* Commercial activities of a subsidiary controlled entity are not attributed to its parent. Thus, investment income described in § 1.892-3T that is derived by a parent controlled entity that is not itself engaged in commercial activity within or outside the United States is exempt from taxation notwithstanding the fact that its subsidiary is a controlled commercial entity. Dividends or other payments of income received by the parent controlled entity from the subsidiary are not exempt under section 892, because it constitutes income received from a controlled commercial entity. Furthermore, dividends paid by the parent are not exempt to the extent attributable to the dividends received by the parent from the subsidiary. Thus, a distribution by the parent shall be exempt only to the extent such distribution exceeds earnings and profits attributable to the dividend received from its subsidiary.

(ii) *Parent to subsidiary attribution.* Commercial activities of a parent controlled entity are attributed to its subsidiary. Thus, investment income described in § 1.892-3T that is derived by a subsidiary controlled entity (not engaged in commercial activity within or outside the United States) is not exempt from taxation under section 892 if its parent is a controlled commercial entity.

(3) *Partnerships.* Except for partners of publicly traded partnerships, commercial activities of a partnership are attributable to its general and limited partners for purposes of section 892. For example, where a controlled entity is a general partner in a partnership engaged in commercial activities, the controlled entity's distributive share of partnership income (including income described in § 1.892-3T) will not be exempt from taxation under section 892.

(4) *Illustrations.* The principles of this section may be illustrated by the following examples.

Example (1). (a) The Ministry of Industry and Development is an integral part of a foreign sovereign under § 1.892-2T(a)(2). The Ministry is engaged in commercial activity within the United States. In addition, the Ministry receives income from various publicly traded stocks and bonds, soybean futures contracts and net leases on U.S. real property. Since the Ministry is an integral part, and not a controlled entity, of a foreign sovereign, it is not a controlled commercial entity within the meaning of paragraph (a) of this section. Therefore, income described in § 1.892-3T is ineligible for exemption under section 892 only to the extent derived from the conduct of commercial activities. Accordingly, the Ministry's income from the stocks and bonds is exempt from U.S. tax.

(b) The facts are the same as in *Example* (1)(a), except that the Ministry also owns 75 percent of the stock of R, a U.S. holding company that owns all the stock of S, a U.S. operating company engaged in commercial activity. Ministry's dividend income from R is income received indirectly from a controlled commercial entity. The Ministry's income from the stocks and bonds, with the exception of dividend income from R, is exempt from U.S. tax.

(c) The facts are the same as in *Example* (1)(a), except that the Ministry is a controlled entity of a foreign sovereign. Since the Ministry is a controlled entity and is engaged in commercial activity, it is a controlled commercial entity within the meaning of paragraph (a) of this section, and none of its income is eligible for exemption.

Example (2). (a) Z, a controlled entity of a foreign sovereign, has established a pension trust as part of a pension plan for the benefit of its employees and former employees. The pension trust (T), which meets the requirements of § 1.892-2T(c), has investments in the U.S. in various stocks, bonds, annuity contracts, and a shopping center which is leased and managed by an independent real estate management firm. T also makes securities loans in transactions that qualify under section 1058. T's investment in the shopping center is not considered an unrelated trade or business within the meaning of section 513(b). Accordingly, T will not be treated as engaged in commercial activity. Since T is not a controlled commercial entity, its investment income described in § 1.892-3T, with the exception of income received from the operations of the shopping center, is exempt from taxation under section 892.

(b) The facts are the same as *Example* (2)(a), except that T has an interest in a limited partnership which owns the shopping center. The shopping center is leased and managed by the partnership rather than by an independent management firm. Managing a shopping center, directly or indirectly through a partnership of which a trust is a member, would be considered an unrelated trade or business within the meaning of section 513(b) giving rise to unrelated business taxable income. Since the commercial activities of a partnership are attributable to its partners, T will be treated as engaged in commercial activity and thus will be considered a controlled commercial entity. Accordingly, none of T's income will be exempt from taxation under section 892.

(c) The facts are the same as *Example* (2)(a), except that Z is a controlled commercial entity. The result is the same as in *Example* (2)(a).

Example (3). (a) The Department of Interior, an integral part of foreign sovereign FC, wholly owns corporations G and H. G, in turn, wholly owns S. G, H and S are each controlled entities. G, which is not engaged in commercial activity anywhere in the world, receives interest income from deposits in banks in the United States. Both H and S do not have any investments in the U.S. but are both engaged in commercial activities. However, only S is engaged in commercial activities within the United States. Because neither the commercial activities of H nor the commercial activities of S are attributable to the Department of Interior or G, G's interest income is exempt from taxation under section 892.

(b) The facts are the same as *Example* (3)(a), except that G rather than S is engaged in commercial activities and S rather than G receives the interest income from the United States. Since the commercial activities of G are attributable to S, S's interest income is not exempt from taxation.

Example (4). (a) K, a controlled entity of a foreign sovereign, is a general partner in the Daj partnership. The Daj partnership has investments in the U.S. in various stocks and bonds and also owns and manages an office building in New York. K will be deemed to be engaged in commercial activity by being a general partner in Daj even if K does not actually make management decisions with regard to the partnership's commercial activity, the operation of the office building. Accordingly K's distributive share of partnership income (including income derived from stocks and bonds) will not be exempt from taxation under section 892.

(b) The facts are the same as in *Example* (4)(a), except that the Daj partnership has hired a real estate management firm to lease offices and manage the building. Notwithstanding the fact that an independent contractor is performing the activities, the partnership shall still be deemed to be engaged in commercial activity. Accordingly, K's distributive share of partnership income (including income derived from stocks and bonds) will not be exempt from taxation under section 892.

(c) The facts are the same as in *Example* (4)(a), except that K is a partner whose partnership interest is considered a publicly traded partnership interest within the meaning of section 7704. Under paragraph (d)(3) of this section, the partnership's commercial activity will not be attributed to K. Since K will not be deemed to be engaged in commercial activity, K's distributive share of partnership income derived from stocks and bonds will be exempt from taxation under section 892.

§ 1.892-6T Income of international organizations (Temporary regulations).

(a) *Exempt from tax.* Subject to the provisions of section 1 of the International Organizations Immunities Act (22 U.S.C. 288) (the provisions of which are set forth in paragraph (b)(3) of § 1.893-1), the income of an international organization (as defined in

section 7701(a)(18)) received from investments in the United States in stocks, bonds, or other domestic securities, owned by such international organization, or from interest on deposits in banks in the United States of moneys belonging to such international organization, or from any other source within the United States, is exempt from Federal income tax.

(b) *Income received prior to Presidential designation.* An organization designated by the President through appropriate Executive order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exemption with respect to income of the prescribed character received by such organization prior to the date of the issuance of such Executive order, if (i) the Executive order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation for such participation, at the time such income is received.

§ 1.892-7T Relationship to other Internal Revenue Code sections (Temporary regulations).

(a) *Section 893.* The term "foreign government" referred to in section 893 (relating to the exemption for compensation of employees of foreign governments) has the same meaning as given such term in § 1.892-2T.

(b) *Section 895.* A foreign central bank of issue (as defined in § 1.895-1(b)) that fails to qualify for the exemption from tax provided by this section (for example, it is not wholly owned by a foreign sovereign) may nevertheless be exempt from tax on the items of income described in section 895.

(c) *Section 883(b).* Nothing in section 892 or these regulations shall limit the exemption provided under section 883(b) relating generally to the exemption of earnings derived by foreign participants from the ownership or operation of communications satellite systems.

(d) *Section 884.* Earnings and profits attributable to income of a controlled entity of a foreign sovereign which is exempt from taxation under section 892 shall not be subject to the tax imposed by section 884(a).

(e) *Sections 1441 and 1442.* No withholding is required under sections 1441 and 1442 in the case of income exempt from taxation under section 892.

Par. 3. A new § 1.1441-8T is added immediately after § 1.1441-7 to read as follows:

§ 1.1441-8T Foreign government exemption from withholding (Temporary regulations).

(a) *Foreign governments.* Under section 892, certain specific types of income received by foreign governments are excluded from gross income and are exempt from taxation, unless derived from the conduct of a commercial activity or received from or by a controlled commercial entity. Accordingly, withholding is not required under § 1441.1 with regard to any item of income which is exempt from taxation under section 892.

(b) *Statement claiming exemption.* To avoid withholding of tax at source under § 1.1441-1, a foreign government which is entitled to the income must file with each withholding agent from whom amounts of income are to be received, a statement under penalties of perjury (in duplicate) indicating the extent to which such income described in the statement is exempt from taxation under section 892. This statement should contain (i) the name and address of the foreign government entitled to the income, (ii) the items of income and their amount with respect to which the statement is filed, (iii) an explanation indicating why the specific items of income are exempt from taxation under section 892, and (iv) the taxable year during which such exemption is to apply. This statement shall be filed with the withholding agent for each taxable year the foreign government is entitled to the income, and before payment of the income in respect of which it applies. Any statement so filed shall be effective only with respect to the item or items of income specified therein and only with respect to the types of income specified in § 1.892-3T(a)(1) (i), (ii) or (iii). The statement shall constitute authorization to the withholding agent to pay such income during the taxable year without deduction of the tax at source under § 1441-1. Any statement required by this subparagraph may be made on a form prescribed by the Internal Revenue Service.

OMB Control Numbers Under The Paperwork Reduction Act

PART 602—[AMENDED]

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 "§ 1.1441-8T . . . 1545-1053".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved May 27, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 88-14429 Filed 6-24-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 266

[DoD Directive 7600.10]

Audits of State and Local Governments

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part implements Pub. L. 98-502, "Single Audit of 1984," October 19, 1984, and OMB Circular No. A-128, "Audits of State and Local Governments," April 12, 1985. It requires that DOD Components rely upon and use financial and compliance audits by non-Federal auditors under Pub. L. 98-502 and OMB Circular No. A-128 in the oversight of Federal financial assistance provided to State and local governments. The part also authorizes the DOD Components to provide for additional audits of Federal financial assistance when required by regulation or to ensure effective use of such assistance. It also specifies the responsibilities of the Inspector General, Department of Defense, and the Heads of the DOD Components for monitoring compliance with the provisions of new 32 CFR Part 266.

EFFECTIVE DATE: February 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. V. Stone, Office of the Assistant Inspector General for Audit Policy, Department of Defense, 400 Army Navy Drive, Room 1076, Arlington, VA 22202, telephone (202) 693-0017.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 266

State and local governments.

Accordingly, Title 32, Chapter 1, is amended to add Part 266 as follows:

PART 266—AUDITS OF STATE AND LOCAL GOVERNMENTS

Sec.
266.1 Purpose.
266.2 Applicability.

Sec.
266.3 Definitions.
266.4 Policy.
266.5 Responsibilities.
266.6 Cost of audits.
266.7 Effective date.

Authority: Single Audit Act of 1984, Pub. L. 98-502, 98 Stat. 2327; 31 U.S.C. 7501 note.

§ 226.1 Purpose.

This part:

(a) Implements Pub. L. 98-502 and OMB Circular No. A-128 to establish audit requirements for State and local governments that receive Federal financial assistance.

(b) Assigns responsibilities within the Department of Defense for monitoring compliance with those requirements.

§ 226.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Inspector General, Department of Defense (IG, DOD); the Military Departments; the Defense Agencies; and DOD Field Activities (hereafter referred to collectively as "DOD Components") that provide Federal financial assistance to State and local governments.

§ 226.3 Definitions.

Cognizant Agency. The Federal Agency assigned by OMB to carry out the responsibilities described in OMB Circular No. A-128.

Desk Review. A review of an audit report performed by the cognizant audit organization at its offices to determine whether the audit report meets the requirements of Pub. L. 98-502 and OMB Circular No. A-128.

Federal Financial Assistance. Assistance provided by a Federal Agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. Funds paid by the National Guard Bureau to States under facilities' operation and maintenance agreements do not constitute "Federal financial assistance" for purposes of Pub. L. 98-502 and OMB Circular No. A-128.

Local Government. A unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Non-Federal Auditor. A State or local government auditor who meets the standards on independence specified in generally accepted Government auditing standards or a public accountant who meets such standards' independence.

Qualtiy Control Review. A review of the audit report and supporting work papers of the non-Federal auditor to assess compliance with OMB Circular No. A-128.

State. Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Somoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any instrumentality thereof; and any multistate, regional, or interstate entity that has governmental functions, and any Indian tribe.

§ 226.4 Policy.

The DOD Components shall rely upon the use financial and compliance audits by non-Federal auditors under Pub. L. 98-502 and OMB Circular No. A-128 in the oversight of Federal financial assistance provided to State or local governments. The DOD Components, however, may provide for additional audits of such assistance when required by regulation or to ensure effective use of such assistance. Such additional audits include economy and efficiency audits, program results audits, and program evaluations. Any additional audit effort shall be planned and carried out in such a way as to avoid duplication and shall be separately funded.

§ 226.5 Responsibilities.

(a) The *Inspector General, Department of Defense* (IG, DOD) shall:

(1) Serve as the DOD senior official under OMB Circular No. A-128 for policy guidance, direction, and coordination with DOD Components and other Federal Agencies on single-audit matters.

(2) For State and local governments for which OMB has assigned DOD cognizance, do the following:

(i) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of OMB Circular No. A-128.

(ii) Provide technical advice and liaison to State and local governments and non-Federal auditors.

(iii) Make desk reviews of all reports received, and also make quality control reviews of selected audits made by non-Federal audit organizations and provide the results, when appropriate, to other interested organizations.

(iv) Inform other affected Federal Agencies and appropriate law enforcement officials of any reported illegal acts of irregularities.

(v) Advise the recipient of audits that have been found not meeting the requirements of OMB Circular No. A-128.

(vi) Coordinate, to the extent practicable, audits requested by DOD Components, in addition to those required by OMB Circular No. A-128.

(vii) Oversee the resolution of audit findings and recommendations that affect DOD programs and those findings affecting programs of more than one Federal Agency.

(3) For other State and local governments, receive and distribute copies of single-audit reports to appropriate DOD Components for appropriate action and follow-up by designated program officials.

(b) The *Heads of the DOD Components* shall:

(1) Designate an official to coordinate with the IG, DOD, on matters dealing with audits of financial assistance provided by the DOD Component to State and local governments.

(2) Advise the IG, DOD, of financial assistance provided to State or local governments when such assistance to any State or local government exceeds $100,000 in a year.

(3) Ensure that the State or local government takes appropriate actions to correct audit deficiencies involving financial assistance provided by the DOD Component.

(4) Coordinate with the IG, DOD, on requests for audits of State and local governments, in addition to those required by OMB Circular No. A-128.

§ 226.6 Cost of audits.

The costs of audits made by non-Federal auditors under OMB Circular No. A-128 are allowable charges to Federal financial assistance programs. The charges may be considered as a direct cost or an allocated indirect cost in accordance with OMB Circular No. A-87. Generally, the percentage of costs charged to Federal assistance programs for an audit shall not exceed the percentage of Fedral funds expended to the total funds expended by the recipient during the fisal year. No cost, however, may be charged to Federal programs for audits not made in accordance with OMB Circular No. A-128.

§ 226.7 Effective date.

This part is effective February 12, 1988.

June 21, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-14307 Filed 6-24-88; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes numerous miscellaneous revisions consolidated in the transmittal letter for issue 5 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR 20.1.

While many of the revisions are minor, editorial, or clarifying, issue 5 contains some substantive changes, such as the changes in international rates and fees, which have previously been published in the **Federal Register.**

EFFECTIVE DATE: April 21, 1988.

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

SUPPLEMENTARY INFORMATION: The International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 20.1), has been amended by the publication of a transmittal letter for issue 5, dated April 21, 1988. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the IMM receive these amendments automatically from the Government Printing Office.

The following is from the Explanation section of the transmittal letter from issue 5:

Explanation

Issue 5 replaces Issue 4 of the IMM. It contains all IMM revisions published in the *Postal Bulletin* from September 25, 1986, through April 21, 1988. Items published after April 21, 1988, are effective but have not been incorporated into Issue 5. In addition, Issue 5 corrects printing and format errors and omissions in Issue 4.

Chapter 1

Section 123.13a(1) was revised to incorporate the new monetary limit ($375) for shipments of Postal Union mail that do not need to include Form 2976-A, *Customs Declaration.*

Section 123.2 was revised to incorporate the use of Form 2966-E, Parcel Post Customs Declaration (envelope), which is used with Form 2966-B, Parcel Post Customs Declaration and Dispatch Note (3-part set). (PB 21603, 1-22-87)

Section 123.222(3) was revised to add a new requirement for completion of USSR Customs forms. (PB 21635, 9-3-87)

Chapter 2

a. Section 212.24 is revised to increase the pickup service fee Express Mail International Service (EMS) items to $4.00.

b. Part 232 is revised to increase the rates charged for postal cards/postcards. (PB 21666, 3-25-88)

c. Part 246 is new and was added to incorporate the regulations for International Surface Air Lift service (ISAL).

d. Section 281.4 was revised to incorporate additional offices that can accept International Priority Airmail. (PB 21627, 7-9-87)

Chapter 3

a. Section 313.2 was revised to increase the fee for a Certificate of Mailing.

b. Section 324.22 was revised to incorporate the changes to the values of the GFR and SDR. (PB 21653, 1-7-88)

c. Section 333.1 was revised to increase the fee charged for Registration—$4.40 except to Canada.

d. Section 333.2 was revised to increase the indemnity limit to $24.60 for all registered shipments except those sent to Canada. The fees for shipments sent to Canada have been charged and are reflected in the ICL for Canada.

e. Section 343 was revised to increase the fee for Return Receipt service to $0.90.

f. Section 344.3 was revised to increase the fee for inquiries concerning confirmation of delivery after mailing to $5.00.

g. Exhibit 363.1 was revised to incorporate the increase to the Registration fee to $4.40 and the change in location where change of address and recall requests are processed from the Office of Classification and Rates Administration to the International Claims and Inquiries Office (ICIO). (PB 21629, 7-23-87)

h. Section 364.22b was revised to incorporate the change in location where change of address and recall requests are processed from the Office of Classification and Rates Administration to the International Claims and Inquiries Office (ICIO). (PB 21629, 7-23-87)

i. Sections 391.912 and 391.92 were revised to increase the fee for a photostat of a paid money order to $2.00.

j. Section 392.3a was revised to increase the fee for an International Reply Coupon to $.95.

k. Section 392.3b was revised to increase the rate at which International Reply Coupons can be exchanged in the U.S. to $0.40.

Chapter 7

a. Section 712.3 was revised to increase the Customs clearance and delivery fee for each dutiable item to $3.25.

b. Section 781.5 was revised to increase the Return Charges for Postal Union Mail.

Chapter 9

a. Sections 922, 923 and 924 were revised to incorporate new procedures concerning the filing of claims and inquiries for Express Mail International Service. (PB 21599, 12-25-86)

b. Section 927.3 was revised to incorporate the change in location for the destination of requests for telegraphic inquiries to the appropriate International Claims and Inquiries Office (ICIO). (PB 21629, 7-23-87)

c. Section 941.2 was revised to incorporate the change in location where refund applications are processed. These applications are now processed by the appropriate International Claims and Inquiries Office (ICIO). (PB 21629, 7-23-87)

d. Sections 927.11, 928.22c, 928.231c, 928.251c, 928.261d, 928.32c, 928.331a(3), 928.332a(4), and 928.341a(2) were revised to increase the fees for filing an inquiry to $5.00.

APPENDICES

Appendix C was revised to incorporate new values for Special Drawing Rights (SDRs) and Gold Francs (GFRs). (PB 21657, 2-4-88)

Appendix D was revised substantially. It is now a list of the countries which offer Express Mail International Service (EMS). The specific information for each country can be found after the Individual Country Listing for each country that offers EMS. These listings have been updated to include information concerning new postage rates, weight limits, service areas, admitted contents, insurance indemnity limits, Customs information, and to add countries that now offer Express Mail International Service. (Refer to EMS ½ lb. rates—PB 21648, 12-3-87)

Appendix E was revised in format to accommodate new International Surface Air Lift (ISAL) exchange offices, new rates, and destination countries.

Individual Country Listings (ICLs) were revised to reflect new or changed prohibitions and restrictions as published by the International Bureau and to correct printing errors and omissions in Issue 4. The ICLs were revised to incorporate information concerning new postage rates, weight limits, service areas, admitted contents, and Customs information.

List of Subjects in 39 CFR Part 20

Postal Service, Foreign relations, Incorporation by reference.

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Section 20.3 is amended by adding at the end thereof the following:

§ 20.3 Amendments to the International Mail Manual.

* * * * *

Transmittal letter for issue. Dated
FR Publication.

* * * * *

April 21, 1988. 53 FR 24068.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-14431 Filed 6-24-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F3256/R967; FRL-3405-5]

Pesticide Tolerances for AC 222,293; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document deletes the alternate name AC 222,293 and trade name, Assert, for the herbicide mixture of methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*p*-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate in or on various raw agricultural commodities. This is a technical amendment that adds no new regulatory requirements, but merely clarifies an existing regulation by deleting inappropriate alternate names; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 20, 1988 (53 FR 12943), EPA issued new § 180.437 *AC 222,293; tolerances for residues* (40 CFR 180.437) establishing various tolerances for the herbicide mixture of methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*p*-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate. The alternate name of AC 222,293 and the trade name, Assert, should not have been included in the codified text, and they are being deleted. This technical amendment merely clarifies an existing regulation by deleting inappropriate material. No new regulatory requirements are being added, and advance notice and public comment are unnecessary.

List of Subjects in 40 CFR Part 180

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

Dated: June 20, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments is being made to 40 CFR Part 180 as follows:

PART 180—[AMENDED]

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

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

2. Section 180.437 is revised to read as follows:

5-oxo-2-imidazolin-2-yl)-*p*-toluate and methyl-6-(r-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate tolerances for residues.

Tolerances are established for the combined residues of the herbicide methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*p*-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate in or on the following raw agricultural commodities:

Commodities	Parts per million
Barley grain	0.10
Barley straw	2.00
Sunflower seed	0.10
Wheat grain	0.10
Wheat straw	2.00

[FR Doc. 88-14382 Filed 6-24-88; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 53, No. 123
Monday, June 27, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 968

[Docket No. AO F&V 88-1]

Proposed Seedless European Cucumber Marketing Agreement and Order; Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed marketing agreement and order and notice of hearing.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and order to cover seedless European cucumbers grown in the fifty states of the United States of America and the District of Columbia. The proposed agreement and order would authorize establishment of grade, size, quality, maturity, container, and pack regulations to promote the quality and pack of seedless European cucumbers in the marketplace. In addition, it would enable the establishment of production and market research projects to improve production practices and increase the consumption of seedless European cucumbers. The proposal was submitted by the American Greenhouse Vegetable Growers Association which represents a substantial portion of the seedless European cucumbers producers and handlers. The program would be financed by assessments levied on seedless European cucumber handlers. The assessment rate would be established by the Secretary of Agriculture, based on the recommendation of a committee that would administer the program. The committee would be composed of seven seedless European cucumber producers, three handlers, and a repesentative of the general public.

DATES: The hearing will be held in Sacramento, California, beginning on July 26, 1988, at 10:00 a.m. Additional sessions, if necessary, will be held on July 27 and 28, beginning at 9:00 a.m., at the same location.

ADRESSES: The hearing will be held in the California State Building, Room 4061, 722 Capitol Mall, Sacramento, California 95814.

FOR FURTHER INFORMATION CONTACT: Copies of this Notice of Hearing may be obtained from:

(1) David Fitz, Officer-in-Charge, California Marketing Field Office, USDA, 1755 North Gateway, Suite B, Fresno, California 93727; telephone (209) 455-2262; or

(2) Virginia Olson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2529-S, AMS, USDA, Washington, DC 20250; telephone (202) 447-5057.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12291. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 ("Act"), as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the reporting requirements and probable economic impact of the proposal on small businesses.

Proponents of the proposed agreement and order believe that this proposal would promote consistent quality of greenhouse cucumbers and standardize containers used in shipping them to market. Proponents also believe that lower quality cucumbers and nonstandard containers are adversely affecting overall prices for seedless European cucumbers. Federal grade standards have been established, and are currently in effect but, because they are voluntary, they have not been able to effectively provide for an orderly market situation. The proposed marketing agreement and order would authorize mandatory regulations on the grade, size, maturity, container, and pack of seedless European cucumbers.

Proponents also contend that market research and development projects should be expected to improve the efficiency of production and distribution and increase the consumption of seedless European cucumbers. Funds to finance these projects and to cover administrative expenses will be derived from mandatory assessments levied on handlers who first handle such cucumbers.

This proposal has been widely discussed within the seedless European cucumber industry but has not yet received approval by the Secretary of Agriculture.

The hearing will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of seedless European cucumbers in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce.

(c) Determining the need for such a marketing agreement and order that would be implemented for seedless European cucumbers in the production area.

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the production area and on the public affected by such a program.

(e) Determining whether the proposal or an appropriate modification of it will tend to effectuate the declared policy of the Act.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an exparte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and are proposed by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture.

List of Subjects in 7 CFR Part 968

Marketing agreements and orders, Seedless European cucumbers grown in greenhouses.

The marketing agreement and order as proposed would add a new Part 968 to 7 CFR chapter IX to read as follows:

PART 968—SEEDLESS EUROPEAN CUCUMBER MARKETING AGREEMENT AND ORDER

Definitions

Sec.
968.1 Secretary.
968.2 Act.
968.3 Person.
968.4 Production area.
968.5 Cucumbers.
968.6 Varieties.
968.7 Producer
968.8 Handler.
968.9 Handle.
968.10 Committee.
968.11 Fiscal period.
968.12 District.
968.13 Container.
968.14 Pack.
968.15 Part and subpart.

Administrative Body

968.20 Establishment and membership.
968.21 Term of office.
968.22 Nomination.
968.23 Qualifications.
968.24 Selection.
968.25 Failure to nominate.
968.26 Alternate members.
968.27 Vacancies.
968.28 Powers.
968.29 Duties.
968.30 Procedure.
968.31 Expenses and compensation.
968.32 Annual report.

Expenses and Assessments

968.40 Expenses.
968.41 Assessments.
968.42 Deliquent assessments.
968.43 Accounting.

Research and Development

968.50 Research and development.

Regulations

968.60 Marketing policy.
968.61 Recommendations for regulation.
968.62 Issuance of regulations.
968.63 Modification, suspension, or termination of regulations.
968.64 Special purpose shipments.
968.65 Inspection and certification.
968.66 Minimum quantities.

Reports

968.70 Reports and records.

Miscellaneous Provisions

968.80 Compliance.
968.81 Patents, copyrights, inventions, trademarks, and publications.
968.82 Right of the Secretary.
968.83 Termination.
968.84 Proceeding after termination.
968.85 Effect of termination or amendment.
968.86 Duration of immunities.
968.87 Agents.
968.88 Derogation.
968.89 Personal liability.
968.90 Separability.
968.91 Amendments.

Marketing Agreement

968.97 Counterparts.
968.98 Additional parties.
968.99 Order with marketing agreement.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Definitions

§ 968.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture to whom has been delegated, or to whom may hereinafter be delegated the authority to act for the Secretary.

§ 968.2 Act.

"Act" means Public Act No. 10, 73rd Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 968.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 968.4 Production area.

"Production area" means the fifty states of the United States of America and the District of Columbia.

§ 968.5 Cucumbers.

"Cucumbers" means predominately gynoecious cultivars of *Cucumis sativus L.*, also known as seedless European cucumbers, European cucumbers, English cucumbers, hothouse seedless cucumbers, or greenhouse seedless cucumbers, grown in greenhouses and hereafter referred to in this subpart as cucumbers.

§ 968.6 Varieties.

"Varieties" means and includes all classfications of cucumbers, as defined in § 968.5, according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture, or the committee with the approval of the Secretary.

§ 968.7 Producer.

"Producer" is synonymous with the term "grower" and means any person engaged in a proprietary capacity in the production of cucumbers grown in a greenhouse exceeding 2500 square feet of climate controlled, weather protected growing areas devoted to cucumber production.

§ 968.8 Handler.

"Handler" is synonymous with the term "shipper" and means any person (except a common or contract carrier transporting cucumbers owned by another person) who handles cucumbers.

§ 968.9 Handle.

"Handle" is synonymous with the term "ship" and means to sell, consign, deliver, or transport cucumbers; or to cause cucumbers to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided*, That the term handle shall not include the transportation within the production area of cucumbers from the greenhouse where grown to a handling facility located within such area for preparation for market.

§ 968.10 Committee.

"Committee" means the Cucumber Administrative Committee established pursuant to § 968.20 of this subpart.

§ 968.11 Fiscal period.

"Fiscal period" is synonymous with the term "fiscal year" and means a 12-month period beginning on January 1 and ending on the last day of December of the same year, or such other period as the committee, with the approval of the Secretary, may prescribe: *Provided*, That the initial fiscal period shall begin on the effective date of this subpart.

§ 968.12 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 968.29(n) of this subpart.

(a) District 1 shall include the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington.

(b) District 2 shall include the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota,

Oklahoma, South Dakota, Texas, and Wyoming.

(c) District 3 shall include the States of Connecticut, Delaware Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin, and the District of Columbia.

(d) District 4 shall include the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

§ 968.13 Container.

"Container" means any type of receptacle used in the packaging or handling of cucumbers.

§ 968.14 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of cucumbers in a particular type and size of container, or any combination thereof.

§ 968.15 Part and subpart.

"Part" means the Order Regulating the Handling of Seedless European Cucumbers Grown in Greenhouses and all rules, regulations, and supplementary orders issued thereunder. The aforesaid Order Regulating the Handling of Seedless European Cucumbers Grown in Greenhouses shall be a "subpart" of such "part."

Administrative Body

§ 968.20 Establishment and membership.

(a) There is hereby established a Cucumber Administrative Committee consisting of eleven members. For each member, there shall be an alternate member who shall have the same qualifications as the member for whom such person is alternate. Seven of the members and their respective alternates shall be producers, or officers or employees of producers. Three of the members and their respective alternates shall be handlers, or officers or employees of such handlers. One member of the committee shall be a public member with an alternate, who shall be nominated by the committee and selected by the Secretary.

(b) The producer members shall initially be appointed as follows: two producer members and respective alternatives shall be from District 1; one producer member and respective alternate shall be from District 2; two producer members and respective alternates shall be from District 3; two producer members and respective alternates shall be from District 4.

(c) No producer shall be permitted to have more than one member on the committee. The three handler members and their respective alternates shall be selected from the production area at large. No handler shall be permitted to have more than one handler member on the committee.

§ 968.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three years and shall begin as of January 1 and end the last day of December, three years hence, or for such other three year period as the committee may recommend and the Secretary approve. The eleven selected members of the initial committee shall begin their term of office immediately after they are appointed by the Secretary.

(b) The terms of office shall be so staggered so that approximately one-third of the total committee shall terminate membership each year. The initial terms of office will be determined by lot at the first full meeting of the initial committee: With three members serving one year initial terms, three members serving two year initial terms, and four members serving three year initial terms. The initial public member shall serve a two year term. Members and alternates shall serve in such capacity for the portion of the term of office for which they are selected and have qualified, and until their respective successors are selected and have qualified.

(c) The consecutive terms of office of members shall be limited to two terms, except for those three initial members who by lot shall serve for one year and who shall be eligible for renomination for two full terms at the end of their initial one year term. Any member serving on the committee will not be eligible for renomination to the committee for a period of one (1) year after the second consecutive term of office. Alternates to the committee will be eligible for renomination at the end of their respective terms.

§ 968.22 Nomination.

(a) Initial Members. Nominations for each of the initial producer and handler member positions, together with nominations for the initial alternate members for each position, shall be submitted to the Secretary for selection as soon as practicable after the effective date of this subpart. A nomination for the public member position, together with a nomination for the alternate public member position, shall be made by the Committee at its first meeting and submitted to the Secretary. Nominations for producer and handler members and alternates shall be made by means of group meetings of the producers and handlers concerned in each district in accordance with paragraphs (b)(2) and (3) of this section.

(b) *Successor Members.* (1) The committee shall hold or cause to be held a meeting or meetings of producers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee: *Provided,* That the committee may conduct nominations of producers and handlers by mail in a manner recommended by the committee and approved by the Secretary. One nominee shall be submitted for each member position on the committee and one nominee for each alternate member position. Such nominations shall be submitted to the Secretary by the committee not later than October 15 of each year, or such other date as may be approved by the Secretary. The committee shall prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nominations.

(2) Only producers may participate in the nominations and election of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote for each nominee to be elected in the district in which such producer produces cucumbers. No producer shall participate in the election of nominees in more than one district in any one fiscal year.

(3) Only handlers, including a duly authorized officer or employee of handlers, may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each handler nominee.

(4) The Committee members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office.

§ 968.23 Qualifications.

Any person prior to or within 15 days after selection as a member or as an alternate for a member of the Cucumber Administrative Committee shall qualify by filing with the Secretry a written acceptance of the person's willingness to serve.

§ 968.24 Selection.

From the nominations made pursuant to § 968.22 of this subpart, or from other qualified persons, the Secretary shall

select the 11 members of the committee and an alternate for each such member.

§ 968.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 968.22 of this subpart, the Secretary may, without regard to nominations select the members and alternate members of the committee on the basis of the representation provided for in § 968.20 of this subpart.

§ 968.26 Alternate members.

An alternate for a member shall act in the place of such member (a) in the member's absence, or (b) when designated to do so by such member. In the event both a member and respective alternate are unable to attend a committee meeting, the member, alternate, the committee, in that order may designate another alternate from the same district and the same group (handler or producer) to act in the place of such member. In the event of the member's death, removal, resignation, or disqualification, the respective alternate shall act for the member until a successor for the member's unexpired term is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 968.27 Vacancies.

To fill any vacancy occasioned by the failure of any member of alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to fill the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in § 968.22 and § 968.24 of this subpart.

§ 968.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make and adopt rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 968.29 Duties.

The committee shall have, among others, the following duties:

(a) To select, from among its membership, such officers as may be necessary, and to define the duties of such officers, and to adopt such rules or by-laws for the conduct of its meetings as it deems necessary;

(b) To appoint such employees and agents, as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To appoint such subcommittees and consultants as it may deem necessary;

(d) To submit to the Secretary, at least 90 days prior to the beginning of each new fiscal period, a budget for such fiscal period, including a report and explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the office of the committee;

(g) To cause its books to be audited by a certified public accountant at least once each fiscal year, or at such times as the Secretary may request; and to submit copies of each audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(h) To act as intermediary between the Secretary and any producer or handler;

(i) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cucumbers;

(j) To investigate compliance with the provisions of this part;

(k) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations and of all regulatory actions taken;

(l) To submit to the Secretary such available information as may be requested or that the committee may deem desirable and pertinent;

(m) So submit to the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members; and

(n) At least once every five years, to consider realignment of the districts into which the production area is divided and, with the approval of the Secretary, to reapportion the representation of any district on the committee based upon cucumber production: *Provided,* That such changes shall reflect, insofar as practicable, shifts in cucumber production within the districts and the production area; and that such production data is based upon USDA reports, other certified production reports or data compiled by the committee from reports submitted by handlers under this order.

§ 968.30 Procedure.

(a) At an assembled meeting, all votes shall be cast in person and six members of the committee shall constitute a quorum. Decisions of the committee shall require the concurring vote of at least six members.

(b) The committee may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That each proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing. Seven concurring votes shall be required for approval of a Committee action by such method.

§ 968.31 Expenses and compensation.

Members of the committee, their alternatives, subcommittee members including any special subcommittees, shall serve without compensation but shall receive such reimbursement for necessary expenses, incurred in performing their duties, as may be approved by the committee.

§ 968.32 Annual report.

The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each producer and handler who requests a copy of the report.

Expenses and Assessments

§ 968.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 968.41, and from such other funds which may accrue to the committee.

§ 968.41 Assessments.

(a) Requirements for Payment. Each person who first handles cucumbers shall pay to the committee, upon demand, the handler's pro rata share of the expenses authorized by the Secretary for each fiscal year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary multiplied by the quantity of cucumbers which the handler handles as the handler thereof. The payment of

assessments for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to this subpart, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) Rate of Assessment. The Secretary shall fix the rate of assessment to be paid by each handler. At any time during or after the fiscal year, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be applied to all cucumbers handled during the appliable fiscal year. In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the committee may accept advance assessments and may also borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the fiscal year.

§ 968.42 Delinquent assessments.

Each handler shall pay late payment charges and interest of an amount recommended by the committee and approved by the Secretary on any unpaid assessment balance beginning 30 days after date of billing. Such interest charge is to apply to any unpaid assessments which become due the committee.

§ 968.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to the handler: *Provided,* That any sum paid by a person in excess of the handler's pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess funds into subsequent fiscal periods as an operating monetary reserve: *Provided,* That funds already in the reserve do not equal approximately three (3) fiscal periods' operational expenses or such lower limits as the committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to § 968.40.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds will be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to any provisions of this subpart shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds, together with all books and records in such member's possession, to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research and Development

§ 968.50 Research and development.

(a) The committee may, with the approval of the Secretary, establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the production, marketing, distribution, and consumption of cucumbers. In a similar manner any such project may be modified, suspended, or terminated. The expenses of such projects shall be paid from funds collected pursuant to § 968.41 or from voluntary contributions. Voluntary contributions may be accepted by the committee only to pay the expenses of such projects: *Provided,* That the committee shall retain complete control over the use of such contributions which shall be free from any encumbrances.

(b) In recommending marketing research and development projects pursuant to this section, the committee shall give consideration to the following factors:

(1) The expected supply of cucumbers in relation to market requirements;

(2) The supply situation among competing areas and commodities; and

(3) The need for production or marketing research with respect to any production or marketing development activity.

(c) In recommending production research projects pursuant to this section, the committee shall give consideration to the extent and need for assistance to, and improvement of, cucumber production.

(d) If the committee should conclude that a program of production or marketing research or development should be undertaken or continued pursuant to this section in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to funds to be obtained pursuant to § 968.41 or voluntary contributions;

(2) Its recommendations as to any production research or marketing research projects;

(3) Its recommendations as to promotion activity; and

(4) Any other information requested by the Secretary.

Regulations

§ 968.60 Marketing policy.

Each fiscal period prior to making any recommendations pursuant to § 968.61, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(a) The estimated total production of cucumbers within the production area;

(b) The expected general quality and size of cucumbers in the production area and in other areas;

(c) The expected demand conditions for cucumbers in different market outlets;

(d) The expected shipments of cucumbers produced in the production area and in areas outside the production area;

(e) Supplies of competing commodities;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of cucumbers; and

(h) The type of regulations expected to be recommended during the marketing season.

§ 968.61 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulated the handling of cucumbers in the manner provided in § 968.62, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information including but no limited to the factors affecting the supply and demand for cucumbers during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request, including the following: (1) A clear definition of the problem; (2) the conditions that led to the problem; (3) how the recommendation will address or correct the problem; (4) whether there are viable alternatives to address the problem; (5) what the expected results of the regulation would be; and (6) an assessment of impact on small business.

§ 968.62 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cucumbers whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period of periods, the handling of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of cucumbers grown in the production area.

(2) Limit the handling of cucumbers by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level.

(3) Fix the size, capacity, weight, materials, dimensions, markings, or pack of the container, or containers, or coverings which may be used in the packaging or handling of cucumbers.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ 968.63 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 968.62 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulations should be modified, suspended, or terminated with respect to any or all shipments of cucumbers in order to effectuate the declared policy of the act, the Security shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension.

§ 968.64 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of § 968.41, § 968.62, § 968.63, and § 968.65, and the regulations issued thereunder, handle cucumbers:

(1) For consumption by charitable institutions,

(2) For distribution by relief agencies, or

(3) For commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may modify or relieve from any or all requirements, under or established pursuant to § 968.41, § 968.62, § 968.63, or § 968.65, the handling of cucumbers:

(1) To designated market areas;

(2) For such specified purposes as, but not limited to:

(i) Sales or deliveries of cucumbers by a producer to a handler within the area;

(ii) Sales by the producer to the final consumer and not for resale;

(iii) Sales by the producer to food service establishments;

(iv) Packaging cucumbers for others;

(v) receips, sales, or shipments of cucumbers already handled by another person; and

(vi) Shipments for research and development projects, as may be designated by the committee, with the approval of the Secretary; or,

(3) In such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules and regulations as it may deem necessary to prevent cucumbers handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules and regulations may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cucumbers pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the cucumbers will not be used for any purpose not authorized by this section.

§ 968.65 Inspection and certification.

(a) Whenever the handling of any variety of cucumbers is regulated pursuant to § 968.62 or § 968.63 each handler who handles cucumbers shall, prior thereto, cause such cucumbers to be inspected by the Federal or Federal-State inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,* that inspection and certification shall not be required for cucumbers which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such cucumbers. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* that all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

§ 968.66 Minimum quantities.

The committee, with the approval of the Secretary, may establish, minimum quantities below which handling will be free from regulations issued or effective pursuant to §§ 968.41, 968.62, 968.64, 968.65, or any combination thereof.

Reports

§ 968.70 Reports and records.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, with the approval of the Secretary, certified reports covering, to the extent necessary for the committee to perform

its functions, each shipment of cucumbers as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, size and grade of the cucumbers;

(6) The destination; and

(7) Identification of the inspection certificate or waiver pursuant to which the cucumbers were handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the cucumber received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information, is not disclosed but may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions.

§ 968.80 Compliance.

(a) Except as otherwise specifically provided in this part, no handler shall ship cucumbers, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part, and no handler shall ship cucumbers except in conformity with the provisions of this part.

(b) For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any cucumbers held by such handler, and any and all records of the handler with respect to the handler's acquisition, sales, uses and shipments of cucumbers. Each handler shall furnish all labor and equipment necessary to make such inspections.

§ 968.81 Patents, copyrights, inventions, trademarks, and publications.

(a) Any patents, plant materials, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the committee.

(b) Funds generated by such patents, plant materials, copyrights, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the committee.

(c) Upon termination of this subpart, the committee shall transfer custody of all patents, plant materials, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided in § 968.84 of this subpart.

§ 968.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any employees or agents thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 968.83 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c)(1) The Secretary shall terminate, in accordance with sectioin 8(c)(16)B of the Act, the provisions of this order at the end of any fiscal period in which the Secretary is favored by a majority of the producers, who during a representative period as determined by the Secretary, have been engaged in the production of cucumbers for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such cucumbers produced for market, and that such termination shall be effective only if announced on or before the beginning of the ensuing fiscal period.

(2) The Secretary shall conduct a continuance referendum every fifth fiscal period with the first such referendum to be conducted within five years from the effective date of this section, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of cucumbers in the production area. Such termination of the order shall be effective only if announced on or before the end of the then current fiscal period.

(d) The provisions of this order shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 968.84 Proceeding after termination.

(a) Upon the termination of the provisions of this part, the committee members shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary,

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee on the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same

obligation imposed upon the committee and upon the trustees.

§ 968.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 968.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 968.87 Agents.

The Secretary may, be designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 968.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary of the United States (a) to exercise any powers granted by the act of otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 968.89 Personal liability.

No member on alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 968.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 968.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

§ 968.97 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 968.98 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 968.99 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of cucumbers in the same manner as is provided for in the agreement.

Dated: June 22, 1988.

J. Patrick Boyle,

Administrator

[FR Doc. 88-14372 Filed 6-24-88; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

Revision of Fee Schedules

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations by revising its fee schedules in 10 CFR Parts 170 and 171. This revision is necessary both to update the current fees and to implement the most recent fee legislation enacted by the Congress. The proposed amendments would: (1) Remove the 10 CFR Part 170 fee ceilings for application reviews and inspections for power reactors; fuel cycle facilities, transportaton cask packages and shipping containers; (2) revise the hourly rate for NRC professional time spent providing various regulatory services and provide for an annual adjustment; (3) revise upward the ceiling on annual fees assessed pursuant to 10 CFR Part 171; (4) include, when appropriate, reimbursements from the Department of Energy Nuclear Waste Fund; (5) charge for each routine and nonroutine inspection conducted by the NRC, (6) remove the application fee and defer payment of costs for standardized reactor design reviews and certifications until a standardized design is referenced, and (7) remove amendment application filing fees for power reactors and reactor related (topical) reports. The proposed changes listed above will result in those applicants and licensees requiring the greatest expenditure of NRC resources paying the greatest fees. All applicants and licensees currently subject to fee collections would be affected by the proposed rule in 10 CFR Parts 170 and 171.

DATES: The comment perod expires July 27, 1988. 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. Because of the need to implement the legislation promptly, requests for extension of time will not be granted.

ADDRESSES: Submit written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. (Telephone (301) 492-1966)

Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Hiller, Assistant Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7351.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 5601 of the Omnibus Budget Reconciliation Act of 1987, signed into law on December 22, 1987 (Pub. L. 100-

203), amended section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272), which requires the Nuclear Regulatory Commission (NRC) to collect annual charges from its licensees. The amendment, in pertinent part, requires the Commission to collect under 10 CFR Parts 170 and 171, as well as under other provisions of law, not less than 45 percent of its costs for each of Fiscal Years 1988 and 1989.

Part 170 implements Tite V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). The fees charged under Part 170 recover the costs to the NRC of providing individually identifiable services to applicants for and holders of NRC licenses and approvals. The fee schedules under Part 170 were last revised on May 21, 1984 (49 FR 21293), based on cost and manpower data from FY 81.

Part 171 implements COBRA by charging an annual fee to NRC power reactor licensees (51 FR 33224; September 18, 1986). NRC's Part 171 fee schedule was recently upheld by the courts. Florida Power and Light vs. United States No. 86–1512 (D.C. Cir. May 13, 1988). The annual fee recovers NRC costs incurred in providing generic regulatory services to these licensees. Section 7601, prior to its amendment, limited NRC recovery of its costs under Parts 170 and 171, and other provisions of law to 33 percent of its budget. As amended, section 7601 of COBRA, in pertinent part, now provides that:

> The Nuclear Regulatory Commission shall assess and collect annual charges from its licensees on a fiscal year basis, except that—
>
> (A) the maximum amount of the aggregate charges assessed pursuant to this paragraph in any fiscal year may not exceed an amount that, when added to other amounts collected by the Commission for such fiscal year under other provisions of law, is estimated to be equal to 33 percent of the costs incurred by the Commission with respect to such fiscal year, except that for fiscal years 1988 and 1989, such percentage shall be increased an additional 6 percent of such costs plus all other assessments made by NRC pursuant to House Joint Resolution 395, 100th Congress, 1st Session, as enacted; but in no event shall such percentage be less than a total of 45 percent of such costs in each such fiscal year.

The requirement under section 7601 that such charges be reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing this service is unaffected by the recent amendments.

II. Analysis of Legislation

Section 5601 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, Dec. 22, 1987), read literally, makes the following points:

1. The previous limitation under COBRA of 33 percent on collections by the NRC for regulatory services is raised to at least 39 percent (33%+6%).

2. Added to the 39 percent are all other assessments made by the NRC pursuant to House Joint Resolution 395, as enacted (Pub. L. 100–202, Dec. 22, 1987).

3. However, in any event the NRC must collect no less than 45 percent of its costs in each of fiscal years 1988 and 1989.

The first point is clear and builds on Parts 170 and 171, as currently applied by the NRC to its applicants and licensees. However, the second point is ambiguous because of its reference to "other assessments." Two categories of moneys received by the NRC are addressed in Resolution 395. The first category includes "moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs including criminal history checks under section 149 of the Atomic Energy Act, as amended." The second category includes "revenues from licensing fees, inspection services, and other services and collections" estimated at one-half the NRC's FY 1988 appropriation of $392,800,000.

Usually, the term "assessment" refers to a tax, fee or other charge on something or for some service. The Commission believes that the moneys collected as a result of contractual arrangements entered pursuant to the cooperative nuclear safety research program should not be construed as "assessments", as that term is normally used. Similarly, payment for services rendered to foreign governments and international organizations should not be considered "assessments" due to the cooperative nature of these endeavors. Thus, of the items included in the first category, only moneys collected under the material and information access authorization programs could possibly be considered assessments. Those amounts are estimated to be $3 million for FY 1988, with no significant increase expected in FY 1989. However, it is apparent that under the terms of H.J. Resolution 395, neither these collections nor collections for cooperative research program and services to foreign governments were to be considered fees. These moneys are expressly *excluded* from the user fee collections that are to be applied under H.J. Resolution 395 as an offset to the full appropriation for the NRC. Thus, the Commission believes that it was not the intent of the Congress to include those collections, expressly referenced as excludable in H.J. Resolution 395, in the calculation of moneys to be collected pursuant to section 5601 for the purpose of offsetting one-half of its fiscal appropriation. Accordingly, these moneys, approximately $7 million total, will not be included within the 45 percent target on NRC collections.

With regard to the phrase "in no event shall such percentage (total charges collected) be less than a total of 45 percent of such costs in each such fiscal year." Read alone, this phrase could be read to mean that the NRC must collect at least 45 percent of its budget and may collect significantly more than that amount. However, when read in the context of all of section 7601, the Commission believes that the intent of Congress was to raise the overall percentage of fees collected a minimum of 6 percent but, if other collections (Part 170, etc.) did not result in collecting 45 percent of the NRC budget, then the annual charge should be raised so that a total of no less than 45 percent of NRC costs is recovered. Although the 33 percent level was a ceiling under section 7601 prior to amendment of the section, the Commission notes that the statute, as indicated above, requires collection of no less than 45 percent for fiscal years 1988 and 1989. The 45 percent does not represent a ceiling. The best reading of the statute is that Congress intended collections to be not less than 45 percent of the NRC budget. Accordingly, actual collections will approximate but be at least 45 percent of the Commission's budget. Consistent with the view that collections may exceed 45 percent, the current § 171.21, which provides for refunds if the statutory ceiling is exceeded, is no longer necessary. Therefore, we propose to delete this section.

The issue remains as to whether the requirement to increase charges so as to collect 45 percent of the NRC budget, should be applied to all of FY 1988. The enacted legislation addresses recovery of NRC costs for both fiscal years 1988 and 1989. The Commission concludes that it is the intent of Congress that the Commission recover 45 percent of its costs for both years, which leads to the result that the revised annual charge (Part 171) will be applicable to all of FY 1988. Consistent with past practices, the changes to Part 170 (increased fees) will apply from the effective date of the final rule.

III. Proposed Action

The Commission proposes to amend 10 CFR Parts 170 and 171 in a way that

will accomplish recovery of approximately, but not less than 45 percent of its costs for fiscal years 1988 and 1989, respectively. This objective will be met by:

1. Changing the hourly rate under Part 170 to reflect current fiscal costs and providing for an annual adjustments;

2. Removing the ceilings on certain collections made pursuant to Part 170;

3. Charging for each routine and nonroutine inspection conducted;

4. Raising, when necessary, the annual fee assessed pursuant to Part 171. Additionally the Part 171 fees to licensees will be based upon the principal that licensees which require the greatest expenditure of NRC resources, shall pay the greatest fee.

5. Including moneys recovered from the Nuclear Waste Fund, as managed by the Department of Energy pursuant to the Nuclear Waste Policy Act, as amended, for costs incurred by the NRC associated with licensing a high-level waste repository.

6. Removing the application fee and deferring payment of costs for standardized reactor design review and certification for up to 10 years.

7. Removing amendment application fees for power reactors and reactor related (topical) reports.

The Commission is proposing to remove many of the current ceilings on the collection of fees. It should be noted that the ceilings under the current rule were established by the Commission at the request of the regulated industry as a means of assigning predictability as to what the final costs of a regulatory service would be. Since the effective date of the rule in 1984 and as a direct result of these ceilings, we estimate that over the years the NRC has not collected $23 million in fees for regulatory services provided to some applicants/licensees.

Additionally, the Commission strongly supports the concept that those requiring the greatest expenditure of NRC resources should pay the greatest fees. This is the rationale for the Commission's proposal to remove some fee ceilings. The lifting of ceilings will not result in unnecessary NRC resources being devoted to a given task. The NRC has an increasingly limited budget and therefore cannot afford to use its limited resources unwisely if it is to successfully perform its mission. In order to provide our applicants and licensees an estimate of what NRC fees for performing services might be, we are providing in Appendices A and B a non-binding schedule of estimated fees which may be used for planning purposes in the absence of ceilings.

The Commission also seeks comment on a second option. Under this option, the Commission at this time would not adopt changes to Parts 170 or Part 171 other than to raise the annual fee so that the amount of fees collected by the Commission under 10 CFR 171.15 when added to fees that would be collected under Part 170 as currently codified, would approximate, but not be less than 45 percent of the NRC budget.

The agency work papers which support the proposed changes to 10 CFR Parts 170 and 171 are available in the Public Document Room, 1717 H Street NW., Washington, DC 20555.

The NRC will hold a public meeting on July 7 at 3:00 pm in Room 2F17 White Flint North, 11555 Rockville Pike, Rockville, Maryland to discuss the proposed changes and answer any questions.

IV. Section-by-Section Analysis

To accomplish these objectives, under Option 1, the Commission is proposing to revise certain sections of 10 CFR Parts 170 and 171. The following section-by-section analysis of those sections affected provides additional explanatory information. All references are to Title 10, Chapter I, Code of Federal Regulations.

Part 170

Section 170.12 Payment of fees.

Paragraphs (c), (d), (e), and (f) are changed to remove the $150 application fee for reactor license amendments and other approvals.

Within paragraph (e), Approval fees, the current reference to facility standard reference design approvals is changed to remove the application fee and to permit deferral of review and certification fees until the design is referenced, payable thereafter in 20 percent increments as the design is referenced. However, regardless of whether the design is referenced, the full costs will be recovered by the NRC from the holder of the design approval within 5 years from the date of a preliminary design approval (PDA)/final design approval (FDA). Upon request, the five-year period may be extended to 10 years from the date of the design certification. In the event the standardized design approval application is denied, withdrawn, suspended, or action on the application is postponed, fees will be collected when the review, to that point, is completed and the five (5) installment payment procedure will not apply.

Section 170.20 Average cost per professional staff-hour.

This section is modified to reflect an agency-wide professional staff-hour rate based on current fiscal costs to the Agency. The section is also modified to reflect that the hourly rate will be adjusted each fiscal year, with notice of the new rate published in the **Federal Register**. Accordingly, the proposed professional staff rate for the NRC for FY 1988 is $80 per hour, or $138.8 thousand per FTE (professional staff year). In each subsequent year, the hourly rate will be adjusted to reflect current cost per direct staff FTE. An analysis of the costs which generated this rate is provided in the Part 171 Section-by-Section analysis. The resultant hourly rate will be published in the **Federal Register** prior to the next fiscal year as a final rule.

Section 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

Within the schedule of fees, all services (other than most application filing fees) will be changed from the current specified cost to "Full cost." The schedule for Standard Reference Design Review is modified to reflect the amendment of § 170.12 addressed above.

With the removal of ceilings for certain services, the costs for those reviews for which a ceiling previously established has been reached will not be billed if prior to the effective date of this rule the review of the application is completed. For administrative reasons, where such review has not yet been completed, NRC will not seek to recover those costs which it incurred after current ceiling was reached and before a revised rule is enacted and becomes effective as a result of this rulemaking. Costs incurred after the effective date of a final rule resulting from this rulemaking will be billed. The professional staff-hours expended up to the effective date of this rule will be at the professional rates established for the June 20, 1984 rule. Any professional hours expended after the effective date of this rule will be assessed at the FY 1988 rates reflected in this proposed rule. (The same applies to the removal of ceilings under the proposed revisions of § 170.31 and 170.32 below.) The footnotes to this schedule also are modified to bring them into conformity with the proposed amendments to this schedule.

Section 170.31 Schedule of fees for materials licenses and other regulatory services.

Like § 170.21, this section is modified to reflect the removal of ceilings on certain categories of fees and to charge full costs for those services. Fees for each ensuing year will be published in the **Federal Register**, as in the case of § 170.20. Footnotes to the schedule that are affected by this action are revised to be consistent with this revision.

Section 170.32 Schedule of fees for health, safety, and safeguards inspections for materals licenses.

Fee ceilings for selected services are removed and the remaining fixed fees are retained since the ratio of NRC costs to fees collected is approximately equivalent to the percentage of the budget to be collected into the General Treasury. The schedule of fees for each ensuing year will be published as a final rule in the **Federal Register** for this schedule.

Footnote 3 is revised. Currently if the frequency of inspection, for example, for a category is 2 years and an inspection is next conducted 1 year and 11 months after the previous inspection, no fee is assessed. Often times inspections of different licensees are scheduled because of their close proximity. Such scheduling represents a more efficient use of resources. Accordingly, § 170.32 and footnote 3 are being revised to indicate that the fee will be assessed for each inspection conducted by the NRC. Other footnotes are revised as well to make them consistent with the revised schedule.

Part 171

In light of the above, the Commission is proposing to revise certain sections of 10 CFR Part 171. The following section-by-section analysis of those sections affected provides additional explanatory information. All references are to Title 10, Chapter I, Code of Federal Regulations.

Section 171.5 Definitons.

The following definitions are being added

The term "Budgeted obligations" is defined to be the projected obligations of the NRC that likely will result in payments by the NRC during the same or a future fiscal year to provide regulatory services to licensees. Budgeted obligations include, but are not limited to amounts of orders to be placed, contracts to be awarded, and services to be provided to licensees. Fees billed to licensees are based on budgeted obligations because the NRC's annual budget is prepared on an obligation basis.

The term "Overhead costs" is defined to include three components: (1) Government benefits for each employee such as leave and holidays, retirement and disability costs, health and life insurance costs, and social security costs; (2) travel costs; (3) direct overhead, e.g., supervision, program support staff, etc.; and (4) indirect costs, e.g., funding and staff for administrative support activities. Factors have been developed for these overhead costs which are applied to hourly rates developed for employees providing the regulatory services within the categories and activities applicable to specified types or classes of reactors. The Commission views these costs as being reasonably related to the regulatory services provided to the licensees and, therefore, within the meaning of section 7601, COBRA.

Section 171.13 Notice.

Under the current rule, one fee is applicable to all licensed reactors. Under the proposed revision, each reactor will be billed individually, based on those NRC activities from which it benefits as a type or within a class of reactors. Accordingly, annual fees are expected to be different for each of the various types or classes of reactor operating licenses. Each bill will reflect those specific activities applicable to each operating license as required by the revised § 171.15 discussed below. Prior to issuance of the bill, the annual fee for each applicable licensee will be published in the **Federal Register**.

Section 171.15 Annual Fee: Power reactor operating licenses.

Paragraph (c) is modified to reflect a target percentage of 45 percent rather than a maximum percentage of 33 percent. The formula used to calculate the annual fee is modified to reflect the inclusion of moneys expected to be collected from the Nuclear High Level Waste (HLW) Fund administered by the Department of Energy and the estimated collections under Part 170 for each fiscal year. Funds will be collected from the Nuclear HLW Fund beginning in FY 1989. The sum of these funds will be subtracted from the amount reflecting 45 percent of the NRC budget prior to determining the annual fee for each licensed power reactor.

In FY 1988, the Commission must recover 45 percent of its approved budget of $392,800,000. Applying the fee rates proposed herein, the NRC estimates that it will collect $36.5 million pursuant to Part 170 this fiscal year, but no money from the Nuclear Waste Fund in FY 1988. In accordance with the formula provided in § 171.15, for FY 1988: $177 million minus approximately $36.5 million for Part 170+$0 million for Nuclear Waste Fund) equals approximately $140.5 million to be recovered through annual fees. Since at least 45 percent is to be collected, the amount charged under Part 171 will also be dependent on the number of exemptions granted pursuant to § 171.11 and the number of new power reactor licenses issued during the fiscal year.

The following areas are those NRC programs which comprise the annual fee. They have been expressed in terms of the NRC's budget program elements and associated activities.

Program element	Activity
Reactor Performance Evaluation.	Generic Communications.
	Engineering/Safety Assessments.
Reactor Maintenance and Surveillance.	Maintenance and Surveillance.
License Performance Evaluation.	Quality Assurance.
License and Examine Reactor Operators.	Program Development and Assessment/ Regional Oversight.
	Generic Activities.
Region-Based Inspections.	Lab and Technical Support.
	Regional Assessment.
Specialized Inspections	Vendor Inspections.
Project Management	Project Management (only partly 171).
Regulatory Improvements.	Technical Specifications.
	Safety Goal Implementation.
	Inspection/Licensing Integration and Research and Standards Coordination.
Licensee Reactor Accident Management Evaluation.	Concept of Operations and Implementing Technical Procedures.
	Regional Assistance Committees.
Safeguards Licensing and Inspection.	Regulatory Effectiveness Reviews.
Reactor Vessel and Piping Integrity.	Pressure Vessel Safety.
	Piping Integrity.
	Inspection Procedures and Techniques.
Aging of Reactor Components.	Aging Research.
	Chemical Effects.
Reactor Equipment Qualification.	Equipment Qualification Methods.
Seismic and Fire Protection Research.	Earth Sciences.
	Component Response to Earthquakes.
	Validation of Seismic Analysis.
	Seismic Design Margin Methods.

Program element	Activity
Plant Performance	MIST.
	2D73D.
	ROSA IV and Other Foreign Experiments.
	Continuing Experimental Capability.
	Once-Through Steam Generator (B&W).
	Basic Studies.
	Development and Assessment of Codes.
	Code Uncertainty.
	Technical Support Center.
Human Performance	Human Factors Research.
	Human Error Data Collection and Analysis.
Reliability of Reactor Systems.	Performance Indicators.
	Plant and Systems Risk and Reliability.
	Dependent Failure Analysis.
	External Event Safety Margins.
Radionuclide Source Terms.	Fission Product Behavior and Chemical Form.
	Natural Circulation in the Reactor Coolant System.
Reactor Containment	Structural Tests.
	Core Melt Progression and Hydrogen Generation.
	Core/Concrete Interactions.
	Direct Containment Heating.
	Steam Explosions.
	Code Models Validation and Analyses.
	Hydrogen Transport and Combustion.
Reactor Accident Risk Analysis.	Severe Accident Management.
	Risk Model Development.
	Risk Uncertainty Methodology.
	Risk Rebaseline Analyses.
	Risk-Based Management Methodology.
Severe Accident Program Implementation.	Severe Accident Policy Implementation.
	Regulatory Application of New Source Terms.
Radiation Protection and Health Effects.	Reduce Uncertainty in Health Risk Estimates.
	Health Physics Technology Improvements.
	Dose Reduction.
Generic and Unresolved Safety Issues.	Engineering Issues.
	Reactor System Issues.
	Human Factors Issues.
	Severe Accident Issues.
	Management of Safety Issue Resolution.
Developing and Improving Regulations.	Develop or Modify Regulations.
	Independent Review and Control of Rulemaking.
	Regulatory Analysis.
	Safety Goal Implementation.
	Decommissioning.
	RES Grants.
	RES Small Business Innovative Research.
Performance Indicators	Manage Performance Indicator Program.
Diagnostic Evaluations	Conduct Diagnostic Evaluations of Licensee Performance.
Incident Investigation	Management Incident Investigation Program.
NRC Incident Response	Emergency Response Data System.
	Develop and Maintain Response Center Equipment, Procedures and Analytical Tools.
	Program Coordination and Development.
	Operations Officers.
Technical Training Center.	PWR/BWR Technology Training.
Operational Data Analysis.	Analysis of Operational Experience.
	Analysis of Operational Trends and Patterns.
Operational Data Collection and Dissemination.	Collect, Screen and Feed Back Operational Data.
	Operational and Reliability Data Systems.

Each of these activities is related to providing services to operating nuclear power plants. NRC's efforts in each of these areas contribute to the licensees' continued safe operation of their facilities and therefore are of benefit to them. A broader description of these programs is contained in the NRC's annual budget submission to Congress. See NUREG-1100, Volume 4, "Budget Estimates Fiscal Year 1989" (February 1988). While these activities also provide benefits to the public, because they benefit our licensees, these are not "independent public benefits" as that term is used in user fee case law. Accordingly, it is legally permissible to charge licensees for these services.

Paragraph (c) is being revised to reflect that the basis for each annual fee will be the budgeted obligations for activities (regulatory services) applicable to each nuclear power reactor as one of a type or class of reactors, e.g., boiling water reactors or pressurized water reactors. Using this approach, the Commission will, each year, establish the budgeted obligations (including overhead costs) for each activity on a per reactor unit basis, and establish the total costs for those regulatory services provided to each reactor licensed to operate. NRC labor costs attributable to these activities will be determined using the hourly rates established on the basis of an analysis of direct and indirect (overhead as defined herein) staffing costs attributable to the regulatory services provided. Each revision of these hourly rates will be available for public inspection at the time the annual fee is published. Each activity applicable to a licensed power reactor will be indicated on the bill issued to the licensed reactor for the next fiscal year's annual fee. Prior to the issuance of the bill, the annual fee for each applicable licensee will be published in the **Federal Register**.

Paragraphs (d) and (e) of the current rule are being deleted as superfluous to the proposed approach to annual fees.

Supplemental Analysis on Annual Fee Determination Under § 171.15

Under current legislation the NRC is to collect, and deposit to the General Fund of the Treasury, an amount to approximate but not be less than 45 percent of its budget. In fiscal year 1988 the President's budget for the NRC is $392.8 million. Thus, in FY 1988 the NRC should collect at least $177 million. In FY 1988, it is estimated that approximately $36.5 million will be collected from specific licensees under Part 170, but no money collected from the Department of Energy High-Level Waste Fund. Thus, the remaining funds, approximately $140.5 million ($177 million less $36.5 million), will have to be collected under Part 171. A multiplier will be used such that the amount to be collected will be equal to Part 170 collections, plus High-Level Waste Fund collections, plus Part 171 potential collections multiplied by a factor "M," which in future years, will probably be less than one.

For FY 1988

Total amount to be collected = Part 170 collections + High-Level-Waste Fund Collections + (M × Part 171 potential collections)

$177 million = $36.5 million + $0 million + (M × $140.5 million)

M = 1.0

The following analysis supports a potential Part 171 fee schedule which could total about $140.5 million. In identifying the universe of plants/licensees for each program the following categories of program beneficiaries were identified:

1. All commercial nuclear power reactors (with OL's)—110 plants.
2. All commercial nuclear power reactors East of the Rockies—98 plants.
3. All General Electric (GE) nuclear power reactors (BWR's)—36 plants.
4. All Combustion Engineering (CE) nuclear power reactors—14 plants.
5. All Westinghous nuclear power reactors—49 plants.
6. All Babcock & Wilcox (B&W) nuclear power rectors—10 plants.

In these instances the costs to NRC for these programs should be paid for on a prorata basis, by all plants included in the above specified categories. By adding the program support costs to the NRC staff cost for each category of effort and prorating these costs over the population (plants) of that category, a fee is established which requires those licensees who require the greatest expenditure of NRC resources to pay the largest annual fee. The following documentation identifies how the NRC determined the cost of a direct staff Full-Time Equivalent employee (FTE) and how it allocated, based upon the fiscal year 1988 budget, staff and program support costs to each category of plant/licensee.

For fiscal year 1988, the budgeted obligations by direct program are: (1) Salaries and Benefits, $182.9 million; (2) Administrative Support, $62.02 million; (3) Travel, $10.45 million; and (4) Program Support, $137.43 million. In fiscal year 1988 1,674.2 FTEs are considered to be in direct support of NRC programs applicable to fees (See Table I about 369.6 FTEs are utilized in efforts associated with Part 171, with the remainder being utilized in efforts associated with Part 170, or to be recovered from the DOE Nuclear Waste Fund or other efforts). Of the total 3,250 FTEs; 1,575.8 FTEs (3250–1674.2) will be considered administrative, overhead (supervisory and support) or exempted (due to their program function). Of the 1575.8 FTEs, a total of 292 FTEs and the resulting $22.98 million in support are exempted from the fee base due to the nature of their functions (i.e., enforcement activities and other NRC functions currently exempted by Commission policy).

In determining the cost for each direct labor FTE (an FTE whose position/function is such that it can be identified to a specific licensee or class of licensees) whose function, in the NRC's judgment, is necessary to the regulatory process, the following rationale is used:

1. All such direct FTEs are identified by office.

2. NRC plans, budgets, and controls on the following four major categories (see Table II):

a. Salaries and Benefits
b. Administrative Support
c. Travel
d. Program Support

3. Program Support, the use of contract or other services for which the NRC pays for support from outside the Commission, is charged to various categories as used.

4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Although this method differs from previous methods for recovery of costs, it is equally accurate because it allocates all "in-house" resource requirements over the universe of direct FTEs (those staff members who would be billed to licensees based upon work performed either directly for a specific licensee or a specific group of licensees).

Using this approach, and excluding budgeted Program Support obligations, the remaining $232.4 million allocated uniformly to the direct FTEs (1,674.2) results in a calculation of $138.8 thousand per FTE for FY 1988.

TABLE 1.—ALLOCATION OF DIRECT FTES BY OFFICE

Office	Number of direct FTE's [1]
NRR	1045.0
Research	162.7
NMSS	294.3
AEOD	92.0
ASLAP	5.2
ASLBP	17.0
ACRS	25.0
OGC	33.0
	1674.2

[1] Regional employees are counted in the office of the program each supports.

TABLE II—FY 1988 BUDGET BY MAJOR CATEGORY

[Dollars in millions]

Salaries and Benefits	182.90
Administrative Support	62.02
Travel	10.45
Total Non-Program Support Obligations	255.37
Program Support	137.43
Total Budget	392.80

The Direct FTE Productive Hourly Rate ($80/hour) is calculated by dividing the annual non program support costs ($255.4 million) less the amount applicable to exempted functions ($22.98 million) by the product of the direct FTE (1,674.3 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commerical Activities."

Since Part 171 is designed to collect fees for NRC efforts of a generic or multi-license nature concerning licensees with power reactor operating licenses, the most feasible method to accomplish this is to develop fees based on NRC budgeted obligations for each NRC generic or multi-licensee program concerning plants with operating licenses. Additionally, since many of the research programs expend effort for specific types of reactors (i.e., Westinghouse, CE, B&W, and GE) or plants in a specific geographic location (e.g., reactors east of the Rockies); these parameters were also used in refining NRC cost by reactor/operating license. Table III presents a summary of Part 171 fees, by reactor category, using the current fiscal year 1988 budget for Program Support costs and FTE's.

As can be seen from Table III, a reactor which is a B&W reactor, east of the Rockies, would have a fee imposed which is higher than the fee imposed on a Westinghouse reactor west of the Rockies (i.e., $1,154 thousand + $342 thousand + $38 thousand = $1,534 thousand versus $1,154 thousand + $42 thousand = $1,196 thousand). This example also represents the normal range of fee to be charged under Part 171 of $1,196 thousand to $1,534 thousand. The attachment following this analysis provides a detailed presentation of the budgeted obligations by budget program element and activity.

TABLE III.—PART 171 FEES BY REACTOR CATEGORY—SUMMARY

[Dollars in thousands]

Reactor category	No. of reactors	Program support (dollars)	FTE	Total dollars	Per reactor fee
All Reactors	110	$77,118	359.2	$126,975	$1,154
Research		66,811	118.0	83,189	
NRR		2,928	153.7	24,262	
AEOD		7,379	87.5	19,524	

TABLE III.—PART 171 FEES BY REACTOR CATEGORY—SUMMARY—Continued

[Dollars in thousands]

Reactor category	No. of reactors	Program support (dollars)	FTE	Total dollars	Per reactor fee
Additional Charges By Type:					
Reactors (East of the Rockies)[1]	98	3,290	3.0	3,706	38
B&W	10	2,889	3.8	3,416	342
CE	14	1,855	1.4	2,049	146
Westinghouse	49	1,855	1.4	2,049	42
GE	36	2,150	.8	2,261	63
Totals		89,137	369.6	140,456	

Table IV provides detailed analysis of the composition of Table III.

[1] Special seismic studies that benefit eastern reactors.

Eastern seismisity studies are performed to determine that reactor construction meets seismic criteria. These are performed only on reactors east of the Rockies. Reactors west of the Rockies already have seismic criteria included in their "as built design"

TABLE IV.—PART 171 FEES BY CATEGORY—DETAIL

[Dollars in thousands]

	FY 1988	
	Program support dollars	FTE
I. *Part 171 Work for All Reactors:*		
A. *Part 171 Work by Research* (Program/Activity):		
1. Reactor Vessel and Piping Integrity	$10,050	5.0
2. Aging of Reactor Components	7,280	12.0
3. Reactor Equipment Qualifications	1,100	1.5
4. Seismic and Fire Protection Research (less Earth Sciences $3,990/3.0 FTE	4,060	4.5
5. Plant Performance:		
a. Basic Studies	1,291	1.8
b. Development and Assessment of Codes (less GE plants only ($750))	2,740	3.6
6. Human Performance	2,630	3.6
7. Reliability of Reactor Systems	3,020	4.9
8. Radionuclide Source Terms	1,304	2.0
9. Reactor Containment Safety (less GE only—($1,150/.8 FTE))	15,523	9.7
10. Reactor Accident Risk Analysis (less Reviews of PRA's $1,100/3.0 FTE's)	7,118	10.0
11. Severe Accident Program Implementation	950	7.2
12. Radiation Protection and Health Effects	1,655	6.5
13. Generic and Unresolved Safety Issues (less Reactor Systems Issues—GE only—$250)	5,215	33.7
14. Developing and Improving Regulations	2,875	12.0
Total Part 171 Work by Research	$66,811	118.0
B. *Part 171 Work by NRR (Program/Activity):*		
1 Reactor Performance Evaluation:		
a. Generic Communications	$300	7.8
b. Engineering/Safety Assessments	414	6.7
c. Reactor Maintenance and Surveillance	100	3.0
2. Licensee Performance Evaluation Quality Assurance Program	50	8.1
3. License and Examine Reactor Operations:		
a. Program Development and Assessment/Regional Oversight	180	10.9
4. Region-Based Inspections:		
a. Lab and Technical Support	184	10.6
b. Regional Assessment	0	1.7
5. Specialized Inspections Vendor Inspections	1,160	19.9
6. Project Management:		
(Project Engineers)	0	20.2
(Licensing Assistants)	0	15.1
7 Regulatory Improvements:		
a. Technical Specifications	150	16.1
b. Safety Goal Implementation	0	.4
c. Inspection/Licensing Integration and Research and Standards Coordination	0	21.7
8. Licensee Reactor Accident Management Evaluation:		
a. Concept of Operations and Implementing		1.0
b. Regional Assistance Committees		2.2
9. Safeguards Licensing and Inspection Regulatory Effectiveness Reviews	390	8.3
Total Part 171	$2,928	153.7
C. *Part 171 Work by AEOD* (Program Elements):		
1. Performance Indicators	$228	3.9
2. Diagnostic Evaluations	0	2.0
3. Incident Investigation	50	2.5
4. NRC Incident Response	1,129	27.1
5. Technical Training Center	2,102	21.0
6. Operational Data Analysis	2,115	25.0
7 Operational Data Collection and Dissemination	1,755	6.0
Total Part 171 Work by AEOD	$7,379	87.5

TABLE IV.—PART 171 FEES BY CATEGORY—DETAIL—Continued

[Dollars in thousands]

		FY 1988	
		Program support dollars	FTE
D. *Total NRC for All Reactors:*			
1. Cost for AEOD Staff = 87.5 × 138.8	$12,145		
Program Support AEOD	7,379		
Total AEOD Cost	$19,524		
2. Cost for NRR Staff = 153.7 × 138.8	$21,334		
Program Support NRR	2,928		
Total NRR Cost	$24,262		
3. Cost for Research Staff = 118.0 × 138.8	$16,378		
Program Support Research	66,811		
Total Research Cost	$83,189		
4. Total (All Reactors) Cost to NRC	$126,975		
II. *Part 171 Work—Reactors East of the Rockies:*			
Seismic and Fire Protection Research—Earth Sciences		$3,290	3.0
Cost of Research Staff = 3 × 138.8	$416		
Program Support	3,290		
Total Cost (Reactors East of the Rockies)	$3,706		
III. *Part 171 Work—B&W Reactors:*			
Plant Performance (Research):			
a. MIST		$1,390	.5
b. 2D/3D (10 percent of effort)		220	.1
c. Continuing Experimental Capability		150	0
d. Once-Through Steam Generator (B&W)		229	1.7
e. Technical Integration Center		900	1.5
Total Part 171 Work—B&W Reactors		$2,889	3.8
Cost of Research Staff = 3.8 × 138.8	$527		
Program Support	2,889		
Total Cost (B&W Reactors)	$3,416		
IV. *Part 171 Work—CE Reactors:*			
Plant Performance:			
a. 2D/3D (45 percent of effort)		$1,020	.7
b. ROSA IV and Other Foreign Experiments (50%)		250	.2
c. Code Uncertainty (50%)		585	.5
Total Part 171 Work—GE Reactors		$1,855	1.4
Cost of Research Staff = 1.4 × 138.8	$194		
Program Support	1,855		
Total Cost (CE Reactors)	$2,049		
V. *Part 171 Work—Westinghouse Rectors:*			
Plant Performance:			
a. 2D/3D (45 percent of effort)		$1,020	.7
b. ROSA IV and Other Foreign Experiments		250	.2
c. Code Uncertainty		585	.5
Total Part 171 Work—Westinghouse Reactors		$1,855	1.4
Cost of Research Staff = 1.4 × 138.8	$194		
Program Support	1,855		
Total Cost (Westinghouse Reactors)	$2,049		
VI. *Part 171 Work—GE Reactors:*			
1. Plant Performance—Development of Assessment of Codes		750	0
2. Reactor Containment Safety—Code Models Validation and Analysis		1,150	.8
3. Generic and Unresolved Safety Issues—Reactor System Issues		250	0
Total Part 171 Work—GE Reactors		$2,150	.8
Cost of Research Staff = .8 × 138.8	$111		
Program Support	2,150		
Total Cost (GE Reactors)	$2,261		

Due to the multi-recipient nature of these NRC efforts; the need to collect fees in a practicable manner; and OMB Circular A-25, User Fees, requirements for advance or simultaneous billing; Part 171 user fees should be established and assessed based upon the budget for that year. This will allow for equitable fees, established and collected with the minimum resource expenditure; such expenditure affects overhead cost which must ultimately be recovered from all American taxpayers or from the organizations regulated by the NRC.

Section 171.21 Refunds.

This section is being eliminated. Under current legislation, at least 45 percent should be collected. No refunds will be provided, although the fees will be calculated in such a manner as to not

greatly exceed the 45 percent "floor" imposed by the legislation.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

VI. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

Section 7601 of COBRA required the NRC, by rule, to establish an annual charge for regulatory services provided to its applicants and licensees, that when added to other amounts collected, equaled up to 33 percent of Commission costs in providing those services. Section 5601 of the Omnibus Budget Reconciliation Act of 1987 requires that the NRC, for the fiscal years 1988 and 1989, increase the moneys collected pursuant to section 7601 and other authority to at least 45 percent of the Commission's costs. In order to accomplish this statutory requirement, the NRC is proposing to revise its fee schedules in 10 CFR Part 170 to remove the fee ceilings on certain categories, to revise its professional hourly rate to reflect inflationary and other increases since FY 1981, to revise the ceiling of 33 percent contained in 10 CFR Part 171 to a target of which approximates but will be at least 45 percent, and to include the collection of moneys from the High Level Waste Fund administered by the Department of Energy.

This proposed rule revision will not have significant impacts on state and local governments and geographical regions; on health, safety, and the environment; or, create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects about 10,000 specific licenses under 10 CFR Parts 30–35, 39, 40, 50, 60, 61, 70, 71, and 72. Approximately 9 000 of these licensees could be considered small entities, particularly in the area of materials licensing under Parts 30–35 and 39. The annual record keeping burden imposed by the proposed rule will not be increased for these licensees.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upn the licensee as compared to the economic burden on a larger licensee.

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee.

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

IX. 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 are mandated by 31 U.S.C. 9701 and section 7601, Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272, 100 Stat. 146), as amended by section 5601, Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, ____ Stat. ____).

List of Subjects

10 CFR Part 170

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Nuclear powerplants and reactors, Penalty.

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. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2 In § 170.12, paragraph (b) through (g) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) *License fees.* Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review in completed. Each bill will identify the applications and costs related to each. Fees for applications for materials licenses not subject to full cost must accompany the application when it is filed.

(c) *Amendment fees and other required approvals.* Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission, until the review is completed. Each bill will identify the applications and costs related to each. Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(d) *Renewal fees.* Fees for applications for renewals that are subject to full cost of the review are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs on each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each. Renewal fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(e) *Approval fees.* (1) Applications for transportation casks, packages, and

shipping container approvals, spent fuel storage facility design approvals, and construction approvals for plutonium fuel processing and fabrication plants must be accompanied by an application fee of $150.

(2) There is no application fee for standardized design approvals. The review fees for facility reference standardized design approvals and certifications will be paid by the holder of the design approval or certification in five (5) installments based on payment of 20 percent of the application and approval/certification fee (see footnote 4 § 170.21) as each of the first five units of the approved/certified design is referenced in an application(s) filed by a utility or utilities. If the design(s) is not referenced or if all costs are not recovered within 5 years after the preliminary design approval (PDA) or the final design approval (FDA), the vendor applicant will pay the costs, or remainder of those costs, at that time. The 5-year period is extended to 10 years from the date of the design certification.

(3) Fees for other applications that are subject to full cost reviews are payable upon notification by the Commission. Each subject applicant will be billed at six-month intervals until the review is completed. Each bill will identify the applications and the costs related to each. Fees for applications for materials approvals that are not subject to full cost must accompany the application when it is filed.

(f) *Special project fees.* Fees for applications for special projects such as topical reports, are based on full cost of the reviews and are payable upon notification by the Commission. Each applicant will be billed at six-month intervals until the review is completed. Each bill will identify the applications and the costs related to each.

(g) *Inspection fees.* Fees for all routine and non-routine inspections will be assessed on a per inspection basis, and will be billed quarterly. Inspection fees are payable upon notification by the Commission. Inspection costs include preparation time, time on site and documentation time and any associated contractual services costs but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects Part 55 requalification and replacement examinations and tests, other required approvals and inspections under §§ 170.21, 170.31 and 170.32 will be calculated based upon the full costs for the review using a professional staff rate per hour equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support and travel. The professional staff rate will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be pulished in the **Federal Register** for each fiscal year. The professional staff rate for the NRC for FY 88 is $80 per hour.

4. Section 170.21 is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

Applicants for construction permits, manufacturing licenses, operating licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and types of fees	Fees[1,2]
A. Nuclear Power Reactors	
Application for Construction Permit	$125,000
Construction Permit, Operating License	(5)
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals	(5)
Inspections [3]	(5)
B. Standard Reference Design Review[4]	
Preliminary Design Approvals, Final Design Approvals, Certification	(5)
Amendment, Renewal, Other Approvals	(5)
C. Test Facility/Research Reactor/Critical Facility	
Application for Construction Permit,	$5,000
Construction Permit, Operating License	(5)
Amendment, Renewal, Dismantling, Decommissioning and Termination, Other Approvals	(5)
Inspection [3]	(5)
D. Manufacturing License	
Application	$125,000
Preliminary Design Approval, Final Design Approval	(5)
Amendment, Renewal, Other Approvals	(5)
Inspections [3]	(5)
E. Uranium Enrichment Plant	
Application for Construction Permit	$125,000
Construction Permit, Operating License	(5)
Amendment, Renewal, Other Approvals	(5)

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and types of fees	Fees[1,2]
Inspections [3]	(5)
F. Advanced Reactors	
Application for Construction Permit	$125,000
Construcion Permit, Operating License	(5)
Amendment, renewal, Other Approvals	(5)
Inspections [3]	(5)
G. Other Production and Utilization Facility	
Application for Construction Permit	$125,000
Construction Permit, Operating License	(5)
Amendment, Renewal, Other Approvals	(5)
Inspections [3]	(5)
H. Production or Utilization Facility Permanently Closed Down	
Inspections [3]	(5)
I. Part 55 Reviews	
Requalification and Replacement Examinations for Reactor Operators	(5)
J. Special Projects	
Approvals	(5)

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5), and any other such sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

[2] All charges will be based on expenditures for professional staff time and appropriate contractual support services. However, in no event will the charges be less than $150. For those applications currently on file, the professional staf hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 rule. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the costs incurred after the ceiling was reached up to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20. This rate will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. The rate for each fiscal year will be published in the FEDERAL REGISTER. In the event a review covers a combination of licensing actions in a one-step licensing process such as a combined construction permit and operating license review (interim, temporary, or other), the fees charged will be the total of the costs for the licensing action.

[3] Inspections covered by this schedule are both routine and nonroutine safety and safeguards in-

spections performed by NRC for the purpose of review or followup of a licensed program. Inspections are performed throughout the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] Collection of the review costs for a preliminary design approval (PDA) and final design approval (FDA) are deferred, respectively, for a period of five years from the approval; except that, if the design is referenced during that period, 20 percent of the total costs will be payable by the holder of design approval or certificate as each reference is made until the full costs are paid. If the design is certified, the deferral period is extended to 10 years from the certification, with the same proviso that 20 percent of the costs will be payable each time the design is referenced. In the event the full costs are not recovered by the end of the applicable deferral period, the holder of the design approval or certificate must pay the remainder of any costs not previously recovered by the NRC. Applications for amendments to PDA's, FDA's and certifications are subject to full costs and will be billed upon completion of the review.

[5] Full cost.

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services.

Applicants for materials licenses and other regulatory services and holders of materials licenses shall pay fees for the following categories of services.

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES

[See footnotes at end of table]

Category of materials licenses and type of fee [1]	Fee [2]
1 Special Nuclear Material [3]	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses and to authorize decommissioning, decontamination, reclamation, or site restoration activities as well as licenses authorizing possession only:	
Application	$150
License, Renewal, Amendment	Full Cost
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Application	$150
License, Renewal, Amendment	Full Cost
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems: [4]	
Application—New license	$230
Renewal	$120
Amendment	$60

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fee [1]	Fee [2]
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same rate as that for Category 1A:	
Application—New license	$350
Renewal	$350
Amendment	$120
2. Source material: [3]	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailing) from source material recovery operations, and licenses authorizing decommissioning, reclamation or restoration activities as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Application	$150
License, Renewal, Amendment	Full Cost
B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8):	
Application—New license	$60
Renewal	$60
Amendment	$60
C. All other source material licenses:	
Application—New license	$350
Renewal	$230
Amendment	$120
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees:	
Application—New license	$1,200
Renewal	$700
Amendment	$120
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees:	
Application—New license	$460
Renewal	$460
Amendment	$120

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fee [1]	Fee [2]
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacture and distribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$1,400
Renewal	$1,400
Amendment	$230
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing distribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$700
Renewal	$700
Amendment	$120
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$230
Renewal	$170
Amendment	$120
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$580
Renewal	$350
Amendment	$230
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$2,300
Renewal	$930
Amendment	$230
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$580
Renewal	$230
Amendment	$120

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fee [1]	Fee [2]
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material. that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$290
Renewal	$230
Amendment	$60
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,200
Renewal	$700
Amendment	$230
K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material, that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$290
Renewal	$230
Amendment	$60
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,200
Renewal	$700
Amendment	$120
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$700
Renewal	$460
Amendment	$120
N. Licenses that authorize services for other licensees, except for leak testing and waste disposal pickup services:	
Application—New license	$930
Renewal	$930
Amendment	$120
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application—New license	$700
Renewal	$700
Amendment	$230
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$230
Renewal	$120
Amendment	$60
4. Waste disposal: [3]	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material:	
Application	$150
License, renewal, amendment	Full Cost
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,400
Renewal	$930
Amendment	$350
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$930
Renewal	$460
Amendment	$120
5. Well logging: [3]	
A. Licenses specifically authorizing use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$700
Renewal	$700
Amendment	$170
B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies:	
Application	$150
License, renewal, amendment	Full Cost
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$700
Renewal	$700
Amendment	$170
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$580
Renewal	$350
Amendment	$230
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,200
Renewal	$700
Amendment	$120
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$580
Renewal	$580
Amendment	$120
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$290
Renewal	$230
Amendment	$60
9. Device, product or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$1,600
Amendment—each device	$580
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for	

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fee [1]	Fee [2]
use by a single applicant, except reactor fuel devices:	
Application—each device	$800
Amendment—each device	$290
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$350
Amendment—each source	$120
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:	
Application—each source	$175
Amendment—each source	$60
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Application	$150
Approval, Renewal, Amendment	Full Cost [3]
B. Evaluation of Part 71 quality assurance programs:	
Application—New license	$150
Renewal	Full Cost [3]
Amendment	Full Cost [3]
11. Review of standardized spent fuel facilities: [3]	
Application	$150
Approval, amendment	Full Cost
12. Special projects: [3]	
Application	$150
Approval	Full Cost

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, and amendments and renewals to existing licenses and approvals. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals or those applications filed in support of expired licenses and approvals must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) *License/approval fees*—For new licenses and approvals issued in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 11 and 12, the recipient shall pay the license or approval fee as determined by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal fees*—Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, and 11 must be accompanied by an application fee of $150, with the balance due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) *Amendment fees*—Applications for amendments must be accompanied by the prescribed amendment fees. An application for an amendment to a license or approval classified in more than one category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply, except that applications for amendment of licenses in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 11, and 12 must be accompanied by an application fee of $150 with the balance due upon notification by the Commission in accordance with § 170.12(c).

An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedures is required, shall not be subject to fees.

An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

[2] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other such sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rate established for the June 20, 1984 rule. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after the ceiling was reached up to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20 of this part. This rate will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. In no event will the total review costs be less than the application fee. The professional rate will be published in the FEDERAL REGISTER for each fiscal year.

[4] Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

6. Section 170.32 is revised to read as follows:

§ 170.32 Schedule of fees for health and safety, and safeguards inspections for materials licenses.

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES

[See footnotes at end of table]

Category of license	Type of inspection [1]	Fee [2]	Frequency of billing [3]
1. Special nuclear material:			
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses and to authorize decommissioning, decontamination, reclamation, or site restoration activities as well as licenses authorizing possession only.	Routine	Full cost [4]	Per inspection.
	Nonroutine	do	Do.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).	Routine	do	Do.
	Nonrountine	do	Do.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems.	Routine	$210	Do.
	Nonroutine	$640	Do.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity as defined in § 150.11 of this chapter for which the licensee shall pay an inspection fee based on the full cost method indicated in category 1A.	Routine	$320	Do.
	Nonroutine	$370	Do.

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES—Continued

[See footnotes at end of table]

Category of license	Type of inspection [1]	Fee [2]	Frequency of billing [3]
2. Source material:			
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching and heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities, and in processing of ore containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailing) from source material recovery operations, and licenses authorizing decommissioning, reclamation or restoration activities as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	Routine	Full cost [4]	Do.
	Nonroutine	do	Do.
B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8).	Routine	$130	Do.
	Nonroutine	$160	Do.
C. All other source material licenses	Routine	$370	Do.
	Nonroutine	$690	Do.
3. Byproduct material:			
A. licenses of broad scope for prossession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licenses.	Routine	$950 [5]	Do.
	Nonroutine	$1,000 [5]	Do.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees.	Routine	$480 [5]	Do.
	Nonroutine	$900 [5]	Do.
C. Licenses issued pursuant to §§ 32.72, 32.73 and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacturing and distribution of radiopharmaceuticals, generators, reagent kits and/or devices containing byproduct material.	Routine	$640	Do.
	Nonroutine	$850	Do.
D. Licenses and approval issued pursuant to §§ 32.72, 32.73 and/or 32.74 of Part 32 of this chapter authorizing distribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material.	Routine	$370	Do.
	Nonroutine	$530	Do.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	Routine	$210	Do.
	Nonroutine	$320	Do.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.	Routine	$270	Do.
	Nonroutine	$580	Do.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sources for irradiation of materials in which the source is exposed for irradiation purposes.	Routine	$480	Do.
	Nonroutine	$640	Do.
H. Licenses issued pursuant to subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter.	Routine	$320	Do.
	Nonroutine	$320	Do.
I. Licenses issued pursuant to subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter.	Routine	$210	Do.
	Nonroutine	$320	Do.
J. Licenses issued pursuant to subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing reddistribution to persons generally licensed under Part 31 of this chapter.	Routine	$320	Do.
	Nonroutine	$320	Do.
K. Licenses issued pursuant to subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing reddistribution to persons generally licensed under Part 31 of this chapter.	Routine	$320	Do.
	Nonroutine	$320	Do.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	Routine	$420	Do.
	Nonroutine	$530	Do.
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution.	Routine	$370	Do.
	Nonroutine	$420	Do.
N. Licenses that authorize services for other licenses, except for leak testing and waste disposal pickup services.	Routine	$320	Do.
	Nonroutine	$320	Do.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations.	Routine	$530 [5]	Do.

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES—Continued

[See footnotes at end of table]

Category of license	Type of inspection [1]	Fee [2]	Frequency of billing [3]
	Nonroutine	$1,200[5]	Do.
P. All other specific byproduct material licenses except those in categories 4A through 9D	Routine	$530	Do.
	Nonroutine	$530	Do.
4. Waste disposal:			
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low-level radioactive wastes at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues, resulting from incineration, and transfer of packages to another person authorized to receive or dispose of waste material.	Routine	Full cost[4]	Do.
	Nonroutine	do[4]	Do.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Routine	$1,000	Do.
	Nonroutine	$740	Do.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Routine	$740	Do.
	Nonroutine	$950	Do.
5. Well logging:			
A. Licenses use specifically authorizing of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	Routine	$370	Do.
	Nonroutine	$370	Do.
B. License specifically authorizing the receipt of prepackaged waste byproduct material for field flooding tracer studies.	Routine	$320	Do.
	Nonroutine	$480	Do.
6. Nuclear laundries:			
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	Routine	$530	Do.
	Nonroutine	$850	Do.
7. Human use of byproduct, source, or special nuclear material:			
A. Licenses issued pursuant to Parts 30, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	Routine	$530	Do.
	Nonroutine	$850	Do.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	Routine	$740	Do.
	Nonroutine	$800	Do.
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	Routine	$480	Do.
	Nonroutine	$690	Do.
8. Civil defense:			
Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	Routine	$320	Do.
	Nonroutine	$320	Do.
9. Device, product, or sealed source safety evaluation: Safety evaluation of devices, products or sealed sources containing byproduct, source, or special nuclear material, except reactor fuel.	No inspections conducted.		
10. Transportation of radioactive material:			
A. Evaluation of casks, packages, and shipping containers	do		
B. Evaluation of Part 71 quality assurance programs	do		
11. Review of standardized spent fuel facilities	do		
12. Special projects	do		

[1] Types of inspections—Separate charges will be assessed for each routine and non-routine inspection which is performed, except those investigations conducted by the Office of Investigations. Non-routine inspections that result from third-party allegations will not be subject to fees.

[2] If a license holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on the full cost to conduct the inspection.

[3] Fees for all routine and non-routine inspections will be assessed on a per inspection basis.

[4] The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 of this part, to which any appropriate contractual support service costs incurred will be added. This rate will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

PART 171—ANNUAL FEE FOR POWER REACTOR OPERATING LICENSES

7. The authority citation for Part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330-275; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 82 Stat. 1242, as amended (42 U.S.C. 5841).

8. In § 171.5, the following definitions are added in alphabetical order:

§ 171.5 Definitions.

* * * * *

"Budgeted obligations" is defined to be the projected obligations of the NRC that likely will result in payments by the NRC during the same or a future fiscal year in providing regulatory services to licensees. For this purpose budgeted obligations include, but are not limited to, amounts of orders to be placed, contracts to be awarded, and services to be provided to licensees. Fees billed to licensees are based on budgeted obligations because the NRC's annual budget is prepared on an obligation basis.

* * * * *

"Overhead costs" means (1) Government benefits for each employee such as leave and holidays, retirement and disability costs, health and life insurance costs, and social security costs; (2) travel costs; (3) direct overhead, e.g., supervision, program support staff, etc.; and (4) indirect costs, e.g., funding and staff for administrative support activities. Factors have been developed for these overhead costs which are applied to hourly rates developed for employees providing the regulatory services within the categories and activities applicable to specified types or classes of reactors. The Commission views these costs as being reasonably related to the regulatory services provided to the licensees and, therefore, within the meaning of section 7601, COBRA.

* * * * *

9. In § 171.15, paragraphs (d) and (e) are removed and paragraph (c) is revised to read as follows:

§171.15 Annual fee: Power reactor operating licenses.

* * * * *

(c) If the basis for the annual fee is greater than 45 percent of the NRC budget less the sum of moneys estimated to be collected from the High Level Waste (HLW) fund administered by the Department of Energy and the total estimated fees chargeable under Part 170 of this chapter, then the maximum annual fee for each nuclear power reactor that is licensed to operate shall be calculated as follows:

(NRC FY Budget x .45) minus Sum of HLW moneys and est. Part 170 fees equals fees to be collected under Part 171.

Part 171 fees to be collected on a schedule based on the total from categories shown in the following table:

PART 171 FEES BY REACTOR CATEGORY—SUMMARY

[Dollars in thousands]

Reactor category	No. of reactors	Program support	FTE	Total	Per reactor fee
All reactors	110	$77,118	359.2	$126,975	$1,154
Research		66,811	118.0	83,189	
NRR		2,928	153.7	24,262	
AEOD		7,379	87.5	19,524	
Additional charges by type:					
Reactors (east of the Rockies)[1]	98	3,290	3.0	3,706	38
B&W	10	2,889	3.8	3,416	342
CE	14	1,855	1.4	2,049	146
Westinghouse	49	1,855	1.4	2,049	42
GE	36	2,150	.8	2,261	63
Totals		89,137	369.6	140,456	

Note: The total for all reactors will increase in the amount needed to recover funds lost due to exemptions/partial exemptions granted to licensees under Part 171. The total collections for Part 171 must equal $140.456 million in FY 1988. Adjustments will be on an end of fiscal year invoice.

[1]Special seismic studies that benefit eastern reactors.

§ 171.21 [Removed]

10. Part 171 is amended by removing § 171.21.

Dated at Rockville, Maryland this 20th day of June 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Editorial note: The Following appendixes will not appear in the Code of Federal Regulations.

Appendix A—Reactor Facilities

RANGE OF PRESENT FEES COMPARED WITH RANGE OF FISCAL YEAR 1988 PROPOSED FEES

Type of review or service	Range of fees (June 1984 schedule)		June 1984 rule ceiling	Range of FY 1988 fees under proposed rule	
	From	To		From	To
A. Power reactors:					
Operating license[1] reviews	$957,000	$5,552,000	$3,077,400	$1,378,000	$9,395,000
License amendments and other approvals (per application)[2]	150	232,000	164,600	150	287,000
Inspections:[3]					
Routine	68,000	460,000	300,000	83,000	697,000
Non routine	2,600	395,000	(4)	3,800	544,000

RANGE OF PRESENT FEES COMPARED WITH RANGE OF FISCAL YEAR 1988 PROPOSED FEES—Continued

Type of review or service	Range of fees (June 1984 schedule)		June 1984 rule ceiling	Range of FY 1988 fees under proposed rule	
	From	To		From	To
B. Research reactors:					
License amendments and other approvals (per application)	150	1,900	42,100	150	2,400
Inspections:[3]					
Routine	600	6,200	3,200	900	9,300
Nonroutine	53	2,000	(4)	80	3,000
C. Part 55 services[3]	600	257,800	147,600	900	323,700
D. Topical and other reports and revisions to reports	150	146,500	20,000	150	189,100

[1] The current and proposed range of fees shown represents NRC costs for completed licensing reviews through issuance of the 100% power license. One OL application, which is still undergoing review, had costs through December 1986 of $8.7 million.
[2] The current and proposed range of fees shown represents NRC costs for completed amendment actions. One case, which is still undergoing review, had costs through December 1986 of approximately $500,000.
[3] The amount shown is based on fees for a 1-year period.
[4] Full cost.

Appendix B—Fuel Cycle Cases

RANGE OF PRESENT FEES COMPARED WITH RANGE OF FISCAL YEAR 1988 PROPOSED FEES

Category	Range of fees June 1984 schedule		June 1984 rule ceiling	Range of FY 1988 fees under proposed rule	
	From	To		From	To
Special Nuclear Material					
1A. (Formerly 1A-II):					
New licenses	$167,200	$288,000	(3)	$190,300	$405,800
Renewals		[1] 14,200	$140,600		[1] 19,600
Amendments	58	3,700	170,000	80	5,100
Inspections:					
Routine	1,670	56,300	120,000	2,500	84,900
Nonroutine	159	6,500	(3)	240	9,800
Source Material					
2A (Formerly 2A-2E):					
New licenses	(2)	(2)	341,000	(3)	
Renewals	18,100	243,700	140,600	24,900	317,100
Amendments	150	15,100	103,200	150	27,800
Inspections:					
Routine	53	12,500	(3)	80	18,800
Non routine	371	4,600	(3)	560	7,000
Transportation					
10A. (Formerly 10A-10E):					
Approval	150	43,500	164,000	80	67,900
Renewal	(2)	(2)	1,400	(3)	
Amendment	58	15,300	43,000	80	21,000
12 Special projects	290	424,000	20,000	400	443,200

[1] Based on one completed action in 1986.
[2] No completed actions in 1986.
[3] Full cost.

[FR Doc. 88-14335 Filed 6-24-88; 8:45 am]
BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0639]

Availability of Fund and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229) as part of its regulatory responsibility for the payments system under the Expedited Funds Availability Act. The proposed rule prohibits certain delayed disbursement practices by setting out requirements for the issuance of teller's checks.

DATES: Comments must be submitted on or before September 23, 1988.

ADDRESSES: Comments, which should refer to Docket No. R-0639, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202/452-3926), Louise L. Roseman, Assistant Director (202/452-3874), Brada Panther, Analyst (202/452-2831), Division of Federal Reserve Bank Operations, or Stephanie Martin, Attorney, Legal Division (202/452-3198); for the hearing impaired *only*: Telecommunications Device for the

Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Delayed disbursement is the practice of delaying payment of a check by drawing the check on a bank [1] located in an area that is remote from the payee. Delayed disbursement practices are designed to increase the time it takes to clear a check. These practices reduce the efficiency of the check collection system and increase the risks to depositary banks, which must meet the availability schedules of the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001-4010) and Regulation CC. Delayed disbursement increases the time for the collection and return of a check as well as the costs to process and transport the check, due to the increased likelihood that the check must be processed through multiple intermediary banks. This delay may also result in a check being returned after funds must be made available for withdrawal under the Act.

The Federal Reserve System has been concerned with the problem of delayed disbursement for a number of years. The Board issued a policy statement on January 11, 1979, that discouraged abuse of the check collection system through remote disbursement. The policy statement enumerated the Board's principal concerns with respect to remote disbursement, including the risk of loss to depositary banks and recipients of remotely disbursed payments, denial to consumers and small businesses of access to funds due them (a problem which has been addressed, in part, by the Act and Regulation CC), and the possibility of unsafe or unsound banking practices caused by unsecured extensions of credit to customers whose funds at the remote paying bank are not sufficient to cover the customer's checks. The Board stated that it believes the banking industry has a public responsibility not to design, offer, promote, or otherwise encourage the use of a service expressly intended to delay final settlement and that exposes payment recipients to greater than ordinary risks.

On February 23, 1984, the Board issued another policy statement that further discouraged the use of arrangements that result in a delay in the collection and final settlement of checks. In addition to reiterating the concerns expressed in the 1979 policy statement, the Board stated that delayed disbursement results in higher transportation and processing costs and an increased possibility of check fraud. The Board also stated that it intended to monitor the success of voluntary efforts to reduce and eliminate the use of delayed disbursement arrangements and, if abuses continued, to pursue appropriate action. In conjunction with this policy statement, the Board implemented the High-Dollar Group Sort Program to reduce the level of float and accelerate the collection of checks.

The Expedited Funds Availability Act evidences Congress' intent to speed the availability of funds to bank depositors and, therefore, suggests that a reevaluation of delayed disbursement practices is appropriate. Although many classes of checks are subject to delayed disbursement, the ramifications of delayed disbursement are particularly significant in the case of teller's checks.

Regulation CC requires a depositary bank to make the proceeds of certain checks deposited in transition accounts, including cashier's checks, teller's checks,[2] and checks drawn on Federal Reserve Banks and Federal Home Loan Banks (collectively "official checks"), available for withdrawal on the business day following deposit, under specified conditions. If these checks are drawn on a remote paying bank, the depositary bank may not receive credit for the check by the time funds must be made available to the customer for withdrawal. Thus, the practice of delayed disbursement permits a depository institution issuing such checks to impose costs, in terms of lost interest, on other depository institutions and to retain for itself interest earned on outstanding checks until the checks are presented for payment.

A recent Federal Reserve Bank survey of official checks indicates that approximately 60 to 80 percent of official checks are deposited in a bank that is located in the same state as the issuing bank. Some banks issue official checks that are drawn on a paying bank remotely located from the issuing bank. In these cases, the paying bank is often remotely located from the depositary bank.

Prior to enactment of the Act, the Board's ability to address delayed disbursement abuses was limited to discouraging such practices through policy statements, and through Federal Reserve Bank services, such as the High-Dollar Group Sort Program, which accelerates the collection of certain delayed disbursement checks. The Expedited Funds Availability Act authorizes the Board to make improvements to the check system to speed the collection and return of checks, and, thus, to restrict delayed disbursement practices. Specifically, the Act gives the Board "the responsibility to regulate any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and any related function of the payment system with respect to checks." (12 U.S.C. 4008(c)(1).)

In December 1987, the Board requested public comment on proposed Regulation CC as well as proposals for long-term improvements to the check collection system. A number of commenters on the proposed Regulation CC cited the inequity of requiring the depositary bank to make the proceeds of official checks available for withdrawal on the business day after deposit, if the bank cannot receive credit for the check by that time. Some commenters requested that the Board restrict the next-day availability requirement to checks for which the depositary bank can receive credit within that time.

The Board specifically requested comment on how to address delayed disbursement practices and the practice of issuing official checks payable in a different check processing region than the issuing bank. The majority of commenters addressing this issue indicated that the practice of issuing official checks drawn on another institution located in a different check processing region should be eliminated. One commenter noted that delayed disbursement of official checks may have particular effects on deposits to escrow accounts used in residential real estate closings. Deposits to these accounts are comprised predominantly of official checks that must be accorded next-day availability, although the depositary bank does not receive credit for a portion of these checks until a later date. The commenter noted that the later return of these checks poses risks to the escrow companies. Several other commenters (all providers of official check services) opposed any regulatory action to limit the location of the paying bank.

Despite the past policy statements of the Board, certain delayed disbursement practices continue to be employed. Many corporations and banks find delayed disbursement attractive, because the timing of the presentment of the checks they issue, and hence

[1] "Bank" is defined in Regulation CC to include all depository institutions. A "paying bank" is the bank that pays the check and includes payable through and payable at banks. A "depositary bank" is the bank in which the check is first deposited.

[2] Regulation CC defines "teller's check" as a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

payment for these checks, is delayed, giving the drawer of the check use of the funds needed to pay the check for a longer period of time. Delayed disbursement is also very profitable to the banks that provide such services. These delayed disbursement practices, however, often disadvantage the depositary bank that sends the check for forward collection as well as the depositor of the check. The costs to the depositary bank are particularly high in the case of remotely disbursed checks that must be given next-day availability under Regulation CC. Delayed disbursement may also pose additional risks to depositary banks.

Certain banks, particularly savings and loan associations, credit unions, and small commercial banks, issue teller's checks as official checks rather than issuing cashier's checks (i.e., checks a bank draws on itself). Some teller's checks are subject to delayed disbursement, where the paying bank is remote from the issuing bank in order to extend the time within which the check is collected. In some cases these checks are drawn on a RCPC [3] routing number, rather than a Reserve Bank city routing number, further delaying the collection of these items.

Many member savings and loan associations draw checks on their accounts at Federal Home Loan Banks that are provided to customers as the functional equivalent of teller's and cashier's checks. In the case of Federal Home Loan Bank checks, checks may be issued by a member of one Federal Home Loan Bank and drawn on another Federal Home Loan Bank.

There are a number of reasons, other than delayed disbursement, that banks may wish to issue teller's checks as their official checks. Due to specialization and economies of scale, certain banks or other service providers can perform the issuing, tracking, reconciliation, and payment services associated with these payment instruments at a lower cost than can the issuing bank itself. These types of arrangements are beneficial as long as they do not rely on delayed disbursement to achieve the cost benefits.

Request for Comment

The proposed rule, which would be effective April 1, 1989, would amend § 229.36 of Regulation CC to provide that a bank that issues a teller's check must draw the check on or designate the check payable through or at a bank such that a depositary bank in the same community as the issuing bank will be able to receive credit for the check as early as if the check were drawn on the issuing bank itself. For the purposes of Subpart C, a teller's check includes a check drawn on a Federal Reserve Bank or a Federal Home Loan Bank. The Board is also publishing for comment a Board interpretation of the proposed rule to be added to the official Commentary contained in Appendix E of Regulation CC. In addition, the Board requests comment on the following issues:

1. Does the proposed regulation unnecessarily disrupt current correspondent relationships? If so, in what way(s)?

2. Should the Board require that official checks be conspicuously identified by labeling them in a certain way and by prohibiting the label on other checks? If yes, what specific requirements should be imposed?

3. Should the Board require that the name of the paying bank be printed prominently and in a standardized location on the check?

4. Should the proposed regulation further define the community in which the issuing bank is located?

5. Should the proposed regulation's standard for equivalent availability be tied to specific Reserve Bank deposit deadlines that are applicable to checks to be presented in the paying bank's community?

6. Should the proposed regulation's standard for equivalent availability be expanded to cover checks other than official checks?

7. Should the Board require official checks not drawn on the issuing bank to be payable at multiple presentment points?

8. Are the liability standards of Regulation CC, Subpart C, appropriate for violations of the proposed requirement?

9. Should the proposed regulation's standard for equivalent availability rule provide an exception for official checks that do not meet the availability test, but that are likely to be deposited at locations distant from the issuing bank? For example, several commenters asked that the practice of issuing official checks drawn on a New York city correspondent, regardless of the location of the issuing bank, to remit funds to foreign payees not be restricted. Under what circumstances should an exception apply?

10. If banks in the issuing bank's community generally do not collect checks through the Federal Reserve, should the availability schedules of one or more correspondent banks used by banks in that community be used to determine whether the proposed regulation's standard for equivalent availability has been met?

Initial Regulatory Flexibility Analysis

Of the items required to be contained in an initial regulatory flexibility analysis by 5 U.S.C. 603(b), the first ("a description of the reasons why action by the agency is being considered") and the second ("a succinct statement of the objectives of, and legal basis for, the proposed rule") are found elsewhere in this preamble.

The requirements of the proposed rule would apply to all banks subject to the rule regardless of size. The proposed rule would affect any bank that issues a teller's check that does not meet the equivalent availability standard of the rule; the Board anticipates that a number of small banks will be affected by the rule. The Board considered exempting very small banks, those that fall below the threshold for filing reports of deposit under the Board's Regulation D (12 CFR Part 204) (currently those with deposits of less than $2.9 million) from the rule's requirements. If such an exemption were allowed, however, small banks would continue to be able to engage in delayed disbursement of teller's checks, and depository banks, which must make the proceeds of such checks available for withdrawal according to the availability schedules of Regulation CC, would incur additional costs and risk due to this practice. The Board believes that the problems of delayed disbursement can be addressed only if the proposed rule applies to all banks.

Because the proposed rule would only affect an issuing bank's choice of the paying bank for its teller's checks, the Board does not anticipate that the rule will impose significant costs on small banks other than the costs of changing paying banks and purchasing new check stock for those banks that do not currently meet the equivalent availability standard. The Board does not anticipate that the proposed rule would impose extra reporting or recordkeeping burdens on small banks.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is proposed to be amended as follows:

[3] "RCPC" checks are drawn on depository institutions located in areas designated within the territories of Federal Reserve offices but outside Federal Reserve cities. "City" checks are drawn on depository institutions located in the same city as the processing Federal Reserve office. When deposited for collection, RCPC checks generally must be deposited several hours earlier than city checks in order to receive comparable availability.

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. The heading of § 229.36 is revised and a new paragraph (e) is added to § 229.36 to read as follows:

§ 229.36 Presentment and issuance of checks.

* * * * *

(e) *Issuance of teller's checks.* A bank shall not issue a teller's check if a depositary bank located in the same community as the issuing bank would not normally receive credit for the check as early as for a check drawn on the issuing bank.

3. In Appendix E, the heading for § 229.36 is revised and a new paragraph (e) is added to Appendix E, § 229.36 to read as follows:

Appendix E—Commentary

* * * * *

Section 229.36 Presentment and Issuance of Checks

* * * * *

(e) *Issuance of teller's checks.* This paragraph requires that a bank that issues a teller's check must draw the check on or designate the check payable through or at a bank such that a depositary bank in the same community as the issuing bank will be able to receive credit for the check as early as if the check were drawn on the issuing bank itself. For the purposes of Subpart C, a teller's check includes a check drawn on a Federal Reserve Bank or a Federal Home Loan Bank. Two banks are in the same community if they are in the same city, town, or similar locality. Under this proposed rule, a bank in Atlanta could issue a teller's check drawn on a New York bank only if an Atlanta depositary bank would receive credit for that check as promptly as it would for a check drawn on the issuing bank.

To determine whether a depositary bank in the same community as the issuing bank would receive credit for the check as early as it would for a check drawn on the issuing bank, an issuing bank may look to the availability schedule and deposit deadlines of the Federal Reserve Bank office that serves the issuing bank. The applicable deposit deadlines are the deadlines banks in the issuing bank's community would normally use to deposit checks drawn on the paying bank. Thus, to determine whether a teller's check meets the proposed rule's equivalent availability test, the issuing bank must compare: (1) The availability its local Federal Reserve office provides for checks drawn on the issuing bank and deposited at the deposit deadline generally used by banks in the issuing bank's community for collecting such checks, with (2) the availability that its local Federal Reserve office provides for checks drawn on the paying bank and deposited at the deposit deadline generally used by banks in the issuing bank's community for collecting such checks. For example, if a Federal Reserve Bank provides credit for checks drawn on a paying bank located in another Federal Reserve district that are deposited by the local Reserve Bank's Other Fed deadline at the same time as for checks drawn on the issuing bank that are deposited at the local Reserve Bank's RCPC deadline (which is later than the Other Fed deadline), the equivalent availability test would not be met if banks in the issuing bank's community generally arrange their transportation to the local Reserve Bank such that the checks arrive for processing after the Other Fed deadline, but before the later RCPC deadline. In this example, depositary banks would receive credit for checks drawn on the paying bank, located in another Federal Reserve district, one day later than they would for checks drawn on the issuing bank.

Most checks cleared outside the Federal Reserve System are collected at least as quickly as checks collected through the Federal Reserve System, and therefore the Federal Reserve Bank collection times serve as reasonable proxies for collection times generally. Availability under the Federal Reserve's High-Dollar Group Sort Program, however, may not be considered in determining equivalent availability because, in many cases, the collection times under this program are not matched by the private sector, and therefore such availability does not serve as an appropriate proxy for the normal collection time. Moreover, the depositary bank must incur additional costs to collect checks under this program.

An issuing bank that issues a teller's check for which equivalent availability requirements are not met may be liable to the depositary bank or others as provided in § 229.38. For example, an issuing bank could be liable to a depositary bank that suffers a loss resulting from increased float or due to a late return of a check if the loss would not have occurred had the check met the equivalent availability standard. The issuing bank may be liable for additional damages if it fails to act in good faith.

Board of Governors of the Federal Reserve System, June 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14359 Filed 6-24-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

Accounting for Phase-In Plans

Issued June 21, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a notice of inquiry into the effects of recent and proposed actions of the Financial Accounting Standards Board (FASB) that would change the way regulated public utilities account for certain transactions in the financial statements that they issue to the public. This notice of inquiry is intended to elicit discussions regarding Statement of Financial Accounting Standards No. 92, "Regulated Enterprises—Accounting for Phase-in Plans" (FASB No. 92). FASB No. 92 sets forth certain criteria that must be met in order for a regulated enterprise to capitalize deferred costs incurred in connection with a new plant.

This notice invites interested persons to participate in the inquiry and to bring to the Commission's attention any other matters that they believe will be useful.

DATE: Written comments must be received by August 22, 1988.

ADDRESS: All comments should refer to Docket No. RM88-22-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Joseph C. Lynch, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8953.

SUPPLEMENTARY INFORMATION: All persons interested in obtaining the full text of this document for inspection and copying may do so during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426. In addition, the Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) announces an inquiry into the interrelationship

between the Commission's accounting authority and its Uniform System of Accounts, and the Security and Exchange Commission's (SEC) authority over issuance of financial statements, in light of recent actions by the Financial Accounting Standards Board (FASB). The Commission seeks comments regarding the potential effects of conflicts that result from FASB's actions and proposals on regulated enterprises, investors, ratepayers, and the Commission's current regulations, and what Commission action, if any, may be appropriate under the circumstances.

II. Background

Under section 301 of the Federal Power Act (FPA), 16 U.S.C. 825 (1982), the Commission has authority to prescribe the manner in which jurisdictional utilities are to maintain their accounts and records. The Commission's authority over the accounts of the companies under its jurisdiction extends to the entire business of these utilities and promotes the uniform accounting that is essential in the electric utility industry.[1]

The Commission must have available to it for ratemaking purposes, under traditional cost-of-service regulations, a set of financial statements that enable it to determine the current cost of providing service and to be able to monitor past performance under approved rates by inspection of financial statements that comport with the ratemaking principles used to develop them. So long as the Commission continues to engage in cost-of-service regulation, the Commission must, then, require that its jurisdictional utilities maintain their accounts in a manner that reflects the economic effects of regulation.

The SEC has statutory authority to establish financial accounting and reporting standards for publicly-held companies under the Securities and Exchange Act of 1934. Since 1973 the SEC has recognized the FASB as the designated organization in the private sector responsible for establishing financial accounting and reporting standards. The mission of the FASB is to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors, and users of financial information. Those standards are, in effect, rules governing the preparation of financial reports. They are officially recognized as authoritative by the SEC (Accounting Series Release No. 150, dated December 20, 1973), and the American Institute of Certified Public Accountants (Code of Professional Conduct as adopted January 12, 1988).

Since its inception, the Commission's Uniform Systems of Accounts and related financial reporting requirements have been based on sound accounting principles applicable to privately-owned business enterprises in general with certain differences to accommodate the manner costs are recovered in cost-based utility rates. These differences recognize that under cost-based rate regulation equity has a recordable cost during the period of construction of utility assets, and allow for the recording of so-called regulatory assets or liabilities. These differences have not resulted in conflicts between the Commission and the SEC in the past, in part of the existence of FASB Statement No. 71, Accounting for the Effects of Certain Types of Regulation,[3] and its predecessor, the Addendum to the Accounting Principles Board's (APB) Opinion No. 2.[4] These statements recognize that difference may arise in the application of generally accepted accounting principles (GAAP)[5] as between regulated and nonregulated businesses, because of the effect on regulated businesses of the ratemaking process, a phenomenon not present in nonregulated businesses. These differences chiefly concern the time at which various items enter into the determination of net income in accordance with the principle of matching costs and revenues. For example, if it is clear that a current cost will be recoverable out of future revenues, FASB Statement No. 71 permits a regulated utility to recognize the cost in the future period or periods in which the related revenue accrues. This would not be true for unregulated enterprises.[6]

The accounting profession, then, has traditionally recognized that the ratemaking process produces certain economic effects not present in nonregulated industries and has issued authoritative pronouncements (such as FASB Statement No. 71 and the addendum to APB Opinion No. 2, noted above) embodying this principle. The Commission has from time to time adopted revised accounting rules, where appropriate to do so, to reflect new, authoritative accounting pronouncements, while continuing to take into account the economic effects of the ratemaking process. For example, in response to these pronouncements, the Commission (a) Adopted an all-inclusive income statement[7]; (b) made provisions for principles of comprehensive income tax allocaton[8]; (c) issued regulations for recording of capital leases[9]; and (d) issued guidelines to electric utilities regarding implementation of the standards set forth in SFAS No. 90, Regulated Enterprises—Accounting for Abandonments and Disallowances of Plant Costs (issued by FASB in December, 1986).[10]

Thus, there has been a mechanism allowing utilities to observe GAAP that at the same time recognizes their unique character as cost-of-service regulated enterprises. This mechanism has been balanced on an accommodation between the accounting profession and the Commission, with each recognizing

[1] *See* Senate Report No. 621, 74th Cong., 1st Sess., accompanying § 2796, p. 53 (1935), which became Parts II and III of the FPA; *cf.* Schneidewind, *et al.* v. ANR Pipeline Co., *et al.*, ——— U.S. ———, No. 86-986, slip op. at 10 (Mar. 22, 1988).

[2] The Uniform System of Accounts for electric utilities became effective June 1, 1937; the Uniform System of Accounts for gas utilities became effective January 1, 1940.

[3] Issued December, 1982 (FASB Statement No. 71).

[4] Addendum to APB Opinion No. 2 (Accounting for the Investment Credit), issued December, 1962 (APB Opinion No. 2)

[5] Generally accepted accounting principles (GAAP) is a technical term in financial accounting. GAAP encompasses the conventions, rules and procedures necessary to define accepted accounting practices at a particular time. GAAP incorporates the accounting profession's consensus at a particular time as to which economic resources and obligations should be recorded as assets and liabilities by financial accounting, which changes in assets and liabilities should be recorded, when these changes should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and what financial statements should be prepared.

[6] *See* Order No. 505-B, Accounting for Premium, Discount and Expense of Issue, etc., 59 FPC 591 (July 8, 1977), 42 FR 37,970 (July 26, 1977); *rehg. denied*, 59 FPC 1796 (Sept. 7, 1977) (Order No. 505-B).

[7] Order No. 389, Revisions in Uniform System of Accounts and Annual Reports Form Nos. 1 and 2, for Reporting Year 1970, 42 FPC 831 (Oct. 9, 1969), *rehg. denied*, 4 2 FPC 11009 (Dec. 18, 1969), 34 FR 17,434 (Oct. 29, 1969).

[8] Order No. 144, Regulations Implementing Tax Normalization for Certain Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes, FERC Stat. and Reg. [Regulations Preambles 1977-1981] ¶ 30,254 (May 6, 1981), 46 FR 26,613 (May 14, 1981).

[9] Order No. 390, Revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform System of Accounts for Form Nos. 1, 1-F, 2 and 2-A and Related Regulations, [Regulations Preambles 1982-1985] FERC Stats. and Reg., ¶ 30,586 (1984), 49 FR 32,496 (Aug. 14, 1984).

[10] OCA Release issued March 11, 1987.

the obligation of the other to present financial information properly allowing for the economic effects of the ratemaking process.

Admittedly, the Commission's recognition in financial statements of certain types of assets and liabilities and its recognition of income and expense over different time frames is different and may not be appropriate for enterprises not regulated on a cost-of-service basis. Up to this point, however, the Commission has concluded that these differences are important so that utilities' statements will be presented to the public on a sound and meaningful basis and will be consistent with the economics of the regulated utilities.[11] The Commission's accounting and reporting requirements have been adopted by numerous state regulatory commissions in regulating retail rates for electric and gas service.

III. Recent Developments

FASB has recently issued statements that may change the way regulated public utilities account for certain transactions in the financial statements that they issue to the public. For example, in August 1987, FASB issued Statement of Financial Accounting Standards No. 92, "Regulated Enterprises—Accounting for Phase-In Plans" (FASB No. 92), setting forth certain criteria which must be met in order for a regulated enterprise to capitalize as an asset all costs incurred in connection with a new plant, recover of which has been deferred by a regulatory body. For plants completed before January 1, 1988, and plants on which substantial physical construction has been performed before such date, FASB No. 92 requires that all deferred costs be recovered within ten years of the date the deferrals begin.

In addition, the percentage increase in rates scheduled under the phase-in plan for each future year can be no greater than the percentage increase in rates scheduled under the plan for each immediately preceding year. If all criteria of FASB No. 92 are not met, the regulated utility may not capitalize any of the deferred costs allowed under the phase-in plan in its financial statements issued to the public, but must reflect the deferred costs as a loss in the current year. For plants on which no substantial construction has been performed before January 1, 1988, recovery of costs under phase-in plans cannot be reflected by the utility for financial reporting purposes regardless of the length of the phase-in.[12]

Phase-in plans are a way of allocating over time the cost of providing service in a manner consistent with regulatory objectives and the public interest. A phase-in schedule, although achieving different expense recognition in particular periods than would the application of generally accepted accounting principles to a nonregulated enterprise, does not disallow costs from rate recognition, but simply provides for recovery of those costs in a later period. Where it is probable that the costs deferred through the phase-in schedule will be collectible through future rates, the deferrals are regulatory-created assets that properly require recognition on the balance sheet filed with the Commission.

The Commission has recently addressed the question of whether, in light of FASB No. 92, public utilities subject to the Commission's jurisdiction can continue to maintain their books and accounts in accordance with the Commission's Uniform System of Accounts. In *Arkansas Power & Light Company (Arkansas)*[13] and in *Kansas Gas and Electric Company (Kansas)*,[14] the Commission noted that it must have available for ratemaking purposes a set of financial statements that will enable it to determine the current cost of providing service under its adopted scheme of regulation. The Commission must also be able to monitor past performance under approved rates by inspection of financial statements that comport with the ratemaking principles used to develop them. The Commission decided that this could only be accomplished if financial statements prepared for ratemaking purposes are prepared in a manner that reflects the economic effects of regulation.[15] Because in each case it was probable that the deferred costs would be collectible through future rates, the Commission allowed both utilities to continue to record as assets on their books and records, in accordance with the Uniform System of Accounts, the deferrals accrued under their respective phase-in plans even though neither plan conformed to the requirements of FASB No. 92.

The Commission appreciates FASB's desire for a high level of assurance that phased-in costs will actually be recovered. However, a difficulty with FASB No. 92 is that, for phase-in plans that do not conform to its criteria, recognition of costs consistently with the way costs are recognized by enterprises that are not regulated will reduce income available for debt coverage and for dividends on common and preferred stock. This is true even though future revenues are to be provided for the costs on a deferred basis, because costs and revenues would not be matched on the financial statements. This accounting may drive up the cost of capital and could have a long-term detrimental effect on ratepayers as the increased cost of capital is recovered in rates. Also, as capital becomes more difficult to obtain, or as its cost rises, utilities may be less likely to agree to phase-in plans.

On May 20, 1988, the SEC determined not to institute proceedings on Arkansas Power & Light Company's (AP&L) petition for a declaratory order that would have allowed the company to continue recording as assets on its financial statements filed with the SEC certain costs associated with AP&L's Grand-Gulf phase-in plan (plan assets) even though the plan did not meet the requirements of FASB No. 92.[16] Under the Commission's order in *Arkansas*,[17] AP&L may continue to record plan assets in its books and records and in the financial statements that it publishes and files with the Commission. In the SEC's view, AP&L could achieve compliance both with SEC's rules and statements of policy and with the Commission's order in *Arkansas, supra*, in one of two ways. First, AP&L could file financial statements with the SEC in conformity with FASB No. 92, while maintaining underlying accounts to be filed both with the SEC and with the Commission that do not conform to FASB No. 92. Alternatively, AP&L could apply FASB No. 92 to both its financial statements and the underlying accounts filed with the SEC while filing separate financial statements and underlying accounts with us that do not conform to FASB No. 92. According to the SEC this latter alternative would result in no conflict with its rules and policies so long as AP&L did not distribute to its shareholders or publish under federal securities law requirements the financial statements that it filed with the Commission.[18]

[11] *See* Order No. 505-B, *supra* n. 6 at 594-5.

[12] FASB issued FASB No. 92 because it was concerned that phase-in plans "have evolved * * * to open ended plans that deferred costs indefinitely and promised recovery only when, and if, future demand grew to the point that the capacity in question was needed." FASB No. 92 at 24 ¶ 57

[13] 41 FERC ¶ 61,034 (1987).

[14] 43 FERC 61,248 (1988).

[15] 41 FERC at 61,034.

[16] Letter from SEC to AP&L and Middle South Utilities, Inc., dated May 20, 1988. (Letter).

[17] *Supra* n. 13.

[18] Letter at 2.

It appears that the SEC and this Commission are in some instances viewing differently how financial statements should be prepared in order for each commission to carry out its respective responsibilities under its governing statutes. Thus, the SEC for its purposes has decided to follow the direction indicated by FASB while the Commission believes that effective regulation requires that utilities' books and records reflect the economic effects of that regulation, even if that means that in certain instances a utility's books and records may not conform to FASB No. 92.

There are other areas where FASB's recent actions provide for cost recognition differently than may be appropriate for our regulatory purposes. These areas involve accounting for pensions (FASB Statements 87 and 88, issued December, 1985), and accounting for income taxes (FASB Statement No. 96, issued December, 1987).

IV. Questions

Because of the above recent actions by FASB, the SEC and the Commission, and the importance of the questions that they raise, the Commission believes it appropriate to solicit comments on these matters. The Commission solicits responses to the following questions. The list of questions is not exhaustive. Those responding to this Notice of Inquiry should feel free to raise any other questions or to make any comments which will aid the Commission.

(A) Would the potential conflicts that result from recent actions of FASB, the SEC, and the Commission have an effect on regulated companies, regulators, investors, and the public generally? If so, how?

(B) Do FASB's authoritative accounting pronouncements give adequate recognition to the economics of the ratemaking process? If not, what action if any, should be taken?

(C) Would the SEC's prohibition against circulating to investors the financial statements filed with this Commission have an effect upon regulated utilities, consumers or investors?

(D) What effect, if any, would the maintenance of different sets of books, records, and financial statements have on utilities, consumers and investors?

(E) Are these concerns of sufficient importance to warrant a rulemaking and, if so, what rules should the Commission promulgate?

V. Request for Public Comments

The Commission invites all interested persons to submit written comments, data, views or arguments on issues raised in this Notice of Inquiry. While the Commission desires comments on the specific questions posed in this Notice of Inquiry, it also encourages parties to comment on any aspect of the issues raised in the discussion. Commenters should not feel obligated to respond to every question. Responses can be limited to the questions that address the commenters' principal concerns. To the extent that several groups or individuals may have similar interests, they are encouraged to file joint comments.

To facilitate its comment analysis, the Commission urges commenters to provide a 3 to 5 page executive summary of their positions on the issues raised. Commenters should double space their comments, provide a concise description identifying themselves, use the same numbering system as the Commission's Notice of Inquiry when answering questions, and indicate by "N/A" when they have not answered a question.

All comments must be received by August 22, 1988. Comments will be placed in the public file established in this docket and will be available for public inspection in the Public Reference Room, Room 1000, 825 North Capitol Street, NE., Washington, DC during regular business hours. Copies of comments will be available for purchase.

List of Subjects in 18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform system of accounts.

By the direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14409 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 292

[Docket No. RM88-6-000]

Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities; Request for Supplemental Comments

Issued June 16, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice requesting supplemental comments.

SUMMARY: The Commission issued a notice of proposed rulemaking (NOPR) in this docket on March 16, 1988 (53 FR 9331 (Mar. 22, 1988)) proposing to amend the Commission's regulations governing the purchase and sale of electricity between electric utilities and qualifying small power production and cogeneration facilities (qualifying facilities) under section 210 of the Public Utilities Regulatory Policies Act (16 U.S.C. 824a-3 (1982).

The Commission is requesting supplemental comments on whether the Commission should codify in the final rule in this docket, the position the Commission adopted in *Orange & Rockland Utilities, Inc.*[1] With respect to rates for the wholesale purchase in interstate commerce of electric energy by an electric utility from a qualifying facility that exceed the purchasing utility's avoided cost. Comments should be limited to this issue only.

DATES: Comments on this notice must be received by Monday, July 18, 1988. Reply comments must not exceed 15 double-spaced pages.

ADDRESS: An original and 14 copies of all comments should be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM88-6-000 (Supplemental Comments). Participants in the public hearings in this docket scheduled for July 21 and July 22, 1988, may comment on the matters in this notice.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during public business hours.

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

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested person an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a

[1] 43 FERC ¶ 61,067 (1988).

modem by dialing (202) 357-8997. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is requesting supplemental comments on whether the Commission should codify in the final rule in this docket, the position the Commission adopted in *Orange & Rockland Utilities, Inc.*[1] with respect to rates for the wholesale purchase in interstate commerce of electric energy by an electric utility from a qualifying facility that exceed the purchasing utility's avoided cost.

II. Background and Discussion

The Commission issued a notice of proposed rulemaking (NOPR) in this docket on March 16, 1988.[1] The NOPR proposed to amend the Commission's regulations governing the purchase and sale of electricity between electric utilities and qualifying small power production facilities (QFs) under section 210 of PURPA.[3] Under the Commission's regulations implementing section 210 of PURPA, a utility is not required to pay more than its "avoided costs" for purchases from new QF capacity in the absence of a negotiated rate.[4] "Avoided costs" are defined as the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the [QF] or [QFs], such utility would generate itself or purchase from another source".[5]

Petitioners for rehearing of the Commission's decision in *Orange & Rockland* have asserted that the *Orange & Rockland* order has generic implications far beyond the facts presented in that proceeding and that the position adopted by the Commission more properly should be the subject of a rulemaking proceeding.[6] The Commission agrees that its decision in *Orange & Rockland* has generic implications, and is therefore responding to the many rehearing requests for a generic proceeding by expanding the scope of this docket to address the issue of whether the Commission should codify in its regulations the position adopted in *Orange & Rockland*.[7] The Commission will address this issue in the final rule.

III. Environmental Review

The Commission has already determined that an environmental impact statement (EIS) is not required in this rulemaking proceeding. This notice merely expands the Commission's proposal in this docket and also addresses only the issue of establishing electric rates. Therefore, it is not necessary for the Commission to prepare an EIS on this issue.[8]

Furthermore, codifying the *Orange & Rockland* decision in the Commission's regulations would not have a significant effect on the human environment. Absent the ability to set rates for wholesale purchases from QFs in interstate commerce above avoided cost, states will still retain the ability to favor preferred technologies through other means.

IV. Comment Procedures

The Commission invites interested persons to submit comments on this notice requesting supplemental comments. Comments must be received by July 18, 1988. Reply comments must be received by August 15, 1988. Reply comments must not exceed 15 double spaced pages. An original and 14 copies of all comments should be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM88-6-000. Participants in the public hearings in this docket scheduled for July 21 and July 22, 1988, may comment on the matters in this notice.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 292, Chapter 1, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission. Commissioner Trabandt concurred in part as to the request for public comment and dissented in part as to the position the Commission adopted in *Orange & Rockland Utilities, Inc.*

Lois D. Cashell,

Acting Secretary.

PART 292—REGULATIONS UNDER SECTION 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation in Part 292 continues to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. 99-494; Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a-825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982), as amended.

2. In § 292.304, paragraph (a) introductory text is added to read as follows:

§ 292.304 Rates for purchases.

(a) *Rates for purchases.* A state has no authority to establish rates for the purchase of energy or capacity from a qualifying facility above the purchasing utility's avoided cost.

* * * * *

[FR Doc. 88-14407 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL-285-88]

Income Taxes; Income of Foreign Governments and International Organizations

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 current taxation of income of foreign governments from investment sources within the United States. 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

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[1] 43 FERC ¶ 61,067 (1988).

[2] 53 FR 9331 (Mar. 22, 1988).

[3] 16 U.S.C. 824a-3 (1982).

[4] 18 CFR 292.304(a) (1987).

[5] 18 CFR 292.101(b)(6) (1987).

[6] *See, e.g.* Requests for Rehearing by Long Lake Energy Corporation, the Public Service Commission of the State of New York, and the National Independent Energy Producers, Docket No. EL87-53-000.

[7] *See e.g.* Requests for Rehearing by Bechtel Civil, Inc., and the Independent Power Producers of New York, *et al.*, Docket No. EL87-53-000.

[8] In the Commission's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 (1982)), the establishment of just and reasonable electric rates is categorically excluded from requiring an EIS. *See* 18 CFR 380.4(a)(15) (1987).

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 June 30, 1986. Written comments and request for a public hearing must be delivered or mailed by August 26, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, (Attention: CC:LR:T, INTL-285-88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David A. Juster of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224 (Attention: CC:LR:T (INTL-285-88)) (202-266-6384, 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 Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for Internal Revenue Service, with copies to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP.

The collection of information in this regulation is in § 1.1441-8T (b). This information is required by Internal Revenue Service to avoid withholding of tax at source with regard to specific types of income received by foreign governments and international organizations. This information will be used by withholding agents to verify that specific items of income received by such foreign governments or international organizations are excluded from gross income by reason of section 892 and are therefore exempt from withholding under section 1441. The likely respondents are foreign governments or international organizations.

Estimated Total Annual Reporting burden: 45,000 hours.

Estimated Average Annual Burden Per Respondent: 15 hours.

Estimated Number of Respondents: 3000.

Estimated Annual Frequency of Responses: Annually.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.892-1T through 1.892-7T and 1441-8T. 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. 8211] published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Request for a Public Hearing

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

Drafting Information

The principal author of these regulations is David A. Juster of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

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, Source of income, U.S. investments abroad.

26 CFR 1.1441-1 to 1.1465-1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The temporary regulations, [T.D. 8211], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 892 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-14428 Filed 6-24-88; 8:45am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 736, 740 and 750

Surface Coal Mining and Reclamation Operations; Application Fee for Permit to Conduct Surface Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for Processing Permit Revisions, Transfers and Renewals; Notice of Public Hearing

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

ACTION: Notice of public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is announcing a public hearing to be held in Denver, Colorado July 13, 1988, on the subject of proposed permit fees for OSMRE permitting actions. This hearing is being held in response to several requests that a hearing be held in Denver. This hearing will be held in addition to the hearing scheduled for July 11, 1988 in Washington, DC.

DATES: OSMRE will hold a public hearing on the subject of proposed permit fees for OSMRE permitting actions, on July 11, 1988, in Washington, DC, beginning at 9:30 a.m., as announced in the **Federal Register** on May 17, 1988 (53 FR 17568). In addition, in response to requests from members of the public, OSMRE is announcing a public hearing to be held July 13, 1988, in Denver, Colorado, beginning at 9:30 a.m.

ADDRESSES: The Washington, DC hearing will be held in the Department

of the Interior Auditorium, 18th and C Streets NW, Washington, DC. The Denver hearing will be held at Brooks Towers, Second Floor, 1020 15th Street, Denver, Colorado, beginning at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Adele Merchant, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; Telephone (202) 343-1864 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: On May 17, 1988, OSMRE published in the Federal Register a proposed rule to establish a system of fees to be paid to OSMRE by applicants to obtain processing and issuance of surface coal mining and reclamation permits and coal exploration permits, and renewals, revisions and transfers of existing permits, in Federal program States, on Federal lands where OSMRE issues a permit, and on Indian lands (53 FR 17568). That notice announced a public hearing scheduled for July 11, 1988, in Washington, DC on the proposed rule, to be held upon request. In response to several requests that the hearing be held, OSMRE will be holding the hearing in Washington, DC as scheduled.

The purpose of this notice is to announce that an additional hearing will be held July 13, 1988, in Denver, Colorado, beginning at 9:30 a.m. local time (See "DATES" and "ADDRESSES") and continuing until all persons in attendance wishing to testify have been heard. This hearing is being held in response to several requests that a hearing be held in Denver.

These hearings will be transcribed. To assist the transcriber and to ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE an advance copy of their testimony. These may be hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC 20240; or mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Date: June 22, 1988.

Richard O. Miller,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-14368 Filed 6-24-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-88-39]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the requests of the North Carolina Department of Transportation and the Mayor of the Town of Surf City, North Carolina, the Coast Guard is considering a change to the regulations governing the drawbridge across the Atlantic Intracoastal Waterway at mile 260.7, in Surf City, North Carolina, by restricting the bridge openings during the boating season. This proposal is being made to alleviate vehicular traffic congestion caused by excessive bridge openings. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 11, 1988.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 507, between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Project Attorney.

Discussion of Proposed Regulations

The North Carolina Department of Transportation and the Mayor of the Town of Surf City, North Carolina, have requested that the NC 50 drawbridge over the Atlantic Intracoastal Waterway be regulated to open on the hour, daily, between 7:00 a.m. and 7:00 p.m., year-round or from March 15 through November 15 if the year-round request is denied. This request is being made as a result of the steady increase of pleasure craft traffic on the AICWW since 1985, resulting in excessive draw openings, which are causing vehicular traffic congestion on NC 50.

A review of the drawlogs indicates that drawbridge openings are steady from January through December with the largest number of openings occurring from March through November. The current operating schedule for this drawbridge is on the hour, daily, between 7:00 a.m. to 7:00 p.m., from May 1 through October 31. In 1987, the drawbridge at Surf City opened a total of 5035 times and the average daily traffic count came to 6800. Vehicular traffic has increased from approximately 3700 in 1972 to 6800 in 1987. These figures appear to support the town's request to regulate the drawbridge year-round. The bridge at Wrightsville Beach, North Carolina, which is located 12.6 miles north of the Surf City bridge, operates with a restricted schedule year-round.

Separate regulations have not been proposed for the months of December, January and February in order to avoid confusion on opening times for both motorists and boaters.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that this proposal is not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.821, paragraph (b)(4) is revised as follows:

§ 117.821 Atlantic Intracoastal waterway, Albermarle sound to Wrightsville Beach, North Carolina

* * * * *

(b) * * *

(4) S.R. 50 bridge, mile 260.7, at Surf City, NC, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

* * * * *

Dated: June 15, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-14423 Filed 6-24-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 440

[BERC-407-P]

Medicaid Program; Coverage of Personal Care Services

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

ACTION: Proposed rule.

SUMMARY: We are proposing to amend Medicaid regulations on personal care services furnished to a recipient. The regulations would clarify the types of services that may be covered, specify the supervisory requirements for personal care service attendants, and provide for review and reauthorization of the plan of treatment at certain intervals by the physician.

The proposed changes are intended to ensure consistency among States in coverage of personal care services and to improve program management at both the State and Federal levels.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 26, 1988.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration
Department of Health and Human Services
Attention: BERC-407-P
P.O. Box 26676
Baltimore, Maryland 21207

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

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

or

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

In commenting, please refer to file code BERC-407-P.

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

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, (301) 966-4607.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Personal care services are noninstitutional, medically-oriented tasks of types discussed in section (C) below, that are necessitated by a recipient's physical or mental impairment. They primarily involve "hands-on" assistance with a recipient's physical dependency needs (as opposed to purely housekeeping requirements). These tasks performed in the recipient's home by a personal care attendant are similar to those that would normally be performed by a nurse's aide if the recipient were in a hospital or nursing home. The purpose of personal care is to accommodate the need for relatively unskilled maintenance or supportive nursing care furnished in the home.

B. Statute and Regulations

The Medicaid program funds a variety of medical and remedial services set forth in title XIX of the Social Security Act (the Act). In addition to the specific services authorized by sections 1905(a)(1) through (20) of the Act, section 1905(a)(21) permits the Secretary to specify other medical and remedial services as Medicaid-covered. Under this authority, the Secretary has included personal care sevices, as described in regulations at 42 CFR 440.170(f).

The regulations, however, define personal care services only in very general terms, and state that personal care services in a recipient's home means "services prescribed by a physician in accordance with the recipient's plan of treatment and provided by an individual who is—

(1) Qualified to provide the services;

(2) Supervised by a registered nurse; and

(3) Not a member of the recipient's family.

A more specific personal care definition has for many years been included in Medicaid program guidelines. In order to clarify the regulations, we now propose essentially to incorporate the elements of the guidelines' more detailed personal care definition as part of the regulations themselves.

C. Current Policy

Currently, 22 States include this optional benefit in their Medicaid plans. Under current Medicaid policy (Medicaid Assistance Manual, section 5-140-00, "Personal Care Services in Recipient's Home", issued in 1979), personal care services are characterized as services that primarily involve direct patient care. This hands-on patient care can include activities such as assisting with administration of medications, eyedrops, and ointments as well as providing needed assistance or supervision with basic personal hygiene, eating, grooming, and toileting. It does not, however, include skilled services that are appropriately furnished only by a registered nurse, licensed practical nurse, therapist, or similar health professional.

While the primary function of the personal care attendant is to provide direct patient care, the attendant, under current policy, may also perform incidental household or chore services necessary to prevent or postpone institutionalization of the recipient. These services may include maintaining a safe and clean environment in areas of the home used by the recipient, for example, changing of bed linens, light housecleaning, rearranging furniture to assure that necessary supplies or medication are accessible to the recipient, and laundering essential to the comfort and cleanliness of the recipient. These services may also include services that ensure the recipient's nutritional needs are met, such as the attendant's assistance with meal preparation (which may include grocery shopping) and washing utensils used to prepare and serve the recipient's food during the attendant's visit.

D. Program Experience

Existing longstanding guidelines in section 5-140-00 of the Medical Assistance Manual clearly state that under the personal care benefit, "[a]ny household tasks performed should be purely incidental to the patient's health care needs," and that homemaker services furnished in isolation "* * * are not reimbursable under title XIX * * * because they are not medical needs." Although these clarifying provisions appear in the interpretive guidelines, the language of the current regulation is more general. Most States have implemented personal care services in a manner that is consistent with the guidelines; however, some States have claimed FFP for services of a purely housekeeping nature. Therefore, in order to ensure appropriate attention to patient care, and to ensure that this benefit is consistently implemented in the manner that we intended, we are clarifying the regulations to apply the concepts contained in the longstanding interpretive guidelines.

We are also taking this opportunity to make certain additional clarifications in the personal care services definition that we believe are appropriate. For example, although the current regulations require personal care services to be "prescribed by a physician in accordance with the recipient's plan of treatment," they do not specifically address the need for reassessment of the recipient's plan of treatment by a physician once it is established. Thus, once a physician prescribes personal care services, the benefit conceivably could be available indefinitely and the services provided remain unchanged, even if the recipient's condition changes. In addition, the regulations require that services be provided by an individual who is "qualified," and who is "not a member of the recipient's family," but do not define these terms, which have been subject to varying interpretations. We believe that revisions are needed in the current regulations to clarify these elements of the personal care services definition.

II. Provisions of the Regulations

To address the problems discussed, we are proposing the following changes to the regulations:

A. Clarification of Types of Covered Services

We would amend the regulations to clarify the types of services that would be covered as personal care services. The regulations would specify that the personal care benefit can include incidental household and chore services, but only when they are furnished as an integral but subordinate part of a program of personal care furnished directly to the recipient (that is, the services are directly related to a recipient's medical needs and are furnished in conjunction with, but subordinate to, direct patient care).

Under the revised 42 CFR 440.170(f), personal care services would include those tasks directed at the recipient or his or her immediate environment that are medically-oriented (that is, direct patient care, as well as those household and chore services that are furnished as an integral but subordinate part of the personal care furnished directly to the recipient). The services may be furnished in the home (which does not include a hospital, skilled nursing facility (SNF), intermediate care facility (ICF), intermediate care facility for the mentally retarded (ICF/MR), or other institution as defined in 42 CFR 435.1009). Services also may be furnished in connection with occasional brief trips made outside the home for the purpose of enabling the recipient to receive medical examination or treatment on other than an inpatient basis, or for shopping to meet the recipient's health care or nutritional needs. The regulations have always described this benefit as personal care services "in the recipient's home"; therefore, we are limiting coverage to include only brief, occasional trips outside the home, in order to preserve the character of the benefit as primarily involving services furnished in the recipient's place of residence (as indicated previously, FFP is not available under this benefit for individuals who reside in institutional settings). (We note that in situations where the services provided predominantly involve extensive travel outside the home, the optional transportation benefit (42 CFR 440.170(a)(3)(iii)) permits coverage of the services of an attendant to accompany a recipient on travel needed to secure the recipient's medical examination or treatment).

Personal care services would not include skilled services that may be performed only by a health professional. In order to address the problem we have experienced under current regulations with respect to household chores, we would specify in the revised § 440.170(f) that household or chore services would be included when furnished as an integral but subordinate part of the personal care that is furnished directly to the recipient. Household or chore services would be considered an integral part of a recipient's personal care when the services are directly related to a condition or medical service reflected in the recipient's plan of treatment and are furnished in conjunction with a direct personal care service. We propose that household or chore services would be considered a subordinate part of a recipient's personal care if they account for no more than one-third of the total time expended during a visit for personal care services delivery. We believe that such a time limit is necessary in order to express clearly in the regulations our intended characterization of personal care services as services that primarily involve direct patient care, and to facilitate application of this policy. However, we welcome comments on possible criteria that could ensure that household or chore services are covered as personal care services only when they are incidental to direct patient care. We note that services not meeting these requirements might be covered under Medicaid in the context of a home and community-based services waiver under section 1915 of the Act. More generally, these services are (and traditionally have been) covered under social services programs, including Title XX of the Act (Block Grants to States for Social Services), under which a State has the option to use Federal funds to provide funding for homemaker services.

B. Qualifications and Supervisory Requirements

The current requirement, under 42 CFR 440.170(f) that personal care services must be provided by an individual qualified to provide the services would be clarified to specify that the State will determine what, if any, qualifications the attendant must meet. The current definition simply says that services provided by a "member of the family" are not covered and does not specify who is included in the term. The revised regulation adopts the definition of an "immediate relative" used in Medicare regulations located at 42 CFR 405.315(a). Thus, the current term "member of the recipient's family" would be defined as: (1) Husband and wife; (2) natural parent, child, and sibling; (3) adopted child and adoptive parent; (4) stepparent, stepchild, stepbrother, and stepsister; (5) father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; (6) grandparent and grandchild. We invite comments on the use of this proposed definition in connection with personal care services, especially as to whether this definition

may limit availability of the services in any geographic areas.

The current requirement for supervision by a registered nurse would be expanded to require a visit to the recipient at least once every 3 months in order to assess the recipient's health, the quality of personal care services received, and the recipient's need for continued care, and to review the recipient's plan of treatment.

However, this supervision requirement would at the same time be made more flexible, by allowing States to have the supervision performed by either a registered nurse or other licensed practitioner of the healing arts acting within the scope of practice as defined under State law. The latter category is one that is currently employed in Medicaid regulations regarding coverage of laboratory services (§ 440.30(a)), licensed practitioner services (§ 440.60(a)), diagnostic services (§ 440.130(a)), preventive services (§ 440.130(c)), and rehabilitative services (§ 440.130(d)).

C. Plan of Treatment

We would amend § 440.170(f) to provide for physician review and reauthorization of the recipient's plan of treatment and review of the medical records at least once every 6 months when the need for services continues beyond 6 months. (The physician would not be required to visit the recipient in order to perform the review and reauthorization. Compensation for the physician's services would be determined by the State.) We would also require that the personal care services that the recipient needs be included in the plan of treatment. These proposals would provide greater assurance that such care meets the recipient's needs and is furnished only to those who require it. This is the same type of requirement now in effect for institutional and home health services.

III. Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for a proposed rule that meets the criteria of a "major rule". A rule is major if its implementation would be likely to result in:

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

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

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

In addition, we usually prepare and publish an initial regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have an annual effect on the economy of $100 million or more. However, only a few States account for most of the personal care service expenditures under Medicaid. We assume that this rule will have an effect primarily on those States and the providers of personal care services in those States. Further, although neither States nor the individual recipients receiving personal care services are small entities under the RFA, the providers of those services are. Although we do not believe that this proposal will have a significant impact on affected States and entities, we are voluntarily providing the following analysis, which, in combination with the preamble of this proposed rule, fulfills the objectives of E.O. 12291 and the RFA.

Generally, States with higher overall expenditures have more recipients receiving services. However, per capita expenditures also may vary significantly among States depending upon the State plan and operational definition of personal care services.

To the extent that personal care services are being claimed when direct patient care is not required, we expect that clarifying the definition of covered personal care services could save money in Federal Medicaid expenditures. In FY 1985, total Federal and State Medicaid expenditures for personal care services came to over $800 million. Costs and savings attributable to these regulatory changes are difficult to estimate with certainty, because we do not have detailed data on personal care expenditures and patient conditions from the 22 States that cover those services. Moreover, we cannot predict what changes States might make in their arrangements for services.

Requiring greater physician review of personal care services, as well as more frequent supervisory visits to recipients receiving those services, would result in additional Federal and State program expenditures that could at least partially offset the savings from more closely controlled coverage. We are unable to estimate these potential costs, because we do not have specific data on the number of recipients who receive personal care services, the periods over which those services are furnished, or the frequency with which visits currently are made. However, the number of these recipients could be quite large (possibly on the order of 300,000 at any given time). Thus, the additional expenditures could be substantial. This may, in part, be offset, however, by the increased termination of services that are no longer necessary, made possible by the increased level of physician review. An additional effect of increased physician review would be a potential for improved quality of care, by assuring greater consistency between services furnished and recipient need.

As noted earlier, States may consider the option of utilizing home and community-based services. Under a home and community-based services waiver, States have flexibility in defining services, subject to Federal approval, and provided that recipient health and safety are adequately protected.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirements

These proposed changes do not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget (EOMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects in 42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Chapter IV would be amended as set forth below:

Part 440 is amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

Subpart A is amended as follows:

1. The authority citation for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.170 is amended by revising paragraph (f) to read as follows:

§ 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

* * * * *

(f) *Personal care services.* Unless defined differently by a State agency for purposes of a waiver granted under Part 441, Subpart G of this chapter, and except as specified in paragraph (f)(4) of this section, "personal care services" means medically-oriented tasks, directed at the recipient or the recipient's immediate environment, that are necessitated by his or her physical or mental condition. The following requirements apply:

(1) The services are prescribed by a physician in accordance with the recipient's plan of treatment and are included in that plan, and, when the need for the services continues beyond 6 months, the plan of treatment is reviewed and reauthorized by a physician at least once every 6 months.

(2) The services are furnished by an individual who—

(i) Meets any applicable qualifications for the provision of these services that the State chooses to establish;

(ii) Is not an immediate relative of the recipient, as defined in 42 CFR 405.315(a); and

(iii) Is under the supervision of a registered nurse (or other licensed practitioner of the healing arts acting within the scope of practice as defined under State law) who, at least once every 3 months—

(A) Visits the recipient to assess his or her health condition, the quality of personal care services received, and the need for continued care; and

(B) Reviews the recipient's plan of treatment.

(3) The services are furnished—

(i) In the recipient's home, which does not include a hospital, skilled nursing facility, intermediate care facility, intermediate care facility for the mentally retarded, or other institution as defined in § 435.1009 of this Subchapter; or

(ii) In connection with occasional brief trips made outside the home for the purpose of enabling the recipient to receive medical examination or treatment on other than an inpatient basis, or for shopping to meet the recipient's health care or nutritional needs.

(4) "Personal care services" do not include—

(i) Skilled services that require professional medical training; or

(ii) Household or chore services, unless furnished as an integral but subordinate part of the personal care that is furnished directly to the recipient.

(5) For purposes of paragraph (f)(4)(ii) of this section, household or chore services are considered—

(i) An intergral part of a recipient's personal care if the services are directly related to a medical condition or service reflected in the recipient's plan of treatment, and are furnished in conjunction with direct patient care; and

(ii) A subordinate part of a recipient's personal care if the services account for no more than one-third of the total time expended during a visit for personal care services delivery.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: November 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: February 4, 1988.

Otis B. Bowen,

Secretary.

[FR Doc. 88-14374 Filed 6-24-88; 8:45 am]

BILLING CODE 4120-01-M

VETERANS ADMINISTRATION

48 CFR Parts 809, 810, 814, 816, 828, 852, and 870

Acquisition Regulations; Packaging Requirements; Estimated Quantities

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to amend the Veterans Administration Acquisition Regulation (VAAR) to clarify the VA's right to repackage shipments at the contractor's cost should noncompliance with packaging requirements occur, and to allow contractors to bid for Department of Memorial Affairs annual monument requirements at less than 75 percent of the annual estimated quantity. These amendments will enhance competition and increase supply sources which should lower costs. This regulation also contains certain technical amendments to correct erroneous references, reflect new organizational titles, correct erroneous terminology and delete duplicative coverage already provided for in the Federal Acquisition Regulation (FAR).

DATES: Comments must be received on or before July 27, 1988. Comments will be available for public inspection until August 8, 1988.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to the Adminstrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Marsha J. Grogan, Acquisition Policy Staff (93), Office of Acquisition and Materiel Management, (202) 233-3784.

SUPPLEMENTARY INFORMATION: The VA is proposing revision of two clauses in VAAR 852.210-76 and 852.216-70.

The clause at 852.210-76 is revised to clarify the VA's right to either reject or repackage shipments that do not comply with specified packaging requirements and charge the contractor for the actual cost of the repackaging.

A new paragraph is added to the estimated quantities clause at 852.216-70 to allow bids from contractors for less than 75 percent of the Department of Memorial Affairs annual requirements for monuments.

Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from sections 3 and 4 of Executive Order 12291.

Regulatory Flexibility Act (RFA)

Because this proposed regulation does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions are primarily clarifications of existing procedures which will not significantly impact the private sector.

Paperwork Reduction Act

This proposed regulation requires no additional information collection or

recordkeeping requirement upon the public.

List of Subjects in 48 CFR Parts 809, 810, 814, 816, 828, 852 and 870

Government procurement.

Approved: June 16, 1988.

Thomas K. Turnage,

Administrator.

48 CFR Parts 809, 810, 814, 816, 828, 852 AND 870 are proposed to be amended as follows:

PARTS 809, 810, 814, 816, 828, 852 and 870—[AMENDED]

1. The authority citation for Parts 809, 810, 814, 816, 828, 852 and 870 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

809.270, 809.404, 809.405, 810.007, 814.406, 816.7001, 828.7101, 852.233-2, 870.112 [Amended]

2. Sections 809.270, 809.404, 809.405, 810.006, 810.007, 814.406-3, 814.406-4, 816.7001, 828.7101, 852.233-2, and 870.112 are amended by removing the words "Office of Procurement and Supply" wherever they appear, and inserting in their place, the words "Office of Acquisition and Materiel Management."

3. Section 809.106-1 is amended by revising the last sentence in paragraph (c) to read as follows:

809.106-1 Conditions for preaward surveys.

* * * * *

(c) * * * On-site evaluation will be made at least annually and recorded on VA Form 10-2079, Inspection Report of Bakery.

4. Section 810.006 is amended by revising paragraph (e)(1) to read as follows:

810.006 Using specifications and standards.

* * * * *

(e) * * *

(1) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with Government Printing Office (GPO) specifications and will be procured from the servicing GPO Regional Printing Procurement Office or, when appropriate, from commercial sources as prescribed in Subpart 808.8.

* * * * *

5. Section 814.201 is amended by revising paragraph (b) to read as follows:

814.201 Preparation of invitations for bids.

* * * * *

(b) Invitations for construction contracts will bear the applicable IFB number and project number, if assigned.

* * * * *

814.407-1 [Removed]

6. Section 814.407-1 is removed.

814.407-71 [Amended].

7. Section 814.407-71(b) is amended by removing the word "station," and adding in its place, the word "facility."

8. Section 816.102 is amended by revising paragraph (b) to read as follows:

816.102 Policies.

* * * * *

(b) Contracts of the type specified in paragraph (a)(3) of this section which include an economic price adjustment provision other than those contracts awarded by the Department of Memorial Affairs for monuments or those contracts that contain the clause for service contracts (FAR 22.1006(c)) require the prior approval of the Director, Office of Acquisition and Materiel Management (90). The request for approval shall clearly set forth the need for the provision.

* * * * *

9. Section 828.106-6 is added to read as follows:

828.106-6 Furnishing information.

The head of the contracting activity as defined in 802.100 shall be the agency designee referenced in FAR 28.106-6(c) to furnish copies of payment bonds to requestors except for contracts awarded by the Office of Facilities. For those contracts, Office of Facilities contracting officers shall be the Agency designee.

10. Section 852.210-76 is amended by revising the clause to read as follows:

852.210-76 Noncompliance with packaging, packing, and/or marking requirements.

* * * * *

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the contractor, to perform the required repackaging, repacking, and/or marking services and charge the contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order charge the contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of Clause)

11. Section 852.216-70 is amended by adding paragraph (e) to read as follows:

852.216-70 Estimated quantities for requirements contracts.

* * * * *

(e) The following clause will be used for Department of Memorial Affairs contracts for monuments:

Estimated Quantities

(date)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles that may be ordered during the contract term, except as he or she otherwise indicates in his or her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his or her obligation. Also, the Veterans Administration shall not be relieved of its obligation to order from the contractor all articles that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

870.112 [Amended]

12. In 870.112, pargraph (b) is amended by removing the words "Data Management and Telecommunications," and adding in their place, the words "Information Systems and Telecommunications."

13. Section 870.112 is amended by removing the words "Procurement and Supply," wherever they appear, and adding in their place, the words "Acquisition and Materiel Management."

[FR Doc. 88-14195 Filed 6-24-88; 8:45 am]

BILLING CODE 8320-01-M

Notices

Federal Register
Vol. 53, No. 123
Monday, June 27, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Background

Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collection information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents (requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents) may be obtained from the agency clearance officer.

Need and Use: Study mandated by Congress (Pub. L. 99-551, section 416) to evaluate RSVP and SCP Family Caregiver Programs which provide, through volunteers, respite services to families caring for frail or disabled relatives. Findings will provide information useful for technical assistance and program development and monitoring. *Key Words:* Program evaluation, Volunteer services.

To Obtain Information About or to Submit Comments on This Proposed Information Collection, Please Contact Both:

Melvin E. Beetle, ACTION Clearance Officer, ACTION, Room M-601, 806 Connecticut Ave. NW., Washington, DC 20525, Tel: (202) 634-9318.

And

James Houser, Desk Officer for ACTION, Office of Management And Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395-7316.

Office of ACTION issuing the Proposal: Office of the Inspector General, Program Analysis and Evaluation Division.

Title of Form: OAVP Family Caregiver Evaluation.

Type of Request: New.

Frequency of Collection: One time only.

General Description of Respondents: RSVP and SCP project directors, station supervisors, volunteers, elderly clients and family caregivers.

Estimated Number of Annual Responses: One.

Estimated Annual Reporting or Disclosure Burden: 1337.8.

Respondent's Obligation to Reply: Voluntary.

Date: June 21, 1988.

Melvin E. Beetle,

ACTION Clearance Officer.

[FR Doc. 88-14405 Filed 6-24-88; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-091]

Availability of Environment Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Herbicide Tolerant Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in the State of Illinois of genetically engineered tomato plants, designed to be tolerant to glyphosate herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James L. White, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7769. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 88-041-07.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained

before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to glyphosate herbicides. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Monsanto application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. EPSP (5-enol-shikimate-3-phosphate) synthase gene has been inserted into the tomato chromosome. In nature, genetic material contained on chromosomes can only be transferred to other sexually compatible plants by cross-pollination. In this field test trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is located a sufficient distance from any sexually compatible plants with which these experimental tomato plants could cross-pollinate.

2. Neither the EPSP synthase gene itself, nor the enzyme it produces confers on tomato any plant pest characteristics.

3. The plant from which the EPSP synthase gene was isolated is not a plant pest.

4. The EPSP synthase gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the EPSP synthase gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

6. Horizontal transfer of the introduced gene is not possible. The vector acts by delivering and inserting the gene into the tomato genome (i.e., chromosomal DNA). The vector does not suvive in the transformed plants. No mechanism for harizontal transfer is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

7. Glyphosate is a nonselective herbicide that is rapidly degraded under field conditions. It has been shown to be less toxic to animals than many selective herbicides commonly used.

8. The size of the field test is very small (150 feet wide by 350 feet long). The plot is physically isolated from many species of wild plants and amimals by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR), Parts 1500–1508); (3) USDA Regulations Implementating NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 20th day of June 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-14392 Filed 6-24-88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88-089]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Insect Resistant Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Agrigenetics Advanced Science Company to allow the field testing in the State of Wisconsin of genetically engineered tomato plants, designed to be resistant to lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 30782.

FOR FURTHER INFORMATION CONTACT: Dr. James L. White, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7769. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7750, or write her at this same address. The environmental assessment should be requested under accession number 88–029–02.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is

reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the envonment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Agrigenetics Advanced Science Company of Madison, Wisconsin, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be resistant to lepidopteran insects. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Agrigenetics application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Agrigenetics Advanced Science Company, as well as a review of other relevant literature, provides the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding delta-endotoxin has been inserted into the tomato chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field test trial, the introduced gene cannot spread to other plants by cross-pollination, because the field test plot is located at a sufficient distance from any sexually compatible plants with which those experimental tomato plants could cross-pollinate.

2. Neither the delta-endotoxin gene itself, nor its polypeptide product confers on tomato any plant pest characteristics.

3. The microorganism from which the delta-endotoxin gene was isolated is not a plant pest and is widely distributed in the environment as a soil inhabitant.

4. The vector used to transfer the delta-endotoxin gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

5. The vector agent, the bacterium that was used to deliver the vector DNA and the delta-endotoxin gene into the plant cells, has been shown to be eliminated and no longer associated with the transformed tomato plants.

6. Horizontal movement of the introduced gene is not possible. The vector acts by delivering and inserting the gene into the tomato genome (i.e., chromosomal DNA). The vector does not survive in the transformed plants. No horizontal movement mechanism is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

7. The toxic polypeptide produced by the transformed plant is called delta-endotoxin. Upon ingestion, the toxin kills only lepidopteran insects. Delta-endotoxin is not toxic to most other insects, to wild or domestic birds, fish or to mammals. Because of its safety, its topical application on vegetable crops is permitted up to harvest date.

8. The field test site is 87 feet wide by 104 feet long and is physically isolated from many species of wild plants and animals by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Parts 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 20th day of June 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-14390 Filed 6-24-88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88-090]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Insect Resistant Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in the State of Illinois of genetically engineered tomato plants, designed to be resistant to lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 605 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James L. White, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7769. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 88-041-04.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of

the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests on Which There is Reason to Believe Are Plant Pests" (hereinafter "The rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation of interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be resistant to lepidopteran insects. In the course of reviewing the permit application, APHIS assessed the impact of the environment of releasing the tomato plants under the conditions described in the Monsanto application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provides the public with documentation of APHIS'review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding delta-endotoxin has been inserted into the tomato chromosome. The expression of the truncated delta-endotoxin polypeptide results in a degree of protection against the feeding damage caused by the larvae of selected lepidopteran insects. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollution. In this field test trial, the introduced genes cannot spread to other plants by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible plants with which these experimental tomato plants could cross-pollinate.

2. Neither the delta-endotoxin gene itself, nor its protein product confers on tomato and plant pest characteristics.

3. The microorganism from which the delta-endotoxin gene was isolated is not a plant pest and is widely distributed in the environmental as a soil inhabitant.

4. The vector used to transfer the delta-endotoxin gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

5. The vector agent, the bacterium that was used to deliver the vector DNA and the delta-endotoxin gene into the plant cells, has been shown to be eliminated and no longer associated with the transformed tomato plants.

6. Horizontal movement or gene transfer of the introduced gene is not possible. The vector acts by delivering and inserting the gene into the tomato genome (i.e., chromosomal DNA). The vector does not survive in the transformed plants. No mechanism for horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

7. The toxic polypeptide produced by the engineered gene is called delta-endotoxin. Upon ingestion, the toxin kills only lepidopteran insects. Delta-endotoxin is not toxic to other insects, to wild or domestic birds, fish or to mammals. Because of its safety, its topical application on vegetable crops is permitted up to harvest date.

8. The field test site is 200 feet wide by 375 feet and is physically isolated from wild plants and animals by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 20th day of June 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-14391 Filed 6-24-88; 8:45 am]

BILLING CODE 3410-34-M

Economic Research Service

National Agricultural Cost of Production Standards Review Board; Meeting

The National Agricultural Cost of Production Standards Review Board will meet at the Economic Research Service, U.S. Department of Agriculture, Washington, DC on July 18–19, 1988.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. All meetings will be held in room 332, 1301 New York Avenue, NW. The meeting's morning session on July 18 will convene at 9:00 a.m. and the afternoon session will begin at 1:30 p.m. ending by 4:30 p.m. On July 19, the session will start at 9:00 a.m. and end at approximately 2:00 p.m.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted to Kenneth Deavers, Director, ARED–ERS–USDA, Room 314, 1301 New York Avenue, NW., Washington, DC 20250.

For further information, contact Diane Bertelsen at (202) 786–1808.

John E. Lee, Jr.,

Administrator.

[FR Doc. 88-14432 Filed 6-24-88; 8:45 am]

BILLING CODE 3410-18-M

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of Country of Origin Adjustment for certain condensed milk from Denmark.

SUMMARY: This notice adjusts the country of origin for the quota quantity of condensed milk in airtight containers assigned to Denmark.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building,

Department of Agriculture, Washington, DC 20250 or telephone at (202) 447-5270.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota item specified herein may be entered does not affect the ability of importers to import this quota item, but only expands the number of countries from which the item may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

Notice

Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Headnote 3(a)(iii) of Part 3 of that Appendix allows for reallocating the quota amount of a dairy article listed in that Appendix among the countries of origin specified for a given article if it is determined that the quota amount assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the amount of condensed milk in airtight containers specified in TSUS Item 949.90 for Denmark will be entered from that country during calendar year 1988.

Notice is hereby given that the 1988 unused quota quantity for condensed milk in airtight containers specified in TSUS Item 949.90 for Denmark may be imported from Australia, Canada, Denmark and the Netherlands for the remainder of the 1988 quota year.

This quota quantity for TSUS Item 949.90 will revert to the original supplying country on January 1, 1989.

Issued at Washington, DC, this 22nd day of June 1988.

Thomas O. Kay,

Administrator.

[FR Doc. 88-14460 Filed 6-24-88; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Transfer of Administrative Jurisdiction; Lucky Peak Lake Project, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of joint interchange of lands.

SUMMARY: On March 8, 1988, and January 27, 1988, the Secretary of the Army and the Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction of 557.10 acres, more or less, from the Department of Agriculture to the Department of the Army and 9.391 acres, more or less, from the Department of the Army to the Department of Agriculture within or adjacent to the exterior boundaries of the Boise National Forest, Idaho. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656, 16 U.S.C. 505a, 505b) has been met. A copy of the Joint Order, as signed, appears at the end of this notice.

EFFECTIVE DATE: The order is effective June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Lands Staff, Room 1010-RP-E, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, Telephone: (703) 235-2406.

George M. Leonard,

Associate Chief.

Date: June 3, 1988.

DEPARTMENT OF THE ARMY

DEPARTMENT OF AGRICULTURE

Lucky Peak Lake Project, Idaho

JOINT ORDER INTERCHANGING ADMINISTRATIVE JURISDICTION OF DEPARTMENT OF THE ARMY LANDS AND NATIONAL FOREST LANDS

By virtue of the authority vested in the Secretary of the Army and in the Secretary of Agriculture by Pub. L. 804 of the 84th Congress approved July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b), it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A attached hereto and made a part hereof, which lands are within or adjacent to the exterior boundaries of the Boise National Forest, Idaho, are hereby transferred from the Secretary of the Army to the Secretary of Agriculture, subject to outstanding rights or interests of record and to such continued use by the Corps of Engineers of all of these lands which are necessary for the operation and maintenance of the Lucky Peak Lake project for its intended purpose of flood control; including, but not limited to the right to flooding of the area, to construct and maintain transmission lines, utilities, access roads, and to make improvements in the aid of navigation, and the right to prohibit construction and placing of fill material below spillway crest elevation 3060', except as approved in writing by the District Engineer. The Secretary of Agriculture will assume administration of all assignable outgrants and leases now existing on Lucky Peak Lake project lands hereby tranferred.

(2) The National Forest lands described in Exhibit B, attached hereto and made a part hereof, which are a part of the Boise National Forest, Idaho, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army, subject to outstanding rights or interests or record.

(3) Pursuant to section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to the laws applicable to the Department of the Army lands comprising the Lucky Peak Lake. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereby subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of date of publication in the **Federal Register.**

John O. Marsh, Jr.,

Secretary of the Army.

Date: March 8, 1988.

Richard E. Lyng,

Secretary of Agriculture.

Date: January 27, 1988.

Exhibit A—Lands To Be Transferred To Forest Service

Lucky Peak Lake Project

T. 3 N., R. 4 E., Boise Meridian, Ada County, Idaho

Sec. 21: Commence at the corner of Sections 16, 17, 20, and 21, Township 3 North, Range 4 East, Boise Meridian, thence S 0° 12'W, 660 feet to a corner marked by a ⅝ inch diameter steel bar, the point of beginning; thence N 0° 12'30"E, 440 feet to a point; thence N 84° 35'30"E, 960.84 feet to a point monumented by a ⅝ inch diameter steel bar; thence S 62° 53'W, 1076.26 feet to the point of beginning, containing 4.391 acres more or less.

Sec. 28: Beginning at the NW corner of Lot 3, Section 28, Township 3 North, Range 4 East, Boise Meridian; the true point of beginning; thence N 89° 35' E, 660 feet to a point, thence S 44° 54'30"W, 938.66 feet to a point; thence N 0° 14' E, 660 feet to

the point of beginning; containing 5 acres more or less.

Total acreage transferred to the Forest Service, 9.391.

Exhibit B—Lands To Be Transferred To Corps of Engineers

Lucky Peak Lake Project

T. 3 N., R. 4 E., Boise Meridian and Elmore Counties, Idaho

	Acres
Sec. 8: NE¼NE¼, E½NW¼NE¼	60.00
Sec. 9: S½NE¼NW¼, NW¼NW¼	60.00
Sec. 11: Lots 1, 2, 3, 4, 8, 9, 10, 11, NW¼SW¼	238.30
Sec. 12: Lots 1, 2, 3, S½SW¼NW¼, W½W½SE¼SW¼, W½SW¼NE¼SW¼	100.40
Sec. 14: Lots 2, 3, 4, 5, 6	98.40
Total acreage transferred to the COE	557.10

[FR Doc. 88-14365 Filed 6-24-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; Ahoa Bellstone Critical Area Treatment Measure, HI

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ahoa Bellstone Critical Area Treatment Measure, Maui, Hawaii.

FOR FURTHER INFORMATION CONTACT: Richard N. Duncan, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii 96850, Telephone (808) 541-2601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard N. Duncan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for stabilizing critically eroding areas along Kahekili Highway. The planned works of improvement include a concrete ford, shoulder swales, and a culvert.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic information developed during the environmental assessment are on file and may be reviewed by contacting Richard N. Duncan, State Conservationist, Soil Conservations Service, P.O. Box 50004, Honolulu, Hawaii 96850, (808) 541-2600.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 101.901, Resource Conservation and Development Program—Public Law 87-703, 16 U.S.C. 590 a-f,q.)

Richard N. Duncan,

State Conservationist.

Date: June 15, 1988.

[FR Doc. 88-14363 Filed 6-24-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.
Title: Ocean Freight Revenues and Expenses of U.S. Carriers; and U.S. Airline Operators' Foreign Revenues and Expenses.
Form Number: Agency—BE-30 and BE-37; OMB—0608-0011.
Type of Request: Extension of a currently approved collection.
Burden: 216 respondents; 1024 reporting hours.
Average Time per Response: 5 hours (BE-30); 4 hours (BE-37).
Needs and Uses: These surveys are needed to obtain data required for the preparation of the international transportation account of the U.S. balance of international payments. The balance of payments accounts are used extensively by Government, international organizations, and other private groups; and are an integral part of the National Income Accounts of the United States.
Affected Public: businesses or other for-profit institutions.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395-7340.

Agency: Bureau of Economic Analysis.
Title: Foreign Airline Operators' Revenues and Expenses in the United States.
Form Number: Agency—BE-36; OMB—0608-0013.
Type of Request: Extension of a currently approved collection.
Burden: 60 respondents; 300 reporting hours.
Average Time per Response: 5 hours.
Needs and Uses: This survey is needed to obtain data required for the international transportation account of the U.S. balance of international payments. The balance of payments accounts are used extensively by Government, international organizations, and their private groups; and are an integral part of the National Income Accounts of the United States.
Affected Public: Businesses or other for-profit institutions.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395-7340.

Agency: Bureau of Economic Analysis.
Title: Industry Classification Questionnaire (FDIUS).
Form Number: Agency—BE-607; OMB—0608-0030.
Type of Request: Extension of a currently approved collection.
Burden: 800 respondents; 400 reporting hours.
Average Time per Response: 30 minutes.
Needs and Uses: This questionnaire is used to obtain reliable and up-to-date data on foreign direct investment in the United States. The data is used to classify, by industry, foreign parents and their U.S. affiliates.
Affected Public: Businesses or other for-profit institutions.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room

3208 New Executive Office Building, Washington, DC 20503.

Dated: June 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-14371 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 22-88]

Foreign-Trade Zone 133, Quad-City, IA; Application for Subzone Status for Maytag Home Appliance Assembly Plants, Newton, IA, Galesburg, IL, and Herrin, IL; Extension of Comment Period

The period for comments on the above case, involving the proposed special-purpose foreign-trade subzone for the home appliance assembly plants of Maytag Corporation, Newton, Iowa, Galesburg, Illinois, and Herrin, Illinois (53 FR 16303, 5/6/88), is extended to July 26, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. The public record will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

John J. Da Ponte, Jr.,

Executive Secretary.

Dated: June 21, 1988.

[FR Doc. 88-14442 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-484-801]

Initiation of Antidumping Duty Investigation; Electrolytic Manganese Dioxide From Greece

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of electrolytic manganese dioxide (hereinafter referred to as EMD) from Greece are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of EMD materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before November 7, 1988.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0187.

SUPPLEMENTARY INFORMATION:

The Petition

On May 31, 1988, we received a petition filed in proper form by Chemetals Inc. and Kerr-McGee Chemical Corporation on behalf of the domestic EMD industry. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of EMD from Greece are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

The petitioners have alleged that they have standing to file the petition. Specifically, petitioners have alleged that they are interested parties as defined under section 771(9)(C) of the Act, and that they have filed the petition on behalf of the U.S. industry manufacturing the product that is subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioners presume that the prevailing price for Greek EMD in the U.S. market is the same as the price for Japanese EMD in the United States. Therefore, petitioners' estimate of United States price was based on prices for EMD produced in Japan and sold in the United States. Adjustments were made for ocean freight, primage, marine insurance, container handling cost, U.S. brokerage and handling, customs duty, and trading company mark-up.

Petitioners have calculated foreign market value (FMV) by applying the special rule for certain multinational corporations contained in Section 773(d) of the Act. Since petitioners allege that Greek home market sales are inadequate for comparison purposes, they have calculated foreign market value based on the sales price of EMD sold in Japan by the Greek producer's related affiliate in Japan. However, a comparison of the sales data provided in the petition indicate that Greek home market sales may be an adequate basis for calculating foreign market value.

Petitioners have also calculated foreign market value based on petitioners' estimate of the constructed value of Greek EMD as derived from the U.S. EMD industry cost experience adjusted for known differences in manufacturing costs. Therefore, for purposes of this initiation, we have used constructed value as foreign market value.

Based on a comparison of United States price and foreign market value, petitioners allege a dumping margin of approximately 48 percent.

Petitioners have alleged that home market sales were made below the cost of production. Our analysis of the cost information provided in the petition, which have been adjusted to reflect known differences between the petitioners' and Greek manufacturer's costs, indicates that there is a reasonable basis to believe or suspect that home market prices are below the cost of production.

Petitioners also allege that "critical circumstances" exist within the meaning of section 733(e) of the Act, with respect to imports of EMD from Greece.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on EMD from Greece and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of EMD from Greece are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the cost of production. We will also make a

determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by November 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is electrolytic manganese dioxide from Greece currently provided for under TSUSA item number 419.4420 and currently classifiable under HS item number 2820.10.000.

EMD is manganese dioxide (Mno_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate form, and two grades, akaline and zinc chloride. EDM sold in all three forms and both grades are tentatively included within the scope of the investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 15, 1988, whether there is a reasoanble indication that imports of EMD from Greece materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

June 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-14445 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-419-801]

Initiation of Antidumping Duty Investigation; Electrolytic Manganese Dioxide From Ireland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of electrolytic manganese dioxide (EMD) from Ireland are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of EMD materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before November 7, 1988.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0187.

SUPPLEMENTARY INFORMATION:

The Petition

On May 31, 1988, we received a petition filed in proper form by Chemetals Inc. and Kerr-McGee Chemical Corporation on behalf of the domestic EMD industry. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of EMD from Ireland are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

The petitioners have alleged that they have standing to file the petition. Specifically, petitioners have alleged that they are interested parties as defined under section 771(9)(C) of the Act and that they have filed the petition on behalf of the U.S. industry manufacturing the product that is subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioners presume that the prevailing price for Irish EMD in the U.S. market is the same as the price for Japanese EMD in the United States. Therefore, petitioners' estimate of United States price was based on prices for EMD produced in Japan and sold in the United States. Adjustments were made for container handling cost, ocean freight, marine insurance, U.S. brokerage and handling, customs duty, and trading company mark-up.

Petitioners have calculated foreign market value by applying the "special rule for certain multinational corporations" contained in section 773(d) of the Act. Since petitioners allege that Irish home market sales are inadequate for comparison purposes, FMV was based on the sales price of EMD sold in Japan by the Irish producer's related affiliate in Japan. Adjustments were made for domestic delivery and trading company mark-up.

Based on a comparison of United States prices and foreign market value, petitioners allege a dumping margin of approximately 120 percent.

Petitioners also allege that "critical circumstances" exist within the meaning of section 733(e) of the Act, with respect to imports of EMD from Ireland.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on EMD from Ireland and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of EMD from Ireland are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by November 7, 1988.

Scope of Investigation

The Unites States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is electrolytic manganese dioxide from Ireland currently provided for under TSUSA item number 419.4420 and currently classifiable under HS item number 2820.10.0000.

EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate form, and two grades, akaline and zinc chloride. EMD sold in all three forms and both grades are tentatively included within the scope of the investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 15, 1988, whether there is a reasonable indication that imports of EMD from Ireland materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

June 20, 1988.

[FR Doc. 88-14446 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-806]

Initiation of Antidumping Duty Investigation; Electrolytic Manganese Dioxide From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of electrolytic manganese dioxide (hereinafter referred to as EMD) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of EMD materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 15, 1988. If that determination is affirmative, we will make a preliminary determination on or before November 7, 1988.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0187.

SUPPLEMENTARY INFORMATION:

The Petition

On May 31, 1988, we received a petition filed in proper form by Chemetals Inc. and Kerr-McGee Chemical Corporation on behalf of the domestic EMD industry. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of EMD from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

The petitioners have alleged that they have standing to file the petition. Specifically, petitioners have alleged that they are interested parties as defined under section 771(9)(C) of the Act, and that they have filed the petition on behalf of the U.S. industry manufacturing the product that is subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioners' estimate of United States price was based on prices for EMD produced in Japan and sold in the United States, less foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, customs duty, and trading company mark-up.

Petitioners' estimate of foreign market value was based on Japanese home market prices less domestic delivery and trading company mark-up.

Based on a comparison of United States prices and foreign market value,

petitioners alleged a dumping margin of approximately 126 percent.

Petitioners also allege that "critical circumstances" exist within the meaning of section 733(e) of the Act, with respect to imports of EMD from Japan.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petiton is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on EMD from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of EMD from Japan are being, or are ikely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by November 7, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the Unitd States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remais dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as wel as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have refeence copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is electrolytic manganese dioxide from Japan currently provided for under TSUSA item number 419.4420 and currently classifiable under HS item number 2820.10.0000.

EMD is manganese dioxide (MnO^2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plante form, and two grades, akaline and zinc chloride. EMD in all three forms and both grades are tentatively included in the scope of the investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writng that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 15, 1988, whether there is a reasonable indication that imports of EMD from Japan materially injure, or threaten material injury to, a U.S industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

June 20, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-14447 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials, Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constituion Avenue, NW., Washington, DC.

Docket number: 88-055. *Applicant:* National Bureau of Standards, Gaithersburg, MD 20399. *Instrument:* Superconducting Magnet. *Manufacturer:* Cryogenic Consultants, Ltd., United Kingdom. *Intended use:* See notice at 53 FR 1811, January 22, 1988. *Reasons for this decision:* The foreign instrument provides a persistent mode with a maximum 13 tesla magnetic field. *Advice submitted by:* The National Institutes of Health, May 17, 1988.

Docket number: 88-076. *Applicant:* Health Research, Inc., Buffalo, NY 14263. *Instrument:* Gas Chromotograph/Mass Spectrometer/Data System, Model MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended use:* See notice at 53 FR 4866, February 18, 1988. *Reasons for this decision:* The foreign instrument provides: (1) resolution to 50 000, (2) mass range to 17 500, (3) scan rate to 0.1 second per decade, and (4) capillary-chromatograph interface with FAB ionization. *Advice submitted by:* The National Institutes of Health, May 17, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-14444 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-DS-M

Veterans Administration Medical Center et al., Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-125. *Applicant:* Veterans Administration Medical Center, Portland, OR 97207. *Instrument:*

Electron Microscope, Model JEM-1200EX/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 15103 April 27, 1988. *Instrument Ordered:* June 30, 1987.

Docket Number: 88-126. *Applicant:* University of Texas Southwestern Medical Center at Dallas, Dallas, TX 75235. *Instrument:* Electron Microscope, Model JEM-100SX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 15103 April 27, 1988. *Instrument Ordered:* Januray 11, 1988.

Docket Number: 88-128. *Applicant:* Massachusetts General Hospital, Boston, MA 02114. *Instrument:* Electron Microscope with Accessories, Model CM 10/PC. *Manufacturer:* N.V. Philips, the Netherlands. *Intended Use:* See notice at 53 FR 15103 April 27, 1988. *Instrument Ordered:* December 29, 1987.

Docket Number: 88-136. *Applicant:* University of California, Santa Barbara, CA 93106. *Instrument:* Electron Microscope Model JEM-4000FX. *Manufacture:* JEOL Ltd., Japan. *Intended Use:* See notice at 53 FR 15099 April 27, 1988. *Instrument Ordered:* November 26, 1986.

Docket Number: 88-137. *Applicant:* Washington University, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 53 FR 15100 April 27, 1988. *Instrument Ordered:* January 13, 1986.

Docket Number: 88-140. *Applicant:* State of Minnesota Department of Health, Minneapolis, MN 55440. *Instrument:* Electron Microscope, Model H-600. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 53 FR 15100 April 27, 1988. *Instrument Ordered:* December 1, 1987.

Docket Number: 88-145. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Electron Microscope, Model CM30T. *Manufacturer:* N.V. Philips, the Netherlands. *Intended Use:* See notice at 53 FR 15100, April 27, 1988. *Instrument Ordered:* December 4, 1987.

Docket Number: 88-149. *Applicant:* Washington University, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Inc., Japan. *Intended Use:* See notice at 53 FR 15101, April 27, 1988. *Instrument Ordered:* Feburary 12, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-14443 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Exxon Co., U.S.A. From an Objection by the New Jersey Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for comments.

On January 13, 1987, the Secretary of Commerce (Secretary) received a notice of appeal from Exxon Company, U.S.A. (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(C)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the New Jersey Department of Environmental Protection (State) to the Appellant's consistency certification for U.S. Army Corps of Engineers (Corps) permit application no. NAPOP-R-86-0758-11. Pursuant to section 404 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1344, the Appellant must obtain a Corps permit before constructing a service station involving the filling of wetlands in Dover Township, New Jersey.

Shortly after the Appellant filed its notice of appeal, the Secretary, at the parties' request, granted a stay of the proceedings pending settlement discussions by the parties. When those discussions did not resolve the issues under dispute, the stay was not extended and the appeal process resumed. The parties have completed the first round of briefing of the issues, and the Department now seeks public comments regarding the criteria relevant to the Secretary's decision on the appeal.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122. The Appellant requests that the Secretary override the State's consistency objection based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed project do not outweigh its contribution to the national interest; (3) the proposed project will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the State's coastal management program.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication date of this notice, and should be sent to Sydney Anne Minnerly, Attorney-Adviser, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Arthur Stein, Esquire, Curry & Stein, 1041 W. Lacey Road, P.O. Box 131, Forked River, New Jersey 08731 and Dorothy M. Highland, Deputy Attorney General, Environmental Protection Section, Division of Law, New Jersey Department of Law and Public Safety, Richard J. Hughes Justice Complex, CN 112, Trenton, New Jersey 08625. All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of Curry & Stein, the New Jersey Department of Law and Public Safety, and the NOAA Office of General Counsel.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of General Counsel, National Oceanic and Atmospheric

Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: June 14, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88-14404 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-03-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, July 11-14, 1988, at the Red Lion Inn-Columbia River, 1401 North Hayden Island Drive, Portland, OR, as follows:

Council—will convene July 13 at 8 a.m., with a closed session (not open to the public), to discuss litigation, personnel, and other appropriate matters. At 9 a.m., the Council will convene its open session to consider groundfish management issues, i.e. applications for experimental fishing permits, limited entry, yellowtail rockfish acceptable biological catch, status of the Pacific Coast Fisheries Information Groundfish Network, inseason management of rockfish and sablefish, sablefish allocation process, groundfish plan amendment (rewrite), sorting of trip limit species, offshore processing, and foreign fishing.

There will be a public comment period on July 13 at approximately 4 p.m., to hear comments on issues not on the agenda. Public comments on agenda items will be heard during the Council's discussion of each issue.

On July 14 the Council will convene at 8 a.m., to address administrative matters, anchovy management, habitat matters, salmon management, and a status report on the Pacific halibut fishery. Salmon management issues include the status of the 1988 fishery, report of the Klamath Fishery Management Council meeting, report on Indian/non-Indian sharing, review of the March salmon process, review of plan amendment options and analyses, extension of emergency salmon regulations, and other matters.

Groundfish Select Group—will convene July 11 at 8 a.m., to address inseason groundfish management and sablefish allocation.

Scientific and Statistical Committee (SSC)—will convene July 11 at 1 p.m., to address issues on the Council agenda and will reconvene July 12 at 8 a.m.

Groundfish Advisory Subpanal—will convene July 11 at 1 p.m., with the SSC, then reconvene July 12 at 8 a.m., to address groundfish issues on the Council agenda.

Budget Committee—will convene July 12 at 3 p.m., to consider changes to the 1988 Council budget and proposed budgets for 1989 and 1990.

Foreign Fishing Committee—will convene July 12 at 4 p.m., to decide on release of the Pacific whiting reserve and address any current foreign fishing applications.

Limited Entry Committee—on July 12 at 5 p.m., will present its proposal and answer questions.

Habitat Committee—on July 13 at 5 p.m., will convene immediately after the Council meeting to address any current habitat issues.

Detailed agendas for the above meetings will be available to the public after June 30. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: June 21, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-14395 Filed 6-24-88; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 17 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/TS21), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1988 have been received from the Governments shown below.

Dated: June 21, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional Fishery Management Councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.

Code	Fishery	Regional Fishery Management Councils
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support
2	Processing and other support only
3	Other support only
*	Vessel(s) in support of U.S. vessels Joint venture)
**	Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities.

Joint Venture

Whiting Fishery

The Government of the Republic of Korea has submitted a permit application for the TAE BAEK 29 Ho to engage in joint venture activities in the WOC fishery. The species and amount requested is for Pacific Hake in the amount of 10,000 mt. The American parter is Profish International Seattle, Washington. This is the second Korean joint venture operation to be added to this fishery. The initial Korean JV/WOC request was published April 29, 1988, at 53 FR 15439.

Squid Fishery

The Government of Italy has submitted permit applications for the NWA Fishery.

The species and amounts requested for joint venture and directed fishing are listed on the chart below. The directed fishing requests are enclosed in the parenthesis.

Species

[In metric tons]

Northwest Atlantic Ocean Fisheries					
Illex	Loligo	Mackerel	Red Hake	Dogfish	American Partner
2,000 (2,000)	2,000 (2,000)	500 (500)	500	500	IST Corporation, Inc., Cape May, NJ.

[FR Doc. 88-14448 Filed 6-22-88; 4:53 pm]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-778,384
In Vitro Screening for and Selection of Glycine Max Resistant to Phialophora Gregata

SN 7-140,501
Simple and Rapid Method for Detection of Virulent Yersinia enterocolitica

SN 7-141,857
Process for Preserving Raw Fruit and Vegetable Juices Using Cyclodextrins and Compositions Thereof

SN 7-159,995
Microbial Production of L-Altrose

SN 7-168,047
Novel Sesquiterpene Epoxides

SN 7-177,236
Biological Control of Postharvest Rots in Fruits Using Debaryomyces hansenii

SN 7-179,453
Ground Contact Implement Soil Penetration Depth Control

Department of Health and Human Services

SN E-129-88
Protein Crosslinking Reagents Cleavable Within Acidified Intercellular Vesticles

SN E-132,88
Derivatives of Cyclic AMP as Treatment of Cancer

SN E-347-86 A
Macrocyclic Chelates and Methods of Use Thereof

SN E-347-86 B
Process for Synthesizing Macrocyclic Chelates

SN E-518-87
Raccoon Poxvirus as a Gene Expression and Vaccine Vector for Genes of Rabies Virus and Other Organisms

SN E-548-87
Metalloproteinase Marker for Cancer Metastases

SN 6-850,120 (4,740,709)
Method of Sensing Fluid Properties of Bubble Concentrations

SN 7-110,348
New Recombinant Plasmid Containing HIV Reverse Transcriptase Gene

SN 7-131,391
Synthetic Oligonucleotide for Translational Control of Eukaryotic Genes

SN 7-172,922
Piperdine Ring Modified Phencyclidine Analogs as Anticonvulsants

Department of the Army

SN 7-084,783
Modulation of Cellular Phosphatidylinositol Turnover by Exogenous Phosphatidylinositol

SN 7-171,323
Monolithic Millimeter-Wave Image Guide Balanced Mixer

SN 7-171,325
Improved Method of Making a Ferrite Circulator

SN 7-176,125
Planar Monolithic Millimeter Wave

Mixer
SN 7-176,126
Method of Etching Zirconium Diboride.

[FR Doc. 88-14364 Filed 6-24-88; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

June 22, 1988.

AGENCY: Committee or the Implementation of Textitle Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new agreement year limits.

EFFECTIVE DATE: July 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the Bulletin Boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and Uruguay is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implemention of Textile Agreement.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

June 22, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period which begins on July 1, 1988 and extends through June 30, 1989, in excess of the levels of restraint:

Category:	*12-Month restraint limit*
335	71,020 dozen.
433	15,403 dozen.
434	23,230 dozen.
435	43,430 dozen.
442	27,818 dozen.

Imports charged to the category limits for the periods July 1, 1987 through December 31, 1987 and January 1, 1988 through June 30, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The limits may be adjusted in the future pursuant to the provisions of the current bilateral agreement between the Govenments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14420 Filed 6-24-88; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to 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: Record of Military Processing—Armed Forces of the United States; DD Form 1966; and OMB Control Number 0704-0173.

Type of Request: Extension.

Annual Burden Hours: 334,000.

Annual Responses: 1,000,000.

Needs and Uses: DD Form 1966 is the basic form used by all Military Services for obtaining data used in determining eligibility of applicants for enlistment in the Armed Forces of the United States and for establishing records for those enlisted.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

June 22, 1988.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-14466 Filed 6-24-88; 8:45 am]
BILING CODE 3810-01-M

Office of the Secretary, DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday and Thursday, 13 & 14 July 1988.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

June 22, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-14467 Filed 6-24-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Surface Warfare Center; Public Meeting on the Environmental Assessment for Continued Operation of the Navy EMPRESS I Facility on the Solomons Annex of the Patuxent River Naval Air Station, Solomons (Calvert County), MD

Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361) and the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), the U.S. Navy has prepared an Environmental Assessment (EA) for continued operation of the Navy EMPRESS I facility on the Solomons Annex of the Patuxent River Naval Air Station, Solomons (Calvert County), Maryland.

EMPRESS I was erected in 1972 for the primary purpose of determining the sensitivity of Navy electronic equipment aboard ships to electromagnetic pulse (EMP) exposure. It is a specialized radio transmitter that broadcasts a high-amplitude, extremely short-duration pulse of radio energy from an antenna located at Pt. Patience, Maryland. It is currently the only landbased U.S.A. EMP facility with a capability to test ships.

The EA has been distributed to various Federal, Maryland state and local governmental agencies and itnerest groups. Copies of the EA may also be viewed during normal business hours at the following locations:

In St. Mary's County:

1. St. Mary's County Memorial Library, Route 1, Leonardtown, Maryland 20650
2. St. Mary's County Memorial Library, Coral Drive, Lexington Park, Maryland 20653
3. St. Mary's Governmental Center, County Commissioner's Office, Leonardtown, Maryland 20650.

In Calvert County:

1. Calvert County, Courthouse, Office of the County Administrator, Prince Frederick, Maryland 20678
2. Calvert County Public Library, Duke Street, Prince Frederick, Maryland 20678.

A public meeting to inform the public of the study's findings and to solicit comments on the Navy's proposed continued operation of the EMPRESS I facility on the Solomons Annex of the Patuxent Naval Air Station will be held at the following location:

Place: Calvert High School, Dares Beach Road, Prince Frederick, MD 20678.

Date: Tuesday, August 9, 1988.

Times:

Registration—6:00 pm to 7:00 pm.

Meeting—7:00 pm to 12:00 pm or completion of public comments.

The meeting will be chaired by the U.S. Navy. All interested parties are invited to be present or represented at this meeting. This includes representatives of Federal, state, and local government agencies; private industry; civic and public interest groups and other interested and concerned citizens. All parties will be afforded full opportunity to express their views, but in order to allow all an opportunity to speak, oral statements will be limited to 5 minutes. Technical statements, statements of considerable length, or statements from persons unable to attend, should be in writing and delivered either at the meeting or mailed to: Naval Surface Warfare Center, White Oak Laboratory, Office of Counsel, Benjamin M. Plotkin, Esq., Code C71W, 10901 New Hampshire Avenue, Silver Spring, MD, 20903-5000.

Oral statements will be heard and transcribed by a stenographer, but for accuracy of record it is desired that all statements be submitted in writing. All statements, either oral or written, will become part of the official record on this study. Upon request, copies of the public meeting transcript may be obtained from the above address.

Final decision on the proposed project will be made only after full consideration is given to the views of responsible agencies, groups and citizens.

Written comments will be accepted until August 19, 1988.

Questions concerning this public notice may be directed to Mr. Benjamin M. Plotkin, Naval Surface Warfare Center, White Oak Laboratory, Office of Counsel, Code C71W, 10901 New Hampshire Avenue, Silver Spring, MD, 20903-5000, (301) 394-1999.

Date: June 22, 1988.

David A. Guy,

Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 88-14370 Filed 6-24-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to the University of Texas at Austin

AGENCY: U.S. Department of Energy.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under Procurement Request Number 19-88BC14265.000 to the University of Texas at Austin for Development of a Cooperative Geoscience Research Institute for Oil and Gas Recovery Research. The recipient comprises a national consortium of universities and other state entities with advanced petroleum engineering, geophysics, and geology programs in oil and gas recovery research.

Scope: The Institute shall perform a study of the presently existing Basic and Fundamental Geoscience Technologies. The study shall be aimed at attempting to provide an increased understanding of, and the technology required for, improved oil and gas recovery. A major goal of this study is to identify new models, concepts, and technology that can be used to maximize recovery of remaining oil and gas resources in existing fields. The proposed program is expected to significantly enhance DOE's efforts to improve oil and gas recovery research and technology.

The term of this grant shall be from approximately July 5, 1988, to November

30, 1988, and the grant is for $500,000.000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236, Attn: Gregory J. Kawalkin, AC 412/892-6039.

Sun W. Chun,

Director, Pittsburgh Energy Technology Center.

[FR Doc. 88-14461 Filed 6-24-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-20-NG]

Amalgamated Pipeline Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order Granting Blanket Authorization to import natural gas from Canada and Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Amalgamated Pipeline Company (Amalgamated) blanket authorization to import natural gas from Canada and Mexico. The order issued in ERA Docket No. 88-20-NG authorizes Amalgamated to import up to an aggregate of 100 Bcf of Canadian or Mexcian natural gas over a two-year period, beginning on the date of first delivery.

A Copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 88-14462 Filed 6-24-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. 88-15-NG]

DEKALB Petroleum Corp.; Order Granting Blanket Authorization To Import Natural Gas

AGRNCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting DEKALB Petroleum Corporation (DEKALB) blanket authorization to import natural gas. The order issued in ERA Docket No. 85-15-NG authorizes DEKALB to import up to 73 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 20, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-14463 Filed 6-24-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 88-4; Theoretical Ecology

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants that will support research in Theoretical Ecology. Applications must be directed to state-of-the-art research that contributes to the development of new theoretical paradigms that lead to a unifying theory of complex ecological systems. At the present time, the following scientific areas are of primary interest: (1) Integration of processes across multiple levels of ecological organization, with special reference to terrestrial biosphere response to global change; (2) analysis of spatial and temporal dynamics of complex ecological systems; and (3) effects of scale on analysis of ecological structure, function, and dynamics. Research aimed at resolving other crucial theoretical issues in ecology will also be considered. Field research and computer simulation studies that provide critical tests of theory are considered integral components of theoretical research.

DATES: To permit timely consideration for award in FY 1989, applications submitted in response to this notice should be received by the Division of Acquisition and Assistance Management by October 25, 1988.

ADDRESS: Applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, Room G-236, Washington, DC 20545 ATTN: Program Notice 88-4.

FOR FURTHER INFORMATION CONTACT: Dr. Edward J. Rykiel, Jr., Office of Health and Environmental Research, ER-75, Washington, DC 20545, (301) 353-4902.

SUPPLEMENTARY INFORMATION: This notice relates to the Theoretical Ecology Program, Ecological Research Division, Office of Health and Environmental Research. The aim of this program is to provide DOE with the fundamental theoretical basis needed to understand complex ecological systems, to predict the behavior of such systems at all scales of resolution and organization, to guide data collection, and to identify the most significant directions for future research. It is anticipated that six awards will be made at approximately $150,000 per year. Multiple year funding of awards is expected subject to the availability of future funds. Information regarding development and submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures may be found in 10 CFR Part 605. Application kits and copies of 10 CFR Part 605 are available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above address). Telephone requests may be made by calling (301) 353-4902. Instructions for preparation of an application are included in the kit. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on June 17, 1988.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 88-14464 Filed 6-24-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES88-40-000 et al.]

Canal Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Canal Electric Company

[Docket No. ES88-40-000]

June 22, 1988.

Take notice that on July 13, 1988, Canal Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $110 million of short-term debt on or before December 31, 1990 with a final maturity no later than December 31, 1991.

Comment date: July 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Company

[Docket No. ES88-455-000]

June 23, 1988.

Take notice that on June 6, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a letter executed by Wisconsin Electric and counsel for Wisconsin Electric's wholesale customers. The letter clarifies the intent of FERC Electric Tariff Volume No. 1, First Revised Sheet No. 115, and resolves possible uncertainties as to its meaning, ambiguities of interpretation. There are no customers served under the interruptible rate schedule in question.

Wisconsin Electric requests an effective date of sixty days after filing.

Copies of the filing have been served on the wholesale customers, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: July 7, 1988, in accordance with Sandard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corporation

[Docket No. ER88-456-000]

June 23, 1988.

Take notice that on June 13, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing as an initial rate schedule a contract dated October 9, 1987, betweene NYSEG and the County of Erie, a municipal corporation of the State of New York, (Erie County). The contract provides for Erie County to pay a charge to NYSEG for the use if its facilities to deliver hydroelectric power and energy sold by Erie County to its residential customers, equal to the charges that would have been billed to such customers under NYSEG appropriate residential electric rate schedule on file with the New York State Public Service Commission less NYSEG's fuels and purchased power costs reflected in such rate schedule.

NYSEG states that copies of this filing have been served by mail upon Erie County, the New York State Public Service Commission, and the Power Authority of the State of New York, from whom Erie County is purchasing the hydroelectric power and energy to be sold by Erie County to its customers.

Comment date: July 7, 1988, in accordance with Standard Paragraph E at the end of this notice

4. Arkansas Power & Light Company

Docket No. ER88-313-000]

June 23, 1988.

Take notice that on June 15, 1988, Arkansas Power & Light Company (Company) tendered for filing an amendment to its filing dated March 31, 1988. The Company states that it has submitted the following documents for its amendment:

1. Amended Refund Payment Schedule (Attach. A, Item 1).
2. Amended Exhibit C (Attach. A, Item 2).
3. Explanation of Amended Exhibit C (Attach. A, Item 3).

Comment date: July 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Tucson Electric Power Company

[Docket No. ER88-394-000]

June 23, 1988.

Take notice that on June 15, 1988, Tucson Electric Power Company (Tucson) tendered for filing, pursuant to Commission request, additional information to its Attachment A in its May 11, 1988 filing.

Comment Date: July 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Georgia Power Company

[Docket No. ER88-466-000]

June 23, 1988.

Take notice that on June 15, 1988, Georgia Power Company (Georgia Power) tendered for filing a Scheduling Services Agreement (Agreement) dated as of June 13, 1988, between Georgia Power and Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) (OPC).

Georgia Power states that the Agreement has been executed to facilitate a short-term, non-firm capacity and energy transaction between OPC and Seminole Electric Cooperative, Inc. Georgia Power seeks waiver of the Commission's notice requirements and seeks an effective date of June 14, 1988. The Agreement will terminate on November 1, 1988.

Comment Date: July 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. New York Electric & Gas Corporation

[Docket No. ER88-467-000]

June 23, 1988.

Take notice that on June 15, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with Long Island Lighting Company (LILCO). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to LILCO. Service under this agreement commenced on June 1, 1988 and shall terminate on September 16, 1988 unless extended in writing by mutual agreement.

NYSEG has filed a copy of this filing with Long Island Lighting Company and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that June 1, 1988 be allowed as the effective date of the filing.

Comment Date: July 7, 1988, in accordance with Standard Paragraph E at the end of this document.

8. New York Electric & Gas Corporation

[Docket No. ER88-468-000]

June 23, 1988.

Take notice that on June 15, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with Orange & Rockland Utilities, Inc. (O&R). The agreement provides that NYSEG shall sell surplus capability and associated energy to O&R. Service under this agreement commenced on June 1, 1988 and shall terminate on October 31, 1990 unless extended in writing by mutual agreement.

NYSEG has filed a copy of this filing with Orange & Rockland Utilities, Inc. and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that June 1, 1988 be allowed as the effective date of the filing.

Comment Date: July 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER88-305-000]

June 23, 1988.

Take notice that on June 13, 1988, Niagara Mohawk Power Corporation

tendered for filing an amendment to its original filing in this Docket. Niagara Mohawk provided revised Period II data and included revised reduced rate sheets in accordance with the revised Period II data.

Copies of the filing were served upon the New York State Public Service Commission and NYSE&G.

Comment Date: July 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER88-304-000]

June 23, 1988.

Take notice that on June 13, 1988, Niagara Mohawk Power Corporation tendered for filing an amendment to its original filing in this Docket. Niagara Mohawk provided revised Period II data and a demonstration of its right to make a change in the method for determining the rate transmission of New York State Electric and Gas Corporation's Somerset generating plant output and for transmission to New York State's Electric and Gas Corporation's remote load areas.

Copies of the filing were served upon the New York State Public Service Commission and NYSE&G.

Comment date: July 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D.Cashell,

Acting Secretary.

[FR Doc. 88-14417 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-166-004, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certification Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission

[Docket No. CP87-166-004]

June 22, 1988.

Take notice that on June 10, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed a petition to amend the order issued August 13, 1987, in Docket No. CP87-166-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of its transportation term for Enron Industrial Natural Gas Company (Industrial) until August 12, 1989.

Specifically, FGT states that on June 2, 1988, Industrial and FGT signed a letter agreement to continue the transportation for another year, consistent with Commission policy. FGT states that the term of the existing transportation agreement on file as FGT's Rate Schedule X-27 is for five years; thus, no change to the term thereof is required.

FGT states that since the transportation service is fully interruptible and contingent upon the availability of sufficient capacity to provide the service without detriment or disadvantage to FGT's existing customers, the herein proposed transportation service cannot have an adverse impact on FGT's existing customers.

Comment date: July 13, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP88-461-000]

June 22, 1988.

Take notice that on June 13, 1988, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonet, Houston, Texas 77251-1642, filed in Docket No. CP88-461-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to (1) install, own, and operate certain pipeline facilities at an additional delivery point for the use of Indiana Gas Company, Inc. (Indiana Gas); (2) reassign volumes of natural gas delivered to Indiana Gas; and (3) abandon an existing delivery point to Indiana Gas.

Panhandle states that it received blanket authorization in Docket No. CP83-83-000 on January 10, 1983. Panhandle also states that Indiana Gas has requested it to deliver 8,500 Mcf of natural gas per day at a proposed delivery point at Carpentersville, Putnam County, Indiana. Accordingly, Panhandle seeks authorization to:

(1) Cease deliveries to Indiana Gas at the Lagoda, Montgomery County, Indiana, delivery station;

(2) Reduce deliveries to Indiana Gas at the Crawfordsville, Montgomery County, Indiana, delivery station from 32,600 Mcf of natural gas per day to 24,000 Mcf of natural gas per day; and

(3) Abandon the Lagoda delivery station.

Thus, the total volume of natural gas delivered by Panhandle to Indiana Gas would remain unchanged.

Comment date: August 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88-470-000]

June 23, 1988.

Take notice that on June 14, 1988, Northern Natural Gas Company Division of Enron Corp. (Northern) 1400 Smith Street P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-470-000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service to Shell Gas Trading Company (Shell Gas), a natural gas broker, under Northern's blanket certificate issued December 22, 1986, in Docket No. CP86-435-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport for Shell Gas up to 80,000 MMBtu of gas per day or approximately 29,200,000 MMBtu annually, pursuant to a transportation agreement dated April 26, 1988, from a receipt point to a delivery point both in Refugio County, Texas. Northern states that the transportation service for Shell Gas under the 120-day automatic authorization provisions of § 284.223(a) was filed with the Commission in Docket No. ST88-3351.

Comment date: August 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88-466-000]

June 23, 1988.

Take notice that on June 13, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-

466-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Catamount Natural Gas, Inc. (Catamount) under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, 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.

Tennessee states that pursuant to a transportation agreement dated April 18, 1988, and amendments dated April 18, and May 20, 1988, it proposes to transport natural gas for Catamount, from points of receipt located offshore Texas and offshore Louisiana and in the states Louisiana, Texas, Alabama and Mississippi, to various delivery points off Tennessee's system in multiple states.

Tennessee further states that the peak day quantities would be 102,600 dekatherms, the average daily quantities would be 200 dekatherms and that the annual quantities would be 73,000 dekatherms. It is stated, service under § 284.223(a) commenced May 14, 1988, as reported in Docket No. ST88-3974 (filed May 31, 1988).

Comment date: August 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP88-462-000]

June 23, 1988.

Take notice that on June 13, 1988, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, pursuant to its blanket certificate of public convenience and necessity issued in Docket No. CP82-406-000, filed in Docket No. CP88-462-000 a Request for Authorization Under the Notice Procedure of Subpart F of Part 157 of the Commission's Regulations under the Natural Gas Act to abandon certain facilities and to construct, install and operate certain other facilities, all as included in the request on file with the Commission and open to public inspection.

Southern states that it provides natural gas service to Atlanta Gas Light Company (Atlanta) at the point of delivery referred to as the Villa Rica Delivery Point (Villa Rica) in the currently effective Exhibit A to the Service Agreement between Southern and Atlanta dated September 23, 1969. In order to eliminate certain operational problems existing with the measurement facilities at Villa Rica, Southern proposes to abandon two 4-inch positive meters pursuant to § 157.216 of the Commission's Regulations and replace them with two 4-inch orifice meter runs pursuant to § 157.212.

Southern states that the total estimated cost of the abandonment subsequent construction and installation is approximately $78,434.00. Southern further states that there will be no increase in the Contract Demand of Atlanta at the Villa Rica Delivery Point associated with the proposed replacement of facilities.

Comment date: August 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street 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.

Tke 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 therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14418 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-433-000, et al.]

M&M/Mars, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. M&M/Mars, Inc.

[Docket No. QF88-433-000]

June 21, 1988.

On June 9, 1988, M&M/Mars, Inc. (Applicant), c/o Wunder & Diefenderfer, Suite 650, 1615 L Street NW., Washington, DC 20036, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hackettstown, New Jersey. The facility will consist of a combustion turbine generating unit, a diesel generator and a waste heat recovery steam generator. Thermal energy recovered from the facility will be used for process and space heating. The electric power production capacity of the facility will be approximately 9 MW. The primary energy source will be natural gas. Installation of the facility is expected to begin in the third quarter of 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Company

[Docket No. EL88-27-000]

June 20, 1988.

Take notice that on June 7, 1988, North Carolina Eastern Municipal Power Agency (Power Agency) tendered for filing pursuant to section 306 of the Federal Power Act, 16 U.S.C. 825e, and Rules 206 and 212 of the Commission's Rules of Practice and Procedure, a Complaint against Carolina Power & Light Company (Volume I).

Power Agency alleges that Power Agency and CP&L have been unsuccessful in negotiating a "power coordination agreement" governing the terms and conditions for interconnection that are necessary to permit Power Agency to beneficially use power available to it from the South Carolina Public Service Authority (Santee Cooper) and to integrate that power into Power Agency's existing power supply arrangements with CP&L.

Comment date: July 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Coal Dynamics Corporation—Fayette County, PA

[Docket No. QF88-949-001]

June 21, 1988.

On May 26, 1988, Coal Dynamics Corporation (Applicant), a subsidiary of the Environmental Power Corporation, of 53 State Street, Exchange Place, 30th Floor, Boston, Massachusetts 02109 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will locate adjacent to the Village of Leckrone, German Township, Fayette County, Pennsylvania. The primary energy source of the facility will be "waste" in the form of heat recovered from an uncontrolled underground coal mine fire. The facility will initially consist of one unit with a second unit installed by 1992. Each unit will consist of an auxiliary diesel engine-generator unit, an induced draft fan, a heat recovery steam generator with a supplemental propane-firing unit, a 7.5 megawatt steam turbine generator unit, and a 115kV transmission line. The facility will utilize the "Controlled Burnout Process" developed by the U.S. Department of Interior, Bureau of Mines. The net electric power production capacity of the facility will be 12 megawatts.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

4. Luz Solar Partners VI, Ltd., Luz Solar Partners VII, Ltd.

[Docket Nos. QF88-33-002 & QF88-34-002]

June 21, 1988.

On June 2, 1988, Luz Solar Partners VI, Ltd. (LSP VI) and Luz Solar VII Partners, Ltd. (LSP VII) (Applicants), c/o Luz Partnership Management, Inc., General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for recertification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes complete filings.

Both 30MW solar powered facilities will be located approximately 31 miles west of Barstow, California. The original applications were filed on October 19, 1987 and granted on April 15, 1988 (43 FERC ¶61,070).

The instant recertification is requested due to clarification of ownership interest with respect to one mile rule of the Commission's regulations. All other characteristics of the facilities remain the same as set forth in the original applications.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14416 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-387-00, et al.]

Ken Gas Co., et al.; Natural Gas Certificate Filings

June 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Ken Gas Companies

[Docket No. CP88-387-000]

Take notice that on May 19, 1988, the Commission issued a Notice of Application with the date of June 19, 1988, for any person desiring to be heard or to make any protest to the issuance of the application made by Ken Gas Companies (Ken Gas), Rt. 3, Box 66, Albany, Kentucky 42602, pursuant to section 7(f) of the Natural Gas Act for a determination by the Commission of a service area for the City of Jellico, Campbell County, Tennessee.

By letter dated June 7, 1988, Ken Gas amends its application by requesting that its section 7(f) service area include the environs of the City of Jellico, Tennessee, Campbell County, Tennessee, and Whitley County, Kentucky.

Ken Gas also requests that the section 7(f) determination be issued to the Jellico Gas Utility which would be operated by Ken-Gas of Tennessee, Inc. Ken Gas' letter more fully sets forth its request to amend the application which is on file with the Commission and open to public inspection.

Comment date: July 12, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Alabama-Tennessee Natural Gas Company

[Docket No. CP88-459-000]

Take notice that on June 10, 1988, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed a certificate application in Docket No. CP88-459-000 pursuant to section 7(c) of the Natural Gas Act requesting a limited-term certificate of public convenience and necessity to perform a transportation service for North Alabama Gas District (shipper), all as more set forth in the application which is on file with the Commission and open to public inspection.

A-T proposes to implement the service pursuant to the terms and conditions of a transportation contract between A-T and shipper dated June 1, 1988. It is indicated that A-T has agreed to transport up to nine billion Btu of natural gas per day on an interruptible basis for a term of one year from the

date of initial deliveries. A-T states that the contract provides that shipper will cause gas to be delivered to various points of interconnection of the facilities of Tennessee Gas Pipeline Company (Tennessee), Columbia Gulf Transmission Company (Columbia), or Tennessee River Intrastate Gas Company, Inc. (TRIGAS), for redelivery to A-T. A-T indicates that it would receive such gas at the existing points of interconnection between the facilities of A-T and Tennessee located in Alcorn County, Mississippi and/or Colbert County, Alabama, and/or an existing point of interconnection between the facilities of A-T and Columbia located in Alcorn County, Mississippi, and/or an existing point of interconnection of the facilities of A-T and TRIGAS located in Colbert County, Alabama. It is indicated that TRIGAS would receive gas from Texas Eastern Transmission Corporation for redelivery to A-T. A-T states that it would redeliver to shipper a thermally equivalent quantity of gas at existing points of interconnection between the facilities of A-T and shipper.

A-T proposed to charge rates provided by its rate Schedule IT ranging from a maximum of 10.41 cents per Mcf to a minimum of 0.53 cents per Mcf.

Comment date: July 12, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Superior Offshore Pipeline Company

[Docket No. CP88-455-000]

Take notice that on June 6, 1988, Superior Offshore Pipeline Company (SOPCO), 9 Greenway Plaza, Suite 2700, Houston, Texas 77046, filed in Docket No. CP88-455-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of certain interests in approximately 1.6 miles of 12-inch pipeline in Sabine Pass, offshore Louisiana and approximately 12.2 miles of 12¾-inch pipeline in West Cameron, offshore Louisiana, from Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

SOPCO proposes to acquire and operate 70% of Southern's 50% interest in approximately 1.6 miles of 12-inch line that extends from Platform A to Platform E in Sabine Pass Block 3, offshore Louisiana (Sabine Pass Block 3 line) and 100% of Southern's 54.29% interest in approximately 11.2 miles of 12 ¾-inch line that extends from West Cameron Block 331, offshore Louisiana to an interconnection with High Island Offshore System (HIOS) in West Cameron Block 342, offshore Louisiana (West Cameron Block 331 line). SOPCO states that Southern assigned the Sabine Pass 3 line and the West Cameron Block 331 line to SOPCO as partial consideration underlying a settlement agreement dated May 27, 1987, between Southern and various affiliates and subsidiaries of Mobil Oil Corporation (Mobil). SOPCO states that these facilities were jointly owned by Southern and United Gas Pipeline. ANR Pipeline Company, the operator of HIOS, would continue to be the operator of the West Cameron Block 331 line, lateral, while SOPCO would operate the Sabine Pass 3 line, it is indicated.

SOPCO proposes to acquire and operate these facilities as part of its existing transportation system, in accordance with its existing Order No. 436 blanket certificate, although these two pipeline segments are not physically connected to the current SOPCO system. SOPCO states that it intends to consolidate for ratemaking purposes these two pipeline segments into its system and to charge its existing systemwide rate of one cent per MMBtu for transportation. Also, SOPCO states that after the certificate requested herein is granted, SOPCO would submit a Section 4 rate case to reflect the minor increase in its transportation rates as a result of this acquisition.

SOPCO states that Southern has advised SOPCO that it has abandoned these facilities pursuant to its blanket authorization for gas supply facilities. SOPCO indicates that Southern's purchases of gas from Mobil from West Cameron Block 331 were abandoned pursuant to Commission order issued in Docket No. CI87-655. Further, SOPCO indicates that the sale by Mobil to Southern from Sabine Pass 3 is not subject to the jurisdiction of the Commission pursuant to section 601 of the Natural Gas Policy Act of 1978, and that such purchase was terminated in the settlement agreement between Southern and Mobil.

Comment date: July 12, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Western Transmission Corporation

[Docket No. CP88-445-000]

Take notice that on June 3, 1988, Western Transmission Corporation (Western), 1801 California Street, Suite 3500, Denver, Colorado 80202, filed in Docket No. CP88-445-000 an application pursuant to section 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the abandonment of natural gas sales to Colorado Interstate Gas Company (CIG), all as more fully set forth in the application on file with the Commission and open to public inspection.

Western states in its application that it has not sold any natural gas to CIG since December of 1986 and has been informed by CIG that CIG does not intend to purchase any more gas under Western's Rate Schedule F. Accordingly, Western requests that it be released from its obligation to make sales to CIG and that it be allowed to abandon and cancel its Rate Schedule F.

Comment date: July 12, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88-465-000]

Take notice that on June 13, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP88-465-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 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.

Tennessee proposes to transport natural gas for American Natural Gas Corporation (American Natural). Tennessee explains that service commenced May 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-3964. Tennessee further explains that the peak day quantity would be 82,000 dekatherms, the average daily quantity would be 109 dekatherms, and that the annual quantity would be 39,785 dekatherms. Tennessee explains that it proposes to transport natural gas for American Natural from various receipt points located in the states of Louisiana, Texas, Mississippi, and Alabama to various delivery points off Tennessee's system, points located in multiple states.

Comment date: August 4, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street 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 therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14411 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST88-3068-000 et al.]

Northern Border Pipeline Co. et al.; Self-Implementing Transactions

June 22, 1988.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before July 12, 1988.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,

Acting Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the notice filing is in compliance with the Commission's Regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-3068	Northern Border Pipeline Co.	Quivira Gas Co.	04-01-88	B		
ST88-3069	American Pipeline Co.	Texas Eastern Transmission Corp.	04-01-88	C		
ST88-3070	Webb/Duval Gatherers	Tennessee Gas Pipeline Co.	04-01-88	C		
ST88-3071	Northern Natural Gas Co.	United Gas Pipe Line Co.	04-01-88	G		
ST88-3072	Tennessee Gas Pipeline Co.	Western Kentucky Gas Co.	04-01-88	B		
ST88-3073	Tennessee Gas Pipeline Co.	Louisiana Gas System, Inc.	04-01-88	B		
ST88-3074	Transcontinental Gas Pipe Line Corp.	UGI Corp.	04-01-88	B		
ST88-3075	Transcontinental Gas Pipe Line Corp.	Louisiana Gas System, Inc.	04-01-88	B		
ST88-3076	Transcontinental Gas Pipe Line Corp.	Delhi Gas Pipeline Corp.	04-01-88	B		
ST88-3077	Transcontinental Gas Pipe Line Corp.	Bay State Gas Co., et al.	04-01-88	B		
ST88-3078	Transcontinental Gas Pipe Line Corp.	Public Service Electric and Gas Co.	04-01-88	B		
ST88-3079	Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.	04-01-88	B		
ST88-3080	ANR Pipeline Co.	TPC Pipeline Co.	04-01-88	B		
ST88-3081	ANR Pipeline Co.	Ohio Gas Co.	04-01-88	B		
ST88-3082	ANR Pipeline Co.	Consumers Power Co.	04-01-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-3083	Columbia Gulf Transmission Co.	Monterey Pipeline Co.	04-04-88	B		
ST88-3084	Natural Gas Pipeline Co. of America	Valley Gas Co.	04-04-88	B		
ST88-3085	Trunkline Gas Co.	Consumers Power Co.	04-04-88	B		
ST88-3086	Houston Pipe Line Co.	Northern Natural Gas Co.	04-04-88	C		
ST88-3087	Houston Pipe Line Co.	Amoco Gas Co.	04-04-88	C		
ST88-3088	SNG Intrastate Pipeline, Inc.	Southern Natural Gas Co.	04-04-88	C	08-30-88	35.00
ST88-3089	SNG Intrastate Pipeline, Inc.	Southern Natural Gas Co.	04-04-88	C	08-30-88	35.90
ST88-3090	United Gas Pipe Line Co.	Clajon Industrial Gas, Inc.	04-04-88	B		
ST88-3091	United Gas Pipe Line Co.	Amalgamated Pipeline Co.	04-04-88	B		
ST88-3092	United Gas Pipe Line Co.	Houston Pipe Line Co.	04-04-88	B		
ST88-3093	United Gas Pipe Line Co.	Coastal States Gas Transmission Co.	04-04-88	B		
ST88-3094	United Gas Pipe Line Co.	Northern Intrastate Pipeline Co.	04-04-88	B		
ST88-3095	United Gas Pipe Line Co.	Pontchartrain Natural Gas System	04-04-88	B		
ST88-3096	United Gas Pipe Line Co.	Olympic Pipeline Co.	04-04-88	B		
ST88-3097	United Gas Pipe Line Co.	Wisconsin Public Service Corp., et al.	04-04-88	B		
ST88-3098	United Gas Pipe Line Co.	Eastex Gas Transmission Co.	04-04-88	B		
ST88-3099	Panhandle Eastern Pipe Line Co.	KPL Gas Service	04-04-88	B		
ST88-3100	Panhandle Eastern Pipe Line Co.	Woodward Pipeline, Inc.	04-04-88	B		
ST88-3101	Panhandle Eastern Pipe Line Co.	Texline Gas Co.	04-04-88	B		
ST88-3102	Southern Natural Gas Co.	Wilcox County Gas District	04-04-88	B		
ST88-3103	Southern Natural Gas Co.	Chattanooga Gas Co.	04-04-88	B		
ST88-3104	Southern Natural Gas Co.	South Carolina Pipeline Corp.	04-04-88	B		
ST88-3105	Southern Natural Gas Co.	Alabama Gas Corp.	04-04-88	B		
ST88-3106	Southern Natural Gas Co.	NGC Intrastate Pipeline Co.	04-04-88	B		
ST88-3107	Southern Natural Gas Co.	Northwest Alabama Gas District	04-04-88	B		
ST88-3108	Southern Natural Gas Co.	City of Tifton	04-04-88	B		
ST88-3109	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3110	Southern Natural Gas Co.	Chattanooga Gas Co.	04-04-88	B		
ST88-3111	South Georgia Natural Gas Co.	City of Tifton	04-04-88	B		
ST88-3112	Southern Natural Gas Co.	City of Cartersville	04-04-88	B		
ST88-3113	Southern Natural Gas Co.	Chattanooga Gas Co.	04-04-88	B		
ST88-3114	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3115	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3116	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3117	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3118	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3119	Southern Natural Gas Co.	NGC Intrastate Pipeline Co.	04-04-88	B		
ST88-3120	Southern Natural Gas Co.	United Cities Gas Co.	04-04-88	B		
ST88-3121	Southern Natural Gas Co.	Chattanooga Gas Co.	04-04-88	B		
ST88-3122	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3123	Southern Natural Gas Co.	Alabama Gas Corp.	04-04-88	B		
ST88-3124	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3125	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-04-88	B		
ST88-3126	Northern Natural Gas Co.	Cabot Energy Marketing Corp.	04-05-88	G-S		
ST88-3127	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	04-05-88	B		
ST88-3128	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co.	04-05-88	B		
ST88-3129	Natural Gas Pipeline Co. of America	Cepex, Inc.	04-05-88	G-S		
ST88-3130	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co.	04-05-88	B		
ST88-3131	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co.	04-05-88	B		
ST88-3132	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp.	04-05-88	G		
ST88-3133	Natural Gas Pipeline Co. of America	Tejas Power Corp.	04-05-88	G-S		
ST88-3134	Colorado Interstate Gas Co.	Columbia Gas of Ohio, Inc.	04-05-88	B		
ST88-3135	Colorado Interstate Gas Co.	Vesgas Co.	04-05-88	B		
ST88-3136	Transwestern Pipeline Co.	Gas Co. of NM (Div. Public Serv. Co. NM).	04-06-88	B		
ST88-3137	Transwestern Pipeline Co.	Lovera Pipeline Co.	04-06-88	B		
ST88-3138	Cabot Pipeline Corp.	El Paso Natural Gas Co.	04-06-88	C		
ST88-3139	Tennessee Gas Pipeline Co.	Connecticut Light & Power Co.	04-06-88	B		
ST88-3140	Tennessee Gas Pipeline Co.	Mobil Oil Corp., et al.	04-06-88	G-S		
ST88-3141	Tennessee Gas Pipeline Co.	Fitchburg Gas & Electric Light Co.	04-06-88	B		
ST88-3142	Tennessee Gas Pipeline Co.	Florida Gas Transmission Co.	04-06-88	G		
ST88-3143	Tennessee Gas Pipeline Co.	ANR Pipeline Co.	04-06-88	G		
ST88-3144	Tennessee Gas Pipeline Co.	Connecticut Natural Gas Corp.	04-06-88	B		
ST88-3145	Tennessee Gas Pipeline Co.	Boston Gas Co.	04-06-88	B		
ST88-3146	Northern Natural Gas Co.	Seagull Shoreline System	04-06-88	B		
ST88-3147	Northern Natural Gas Co.	Louisiana Gas System, Inc.	04-06-88	B		
ST88-3148	Northern Natural Gas Co.	Houston Pipe Line Co.	04-06-88	B		
ST88-3149	Northern Natural Gas Co.	Citizens Gas Supply Corp.	04-06-88	G-S		
ST88-3150	Louisiana Resources Co.	Florida Gas Transmission Co.	04-06-88	C	09-03-88	26.43
ST88-3151	Tennessee Gas Pipeline Co.	NGC Intrastate Pipeline Co.	04-07-88	B		
ST88-3152	ANR Pipeline Co.	Paris Henry Co. Public Utility Dist.	04-07-88	B		
ST88-3153	ANR Pipeline Co.	Northern Indiana Public Service Co.	04-07-88	B		
ST88-3154	Natural Gas Pipeline Co. of America	North Shore Gas Co.	04-07-88	B		
ST88-3155	Transcontinental Gas Pipe Line Corp.	Corpus Christi Industrial Pipeline Co.	04-07-88	B		
ST88-3156	Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.	04-07-88	B		
ST88-3157	Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.	04-07-88	B		
ST88-3158	Transcontinental Gas Pipe Line Corp.	Union Gas Co.	04-7-88	B		
ST88-3159	Texas Gas Transmission Corp.	Union Light, Heat & Power Comm.	04-07-88	B		
ST88-3160	Texas Gas Transmission Corp.	CSX Intrastate Gas Co.	04-07-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST88-3161	Williams Natural Gas Co.	Mobil Oil Corp.	04-08-88	B		
ST88-3162	ANR Pipeline Co.	Peoples Natural Gas Co.	04-08-88	B		
ST88-3163	ANR Pipeline Co.	Peoples Natural Gas Co.	04-08-88	B		
ST88-3164	ANR Pipeline Co.	Columbia Gas of Ohio, Inc.	04-08-88	B		
ST88-3165	Northern Natural Gas Co.	Iowa-Illinois Gas & Electric Co.	04-08-88	B		
ST88-3166	Tennessee Gas Pipeline Co.	Public Service Electric and Gas Co.	04-08-88	B		
ST88-3167	Trunkline Gas Co.	Consumers Power Co.	04-08-88	B		
ST88-3168	Trunkline Gas Co.	Bishop Pipeline Corp.	04-08-88	B		
ST88-3169	Northwest Pipeline Corp.	Washington Water Power Co.	04-12-88	B		
ST88-3170	Tennessee Gas Pipeline Corp.	Bridgeline Gas Distribution Co., et al.	04-13-88	B		
ST88-3171	Northern Natural Gas Co.	Terra International, Inc.	04-11-88	G-S		
ST88-3172	Northwest Pipeline Corp.	MGTC, Inc.	04-11-88	B		
ST88-3173	Northwest Pipeline Corp.	CP National Corp.	04-11-88	B		
ST88-3174	Northwest Pipeline Corp.	Northwest Natural Gas Co.	04-11-88	B		
ST88-3175	Natural Gas Pipeline Co. of America	Iowa Southern Utilities Co.	04-11-88	B		
ST88-3176	Colorado Interstate Gas Co.	Iowa Electric Light & Power Co.	04-11-88	B		
ST88-3177	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co.	04-11-88	B		
ST88-3178	Panhandle Eastern Pipe Line Co.	Citizens Gas Fuel Co.	04-11-88	B		
ST88-3179	Northwest Pipeline Corp.	Northwest Natural Gas Co.	04-11-88	B		
ST88-3180	Tennessee Gas Pipeline Co.	CNG Trading Co.	04-13-88	G-S		
ST88-3181	Tennessee Gas Pipeline Co.	City of Holly Springs	04-13-88	B		
ST88-3182	Northwest Pipeline Corp.	Northwest Natural Gas Co.	04-13-88	B		
ST88-3183	Northern Natural Gas Co.	New Ulm Utilities Commission	04-13-88	B		
ST88-3184	Ringwood Gathering Co.	Plains Resources, Inc.	04-13-88	G-S		
ST88-3185	Natural Gas Pipeline Co. of America	Southern California Gas Co.	04-14-88	B		
ST88-3186	Cabot Pipeline Corp.	Mobil Producing Texas and New Mexico Inc.	04-14-88	C	09-11-88	32.00
ST88-3187	Northwest Pipeline Corp.	Llano, Inc.	04-14-88	B		
ST88-3188	Northwest Pipeline Corp.	Pacific Gas and Electric Co.	04-14-88	B		
ST88-3189	Valero Transmission, L.P.	Northern Natural Gas Co.	04-15-88	C		
ST88-3190	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America	04-15-88	C		
ST88-3191	Wintershall Pipeline Corp., et al.	Columbia Gulf Transmission Co.	04-15-88	C		
ST88-3192	Texas Gas Transmission Corp.	City of Hamilton	04-15-88	B		
ST88-3193	Texas Gas Transmission Corp.	City of Jasonville	04-15-88	B		
ST88-3194	Texas Gas Transmission Corp.	Louisville Gas & Electric Co.	04-15-88	B		
ST88-3195	Texas Gas Transmission Corp.	Jackson Utility Division	04-15-88	B		
ST88-3196	Texas Gas Transmission Corp.	Columbia Gas of VA, Inc., et al.	04-15-88	B		
ST88-3197	Natural Gas Pipeline Co. of America	Central Illinois Light Co.	04-15-88	B		
ST88-3198	Natural Gas Pipeline Co. of America	Central Illinois Light Co.	04-15-88	B		
ST88-3199	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc.	04-15-88	B		
ST88-3200	Natural Gas Pipeline Co. of America	Illinois Power Co.	04-15-88	B		
ST88-3201	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	04-15-88	B		
ST88-3202	Natural Gas Pipeline Co. of America	Southern California Gas Co.	04-15-88	B		
ST88-3203	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co.	04-15-88	B		
ST88-3204	Natural Gas Pipeline Co. of America	Illinois Power Co.	04-15-88	B		
ST88-3205	Transwestern Pipeline Co.	City of Long Beach	04-15-88	B		
ST88-3206	Tennessee Gas Pipeline Co.	Alabama Gas Corp., et al.	04-15-88	B		
ST88-3207	Tennessee Gas Pipeline Co.	Hadson Gas Systems, Inc.	04-15-88	G-S		
ST88-3208	Tennessee Gas Pipeline Co.	Rochester Gas & Electric Corp.	04-15-88	B		
ST88-3209	Transcontinental Gas Pipe line Corp.	Pennsylvania Gas and Water Co.	04-15-88	B		
ST88-3210	Transcontinental Gas Pipe line Corp.	Alabama Gas Corp.	04-15-88	B		
ST88-3211	Colorado Interstate Gas Co.	Consumers Gas Co., Ltd.	04-15-88	B		
ST88-3212	Tennessee Gas Pipeline Co.	Consolidated Edison Co. of NY, Inc.	04-15-88	B		
ST88-3213	United Gas Pipe line Co.	Excel Intrastate Pipe line Co.	04-15-88	B		
ST88-3214	United Gas Pipe line Co.	Transcontinental Gas Pipeline Corp.	04-15-88	G		
ST88-3215	United Gas Pipe Line Co.	Louisiana State Gas Corp.	04-15-88	B		
ST88-3216	United Gas Pipe Line Co.	Olympic Pipeline Co.	04-15-88	B		
ST88-3217	United Gas Pipe Line Co.	South Carolina Pipeline Corp., et al.	04-15-88	B		
ST88-3218	Questar Pipeline Co.	Mountain Fuel Supply Co.	04-18-88	B		
ST88-3219	Transcontinental Gas Pipe Line Corp.	Delmarva Power and Light Co.	04-18-88	B		
ST88-3220	Transcontinental Gas Pipe Line Corp.	Baltimore Gas & Elect. & Co., et al.	04-18-88	B		
ST88-3221	Supenn Pipeline Co.	United Gas Pipe Line Co.	04-18-88	C	09-11-88	11.00
ST88-3222	Tennessee Gas Pipeline Co.	City of Holyoke Gas and Electric Dept.	04-18-88	B		
ST88-3223	Tennessee Gas Pipeline Co.	Mobile Oil Corp., et al.	04-18-88	G-S		
ST88-3224	Tennessee Gas Pipeline Co.	Woodward Marketing, Inc.	04-18-88	G-S		
ST88-3225	Southern Natural Gas Co.	City of Ocilla	04-18-88	B		
ST88-3226	Southern Natural Gas Co.	City of Tallapoosa	04-18-88	B		
ST88-3227	Southern Natural Gas Co.	United Cities Gas Co.	04-18-88	B		
ST88-3228	Southern Natural Gas Co.	Alabama Gas Corp.	04-18-88	B		
ST88-3229	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-18-88	B		
ST88-3230	Southern Natural Gas Co.	Mississippi Valley Gas Co.	04-18-88	B		
ST88-3231	Southern Natural Gas Co.	South Carolina Pipeline Corp.	04-18-88	B		
ST88-3232	Southern Natural Gas Co.	City of Quincy	04-18-88	B		
ST88-3233	Southern Natural Gas Co.	City of Dora	04-18-88	B		
ST88-3234	Southern Natural Gas Co.	South Carolina Pipeline Corp.	04-18-88	B		
ST88-3235	Southern Natural Gas Co.	City of Oakman	04-18-88	B		
ST88-3236	Southern Natural Gas Co.	Cityof Austell	04-18-88	B		
ST88-3237	Southern Natural Gas Co.	Atlanta Gas Light Co.	04-18-88	B		
ST88-3238	Southern Natural Gas Co.	Mississippi Valley Gas Co.	04-18-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-3239	South Georgia Natural Gas Co.	City of Ocilla	04-18-88	B		
ST88-3240	South Georgia Natural Gas Co.	City of Quincy	04-18-88	B		
ST88-3241	Tennessee Gas Pipeline Co.	Natural Gas Pipeline Co. of America	04-19-88	G		
ST88-3242	Tennessee Gas Pipeline Co.	Stellar Gas Co.	04-19-88	B		
ST88-3243	Tennessee Gas Pipeline Co.	Delmarva Power and Light Co.	04-19-88	B		
ST88-3244	Tennessee Gas Pipeline Co.	Natural Gas Pipeline Co. of America	04-19-88	G		
ST88-3245	Tennessee Gas Pipeline Co.	Colonial Gas Company	04-19-88	B		
ST88-3246	Tennessee Gas Pipeline Co.	Stellar Gas Co.	04-19-88	B		
ST88-3247	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	04-19-88	C		
ST88-3248	Natural Gas Pipeline Co. of America	Northern Illinois Gas. Co., et al.	04-19-88	B		
ST88-3249	Natural Gas Pipeline Co. of America	Shell Gas Trading	04-19-88	G-S		
ST88-3250	Arkla Energy Resources	Lawrenceburg Gas Co.	04-19-88	B		
ST88-3251	Texas Eastern Transmission Corp.	Mobil Oil Exp. & Producing SE, Inc.	04-21-88	G-S		
ST88-3252	Texas Eastern Transmission Corp.	Mobil Producing Texas and New Mexico Inc.	04-21-88	G-S		
ST88-3253	Exxon Gas System, Inc.	Humble Gas Transmission Co.	04-21-88	C	09-18-88	12.80
ST88-3254	Williams Natural Gas Co.	PSI, Inc.	04-21-88	G-S		
ST88-3255	Williams Natural Gas Co.	Gastrak Corp.	04-20-88	G-S		
ST88-3256	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	04-20-88	B		
ST88-3257	Texas Gas Transmission Corp.	Cincinnati Gas & Elect. Co., et al.	04-21-88	B		
ST88-3258	Texas Gas Transmission Corp.	Cincinnati Gas & Electric Co.	04-21-88	B		
ST88-3259	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	04-21-88	B		
ST88-3260	Texas Gas Transmission Corp.	United Cities Gas Co.	04-21-88	B		
ST88-3261	Texas Gas Transmission Corp.	United Cities Gas Co.	04-21-88	B		
ST88-3262	Texas Gas Transmission Corp.	Terre Haute Gas Corp.	04-21-88	B		
ST88-3263	Texas Gas Transmission Corp.	Southern Indiana Gas & Electric Co.	04-21-88	B		
ST88-3264	Texas Gas Transmission Corp.	Hoosier Gas Corp.	04-21-88	B		
ST88-3265	Tennessee Gas Pipeline Co.	Exxon Corp.	04-21-88	G-S		
ST88-3266	Transcontinental Gas Pipe Line Corp.	Alabama Gas Corp., et al.	04-20-88	B		
ST88-3276	Cranberry Pipeline Corp.	Tennessee Gas Pipeline Co.	04-22-88	C	09-19-88	65.00
ST88-3268	Cranberry Pipeline Corp.	CNG Transmission Corp.	04-22-88	C	09-19-88	65.00
ST88-3269	Cranberry Pipeline Corp.	Tennessee Gas Pipeline Co.	04-22-88	C	09-19-88	43.00
ST88-3270	Columbia Gas Transmission Corp.	Pennsylvania and Southern Gas Co.	04-22-88	B		
ST88-3271	Tennessee Gas Pipeline Co.	Mississipp Valley Gas Co.	04-22-88	B		
ST88-3272	Tennessee Gas Pipeline Co.	Pennsylvania and Southern Gas Co.	04-22-88	B		
ST88-3273	Panhandle Eastern Pipe Line Co.	City of Edinburg	04-22-88	B		
ST88-3274	Panhandle Eastern Pipe Line Co.	Columbia Gas of Ohio, Inc.	04-22-88	B		
ST88-3275	Northern Natural Gas Co.	Interstate PowerCo.	04-22-88	B		
ST88-3276	Tennessee Gas Pipeline Co.	Columbia Gas of Ohio Inc., et al.	04-25-88	B		
ST88-3277	Tennessee Gas Pipeline Co.	Mississippi Fuel Co.	04-25-88	B		
ST88-3278	Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	04-25-88	G		
ST88-3279	Tennessee Gas Pipeline Co.	New York State Electric and Gas Co.	04-25-88	B		
ST88-3280	ANR Pipeline Co.	Ohio Gas Co.	04-25-88	B		
ST88-3281	ANR Pipeline Co.	Consumers Power Co.	04-25-88	B		
ST88-3282	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	04-25-88	B		
ST88-3283	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	04-25-88	B		
ST88-3284	Trunkline Gas Co.	Philadelphia Elect. Co., et al.	04-25-88	B		
ST88-3285	Trunkline Gas Co.	Northern Indiana Public Service Co.	04-25-88	B		
ST88-3286	Panhandle Eastern Pipe Line Co.	United Cities Gas Co.	04-25-88	B		
ST88-3287	Panhandle Eastern Pipe Line Co.	United Cities Gas Co.	04-25-88	B		
ST88-3288	Panhandle Eastern Pipe Line Co.	Consumers Power Co.	04-25-88	B		
ST88-3289	Panhandle Eastern Pipe Line Co.	Richmond Gas Corp.	04-25-88	B		
ST88-3290	El Paso Natural Gas Co.	NGC Intrastate Pipeline Co.	04-26-88	B		
ST88-3291	El Paso Natural Gas Co.	Pacific Gas and Electric Co.	04-26-88	B		
ST88-3292	Transcontinental Gas Pipe Line Corp.	Connecticut Natural Gas Corp.	04-26-88	B		
ST88-3293	Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co.	04-26-88	B		
ST88-3294	Transcontinental Gas Pipe Line Corp.	Baltimore Gas and Electric Co.	04-26-88	B		
ST88-3295	Transcontinental Gas Pipe Line Corp.	Virginia Natural Gas Co.	04-26-88	B		
ST88-3296	Tennessee Gas Pipeline Co.	Pargon Gas Corp.	04-26-88	G-S		
ST88-3297	Tennessee Gas Pipeline Co.	Tenneco Oil Co.	04-26-88	G-S		
ST88-3298	Tennessee Gas Pipeline Co.	Pennsylvania Gas and Water Co.	04-26-88	B		
ST88-3299	Tennessee Gas Pipeline Co.	Polaris Corp.	04-26-88	B		
ST88-3300	Tennessee Gas Pipeline Co.	Bishop Pipeline Corp.	04-26-88	B		
ST88-3301	Tennessee Gas Pipeline Co.	Pennsylvania Gas and Water Co.	04-26-88	B		
ST88-3302	Tennessee Gas Pipeline Co.	Commonwealth Gas Pipeline Corp.	04-26-88	B		
ST88-3303	Tennessee Gas Pipeline Co.	Polaris Corp.	04-26-88	B		
ST88-3304	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co.	04-27-88	B		
ST88-3305	Natural Gas Pipleine Co. of America	Delhi Gas Pipeline Corp.	04-27-88	B		
ST88-3306	El Paso Natural Gas Co.	Pacific Gas and Electric Co.	04-27-88	B		
ST88-3307	El Paso Natural Gas Co.	Southern California Gas Co.	04-27-88	B		
ST88-3308	El Paso Natural Gas Co.	Southern California Gas Co.	04-27-88	B		
ST88-3309	Northern Border Pipeline Co.	Northern Natural Gas Co.	04-27-88	B		
ST88-3310	Panhandle Eastern Pipe Line Co.	Miami Pipeline Co.	04-27-88	B		
ST88-3311	Trunkline Gas Co.	Union Gas Co.	04-27-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-3312	Panhandle Eastern Pipe Line Co.	Consumers Power Co.	04-27-88	B		
ST88-3313	Panhandle Eastern Pipe Line Co.	Yankee Pipeline Co.	04-27-88	B		
ST88-3314	Panhandle Eastern Pipe Line Co.	Miami Pipeline Co.	04-27-88	B		
ST88-3315	Panhandle Eastern Pipe Line Co.	Richmond Gas Corp.	04-27-88	B		
ST88-3316	Tennessee Gas Pipeline Co.	Granite State Gas Transmission, Inc.	04-27-88	G		
ST88-3317	Northern Natural Gas Co.	Petrus Oil Co., L.P.	04-27-88	G-S		
ST88-3318	Northern Natural Gas Co.	Intratex Gas Co.	04-27-88	B		
ST88-3319	Northern Natural Gas Co.	Yankee Pipeline Co.	04-27-88	B		
ST88-3320	Northern Natural Gas Co.	Northwestern Public Service Co.	04-27-88	B		
ST88-3321	Northern Natural Gas Co.	Lear Gas Transmission Co.	04-27-88	B		
ST88-3322	Colorado Interstate Gas Co.	Public Service Co. of Colorado	04-28-88	B		
ST88-3323	Colorado Interstate Gas Co.	Energy Pipeline Co.	04-28-88	B		
ST88-3324	Colorado Interstate Gas Co.	Northern Indiana Public Service Co.	04-28-88	B		
ST88-3325	Colorado Interstate Gas Co.	MGTC, Inc.	04-28-88	B		
ST88-3326	Northwest Pipeline Corp.	City of Ellensburg	04-28-88	B		
ST88-3327	Northwest Pipeline Corp.	Southern Calif. Gas Co., et al.	04-28-88	B		
ST88-3328	Northwest Pipeline Corp.	Northwest Natural Gas Co.	04-28-88	B		
ST88-3329	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co.	04-28-88	B		
ST88-3330	Northern Border Pipeline Co.	Northern Natural Gas Co.	04-28-88	G		
ST88-3331	Northern Border Pipeline Co.	Northern Natural Gas Co.	04-28-88	G		
ST88-3332	Enserch Gas Transmission Co.	Public Service Electric and Gas Co.	04-28-88	C		
ST88-3333	Tennessee Gas Pipeline Co.	East Ohio Gas Co.	04-28-88	B		
ST88-3334	Tennessee Gas Pipeline Co.	Orange and Rockland Utilities, Inc.	04-28-88	B		
ST88-3335	Tennessee Gas Pipeline Co.	Nashville Gas Co.	04-28-88	B		
ST88-3336	Tennessee Gas Pipeline Co.	Boston Gas Co.	04-28-88	B		
ST88-3337	Louisiana Intrastate Gas Corp.	Trunkline Gas Co.	04-28-88	C	09-25-88	27.44
ST88-3338	Mid Louisiana Gas Co.	Mississippi Valley Gas Co.	04-29-88	G-S		
ST88-3339	Questar Pipeline Co.	Cascade Natural Gas Corp.	04-29-88	B		
ST88-3340	Delhi Gas Pipeline Corp.	South Jersey Gas Co.	04-29-88	D		
ST88-3341	Natural Gas Pipeline Corp. of America	Wisconsin Southern Gas Co., Inc.	04-29-88	B		
ST88-3342	Wintershall Pipeline Corp.	Georgia-Pacific Corp.	04-29-88	C	09-26-88	64.40
ST88-3343	Exxon Gas System, Inc.	Neches Gas Distribution Co.	04-29-88	C	09-26-88	10.00
ST88-3344	Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	04-29-88	B		
ST88-3345	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	04-29-88	B		
ST88-3346	Algonquin Gas Transmission Co.	Providence Gas Co.	04-29-88	B		
ST88-3347	Alogonquin Gas Transmission Co.	Boston Gas Co.	04-29-88	B		
ST88-3348	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	04-29-88	B		
ST88-3349	Tarpon Transmission	Sun Gas Transmission Co., Inc.	04-29-88	B		
ST88-3350	Northern Natural Gas Co.	Peoples Gas Light & Coke Co.	04-29-88	B		
ST88-3351	Northern Natural Gas Co.	Shell Gas Trading	04-29-88	G-S		
ST88-3352	Northern Natural Gas Co.	Enron Gas Marketing, Inc.	04-29-88	B		
ST88-3352	Nothern Natural Gas Co.	Llano, Inc.	04-29-88	G-S		
ST88-3354	El Paso Natural Gas Co.	Ramgas, Inc.	04-29-88	B		
ST88-3355	El Paso Natural Gas Co.	City of Plains	04-29-88	B		
ST88-3356	El Paso Natural Gas Co.	Kengas of Texas, Inc.	04-29-88	B		
ST88-3357	El Paso Natural Gas Co.	Ajo Improvement Co.	04-29-88	B		
ST88-3358	El Paso Natural Gas Co.	General Utilities, Inc.	04-29-88	B		
ST88-3359	El Paso Natural Gas Co.	Rimrock Gas Co.	04-29-88	B		
ST88-3360	El Paso Natural Gas Co.	City of Mountainair	04-29-88	B		
ST88-3361	El Paso Natural Gas Co.	North Bailey Farmers' Co-op Society	04-29-88	B		
ST88-3362	El Paso Natural Gas Co	City of Big Lake	04-29-88	B		
ST88-3363	El Paso Natural Gas Co	Capitan-Carrizozo Natural Gas Assoc	04-29-88	B		
ST88-3364	El Paso Natural Gas Co	Tri-County Gas Co., Inc	04-29-88	B		
ST88-3365	El Paso Natural Gas Co	City of Grandfalls	04-29-88	B		
ST88-3366	El Paso Natural Gas Co	City of Whiteface	04-29-88	B		
ST88-3367	El Paso Natural Gas Co	City of Goldsmith	04-29-88	B		
ST88-3368	Panhandle Eastern Pipe Line Co	Kanss Power and Light Co	04-29-88	B		
ST88-3369	Panhandle Eastern Pipe Line Co	Texline Gas Co	04-29-88	B		
ST88-3370	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	04-29-88	B		
ST88-3371	Panhandle Eastern Pipe Line Co	Yankee Pipeline Co	04-29-88	B		
ST88-3372	Panhandle Eastern Pipe Line Co	Southeastern Michigan Gas Co	04-29-88	B		
ST88-3373	Panhandle Eastern Pipe Line Co	Ohio Valley Gas Corp	04-29-88	B		
ST88-3374	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	04-29-88	B		
ST88-3375	Panhandle Eastern Pipe Line Co	Union Electric Co	04-29-88	B		
ST88-3376	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	04-29-88	B		
ST88-3377	Panhandle Eastern Pipe Line Co	City of Pleasant Hill (Municipal Utility)	04-29-88	B		
ST88-3378	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	04-29-88	B		
ST88-3379	Panhandle Eastern Pipe Line Co	Consumers Power Co	04-29-88	B		
ST88-3380	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	04-29-88	B		
ST88-3381	Panhandle Eastern Pipe Line Co	City of Franklin	04-29-88	B		
ST88-3382	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	04-29-88	B		
ST88-3383	Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	04-29-88	B		
ST88-3384	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	04-29-88	B		
ST88-3385	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	04-29-88	B		
ST88-3386	Panhandle Eastern Pipe Line Co	Northern Indiana Fuel & Light Co	04-29-88	B		
ST88-3387	Panhandle Eastern Pipe Line Co	City of Bushnell Municipal Utility	04-29-88	B		
ST88-3388	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	04-29-88	B		
ST88-3389	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	04-29-88	B		
ST88-3390	Panhandle Eastern Pipe Line Co	Columbia Gas of Ohio, Inc	04-29-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST88-3391	Panhandle Eastern Pipe Line Co	Union Gas Limited	04-29-88	B		
Below is a Petition for Rate Approval. This report is noticed at this time to give interested parties the appropriate 150-day comment period. Also, noticed below is a correction to the March 31, 1988, Update List of St Dockets.						
ST88-1696	Seagull Natural Gas Company	Transcontinental Gas Pipe Line Corp	04-25-88	C	09-22-88	20.00
ST88-2079	Transconinental Gas Pipe Line Corp	Corpus Christi Industrial Pipeline Co	02-05-88			

[1] Notice of Transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's Regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-14408 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9695-001, et al.]

American Hydro Power Co., et al.; Surrender of Preliminary Permits and Exemptions

June 21, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. American Hydro Power Co.

[Project No. 9695-001]

Take notice that American Hydro Power Co., permittee for the Little Pine Dam Project No. 9695 located on the Little Pine Creek in Lycoming and Clinton Counties, Pennsylvania has requested that its preliminary permit be terminated. The preliminary permit was issued on May 21, 1986, and would have expired on April 30, 1989. The permittee states that analysis of the Little Pine Dam Project did not indicate feasibility for development.

The permittee filed the request on June 6, 1988.

2. American Hydro Power Co.

[Project No. 9835-002]

Take notice that American Hydro Power Co., permittee for the Cowanesque Dam Project No. 9835 located on the Cowanesque River in Tioga County, Pennsylvania has requested that its preliminary permit be terminated. The preliminary permit was issued on May 21, 1986, and would have expired on April 30, 1989. The permittee states that analysis of the Cowanesque Dam Project did not indicate feasibility for development.

The permittee filed the request on June 6, 1988.

3. American Hydro Power Co.

[Project No. 9764-001]

Take notice that American Hydro Power Co., permittee for the George B. Stevenson Dam Project No. 9764 located on the First Fork Sinnemahoning Creek in Cameron County, Pennsylvania has requested that its preliminary permit be terminated. The preliminary permit was issued on May 21, 1986, and would have expired on April 30, 1989. The permittee states that analysis of the George B. Stevenson Dam Project did not indicate feasibility for development.

The permittee filed the request on June 6, 1988.

Standard Paragraph

I. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14412 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-93-002 and RP88-40-003]

Questar Pipeline Co.; Compliance Filing

June 22, 1988.

Take notice that on June 16, 1988, Questar Pipeline Company submitted a compliance filing in response to the Commission's order issued April 28, 1988, in consolidated Docket Nos. RP88-93-000 and RP88-40-000 (the April 28 order). 43 FERC § 61,127. In its filing Questar Pipeline submitted the following tariff sheets:

First Revised Volume No. 1
- Substitute Thirteenth Revised Sheet No. 12
- Substitute Original Sheet No. 12-A
- Substitute Second Revised Sheet No. 15
- Substitute Second Revised Sheet No. 15-A
- Substitute First Revised Sheet No. 16
- Substitute First Revised Sheet No. 17
- Original Sheet No. 18
- Substitute Original Sheet No. 39-A
- First Revised Sheet No. 71
- Original Sheet No. 80
- Original Sheet No. 81

Original Volume No. 1-A
- Substitute Fifth Revised Sheet No. 5

Original Volume No. 3
- Substitute Eighth Revised Sheet No. 8
- Substitute Original Sheet No. 8-A
- Substitute Original Sheet No. 10-B

Questar states that on March 31, 1988, it filed a request for an increase in its rates for jurisidictional services pursuant to section 4(e) of the Natural Gas Act. The Commission's April 28 order rejected certain tariff sheets and accepted others subject to specified conditions. Questar Pipeline asserts that its filing complies with the Commission's April 28 order by providing schedules, statements, workpapers and tariff sheets dealing with the following issues:

1. Standby Charge. Questar Pipeline states that its filing modifies the provisions of sales Rate Schedule CD-1 to clarify the optional character of standby sales service for its sales customer, Mountain Fuel Supply Company.

2. Test-period transportation volumes. Questar Pipeline asserts that, pursuant to the April 28 order, it has modified its filing to reflect transportation volumes for the test period ending September 30, 1988, at the maximum rate applicable to such volumes. According to the Company, it has also made volume adjustments to reflect its transportation customers' D-2 entitlement nominations and its compliance with the Commission's standby charge requirements.

3. Demand cost allocation. Questar Pipeline states that its filing complies with the requirements of the April 28 order dealing with the allocation of the D-1 and D-2 components of demand costs. Specifically, Questar Pipeline asserts that its filing relects a three-day-peak basis, as adjusted for known and measurable changes, for allocating D-1 costs, and that D-2 costs have been allocated in the filing to reflect its customers' recently solicited annual D-2 nominations. The Company further states that it has modified its authorized overrun transportation charge to reflect a 100% load-factor rate to comport with the Commission's April 28 order. It proposes to allow its firm transportation customers to modify their D-2 nominations if the new rate would affect their original decision, provided it is permitted to correspondingly modify its rates to become effective October 1, 1988.

4. Cost-and-revenue reports. Questar Pipeline's filing includes schedules, statements and workpapers that it asserts are in compliance with the Commission's requirement for certain cost-and-revenue report information related to its Gathering Division and Clay Basin Storage Division.

Any person desiring to be heard or to protest this 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 211 and 214 of the Commission's rules of practice and procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14414 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-192-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 22, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 15, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 56
Second Revised Sheet No. 57
Second Revised Sheet No. 58
Second Revised Sheet No. 59
Second Revised Sheet Nos. 60-99
Original Sheet No. 483A
Original Sheet No. 483B

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover the take-or-pay charges to be billed by Southern Natural Gas Company (Southern) and paid by Texas Eastern as proposed by Southern in a filing made on May 13, 1988 in Docket No. RP88-96. On May 13, 1988, Southern filed tariff sheets in Docket No. RP88-96 which include the removal of the buy-out and buy-down costs from Southern's sales rates in Docket No. RP86-63 and the credit of all buy-out and buy-down costs paid during the period from October 1, 1986 through March 31, 1988. Buy-out and buy-down costs of $119.5 million have been the subject of litigation in Southern's Docket No. RP86-63. The tariff sheets filed in Docket No. RP88-96 reflect a proposal to recover 35% of Southern's buy-out and buy-down costs through a fixed charge based exclusively on cumulative purchase deficiencies in firm purchases during the period from 1982 through 1986 as compared to firm purchases in 1981. Southern proposes to recover from Texas Easern total buy-out costs of $940,968 plus interest of $44,190, for a total liability of $985,158. The fixed monthly charge to be paid by Texas Eastern to Southern is $82,097.

Texas Eastern states that the tariff sheets listed above are being filed soley to establish the procedures for recovering the take-or-pay charges to be billed by Southern and paid by Texas Eastern. Sheet Nos. 56, 57, 58, and 59 set forth the principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Southern's take-or-pay charges billed to Texas Eastern. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which include a predermined carrying charge) and a breakdown of the total and monthly principal amounts (which includes a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Attachment A of the filing.[1]

[1] Texas Eastern is also filing alternate tariff sheets which reflect the elimination of all interruptible sales volumes in the determination of the base and deficiency period volumes for all customers. Workpapers for the alternate tariff sheets are set forth under Attachment B of the filing.

Texas Eastern states that the tariff sheets are proposed to become effective as of June 1, 1988.

Texas Eastern states that if at any time Southern is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Southern in Docket No. RP88-96.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14413 Filed 6-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-32-010]

Williams Natural Gas Co.; Compliance Filing

June 21, 1988.

Take notice that on June 15, 1988, Williams Natural Gas Company (WNG) filed in these dockets revised tariff sheets in compliance with Ordering Paragraph (C) of the Commission's Order on Compliance Filing and Settlement issued on May 5, 1988. The May 5 order required WNG to modify certain provisions of the tariff sheets contained in Appendix C to the Revised Stipulation and Agreement submitted on January 4, 1988 (as supplemented January 28, 1988). The compliance filing contains, as part of WNG's FERC Gas Tariff, Original Volume No. 1 submitted in Appendix C, the following tariff sheets:

Revised Original Sheet Nos. 142L and 142W

Revised First Revised Sheet Nos. 40, 67E and 67H

Revised Second Revised Sheet Nos. 13, 20, 29, 32, 33, 36, 39, 70–72, 74, 75, 81, 92 and 95

Substitute Revised Second Revised Sheet Nos. 19, 23 and 73

Revised Third Revised Sheet Nos. 2 and 76–80

Revised Fourth Revised Sheet No. 7

Substitute Revised Fifth Revised Sheet No. 6

WNG has requested waivers of the tariff filing provision of its Revised Stipulation and Agreement, the notice requirements of section 4 of the Natural Gas Act and the Commission's regulations as necessary to make all revisions to its FERC Gas Tariff, Original Volume No. 1 effective simultaneously, including those contained in Appendix C of the Revised Stipulation and Agreement, as modified by the tariff sheets submitted in the instant compliance filing, as well as all currently effective tariff provisions not affected by the filings in this docket. WNG proposes an effective date to be the later of July 1, 1988 or the date on which WNG accepts the open access blanket transportation certificate in WNG's Docket No. CP86–631.

WNG states that it will, within fifteen (15) days from the effective date of the simultaneous tariff revisions, refile all tariff sheets in its Original Volume No. 1 reflecting the actual effective date.

WNG states that copies of the filing have been mailed to all customers and affected state regulatory 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 NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–14415 Filed 6–24–88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of April 25 Through April 29, 1988

During the week of April 25 through April 29, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Alan J. White, 4/27/88, KFA–0179

Alan J. White filed an Appeal from a determination by the Director of Personnel of the DOE, regarding a request submitted under the Freedom of Information Act. White sought all documents responsive to a series of questions raised in his initial request. The Director identified and released only one document as being responsive to his request. White argued that additional responsive documents must exist and that the document provided was not responsive. White also requested that the DOE respond to a number of questions. The DOE found that the released document was responsive and ruled that the FOIA requires an agency to release documents, but not to respond to questions. The DOE, however, did find that an adequate search for responsive documents had not been made, and remanded the matter for a new search. Accordingly, the Appeal was granted in part.

California Energy Commission, 4/25/88, KFA–0178

The California Energy Commission (CEC) filed an Appeal from a determination issued to it by the Freedom of Information Official of the Bonneville Power Administration. The Official withheld certain documents under Exemption 5 of the FOIA on the grounds that they were predecisional, internal, agency materials whose release would harm the deliberative process. The CEC contended that the Exemption 5 deliberative process privilege had been waived by the release of the documents to persons outside the DOE. In considering the Appeal, the DOE found that documents were properly withheld pursuant to Exemption 5 of the FOIA, and that Exemption 5 had not been waived by release of the documents to non-governmental third parties. Therefore, the Appeal was denied.

Chameides & Goldstein, 4/28/88, KFA–0180

Chameides & Goldstein filed an Appeal from a determination by the Deputy Director for Economic Analysis of the Office of Hearings and Appeals (OHA) of a request submitted under the Freedom of Information Act. The law firm sought all documents pertaining to specified proceedings before OHA. The Deputy Director had withheld four of the responsive documents pursuant to Exemption 5 to the FOIA. In considering the Appeal, the DOE found that the four withheld documents properly fell within the scope of Exemption 5. The DOE rejected the firm's contention that the DOE had waived its Exemption 5 privilege by submitting documents on allegedly similar subjects in an ongoing court proceeding, finding that subject matter waiver is not applicable to FOIA determinations. Nonetheless, the DOE found that one document and a portion of another should be released to the firm in the public interest. Accordingly, the Appeal was granted in part.

Remedial Order

Houston Oil and Refining, Inc.; Joseph A. Imparato, 4/29/88, HRO–0245

Houston Oil and Refining, Inc. (HO) objected to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to the firm on May 24, 1984. In the PRO the ERA alleged that as a result of "layering" violations of 10 CFR 212.186 during the period June 1979 through August 1980, HO had received excessive profits of more than $182,000,000. Joseph A. Imparato (Imperato), president and owner of HOR, had been joined as a PRO recipient during the course of the proceeding. The DOE rejected HO's and Imparato's arguments that the pricing regulations were invalid, and the claim that the firm performed the traditional and historical functions of a crude oil reseller in the subject transactions. The DOE also found Imparato personally liable for the layering overcharges, because he conducted, controlled and directed the business and benefitted financially from the layered transactions. The DOE concluded that the PRO should be issued as a final Remedial Order and directed HO and Imparato to remit $57,989,772.44, the amount of the firm's gross profits during the audit period, plus applicable interest.

Request for Exception

Arizona Trails, Inc., 4/27/88, KEE–0159

Arizona Trails, Inc. filed an Application for Exception on January 27,

1988. The firm sought relief from the reporting requirements of 10 CFR 205.55(b)(2). In considering the request, the DOE found that the firm did not suffer a hardship, inequity or, unfair distribution of burdens as a result of the reporting requirements warranting exception relief. Accordingly, exception relief was denied.

Motion for Reconsideration

Indiana, 4/29/88, KER-0039

The DOE issued a Decision and Order considering a Motion for Reconsideration submitted by the State of Indiana. The State sought to use Stripper Well monies for three projects: The Anderson municipal electric utility sub-station relocation project; the shale oil-modified asphaltic paving materials project; and the Indiana Geological Survey image-analyzing petroscopic microscope project. The OHA and DOE's Assistant Secretary for Conservation and Renewable Energy previously had held that these projects were inconsistent with the terms of the Stripper Well Settlement Agreement. In reviewing Indiana's Motion for Reconsideration, the OHA determined that in addition to providing incidental energy savings to injured consumers, the sub-station relocation project would reduce the size of the rate increase that would result from relocation of the sub-station. In making this determination, the DOE noted that the sub-station's vulnerability to damage by flood necessitated its relocation and that a substantial portion of the costs of the relocation project would be passed through to utility ratepayers unless Stripper Well funds were used to help pay for the project. Accordingly, the DOE found that the sub-station relocation project was both energy-related and restitutionary. In addition, the DOE approved the use of Stripper Well funds for the asphaltic paving materials project. Approval of this project was based on the substantial support the project had received from the DOE's Fossil Energy Office and upon Indiana's showing that the project would yield tangible energy-related benefits that would inure to injured consumers.

Implementation of Special Refund Procedures

Alemany Chevron Service Center, Lee Garrett Chevron, 4/26/88, KEF-0023, KEF-0040

The DOE issued a Decision and Order implementing a plan for the distribution of $2,700 received pursuant to a Consent Order entered into by Alemany Chevron Service Center (Alemany) and the DOE on January 11, 1985, and $6,200 obtained through a Settlement Agreement between Lee Garrett Chevron (Garrett) and the DOE on October 1, 1985. The DOE determined that these funds should be distributed to customers that purchased motor gasoline from Alemany during the period August 1, 1979 through January 30, 1980, and from Garrett during the period August 2, 1979 through August 26, 1980. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Aminoil U.S.A., Inc./G&K Gas Corporation, 4/29/88, RF139-11

The DOE issued a Decision and Order concerning an Application for Refund filed by G&K Gas Corporation (G&K) in the Aminoil U.S.A., Inc. special refund proceeding. G&K submitted information which allowed the DOE to reconstruct its cost banks which showed that the firm had not absorbed any increased product cost. This indicated that G&K was not injured by any of Aminoil's alleged overcharges. The DOE concluded that the firm's application should be denied.

Buck Creek Farms, 4/29/88, RF272-5053

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Buck Creek Farms based on the firm's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The firm used the products for irrigation of its farm lands during the crude oil settlement period. Buck Creek's method of estimating its purchases we found to be acceptable for the purposes of the crude oil refund proceeding. Buck Creek was found to be an end-user of the petroleum products it claimed, and therefore was found injured based upon the end-user presumption of injury. The total refund granted in this Decision is $31.00.

Clark Propane Service, Inc. et al., 4/29/88, RF272-1136, et al.

The DOE issued a Decision and Order, denying eight Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a gasoline or propane retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were all ineligible for a crude oil refund.

Dale Bone Farms, et al., 4/25/88, RF272-3444, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 21 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through Janaury 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $563.00. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Darrell Riggins, et al., 4/25/88, RF272-1335, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 38 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,214. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Daryl Fixsel et al., 4/28/88, RF272-4200, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities or in operating small businesses. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and therefore was found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $102.

Dennis Hullinger et al., 4/26/88 RF272-4431, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 46 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27,

1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and therefore was found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is $12,064.

Dorchester Gas Corporation/ L.G. Vanderwork Marketer & Transporter of Liquid Petroleum Gas, 4/25/88, FR253-51

The DOE issued a Decision and Order granted an Application for Refund filed by L.G. Vanderwork Marketer & Transporter of liquid Petroleum Gas in the Dorchester Gas Corporation refund proceeding. Vanderwork demonstrated that it purchased at least 1,406,669 gallons of propane directly from Dorchester during the consent order period. Because the applicant limited its claim to $5,000, it was not required to demonstrate injury. Accordingly, a small-claims refund of $5,000 in principal and $1,815 in interest was approved for Vanderwork.

Dorchester Gas Corporation/Perkins Petroleum, Inc. 4/29/88, FR253-46

The DOE issued a Decision and Order granting an Application for Refund filed by Perkins Petroleum, Inc., in the Dorchester Gas Corporation refund proceeding. Perkins demonstrated that it purchased 931,619 gallons of propane indirectly from Dorchester through Phillips Petroleum Company during the consent order period. The DOE had determined in a prior Decision that Phillips, a direct purchaser of Dorchester propane, passed through 79.6 percent of Dorchester's alleged overcharges. Therefore, the DOE calculated Perkins allocable share by multiplying the applicant's gallonage by the per-gallon refund amount and by Phillips' Passthrough percentage. Because the applicant limited its claim to $5,000, it was not required to demonstrate injury. Accordingly, a small-claims refund of $5,000 in principal and $1,831 in interest was approved for Perkins.

Edwin L. McGee, et al., 4/29/88, RF-272-6899, et al.

The DOE issued a Decision and Order granting refunds to 50 claimants that filed Applications for Refund under OHA's Subpart V crude Oil overcharge refund proceeding. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. As an agricultural end-user of petroleum products, each claimant was presumed to have been injured as a result of the crude oil overcharges. The sum of the refund granted was $1,123.

Getty Oil Company/Harry's Supper Service, et al., 4/27/88, RF265-0590, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by reseller or retailer of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products, that were indirectly purchased from Getty jobber/distributors during the consent order period. In ten instances, the applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining two cases, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $41,899, representing $20,606 in principal and $21,293 in accrued interest.

Getty Oil Company/Richard Oil Company, Northern Petroleum, Inc., 4/29/88, RF265-1335, RF265-1336, RF265-2631

The DOE issued a Decision and Order concerning three Applications for Refund filed by resellers or retailers of products that were covered by a Consent Order that the DOE entered into with Getty Oil Company. Each of the applicants submitted information indicating the volume of its Getty purchases. Each applicant elected to limit its claim on the basis of the level-of-distribution presumption of injury methodology and was eligible for a refund below the maximum of the $50,000 threshold. The sum of the refunds approved in this Decision is $25,153, representing $12,370 in principal and $12,783 in accrued interest.

Getty Oil Company/Sterling Oil & Gas Company, 4/28/88, RF265-37

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of propane that was covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the purchases of 5,496,404 gallons of Getty propane. The applicant elected to limit its claim on the basis of the level-of-distribution presumption of injury methodology and was eligible for a refund below the maximum of the $50,000 threshold. The sum of the refund approved in this Decision is $10,234, representing $5,033 in principal and $5,201 in accrued interest.

Getty Oil Company/Vangas, Inc., et al., 4/25/88, RF265-1907, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In four of these claims, the applicants elected to limit their claims on the basis of the level-of-distribution presumption of injury methodology and were eligible for refund below the maximum $50,000 threshold. In the remaining three claims, the applicants elected to limit their claims to $50,000 in accordance with the level-of-distribution presumption of injury for propane and butane. The sum of refunds approved in this Decision is $180,588, representing $88,896 in principal and $91,692 in accrued interest.

I. Wilson Turner 4/27/88, RF272-6176, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 47 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used various actual records and/or conservative estimates to report their gallonage claims. Each applicant was an end-user of the products it claimed and therefore was found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,213. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

K.H. Owens & Son et al., 4/29/88, RF272-6949, et al.

The DOE issued a Decision and Order granting refunds to 48 claimants that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. Each applicant submitted evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. As an agricultural end-user of petroleum products, each claimant was presumed to have been injured as a result of the crude oil overcharges. The sum of the refunds granted was $1,295.

Leonard Walde, et al., 4/25/88, RF272-1892, et al.

The DOE issued a Decision and Order granting 50 Applications for refund from available crude oil overcharge funds. The 50 claimants were farmers who used either the USDA formula or actual

records to derive the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $1,230 was approved in this Decision and Order.

Loren Reith, et al., 4/25/88, RF272-1601, et al.,

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 40 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and therefore was presumed injured by the DOE. The sum of the refunds granted in this Decision is $961. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Marathon Petroleum Co./Monroe Marathon Oil Company, 4/25/88, RF250-1608, RF250-1681

This Decision and Order concerns an Application for Refund filed by the Monroe Marathon Oil Company in the Marathon Petroleum Company refund proceeding. During the consent order period, Monroe purchased 25,777.483 gallons of refined products from Marathon. Based on the results of a competitive injury analysis, the DOE granted Monroe a refund of $7,616 in principal and $1,124 in accrued interest.

Marathon Petroleum Company/Superior Oil Co. of Muskegon 4/29/88, RF250-1284, RF250-1285, RF250-1853

The DOE issued a Decision and Order granting three Applications for Refund filed by the Superior Oil Company of Muskegon in the Marathon Petroleum Company refund proceeding. Superior filed the Applications on behalf of itself and two subsidiary corporations. The DOE determined that the three entities are affiliated and that their purchase volumes should be consolidated for the purpose of calculating Superior's allocable share. Superior demonstrated the volume of the corporations' combined purchases, but elected not to demonstrate injury. Accordingly, a small claims refund of $5,000 in principal and $762 in interest was approved for Superior.

Mike Hammit et al., 4/27/88, RF272-4204, et al.

The DOE issued a Decision and Order granting refunds from crude oil overchage funds to five applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities and calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and therefore was found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $468.

Mobil Oil Corporation/Girling & Coutts et al., 4/29/88, RF225-8425, et al.

The DOE issued a Decision granting four Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $9,975 ($8,017 principal plus $1,958 interest).

Mobil Oil Corp./Griff Petroleum Corp., 4/27/88, RF225-7753, RF225-7754, RF225-7755, RF225-7756

The DOE issued a Decision and Order granting an application for Refund from the Mobil Oil Corporation escrow account filed by a reseller of Mobil refined petroleum products. In the Mobil proceeding, and applicant may choose to either rely on the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) or show that the injury it suffered was greater than that of the average reseller. Griff Petroleum Corp. (Griff) elected to demonstrate injury. Applying the competitive disadvantage analysis to the data submitted by Griff, the DOE determined that the firm purchased its motor gasoline at prices higher than the average market prices. The DOE concluded that Griff therefore was eligible to receive the full volumetric refund amount for its purchases of Mobil motor gasoline. Griff's refund, however, was limited to the gallons purchased after December 1, 1974, the date when the firm's banks of unrecouped product costs became positive. No refund was granted for Griff's purchases of middle distillates, because the firm did not demonstrate injury. The total refund granted to Griff was $14,434, representing $11,605 of principal and $2,829 of interest.

Mobil Oil Corporation/Lunde Fuel & Oil Supply, Franklin County Oil Co., 4/27/88, RF225-21, et al.

The DOE issued a Decision and Order regarding two Motions for Reconsideration filed by Donald H. Grissom on behalf of Lunde Fuel & Oil Supply and Franklin County Oil Co. in the Mobil Oil Corporation special refund proceeding. The OHA had dismissed the firm's original claims for late filing. In its Decision, the OHA determined that the Lunde Claim should be reinstated. The Franklin claim was not reinstated, because no good cause was shown for its late filing. Accordingly, the DOE granted the Lunde claim according to the procedures set forth in *Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985), but dismissed the Franklin claim. The total amount granted to Lunde was $1,330, representing $1,070 in principal pus $260 in interest.

Mobil Oil Corporation/State of Illinois, 4/25/88, RF225-11017

The DOE issued a Decision rescinding a refund from the Mobil Oil Corporation escrow account that had been granted to Nic Schnettler who claimed to represent the State of Illinois, Department of Transportation. The DOE found that although the applicant was entitled to a refund, Mr. Schnettler was not authorized to receive the refund on its behalf. Therefore, the previously approved refund was rescinded.

Mobil Oil Corporation/Thomas Oil Corp., 4/25/88, RF225-9635, RF225-9636

The DOE issued a Decision granting an Application for Refund from the Mobil Oil Corporation escrow account filed by a retailer and end-user of Mobil refined petroleum products. The applicant elected to apply for a refund based upon the presumption set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted a refund of $465 ($374 principal plus $91 interest).

Mobil Oil Corporation/Time Oil Company, Kinbro Petroleum, Inc., 4/26/88 RF225-9988, RF225-10397

The DOE issued a Decision and Order concerning two Applications for refund filed by resellers of Mobil petroleum products. Because both Time Oil Company and Kinbro Petroleum, Inc. were resellers whose purchases of Mobil product were sporadic, the DOE determined that the firms were spot purchasers and thus were presumed not to have been injured by Mobil's alleged overcharges. Because neither firm successfully rebutted that presumption, both Applications for Refund were denied.

Mobil Oil Corp./Triboro Coach Corporation, 4/27/88, RF225-10969

The DOE issued a Decision and Order concerning a refund of $4,379 granted to Triboro Coach Corporation on December 3, 1986. *See Mobil Oil Corp./Alvin Saur*, 15 DOE ¶85,153 (1986). A review of the application submitted in that proceeding revealed that in the December 3 Decision, Triboro received a refund based upon 5,579,131 gallons of diesel fuel purchased after the product's July 1, 1976 date of decontrol. Triboro therefore was ordered to remit to the DOE the overpayment of $2,695 attributable to these ineligible volumes.

Owosso Public Schools Et Al., 4/28/88, RF272-86, et al.

The DOE issued a Decision and Order granting refunds to 10 public school districts that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicants had provided sufficient evidence of the volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that transmission fluid and brake fluid, but not anti-freeze, were eligible products on which a crude oil refund claim could be based. As end-users of petroleum products, the applicants were presumed to have been injured as a result of the crude oil overcharges. The total of the refunds granted was $1,680.

Saber Energy, Inc./Duquesne Light Company, 4/28/88, RF192-11

The DOE issued a Decision and Order denying an Application for Refund filed by Duquesne Light Company from the Saber Energy, Inc. escrow account. Duquesne applied for a refund in excess of the volumetric amount. The DOE found that Duquesne was qualified to receive a per gallon refund that exceeded the volumetric amount. The DOE, however, determined that the refund which Duquesne had already received under the terms of the Saber Consent Order adequately compensated the utility for the portion of Saber's total alleged overcharges which it incurred. Accordingly, the DOE concluded that no additional refund was justified, and Duquesne's Application for Refund was denied.

Southern California Edison Company, Pacific Gas and Electric Company, 4/29/88, RF272-8, RF272-9

Southern California Edison Company and Pacific Gas and Electric Company requested modifications of refund decisions issued to them. *See Southern California Edison Co.*, 17 DOE ¶ 85,247 (1988) and *Pacific Gas and Electric Co.*, 17 DOE ¶ 85,234 (1988). In their motions, the firms requested permission to pay legal fees for outside counsel engaged to obtain the refunds. In denying the requested modifications, the DOE held that the full amount of the refunds must be passed through to the rate payers of the utility and that legal fees may not be deducted directly from the refunds. DOE suggested that petitioners seek permission at an appropriate time from the Public Service Commission of California to include the fees in their respective rate bases.

William D. Deshong, et al., 4/26/88, RF272-5133, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and therefore was found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is $1,285. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Dismissals

The Following Submissions Were Dismissed:

Name and Case No.

A. Grigg, RF272-6508
Alabama River Woodlands, Inc., RF272-27730
American Hoist & Derrick, RF272-23005
Armade Area Schools, RF272-23679
Avco Lycoming Division, RF225-4549, RF225-4550, RF225-4551 RF225-4552
Bay County Road Commission, RF272-9188
Betty Bacharach Rehad, RF272-22176
Bernard Ritchie, RF272-25060
Bibb Distributing Co., RF272-27479
Bill Rhodes Co., Inc., RF225-9098
Bladen County Hospital, RF272-20259
Briggs & Stratton Corp., RF272-29679
Bunge Corporation, RF272-23842
C.H. Sorensen & Sonner A/S, RF272-19010
Central Supply Company of Virginia Inc., RF272-23266
Charles Herrmann, RF272-12064
Charles Shofner, RF272-16529
Chenango Valley Centeral School District, RF225-8941
Ciprianti Brothers, RF272-30411
City of Jetmore, RF272-27985
City of Tulsa, OK, RF272-36018
City of Wilson, RF272-13123
Clyde Schillinger, RF272-21483
Colby Public Schools, RF272-27964
Commission on Aging, RF272-27951
Cone Mills Corproation, RF272-23843
County of Harnett, NC, RF272-28772
Cricket Box Mobil, RF272-5490
Curtis Schwaninger, RF272-36230
D. Pippin, RF272-6506
Delbert Vandevender, RF272-20071
Donald Kristensen, RF272-22593
Earl Behrends, RF272-36936
Gant Oil Company, RF225-7913, RF225-7914, RF225-7915
Greater Laurel Beltsville Hospital, RF272-26624
Halifax Memorial Hospital, Inc., RF272-25961
Herb H. Sand, RF272-31233
Ike's Oil Company, RF225-10433, RF225-10434
J. Martin, RF272-5603
Jefferson County, RF272-23064
John M. McDougall, RF272-16190, RF272-16676
Ken Huston, RF272-22628
Kentucky, RQ10-395
Kraft, Inc., RF272-25982
L. Whatley, RF272-6504
Liberty Polymers, Inc., RF272-10681
Loren Niemann, RF272-16564
Lowell Roeder & Carol Roeder, RF272-36344
Mark Twain Produce Co., RF272-37206
Martin Limestone, Inc., RF272-33532
Methodist Hospital of Memphis, RF272-23677
Methropolitan Asphalt Corp., RF272-26851
Missouri Pacific Truck Lines, Inc., RF272-20182
Mrs. Herbert Rupprecht, RF272-21976
Mustang Truck Line, RF272-29001
New Enterprise Stone & Lime Co., Inc., RF272-32283
Newton Memorial Hospital, RF272-26239
Northern Westchester Hospital, RF272-26438
Olmos Construction Co., RF272-27150
Orville Garrett, RF272-14296
Palmer Asphalt Company, RF272-19018
Petroleum Resource Association, Inc., RF272-29802
R. Bell, RF272-6502
Raymond L. Satree, RF272-13403
Richard Van Dyke, RF272-10430
Robert & Kathryn Manning, RF272-20024
Robinson & Smith, Inc., RF272-21982
Rock Products, Inc., RF272-36146
Rune's Service Station, RF225-3535
Russell County Highway Department, RF272-16463
S. Perry, RF272-6505
School District of Philadelphia, RF272-34964
Service Sign Erectors Co., Inc., RF225-140
Skaarup Shipping Corporation, RF272-23224
South Brunswick Asphalt, RF272-29801
South Shore Hospital, RF272-25152
S. Elizabeth Hospital, RF272-8386
St. Joseph Fuel Oil & Manufacturing Company, RF272-16814
St. Joseph Hospital, RF272-34092
Stanchfield Cattle Co., RF272-19109
Sunnyhill Farms, Inc., RF272-21770
Tennessee Steel Haulers, Inc., RF272-13522
Thomas C. Moe, RF272-24878
Town of Los Gatos, RF272-33235
V&J Wagner, Inc., RF272-36032
W. Shumate, RF272-6507
W.W. Ward, RF272-11182
Walter & Pelagia Winter, RF272-30943
Walter E. Wilke, RF272-30968
Wilson Knott, RF272-32891

Copies of the full text of these decisions and orders are available in the

Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue S.W., Washington, DC. 20585, Monday Through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

June 17, 1988.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88-14465 Filed 6-24-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3405-1]

Draft Updated Assessments for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (2,3,7,8-TCDD)

AGENCY: U.S. Environmental Protection Agency.

ACTION: Availability of external review drafts.

SUMMARY: This notice announces the availability of two external review drafts for public review and comment, as follows:

1. A Cancer Risk-Specific Does Estimate for 2,3,7,8-TCDD EPA/600/6-88/007Aa and Appendices A through F, EPA/600/6-88/007Ab.

2. Estimating Exposures to 2,3,7,8-TCDD, EPA/600/6-88/005A.

These documents will be the subject of a Science Advisory Board meeting to be held later in the year. Notice of the time and place of the Science Advisory Board meeting will published in a separate **Federal Register** notice.

DATES: The Agency will make the documents available for public review and comment on or about Wednesday, July 6, 1988. Comments must be postmarked by Wednesday, October 5, 1988.

ADDRESSES: To obtain a single copy of each document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268, (513) 569-7562 or FTS/684-7562. Please provide your name and mailing address and request the external review drafts by title(s) and EPA number(s).

The draft documents also will be available for public inspection and copying in the Public Information Reference Unit of the EPA library, U.S. EPA Headquarters, Waterside Mall, 401 M Street S.W., Washington, DC 20460.

Commenters are requested to submit separate comments for each document rather than making a combined submission. Comments must be made in writing and addressed as follows:

For the Cancer Risk-Specific Dose Estimate document, send comments to: Project Officer for 2,3,7,8-TCDD; Technical Information Staff (A), Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street SW., Waterside Mall, Room 3703, Washington, DC 20460.

For the Estimating Exposures document, send comments to: Project Officer for Estimating Exposures, Technical Information Staff (B), Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street SW., Waterside Mall, Room 3703, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William H. Farland, Ph.D., (202) 382-7315 or FTS/382-7315.

SUPPLEMENTARY INFORMATION: Although there are many components to any risk assessment for 2,3,7,8-TCDD, two factors have been particularly important in recent Agency decisions, i.e., estimates of cancer potency and estimates of human exposure. The two draft documents, A Cancer Risk-Specific Dose Estimate for 2,3,7,8-TCDD and Estimating Exposures to 2,3,7,8-TCDD, focus on cancer potency and exposure, respectively. Other issues were reviewed and are briefly discussed in Appendices A through F of the cancer document.

the cancer document re-examines the scientific basis and methods used by the EPA for estimating the cancer potency for 2,3,7,8-TCDD. An ad hoc interoffice workgroup prepared the report and recommendations, and scientists outside of the workgroup provided useful analyses, review, and comment. The objective of the report is to determine if EPA's 1985 cancer risk assessment for polychlorinated dibenzo-p-dioxins should be modified in light of recent data, alternative risk assessment methods, or alternative interpretations of data on this chemical.

Thus, this analysis is not a complete risk characterization for 2,3,7,8-TCDD, but rather a re-examination of the hazard identification and dose-response assessment for the potential human carcinogenicity of this chemical. The analysis uses two different approaches. One examines EPA's earlier analysis in terms of new data and recent reviews that offer scientific information and views for re-assessing 2,3,7,8-TCDD cancer risks. The other involves comparing EPA's 1985 assessment with that of other regulatory agencies in this country and elsewhere. The draft report concludes that (1) the 1985 assessment that associates a 0.006 pg/kg/day dose with a plausible upper-bound increased cancer risk of one in a million (10^{-6}) should be reconsidered, and (2) a change to a 0.1 pg/kg/day dose as a plausible upper-bound associated with an increased lifetime risk of one in a million is consistent with the available data and theories, and represents a reasonable science policy position for the Agency.

Two other EPA reports on issues that bear on assessing human cancer risk for 2,3,7,8-TCDD are also available. They are:

Report of the EPA Workshop on the Development of Risk Assessment Methodologies for Tumor Promoters, EPA/600/9-87/013

Dioxin Update Committee Report.

These two reports, together with the two External Review Draft documents, represent EPA's most recent attempt to grapple with the difficult issues presentedf by the large but incomplete data base on 2,3,7,8-TCDD.

These reports are also available throught he ORD Publications Center (address provided previously in this notice).

Date: June 17, 1988.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 88-14386 Filed 6-24-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3404-91]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on July 14-15, 1988 at the Holiday Inn Governor's House, 17th Street at Rhode Island Avenue NW., Washington, DC 20036. This meeting will start at 8:30 a.m. on July 14th and will adjourn no later than 4 p.m. on July 15th.

The main purpose of this meeting will be to review the following: report of the panel that reviewed the Risk Assessment Forum's draft technical report entitled "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations", the proposed risk assessment guidelines for male and female reproductivity, and the

draft Health Assessment Document for Phosgene.

Documentation for this meeting is available from the Center for Research Information (CERI), U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC, 20460 by June 30, 1988. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Donald Barnes,

Director, Science Advisory Board.

Dated: June 20, 1988.

[FR Doc. 88-14389 Filed 6-24-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3404-8]

Science Advisory Board, Steering Committee of the Research Strategies Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting has been scheduled of the Steering Committee of the Research Strategies Subcommittee of the Science Advisory Board. They will meet from 9:00 a.m. to 5:00 p.m. on July 18th, at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, in Conference Room 1001.

The purpose of the meeting is to finalize the Research Strategies Subcommittee report and further review the five workgroup draft reports including: Ecological Effects, Risk Reduction, Exposure Assessment, Health Effects and Sources, Transport and Fate.

The meeting is open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Acting Director, Science Advisory Board, at 202-382-4126 by July 14, 1988.

Donald G. Barnes,

Acting Director, Science Advisory Board.

Date: June 20, 1988.

[FR Doc. 88-14388 Filed 6-24-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3404-6]

Science Advisory Board, Executive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board will meet from 9:00 a.m. to 5:00 p.m. on July 19th in the Administrator's Conference Room 1101, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC.

The purpose of the meeting is to enable the Executive Committee to review SAB Committee reports including: Review of the Guidelines for Preparing Water Quality Advisories; Male/Female Reproductive Effects Guidelines; Thyroid Carcinogensis; Arsenic Drinking Water Criteria Document, an Analytical Methods and Treatment Technology Issues, Lead in Drinking Water and consideration of OW Phase II Chemical. In addition, the CASAC report on acid aersols will be discussed. The Executive Committee will review the report on the Research Strategies Subcommittee. Its Chairman will brief the committee.

The meeting is open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Acting Director, Science Advisory Board, at 202-382-4126 by July 14, 1988.

Donald G. Barnes,

Acting Director, Science Advisory Board.

Date: June 20, 1988.

[FR Doc. 88-14387 Filed 6-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180782; FRL-3405-6]

Receipt of Applications for Specific Exemptions To Use Bifenthrin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Colorado and Nebraska Departments of Agriculture (hereafter referred to as "Applicants") for use of bifenthrin (Capture) (CAS 82657-04-3) to control Banks grass mites and two-spotted spider mites in the respective states. Capture, manufactured by FMC Corporation, contains the active ingredient (2-methyl-[1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate. EPA, in accordance with 40 CFR 166.24, is soliciting comment before making the decision whether or not to grant these specific exemption requests.

DATE: Comments must be received on or before July 12, 1988.

ADDRESS: Three copies of written comment, bearing the identifying notation "OPP-180782," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

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

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 256 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Gene Asbury, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716B, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7890).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue emergency exemptions for the use of bifenthrin to control Banks grass mites, *Oligonychus pratensis* (Banks) and two-spotted spider mites, *Tetranychus urticae* (Koch) in field corn and corn grown for seed production in Colorado and Nebraska. Bifenthrin, is a synthetic pyrethroid insecticide/miticide currently registered for greenhouse ornamentals application as a foliar spray. No

permanent tolerances have been established for bifenthrin on any raw agricultural commodities. There are temporary tolerances, associated with experimental use permits, for residues of bifenthrin on a variety of commodities including field corn.

Information in accordance with 40 CFR Part 166 was submitted as part of these requests. The Applicants propose two air applications applied at a rate of 0.08 pound of active ingredient (5.12 ounces of Capture 2EC product) per acre per application. Capture is to be applied in a minimum of two gallons of water per acre.

Colorado proposes to treat a maximum of 425,000 acres and Nebraska 261,869 acres of field corn and corn grown for seed production in the states and estimate that if two applications are applied to these acres that a maximum of 68,000 pounds active ingredient or 34,000 gallons of product would be needed in Colorado and 41,900 pounds of active ingredient or 20,950 gallons in Nebraska under the proposed exemptions. It is unlikely that each of the requested acres will be treated; and of those acres treated it is unlikely that each will be treated using the maximum number of applications.

The applicants specified certain restrictions and requirements as follows:

1. No applications would be made after September 15, 1988.
2. For control of Banks grass mites when visible damage and mites are moving into the middle third of the plants' leaves.
3. For control of two-spotted spider mites when colonies are present in the upper two thirds of the plant on at least 15 percent of the plants in the field.
4. All general precautions and restrictions on the existing labels shall apply.
5. A buffer zone shall be maintained between treated fields and fish bearing waters as follows: 8 foot spray height—200 feet minimum distance; 15 foot spray height—350 feet minimum distance.
6. In Delta and Mesa counties of Colorado, in particular, or any areas that contain endangered species, a buffer zone of one (1) mile shall be maintained between treated fields and moving fish bearing waters.
7. Do not graze livestock in treated areas or cut treated crops for feed within 30 days of the last application.
8. A 30-day crop rotation restriction will be observed.
9. Application will be made by certified applicators and the respective Departments of Agriculture will require a seasonal permit before any applications may be performed. Applicators must notify the Departments prior to beginning use of the pesticide. In addition, records regarding each application will be required to be maintained.

According to the Applicants, with the use of Capture in their pest management programs, corn growers will be able to control mites which they have had problems controlling with registered pesticides. Banks grass mites are the most widely distributed and destructive mite pest of corn in the high plains of Colorado. Problems with this mite are a major factor limiting corn production in southeastern Colorado. Weather, geography, plant stress and mite overwintering habits are all factors contributing to the Banks grass mite problem in the Arkansas Valley of Colorado. Nebraska indicates that the growing season has been dry and hot and if these weather conditions continue, they would result in optimal conditions for mite development and a potential emergency situation. There is also a potential water shortage which would result in stressful conditions to the corn that would make mite damages more likely.

The two-spotted spider mite has a wide host range on which it builds to high densities later in the season than Banks grass mites. The mites multiply and hang by fine silk strands and are picked up by the slightest air currents and dispersed in the corn.

Colorado indicates that corn is Colorado's leading grain crop; it is expected that this year's crop will be worth over $175 million. Corn yield losses due to damage from mites vary with the degree and extent of infestation. If mite populations reach emergency levels throughout Colorado this year, lack of an efficacious pesticide for their control could result in a loss of over $20 million to the corn growers of the state. The use of Capture could reduce that loss to slightly over $3 million, preventing a loss of nearly $17 million. In Nebraska, use of bifenthrin is anticipated to prevent a potential loss of $6.5 million on a corn crop valued at $66 million. However, these figures are based on the entire crop and it is unlikely that the entire acreage would have this severe a problem.

This notice does not constitute a decision by EPA on the applications themself. The regulations governing section 18 require that the Agency publich notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views of this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: June 10, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-14383 Filed 6-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51707; FRL-3405-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of eighty such PMNs and provides a summary of each:

DATES: Close of Review Periods:

P 88-1332—August 6, 1988.

P 88-1333—August 7, 1988.

P 88-1334—August 9, 1988.

P 88-1335—August 7, 1988.

P 88-1336—August 9, 1988.

P 88-1337, 88-1338, 88-1339, 88-1340, 88-1341, 88-1342, 88-1343, 88-1344, 88-1345, 88-1346, 88-1347, 88-1348, 88-1349, 88-1350—August 8, 1988.

P 88-1351, 88-1354—August 7, 1988.

P 88-1355—August 8, 1988.

P 88-1356, 88-1357, 88-1358, 88-1360, 88-1361, 88-1362, 88-1363, 88-1364, 88-1365, 88-1367, 88-1368—August 9, 1988.

P 88-1369, 88-1370, 88-1371, 88-1372, 88-1373, 88-1375—August 10, 1988.

P 88-1376, 88-1377, 88-1378, 88-1379—August 13, 1988.

P 88-1380, 88-1381, 88-1383, 88-1385, 88-1388, 88-1389, 88-1390, 88-1391, 88-1392, 88-1393, 88-1394, 88-1395, 88-1396, 88-1397, 88-1398, 88-1399, 88-1400, 88-1401, 88-1402, 88-1403, 88-1404, 88-1405—August 14, 1988.

P 88-1406, 88-1407, 88-1408—August 15, 1988.

P 88-1409, 88-1410, 88-1411, 88-1413, 88-1414, 88-1415, 88-1416, 88-1417, 88-1418—August 16, 1988.

P 88-1420, 88-1421, 88-1422—August 17, 1988.

Written comments by:

P 88-1332—July 7, 1988.

P 88-1333—July 8, 1988.

P 88-1334—July 10, 1988.

P 88-1335—July 8, 1988.

P 88-1336—July 10, 1988.

P 88-1337, 88-1338, 88-1339, 88-1340, 88-1341, 88-1342, 88-1343, 88-1344, 88-1345, 88-1346, 88-1347, 88-1348, 88-1349, 88-1350—July 9, 1988.

P 88-1351, 88-1354—July 8, 1988.

P 88-1355—July 9, 1988.

P 88-1356, 88-1357, 88-1358, 88-1360, 88-1361, 88-1362, 88-1363, 88-1364, 88-1365, 88-1367, 88-1368—July 10, 1988.

P 88-1369, 88-1370, 88-1371, 88-1372, 88-1373, 88-1375—July 11, 1988.

P 88-1376, 88-1377, 88-1378, 88-1379—July 14, 1988.

P 88-1380, 88-1381, 88-1383, 88-1385, 88-1388, 88-1389, 88-1390, 88-1391, 88-1392, 88-1393, 88-1394, 88-1395, 88-1396, 88-1397, 88-1398, 88-1399, 88-1400, 88-1401, 88-1402, 88-1403, 88-1404, 88-1405—July 15, 1988.

P 88-1406, 88-1407, 88-1408—July 16, 1988.

P 88-1409, 88-1410, 88-1411, 88-1413, 88-1414, 88-1415, 88-1416, 88-1417, 88-1418—July 17, 1988.

P 88-1420, 88-1421, 88-1422—July 18, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-51707)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M. Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-1332

Manufacturer. Confidential.

Chemical. (G) Polyurea polyurethane modified alkyd polyester.

Use/Production. (G) Industrially used coating. Prod. range: 30,000-51,500 kg/yr.

P 88-1333

Importer. Mitsubishi Chemical Industries Amer. Inc.

Chemical. (G) Blocked isocyanurate.

Use/Import. (G) Automobile exterior. Import range: Confidential.

P 88-1334

Importer. Mitsubishi Chemical Industries Amer. Inc.

Chemical. (G) Blocked isocyanurate.

Use/Import. (G) Automobile exterior. Import range: Confidential.

P 88-1335

Importer. Mitsubishi Chemical Industries Amer. Inc.

Chemical. (G) Blocked diisocyanate adduct.

Use/Import. (G) Automobile interior. Import range: Confidential.

P 88-1336

Importer. Monosanto Company.

Chemical. (G) Imidized styrene-maleic anhydride polymer.

Use/Import. (S) Injection molded parts. Import range: Confidential.

P 88-1337

Importer. Confidential.

Chemical. (S) Ethanol, 2,2'-(3-chloro-4-(2,6-dibromo-4-nitro-pheyl)azo)phenyl)-imino-bis-.

Use/Import. (S) Disperse dye. Import range: Confidential.

P 88-1338

Importer. Confidential.

Chemical. (S) 4-((2-Chloro-4-nitro)phenyl)azo,N,N-docyanoethylaniline.

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1339

Importer. Confidential.

Chemical. (S) 2-((2-Bromo-4-,6-dinitro) phenyl)azo)-5-(n-2-cyanoethyl-N-2-hydroxy ethyl)-4-methoxyacetanilide.

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1340

Importer. Confidential.

Chemical. (S) 4-(((4-Nitro, 2,6-dibromo)-phenyl)azo),N-2-cyanoethyl N-ethyl)aniline.

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1341

Importer. Confidential.

Chemical. (S) 1h-Indene-1,3-(2H)-dione, 2-(4-bromo-3-hydroxy-2-quiniolinyl)-.

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1342

Importer. Confidential.

Chemical. (S) Quinoline, 2,4-dihydroxy-3-((4-chloro)phenyl)azo).

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1343

Importer. Confidential.

Chemical. (S) 2-(((2-Chloro-4-nitro)phenyl)azo), 5-(N-2-cyanoethyl N-2-acetoxyethyl)acetanilide.

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1344

Importer. Confidential.

Chemical. (S) Quinoline, N-methyl-2-oxo-4-hydroxy-3-((4-phenylazo)phenyl)azo.

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1345

Importer. Confidential.

Chemical. (S) Acetanilide-5-NN diethyl-2- (((2-Cyano 4-nitro) phenyl) azo).

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1346

Importer. Confidential.

Chemical. (S) 9,10-Anthracendione, 1-amino-4-hydroxy-2-phenoxy -5-(3-ethoxy propylamino)sulfonyl).

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1347

Manufacturer. Sherex Chemcial Company, Inc.

Chemical. (G) Thermoplastic polyamide resin.

Use/Production. (S) Vehicle for adhesive, inks, varnishes. Prod. range: Confidential.

P 88-1348

Manufacturer. Confidential.

Chemical. (G) Amides from unsaturated fatty acid dimers and diethanol polyester modified.

Use/Import. (G) Paint additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >7500 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligble species (Rabbit).

P 88-1349

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Substituted tetrachlorophosphorane.

Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88-1350

Manufacturer. E.I. du Pont de Nemours & Company, Inc.
Chemical. (G) Substituted phosphorodichlorodothioic acid ester.
Use/Production. (S) Industrial intermediate. Prod. range; Confidential.
Toxicity Data. Acute oral toxicity: LD50 3400 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: strong species (Rabbit).

P 88-1351

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Acid black 194.
Use/Import. (S) Dyestuff. Import range: 6,000-25,000 kg/yr.

P 88-1354

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Acid orange 86.
Use/Import. (S) Dyestuff. Import range: 1,000-3,000 kg/yr.

P 88-1355

Importer. Confidential.
Chemical. (G) Mixed sodium/potassium salt substituted naphthalene disulfonic acid.
Use/Import. (G) Dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg species(Rat). Acute dermal toxicity: LD50 >2,000 mg species (Rat). Static acute toxicity: time LC50 96 h>100 mg/1 species (Raintrout). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: positive. Skin sensitization: positive species (Guinea pig).

P 88-1356

Importer. Confidential.
Chemical. (S) n-Butanol etherification melamine-formaldehyde resin solved in n-Butanol.
Use/Import. (S) Resin for paint manufacture. Import range: Confidential.

P 88-1357

Manufacturer. Confidential.
Chemical. (G) 2-{(2-Oxo-1-{(4-sulfocarbopolycycle)amino)carboxyl) propyl) azo-3-substitutedphenyl) substituted heterocycle sulfonicacid, mixed salts.
Use/Production. (S) Dying of paper. Prod. range: Confidential.

P 88-1358

Manufacturer. Confidential.
Chemical. (G) Diazotized substituted 6-methyl-7-benzothiazole sulfonic acid.
Use/Production. (S) Intermediate in dye manufacture. Prod. range: Confidential.

P 88-1360

Manufacturer. Ethyl Corporation.
Chemical. (G) Partially fluorinated polyamide.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential

P 88-1361

Manufacturer. Ethyl Corporation.
Chemical. (G) Partially fluorinated polyamide.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 88-1362

Manufacturer. Ethyl Corporation.
Chemical. (G) Aromatic tetracarboxylicacid, methylated.
Use/Production. (G) Destructive use. Prod. range: Confidential

P 88-1363

Manufacturer. Hercules Incorporated.
Chemical. (G) Phenolic-modified rosin ester.
Use/Production. (S) Printing inks. Prod. range: Confidential

P 88-1364

Importer. Confidential.
Chemical. (S) 1H-Naphth(2,3-f)isoindole-,3,5,10-tetrasone,4,11 - diamino-2-(3-methoxypropyl)-.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1365

Importer. Confidential.
Chemical. (S) 9,10-Anthracenedione, 1-((2-hydroxyethyl)amino)-4-(methylamino)-.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88-1367

Manufacturer. Amoco Chemical Corporation.
Chemical. (S) 4,4'-Oxybis(benzoicacid).
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. Static acute troxicity: time LC50 48h522 mg/1 species (Daphnia magna). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-1368

Manufacturer. Amoco Chemical Company.
Chemical. (S) Dimethyl-4,4'-Oxybisbenzoate.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88-1369

Manufacturer. Confidential.
Chemical. (G) Fatty acid ester.
Use/Production. (G) Component of coating formulation. Prod. range: Confidential.

P 88-1370

Importer. Confidential.
Chemical. (G) (Substituted heterocycle)azo)substituted aniline, zinc chloride salt.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >206 mg/kg species (Rat). Eye irritation: strong species (Rabbit). Skin irritation: slight species (Rabbit).

P 88-1371

Manufacturer. Confidential.
Chemical. (G) Polyacrylate.
Use/Production. (G) Adhesive. Prod. range: Confidential.

P 88-1372

Manufacturer. Confidential.
Chemical. (G) Polyether/polycarbonate polyurethane polymer.
Use/Production. (G) Coating fabric. Prod. range: Confidential.

P 88-1373

Importer. Confidential.
Chemical. (G) Polymer of an acrylic acid ester, a vinyl monomer, an acid monomer, and methacrylic acid esters.
Use/Production. (G) Laminating adhesive. Prod. range: Confidential.

P 88-1375

Importer. Confidential.
Chemical. (S) Dimethyl octenes mixture and 2-methyl-6-methyleneoctane.
Use/Production. (S) Industrial lubricating oils and grease. Prod. range: 450,000-900,000 kg/yr.

P 88-1376

Importer. Confidential.
Chemical. (G) Dimethyl octenes mixture and 2-methyl-6-methylene-octane.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88-1377

Manufacturer. Confidential.
Chemical. (G) Silylate polyacrylate.
Use/Production. (S) Automative refinish resin. Prod. range: 124,000-248,000 kg/yr.

P 88-1378

Manufacturer. Confidential.
Chemical. (G) Functionalized acrylate styrenated-methacrylate polymer.
Use/Production. (S) Automative refinish intermediate resin. Prod. range: 100,000-200,000 kg/yr.

P 88-1379

Manufacturer. Ciba-Beigy Corporation Dyestuffs & Chem.
Chemical. (G) Substituted triazine naphthalenesulfonic acid.
Use/Production. (S) Textile dye. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5818 mg/kg species(Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species(Rat). Static acute toxicity: time LC50 96 h827 mg/l species(zebra fish). Eye irritation: moderate species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: positive. Phototoxicity: positive species(guinea pig).

P 88-1380

Importer. Tetko, Incorporated.
Chemical. (S) Horse chestnut extracted by solvents, 60% ethanol-water.
Use/Import. (S) Screen preparation compound. Import ranges: 600 kg/yr.

P 88-1381

Manufacturer. Milliken & Company.
Chemical. (G) Chromophore substituted polyoxyalkylene.
Use/Production. (S) Colorant. Prod. range: Confidential.

P 88-1383

Importer. Ausimont U.S.A., Inc.
Chemical. (G) Peroxide curable polymer of hexafluoropropylene, tetrafluoroethylene, and vinylidene fluoride.
Use/Import. (S) << molded or extended thermoset elastoner gaskets. Import range: Confidential

P 88-1385

Importer. Ausimont U.S.A., Inc.
Chemical. (G) Peroxide curable polymer of hexafluoropropylene, tetrafluoroethylene, and vinylidene fluoride.
Use/Import. (S) Molded or extruded thermoset elastomer gaskets. Import range: Confidential.

P 88-1388

Importer. Ausimont U.S.A., Inc.
Chemical. (G) Peroxide curable polymer of hexafluoropropylene and vinylidene fluoride.
Use/Import. (S) Thermoset elastomer gaskets. Import range: Confidential.

P 88-1389

Manufacturer. Confidential.
Chemical. (G) Polymer of a quarternary titanate ester and bifunctional acid.
Use/Production. (S) Ink additive. Prod. range: Confidential.

P 88-1390

Manufacturer. Confidential.
Chemical. (G) Modified acrylate polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential

P 88-1391

Manufacturer. Rexnord Chemical Products.
Chemical. (G) Functionalized styrene-butane copolymer.
Use/Production. (G) Coating base. Prod. Range: Confidential.

P 88-1392

Manufacturer. Rexnord Chemical Products.
Chemical. (G) Functionalized methylmethacrylate copolymer.
Use/Production. (G) Coating base. Prod. range: Confidential.

P 88-1393

Manufacturer. Rexnord Chemical Products.
Chemical. (G) Functionalized polybutane polymer.
Use/Production. (G) Coating base. Prod. range: Confidential.

P 88-1394

Manufacturer. Rexnord Chemical Products.
Chemical. (G) Functionalized styrene-methyl methacrylate copolymer.
Use/Production. (G) Coating base. Prod. range: Confidential.

P 88-1395

Manufacturer. Rexnord Chemical Products.
Chemical. (G) Functionalized styrene polymer.
Use/Production. (G) Coating base. Prod. range: Confidential.

P 88-1396

Manufacturer. Rexnord Chemical Products.
Chemical. (G) Functionalized butylacrylate polymer.
Use/Production. (G) Coating base. Prod. range: Confidential.

P 88-1397

Manufacturer. Rexnord Chemical Products.
Chemical. (G) Polyurethane prepolymer polymeric polyisocyanate.
Use/Production. (G) Industrial coating base. Prod. range: Confidential.

P 88-1398

Manufacturer. Rexnord Chemical Products.
Chemical. (G) Styrene-butane polyurethane prepolymer.
Use/Production. (G) Coating base. Prod. range: Confidential.

P 88-1399

Manufacturer. Confidential.
Chemical. (G) Polyacrylate.
Use/Production. (G) Coating base. Prod. range: Confidential.

P 88-1400

Manufacturer. The Goodyear Tire & Rubber Company.
Chemical. (G) Dimethyl terephthalene, alkane diols polyester.
Use/Production. (S) Resin for toners in reprographics. Prod. range: 300,000–1,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5g/kg. Skin irritation: negligible species (Rabbit).

P 88-1401

Manufacturer. Quantum Chemical Corp, Emery Division.
Chemical. (G) Substituted lactone.
Use/Production. (C) Chemical intermediate. Prod. range: 11,000–33,000 kg/yr.

P 88-1402

Manufacturer. Quantum Chemical Corp, Emery Division.
Chemical. (G) Substituted lactone.
Use/Production. (G) Chemical intermediate. Prod. range: 1,100–33,000 kg/yr.

P 88-1403

Manufacturer. Waterchem Division of Texo Corporation.
Chemical. (G) Melamine-glyoxal resin.
Use/Production. (G) Coagulant for waste water treatment. Prod. range: Confidential.

P 88-1404

Manufacturer. Confidential.
Chemical. (G) Polymer alkyl poly(ethoxethyl) ester of monoethylenically carboxylic acid, mono-ethylenically unsaturated carboxylic acid, and alkyl ester of monoethylenically unsaturated carboxylic acid.
Use/Production. (G) Thickener. Prod. range: Confidential.

P 88-1405

Importer. Miki Sangyo (USA) Inc.
Chemical. (G) Casting resin.
Use/Import. (G) Coating resin. Import range: Confidential.

P 88-1406

Manufacturer. E.I. du Pont de Nemours & Company, Inc.
Chemical. (G) Copolymer resin.
Use/Production. (G) Extruded sheet and parts. Prod. range: Confidential.

P 88-1407

Manufacturer. Pacific Anchor Chemical Corporation.

Chemical. (G) Reaction product of branched and linear fatty acids with polyethyleneamines.

Use/Production. (S) Curing agent for expoxy adhesive systems. Prod. range: Confidential.

P 88-1408

Manufacturer. Pacific Anchor Chemical Corporation.

Chemical. (G) Reaction product of branched and linear fatty acids with polyethyleneamines.

Use/Production. (S) Curing agent for expoxy adhesive systems. Prod. range: Confidential.

P 88-1409

Manufacturer. Confidential.

Chemical. (G) Benzoic acid ester.

Use/Production. (G) Component of polymer. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD 50 >278-360 mg/kg species (Rat). Skin irritation: slight species (Rabbit).

P 88-1410

Manufacturer. Confidential.

Chemical. (G) Modified maleated metal resinate.

Use/Production. (S) Publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD 50 >5 mg/kg species (rat). Skin irritation: negligible species (Rabbit).

P 88-1411

Importer. Sherex Chemical Company, Inc.

Chemical. (G) Thermoplastic polyamide resin.

Use/Import. (S) Hot melt adhesive. Import range: 25,000-50,000 kg/yr.

P 88-1413

Manufacturer. Confidential.

Chemical. (G) Terephthalene polyol esters.

Use/Production. (S) Component of foam insulating materials. Prod. range: 550,000-12,000,000 kg/yr.

P 88-1414

Manufacturer. Confidential.

Chemical. (G) Oxyalkylated terephthalene polyol esters.

Use/Production. (S) Component of foam insulting material. Prod. range: 650,000-14,320,000 kg/yr.

P 88-1415

Manufacturer. Confidential.

Chemical. (G) Oxyalkylated terephthalated polyol esters.

Use/Production. (S) Component for foam insulation material. Prod. range: Confidential.

P 88-1416

Manufacturer. Confidential.

Chemical. (G) Terephthalate polyol esters.

Use/Production. (S) Component of foam insulation material. Prod. range: Confidential.

P 88-1417

Manufacturer. Confidential.

Chemical. (G) Oxyalkylated terephthalate polyol esters.

Use/Production. (S) Component of foam insulation material. Prod. range: Confidential.

P 88-1418

Manufacturer. Confidential.

Chemical. (G) Terephthalate diol esters.

Use/Production. (S) Component of foam insulation material. Prod. range: 640,000-1,600,000 kg/yr.

P 88-1420

Manufacturer. Confidential.

Chemical. (G) Disubstituted heteromonocycleamino substituted benzenesulfontc acid, sodium salt.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-1421

Manufacturer. Confidential.

Chemical. (G) Cobalt substituted hetermonocycle azo benzenesulfonamide substituted napthhalene azo substituted benzenesulfonamide alkali metal complex.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1422

Manufacturer. Confidential.

Chemical. (G) Aliphatic styrenated polyacrylate.

Use/Production. (S) Automative refinish resin. Prod. range: 212,000-248,000 kg/yr.

Date: June 21, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-14381 Filed 6-24-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-722]

Fajardo Federal Savings Bank, Fajardo, PR; Final Action, Approval of Conversion Application

June 16, 1988.

Notice is hereby given that on June 14, 1988, the General Counsel, and the Director of the Office of Regulatory Policy, Oversight and Supervision, (or other respective designees), acting pursuant to delegated authority, approved the application of Fajardo Federal Savings Bank, Fajardo, Puerto Rico ("Fajardo"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the Change in Control Act Notice filed by Juan R. Zalduondo Viera, Robert P. Byrne, Jose E. Soler Zapata, Albert F. Deuth, Manuel Figueroa-Bocanegra, Rafael Soler Zapata, and Jamie Soler Zapata, to acquire control of Fajardo.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-14453 Filed 6-24-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursunt to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011194-001.

Title: Intermodal Transportation Assocation-UIIA-Agreement (foreign).

Parties:

Naviera Pacifico, C.A.,
Topgallant Group, Inc.,
Trans Africa Line,
Cedar Star Line.

Synopsis: The proposed amendment would add Safbank Lines, Ltd., and The Bank Lines, Ltd., as parties to the agreement.

By Order of the Federal Maritime Commission.

Dated: June 22, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-14369 Filed 6-24-88; 8:45am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Fedeal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200128.

Title: Port of Portland Terminal Agreeement.

Parties:

Port of Portland (Port)

Star Shipping A/S (Star).

Synopsis: The Agreement provides for the use of Terminals 2 and 4 for steel or project cargoes. Star agreees to use the Port for a minimum of twenty sailings per year and to provide a minimum of $200,000 per year in wharfage and dockage revenues. The Port and Star will share in wharfage and dockage revenues above the minimum.

By Order of the Federal Maritime Commission.

Dated: June 22, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-14439 Filed 6-24-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fees and Deadlines for Federal Reserve Check Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved prices and deadlines for new Federal Reserve returned check services as well as revised prices and deadlines for forward collection services.

EFFECTIVE DATE: Prices and deadlines are effective September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Steven O. App, Manager (202/452-3760), Gayle Thompson, Program Leader (202/452-2934), or Nalini T. Rogers, Analyst (202/452-3801), Division of Federal Reserve Bank Operations; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Expedited Funds Availability Act (Title VI of the Competitive Equality Banking Act, enacted by Congress on August 10, 1987 (12 U.S.C. 4001-4010)) is designed to ensure prompt availability of funds and to expedite the return of checks. Specific funds availability schedules are required by the Act and will become effective on September 1, 1988. On May 13, 1988, the Board authorized the Federal Reserve Banks to provide new services to expedite the return of unpaid checks, effective September 1, 1988. These services are designed to reduce the risk to depositary bands[1] from making funds available for withdrawal on a more prompt basis and in accordance with the schedules required by the Act. The Board is publishing prices and deadlines for the new Federal Reserve returned check services as well as revised prices and deadlines for forward collection services.

Currently, the Federal Reserve does not explicitly price returned checks; instead the costs of handling returned checks are incorporated into the Federal Reserve's forward collection fees. The new returned check services are being priced explicitly, with the fees being assessed on the paying or the returning bank depositing returns with the Federal Reserve.[2] Price ranges for the new returned check services were published in the December 1987 proposal to implement the Expedited Funds Availability Act (52 FR 47112), and more specific office-by-office estimated price ranges and deadlines were published on April 11, 1988 (52 FR 11960) to assist correspondent banks in developing competing returned check services and to provide other banks with information that would be useful in planning how to most effectively meet their new expeditious return responsibilities.

Implementation of new returned check services are projected to increase the cost of 1988 Reserve Bank check operations by as much as $15 million above the approved 1988 budgeted amounts. A $15 million supplemental check operating budget for 1988 was approved by the Board on December 9, 1987. The Reserve Banks have estimated that costs will be $30 millon higher in 1989, reflecting the full year impact of new returned check services.

The total costs for check services, including the Private Sector Adjustment Factor ("PSAF"), in 1988 are projected to be $511.6 million.[3] Total revenue in 1988 is estimated at $514.8 million, resulting in a 100.6-percent cost recovery rate. This projection is lower than the 102-percent recovery rate projected last fall due to the inclusion of costs to implement the new returned check services, which will not be fully recovered through returned check prices within the September-December 1988 period. In 1989, the total cost for check services, including PSAF, is projected to be $539.3 million. Total revenue in 1989 is estimated at $548.8 million, resulting in a cost recovery rate of 101.8 percent.

The 1989 prices have been developed before the development of the 1989 budgets or the computation of the 1989 PSAF. A PSAF comparable to that for 1988 was assumed in calculating the 1989 prices. An initial computation of the 1989 PSAF has recently been completed, and it appears that these imputed costs will be lower than the amount used in the check repricing exercise. The reduced PSAF is largely attributable to the reduced earnings reported for 1987 by the bank holding companies included in the sample upon which the Federal Reserve bases its PSAF computation. The Board is reviewing the approved PSAF methodology and, if necessary, will issue for public comment proposed changes in the methodology in the fall of 1988. The Board anticipates that this review will include the determination of

[1] "Bank" is defined in Regulation CC to include all depository institutions. A "paying bank" is the bank that pays the check and includes payable through and payable at banks. A "depositary bank" is the bank in which the check is first deposited. A "returning bank" is a bank, other than the paying bank or the depositary bank, that handles a returned check.

[2] Returns must be explicitly priced since some returned checks handled by the Federal Reserve will not follow the same route as they followed in the forward collection process, and therefore may not be subject to the Reserve Bank's forward collection fees. Also, under the new check services, paying banks and returning banks can deposit returned checks with the Federal Reserve in various ways that result in different costs being incurred.

[3] Costs include those associated with new returned check services.

assets to be included in the pro forma priced services balance sheet, the capital structure, and the financing and tax rates. Applying the reduced PSAF to the new check prices will result in a higher than projected overrecovery of check collection costs.

Federal Reserve forward collection check volume is expected to continue to grow at a decreasing rate. Check volume growth in 1988 and 1989 is projected at 3 percent and 2.7 percent respectively, compared to a 4.7 percent growth rate in 1987. Reserve Banks project an increase in returned check volume of 21 percent in 1989 compared to 1987, due to the implementation of the Expedited Funds Availability Act. (The growth impact in 1988 returned check volume was understated due to the partial year impact and is not considered in this analysis.) Due to the uncertainty of the actual effect of the Expedited Funds Availability Act on Federal Reserve returned check volume, the cost recovery rate could be substantially different than projected.

The Board has reduced forward collection per item fees by an average of 0.2 cents as a result of the removal of returned check costs from the cost base for these prices. Currently, returned check costs comprise approximately 10 percent of Reserve Bank total check collection costs. On a System average basis, the new basic city price is reduced one mill, the basic RCPC price is reduced two mills, the city fine-sort price is reduced two mills, and the RCPC fine-sort price is reduced two mills. Since fine-sort prices typcially are less than one cent while processed prices average more than two cents, the decline in fine-sort prices averages about twenty percent compared to about a seven-percent decrease in processed prices. The new collection fees are in conformance with System guidelines.

The new prices become effective September 1, 1988, and are scheduled to remain in effect through 1989. Forward collection price reductions in some districts will be less than the total returned check costs being removed from the collection fees due to an anticipated increase in unit costs in 1989. In other districts, the forward collection price reductions are greater than the amount of return costs, because the districts are attempting to lower their cost recovery rates.

Raw returned check[4] prices range from 30 cents to 75 cents for local returns and 40 cents to 95 cents for nonlocal returned checks. Qualified returned check prices are generally double to triple the corresponding foward collection fees. Fees for fine-sort returned checks are the same as those for fine-sort forward collection items. With ten exceptions out of the approximately 800 individual prices for returned checks, all prices are within the ranges published by the Board on April 5, 1988.

The Board believes that the price spread between raw and qualified returned check prices not only reflects the differences in Federal Reserve costs for processing these types of checks, but also encourages institutions to deposit their returned checks in qualified form. Currently, Reserve Banks expect to receive 46 percent of returned check volume as qualified returned checks. Depositors would reduce their per item charges by 25 cents to 90 cents by qualifying their returned checks, depending on the Reserve Bank office and the type of returned check. Qualifying checks for automated processing often expedites the return process. The price spread between raw and qualified returned check products also creates an opportunity for correspondent banks to offer returned check services in which they accept raw returned checks, deliver some returns directly to the depositary bank and qualify other returns for delivery through a Reserve Bank or other returning bank.

The Board has also revised fees for certain other check services, including return item notification and truncation services. Unit costs for payor bank services and for the Interdistrict Transportation System are expected to remain constant through 1989 and therefore these prices have not been changed at this time. Check collection and return fees will be reviewed in the spring of 1989 and the Board will make price adjustments to be effective in mid-1989, if warranted.

The deadlines for check collection services are generally the same as those currently in effect; only minor changes to the current deadlines have been adopted. Deadlines for qualified and fine-sort returned check services parallel forward collection deadlines. For raw returned checks, Reserve Bank offices generally offer a midnight deadline for sorted returned checks and a deadline between 8:00 p.m. and 10:00 p.m. for mixed returned checks. Many offices offer additional raw returned check deadlines as well. All deadlines are in conformance with System guidelines.

Copies of the fee schedules and deadlines for Federal Reserve Bank priced services are available from local Federal Reserve Banks.

By order of the Board of Governors of the Federal Reserve System, June 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-14360 Filed 6-24-88; 8:45 am]

BILLING CODE 6210-01-M

[4] A raw returned check is a return that has not been prepared for automated processing. A qualified returned check is a return that has been prepared for automated processing by placing a strip on the check, or placing the check in a carrier envelope, and encoding the strip or envelope with the routing number of the depositary bank, the amount of the check, and a special return identifier.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Agency for Toxic Substances and Disease Registry

Cooperative Agreement With the Association of Minority Health Professions Schools

Introduction

The Centers for Disease Control (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of funds in Fiscal Year 1988 for a cooperative agreement with the Association of Minority Health Professions Schools (AMHPS) to assist them in enhancing educational and research opportunities in health promotion and disease prevention and providing professional and practical work experience for AMHPS faculty, staff, and students. This is not a formal request for application. Assistance will be provided only to AMHPS for the support of this project. No other applications are solicited or will be accepted. This request complies with the provisions of the PHS Grants Administration Manual Parts 142 and 144. The Catalog of Federal Domestic Assistance number is 13.283.

Authorizing Legislation

This cooperative agreement is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Background

Since the publication of the Report of the Secretary's Task Force on Black and Minority Health, the Centers for Disease Control (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) have committed themselves to reduce the excessive burden of disability and death borne by minority populations in the United States.

The Association of Minority Health Professions Schools is committed to expanding and enhancing educational opportunities in the health professions for minorities and disadvantaged students with the ultimate goal of improving the health status of minority and disadvantaged people.

With AMHPS's ability to identify minority health problems in the community and CDC's and ATSDR's knowledge and expertise in health promotion and disease prevention, the three organizations could collaborate to improve the input of health professionals in minority-related health activities.

The Secretary's Report recommends joint efforts with groups outside the Federal government to address minority health problems. A cooperative agreement with AMHPS emphasizing health promotion and disease prevention among minority and disadvantaged populations would adhere to this recommendation.

A key element in solving minority health problems is an increased presence of health professionals concerned with those issues. Faculty, staff, and students at AMHPS member institutions have an especial interest in reducing the disease burden of minority and disadvantaged populations.

This collaboration would increase the number of minorities in the health professions and would provide a centralized group of minority health professionals to develop and implement strategies to address health promotion and disease prevention objectives for minorities. It would allow the advancement of public health programs targeted to minorities and upgrade educational opportunities for minority health professionals.

Reasons for Proposing Single Source for This Cooperative Agreement

The factor that distinguishes AMHPS from the universe of health professions schools is its unique mission to produce excellent health professionals from minority and disadvantaged backgrounds. AMHPS educates 20% of black physicians, 50% of black dentists, 50% of black pharmacists, and 75% of black veterinarians.

The Association has goals of: Improved health status for minority and disadvantaged persons, increased numbers of minorities in the health professions, expanded health services to underserved populations, concentrated research on minority health problems, and strengthened and enhanced curricula in minority health professions schools.

This Association has pledged itself to ideals that are identical to the anticipated outcomes of this cooperative agreement. The utilization of AMHPS in this endeavor will ensure upgraded curricula and practical experience that will contribute to the production of excellent health professionals with commitment to minority and disadvantaged populations. There is no other organization of minority health professions schools nor is there any other organization exhibiting the same expertise in minority health. Based on the above, CDC/ATSDR feels that AMHPS is the only organization qualified for this endeavor.

Availability or Funds

Approximately $250,000 will be available in Fiscal Year 1988 for this cooperative agreement. It is expected that the agreement will begin on or about September 30, 1988, and depending upon the availability of funds, will be funded in 12-month budget periods within a 5-year project period. Funding in the second and subsequent years is subject to the availability of funds and satisfactory progress of the applicant in meeting the objectives of the cooperative agreement.

Other Submissions and Review Requirements

Application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Availability of Complete Program Description and Application Assistance

A full description of the program, including criteria for review of application, application procedures, copies of application forms PHS 5161-1, and other materials may be obtained from Terry Maricle, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 320, Atlanta, GA 30305, (404) 842-6511 or FTS 236-6511. Technical assistance may be obtained from Laurie Elam, Project Officer, Office of the Director, Training and Laboratory Program Office, 1600 Clifton Road, Mail Stop E-20, Atlanta, GA 30333, (404) 639-1939 or FTS 236-1939.

Dated: June 21, 1988.

James O. Mason,

Director, Centers for Disease Control and Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88-14396 Filed 6-24-88; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Statement of Organization, Functions and Delegations of Authority

Part M, Chapter M (Family Support Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (51 FR 1164, April 4, 1986 as amended most recently at 52 FR 35958, September 24, 1987) is amended to reflect the revision of Chapter ME, Office of Policy and organization changes within the Family Support Administration (FSA). Specifically the changes are as follows:

First, the abolishment of the Office of Policy and the transfer of the functions to the newly established (1) Office of Program Evaluation and (2) Office of Planning and Policy Development.

Second, changes are being made in the mission, organization and functions of the Office of Policy (OP).

Specifically, the changes are as follows:

1. Amend Chapter M. 10. Organization to delete the Office of Policy (ME) and inserting the "Office of Program Evaluation (ME)" and "Office of Planning and Policy Development ( )" after the Office of Communications (MC).

2. Amend Chapter M. 20 Functions. to delete Paragraph D in its entirety and replace it with the following:

D. Office of Program Evaluation (OPE) provides leadership, direction and oversight to plan, develop and assure consistency of FSA program direction among FSA components and between HHS Operating Divisions. Plans, develops and monitors strategies for promoting FSA program direction; analyzes impact of programmatic alternatives, including fiscal impact. Coordinates the development of priority areas for funding research and evaluation programs; manages crosscutting research, demonstration and evaluation projects. Develops and manages special priority initiatives for which FSA has lead responsibility for the Department. Serves as the focal point for legislative development activities.

3. Amend Chapter M. 20 Functions. To insert after Paragraph D the following:

E. Office of Planning and Policy Development provides leadership, direction and oversight to assure consistency in the development of long-range planning and policy initiatives among FSA components and between HHS Operating Divisions. Serves as the Administrator's principal advisor on all policy matters in FSA. Serves as the focal point for Congressional activities.

4. Amend Chapter M. 20 Functions. to change Paragraphs E, F, G, H, I and J to Paragraphs F, G, H, I, J and K respectively.

5. Establish Chapter [ ], Office of Planning and Policy Development, as follows:

____.00 Mission

____. 10 Organization

____.20 Functions

M____.00 Mission. The Office of Planning and Policy Development (OPPD) is a staff office for the Family Support Administration responsible for the development of long-range planning and policy initiatives within FSA. Recommends to and advises the Administrator, FSA on all policy matters. Provides policy definition in consonance with statutory requirements, Congressional intent and National and Departmental policy and plans, primarily in the areas of policy development long-range planning, policy content of legislation and Congressional Affairs. Manages agency-wide planning systems for determining goals, objectives and priorities. Serves as the focal point for Congressional activities.

M____.10 Organization. The Office of Planning and Policy Development is headed by an Associate Administrator who reports directly to the Administrator, Family Support Administration.

M____.20 Functions. Office of the Associate Administrator provides direction and executive leadership to OPPD in the administration of its responsibilities. Serves as the principal advisor to the Administrator on all policy-related matters for FSA. Represents the Administrator in contacts and negotiations with members of Congress. Develops and implements an FSA-wide long and short range planning system. Develops the planning guidance for FSA Administrator and provides guidance and technical assistance to FSA components in developing operational plans. Develops and implements a review system to assess progress in implementing plans.

6. Delete Chapter ME. Office of Policy, in its entirety and replace it with the following:

ME.00 Mission. The Office of Program Evaluation (OPE) is a staff office for the Family Support Administration (FSA) responsible for managing program evaluation, research and demonstration, legislation coordination and special program initiatives within FSA. Plans, develops and monitors strategies for promoting FSA program directions; analyzes impact of programmatic alternatives, including fiscal impact. Coordinates the development of priority areas for funding research and evaluation programs; manages crosscutting research, demonstration and evaluation projects. Recommends to and advises the Administrator, FSA on all programmatic matters having substantial impact on program direction in such basic areas as: program content and objectives; program evaluation; program impact; the cost/benefit of carrying out the programs; and, internal organization and coordination.

ME.10 Organization. The Office of Program Evaluation is headed by an Associate Administrator who reports directly to the Administrator, Family Support Administration, and consists of: Office of the Associate Administrator, Division of Research, Demonstration and Evaluation, Division of Program Coordination and Evaluation, and Division of Special Program Initiatives.

ME.20 Functions. A. Office of the Associate Administrator provides direction and executive leadership to OPE in the administration of its responsibilities. Serves as the principal advisor to the Administrator on all program-related matters for FSA. Serves as the focal point for coordinating lgislative activities affecting FSA. Analyzes impacts of programmatic alternatives. Provides advice to the Administrator on all matters related to program evaluation and research, demonstration and evaluation issues. Manages special projects and initiatives of priority concern to the Administrator.

B. Division of Research, Demonstration and Evaluation provides guidance and oversight to FSA program components in the conduct of research, demonstration and evaluation (RD&E) and discretionary programs. Identifies major issues which may merit research and demonstration intervention. In cooperation with program components, develops research and demonstration planning guidance to be used by those components; reviews and recommends approval of RD&E plans prepared by the program components; prepares the annual FSA RD&E plan. Reviews all FSA discretionary program announcements for compliance with the discretionary funds plan; ensures the compliance of all grant awards with the discretionary plans; tracks overall progress of projects funded. Develops and manages crosscutting research, demonstration and evaluation initiatives. Ensures the transfer of technologies and best practices of crosscutting research, demonstration and evaluation projects.

C. Division of Program Evaluation and Coordination provides leadership for development of program initiatives ensuring consistency among FSA program and staff offices and with other HHS Operating Divisions. Analyzes the impact of programmatic alternatives within and outside of FSA. Reviews and analyzes all FSA regulations and policy relevant materials. Reviews and evalutes program statistics and performance to determine policy/program effectiveness and recommends proposals for programmatic changes. Manages the legislative planning cycle for FSA. Tracks and reports on legislative development. Serves as the focal point for provision of analytical materials and program data to Congressional staff.

D. Division of Special Program Initiatives develops and manages priority initiatives for which the Administrator has lead responsibility for the Department. These initiatives may require inter-agency or inter-governmental coordination. This Division provides leadership and innovative approaches for achieving the special program initiatives assigned to the Division.

Date: June 21, 1988.

David J. Kirker,

Deputy Administrator, Family Support Administration.

[FR Doc. 88-14376 Filed 6-24-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88M-0185]

Wesley-Jessen; Premarket Approval of AIRLens® (Arfocon A) Rigid Gas Permeable Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Wesley-Jessen, Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the spherical AIRLens® (arfocon A) Rigid Gas Permeable Contact Lens (Clear and Tinted) for extended wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's

Center for Devices and Radiological Health (CDRH) notified the applicant by letter of April 13, 1988, of the approval of the supplemental application.

DATE: Petitions for administrative review by July 27, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On August 1, 1986, Wesley-Jessen, Chicago, IL 60610, submitted to CDRH a supplemental application for premarket approval of the AIRLens® (arfocon A) Rigid Gas Permeable Contact Lens for extended wear. The spherical AIRLens® (arfocon A) Rigid Gas Permeable Contact Lens is indicated for daily wear or extended wear from 24 to 36 hours of continuous wear before removal for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from −20.00 D to +10.00 D and is to be disinfected using a chemical lens care system. The tinted lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On May 29, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 13, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the AIRLens® (arfocon A) Rigid Gas Permeable Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 27, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360; (h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 17, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-14430 Filed 6-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0184]

Hybritech, Inc.; Premarket Approval Of Tandem®-E AFP Immunoenzymetric Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Hybritech Inc., San Diego, CA, for premarket approval, under the Medical Device Amendments of 1976, of the TANDEM®-E AFP Immunoenzymetric Assay to aid in the detection of fetal open neural tube defects. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of April 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by July 27, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: S.K. Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On December 16, 1987, Hybritech, Inc., San Diego, CA 92121, submitted to CDRH an application for premarket approval of the TANDEM®-E AFP Immunoenzymetric Assay to aid in the

detection of fetal open neural tube defects. The device is an enzyme immunoassay (immunoenzymetric assay) indicated for the quantitative measurement of alpha-fetoprotein (AFP) in maternal serum at 15 to 20 weeks gestation and amniotic fluid at 15 to 21 weeks gestation to aid in the detection of fetal open neural tube defects (NTD). Test results, when used in conjunction with ultrasonography, or amniography, and amniotic fluid acetylcholinesterase testing, are a safe and effective aid in the detection of fetal open NTD.

On March 22, 1988, the Immunology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based it approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact S.K. Vadlamudi (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 27, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 17, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-14367 Filed 6-24-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-08-4410-10]

Intent To Prepare the Bishop Resource Management Plan; Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 40 CFR 1501.7 and 43 CFR 1610.2(c), notice is hereby given that the Bishop Resource Area, Bakersfield District, California, will prepare a Resource Management Plan and Environmental Impact Statement (RMP/EIS) for all public lands within its boundaries. Although the Bureau has certain leasing and permitting responsibilities on appromixately 2,000,000 acres of Forest Service land within the Resource Area, those responsibilities will be carried out in accordance with Forest Service plans and not addressed in this plan.

SUPPLEMENTARY INFORMATION: The Bishop Resource Area contains approximately 750,000 acres of public land in Mono and Inyo Counties in the eastern sierra portion of California. Land use plans were developed for the southern portion of the Resource Area (Benton-Owens Valley planning area) in 1982, and the northern portion (Bodie-Coleville planning area) in 1983. A RMP/EIS covering the entire resource area is needed to address new resource demands and respond to situations where monitoring has indicated that new decisions are needed.

It is anticipated that the following issues will receive special emphasis in the RMP/EIS: Livestock grazing/range resources, wildlife/sensitive plant and animal species, land ownership/authorizations (including utility corridors), recreation, vehicle access, and mining/geothermal development. The interdisciplinary team that will develop alternative plans and do the impact analysis will include specialists representing the following disciplines: wildlife biology, range science, archaeology, recreation, hydrology, soil science, geology, and lands/realty.

There will be extensive public involvement in this planning effort, the objective being to have the final product (plan) be, to the extent possible, a shared decision that involves the many agencies, organizations, and individuals that have an interest in the plan. In addition to the scoping meetings listed below, opportunities for public comment and input include: reviewing the preliminary planning criteria, participating in the formulation of alternatives, reviewing the draft RMP/draft EIS, and reviewing the proposed RMP/final EIS.

Public meetings to determine the scope of the issues to be addressed in the RMP/EIS and to identify additional significant issues will be held on four successive days in five cities as follows:

Monday, 7/18/88 7:00–9:00 p.m.
- Statham Hall, Corner of Jackson and Bush, Lone Pine, CA

Tuesday, 7/19/88 7:00–9:00 p.m.
- Bridgeport Memorial Hall, School Street, Bridgeport, CA

Wednesday, 7/20/88 9:00–11:00 a.m.
- Walker Community Center, Hackney Lane, Walker, CA 7:00–9:00 p.m.
- City Council Chambers, 377 West Line Street, Bishop, CA

Thursday, 7/21/88 9:00–11:00 a.m.
- City Council Chambers, 377 West Line Street, Bishop, CA 3:00–5:00 p.m.
- Board of Supervisors Chambers, 168 N. Edwards, Independence, CA

DATES: The resource management planning process is scheduled to be completed by September 30, 1990.

FOR FURTHER INFORMATION CONTACT: James S. Morrison, Area Manager, Bureau of Land Management, Bishop Resource Area, 787 North Main Street, Suite P, Bishop, CA 93514; (619) 872-4881. Documents relevant to this planning effort area available for public review at the same address.

Date: June 21, 1988.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 88-14468 Filed 6-24-88; 8:45 am]

BILLING CODE 4310-40-M

[OR-130-08-4610-10; GP8-171]

Fire Management; Spokane District, WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Fire Prevention notice.

Pursuant to 43 CFR 9212.2 possessing, discharging, or using any kind of incendiary device such as fireworks or other pyrotechnic devices except highway fusees or flares for emergency purposes is prohibited on all public lands administered by the USDI, Bureau of Land Management, Spokane District, until further notice (43 CFR 9212.1).

Pursuant to 43 CFR 9212.2(b)(3) the following are exempt from this order:

1. Any Federal, state, or local official, or member of an organized rescue or fire fighting force in the performance of an official duty.

2. Authorized personnel to whom a permit has been issued from the Spokane District or the Wenatchee Resource Area Offices for use of such devices.

Any person who knowingly and willfully violates the regulations 9212 of this title shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment of not more than 12 months, or both.

This order is in effect as of July 1, 1988.

Lee V. Larson,

Acting District Manager.

[FR Doc. 88-14469 Filed 6-24-88; 8:45 am]

BILLING CODE 4310-33-M

[AZ-020-08-4212-18; AZA-22271]

Amended Notice of Realty Action; Sale of Public Land; Arizona

SUMMARY: The following described federal lands have been identified by Apache County, Arizona and are designated as suitable for selection by Apache County in compensation for certain private lands which were previously subject to taxation by Apache County and which have been or may be acquired by the Zuni Indian Tribe under Pub. L. 98-408. The original Notice of Realty Action was published in the **Federal Register** on August 20, 1986 and is hereby amended to include the following lands:

Gila and Salt River Meridian, Apache County, Arizona

T. 11 N., R. 26 E.,
Sec. 4, E½W½SE¼, E½SE¼;
Sec. 10, all.
T. 11 N., R. 27 E.,
Sec. 24, N½.
T. 11 N., R. 28 E.,
Sec. 19, lot 1, NE¼, E½NW¼, E½SE¼.
T. 12 N., R. 30 E.,
Sec. 18, lot 1, N½NE¼, NE¼NW¼.

Comprising 1,593.78 acres.

Apache County may receive title to no more than five thousand eight hundred and eighty-one (5,881) acres of the selected lands in accordance with section 5 of Pub. L. 98-408. Conveyance of the above-described lands shall be made subject to those leases, permits and rights-of-way of record.

The above-described lands are being considered for disposal under section 206 of the Federal Land Policy and Management Act of 1976.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this notice, from appropriation under the public land laws, including the mining laws, except disposal under Pub. L. 98-408 and section 206 of the Act of October 21, 1976, subject to valid existing rights.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the original date of publication (August 20, 1986), whichever occurs first.

For a period of forty-five (45) days from the date of publication, interested persons may submit comments to the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be reviewed by the State Director, who may modify, vacate or sustain this realty action.

Date: June 21, 1988.

Herman L. Kast,

Acting District Manager.

[FR Doc. 88-14397 Filed 6-24-88; 8:45 am]

BILLING CODE 4310-32-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-384 (Final)]

Import Investigations; Nitrile Rubber From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of nitrile rubber,[3] provided for in item 446.15 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 12, 1988, following a preliminary determination by the Department of Commerce that imports of nitrile rubber for Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 2, 1988 (53 FR 6710). The hearing was held in Washington, DC, on May 3, 1988, and all persons who requested the opportunity were prmittd to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 10, 1988. The views of the Commission are contained in USITC Publication 2090 (June 1988), entitled "Nitrile Rubber from Japan: Determination of the Commission in Investigation No. 731-TA-384 (Final)(Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler dissenting.

[3] The product covered by this investigation is nitrile rubber, not containing fillers, pigments, or rubber processing chemicals. For purposes of this investigation, nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile and that does not contain any type of additive or compounding ingredient have a function in processing, vulcanization, or end use of the product.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 10, 1989.

[FR Doc. 88-14362 Filed 6-24-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31283]

Southern Railway Co.; Trackage Rights Exemption; Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Southern Railway Company between Front Royal, VA (milepost H-63), and the connection between NW and Consolidated Rail Corporation at Hagerstown, MD (milepost H-O), a distance of approximately 63 miles. The trackage rights will be effective on or after June 15, 1988.

This notice is filed under 49 CFR 1180.2(d)(3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980)

Dated: June 10, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

[FR Doc. 88-14127 Filed 6-24-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AD-55 (Sub-No. 248]

CSX Transportation, Inc.; Abandonment Between Parkwood and Bessemer in Jefferson County, AL; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 6.0-mile rail line between Parkwood (milepost ANJ-968.3) and Bessemer (milepost ANJ-974.3) in Jefferson County, AL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable to rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88-14572 Filed 6-24-88; 9:26 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 21, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

Revision of a Currently Approved Collection

(1) National Crime Survey Phase II.

(2) NCS-1(X), NCS-2(X), NCS-3(X), NCS-500, Bureau of Justice Statistics.

(3) Quarterly.

(4) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amount of crime committees against households and individuals throughout the country. Respondents include persons 12 years or older living in 60,000 households in various locations across the Nation.

(5) 295,200 respondents at .217 hours each.

(6) 64,146 estimated annual public burden hours.

(7) Not applicable under 3504(h).

(1) National Crime Survey Test, Phase 1, Third Visit.

(2) NCS-1(X), NCS-2(X), NCS-1A(X), NCS-500, Bureau of Justice Statistics.

(3) Quarterly.

(4) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amount of crime committed against households and individuals throughout the Country.

(5) 2,000 respondents at .375 hours each.

(6) 750 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department of Clearance Officer, Department of Justice.

[FR Doc. 88-14419 Filed 6-4-88; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on Workforce Quality and Labor Market Efficiency; Establishment of Advisory Committee

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with GSA, the Secretary of Labor has determined that the establishment of the Commission on Workforce Quality and Labor Market Efficiency is in the public interest.

The Commission will advise the Secretary of Labor on such matters as shall increase the excellence of the American Workforce.

The Commission will consist of members from the worlds of academia, business, labor and government.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Commission. Such comments should be addressed to: Mr. John Giraudo, Special Assistant to the Secretary, U.S. Department of Labor, Room S2018, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC, this 20th day of June 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-14379 Filed 6-24-88; 8:45 am]

BILLING CODE 4510-23-M

[Docket No. S-024]

Shipyard Employment Standards Advisory Committee; Establishment

AGENCY: Office of the Secretary, U.S. Department of Lobor.

ACTION: Establishment of Shipyard Employment Standards Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. I), and after consultation with the General Services Administration (GSA), I have determined that the establishment of the Shipyard Employment Standards Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by the Occupational Safety and Health Act (OSH Act) 84 Stat. 1590, 29 U.S.C. 651 *et seq.*). Authority to establish this Committee, which will address maritime matters, is found in sections 4(b)(2), 6(b) and 7(b) of the OSH Act; section 41 of the Longshore and Harbor Workers' Compensation Act (44 Stat. 1444 as amended); and by general agency authority in Title 5 of the United States Code.

The Committee will advise the Assistant Secretary of Labor for the Occupational Safety and Health Administration on the preparation of one comprehensive set of standards for the shipbuilding, ship repair and shipbreaking industries by combining Part 1910 and Part 1915 standards, and by updating, reorganizing, clarifying, and simplifying those standards. However, they will not be responsible for those six shipyard Subparts which are being addressed in separate rulemakings: Explosive and Other Dangerous Atmospheres (29 CFR Part 1915, Subpart B); Welding, Cutting and Heating (29 CFR Part 1915, Subpart D); Access and Egress (29 CFR Part 1915, Subpart E); Personal Protective Equipment (29 CFR Part 1915, Subpart I); Walking and Working Surfaces (Proposed 29 CFR Part 1915, Subpart M); and Scaffolds (Proposed 29 CFR 1915, Subpart N).

The Committee will consist of up to 15 members and will proportionately include individuals appointed to represent the following affected interests: Labor organizations; industry; Federal safety and health officials; State health and safety officials; professional organizations and national standards-setting groups.

Requests for appointment to membership on the Committee are solicited. Applicants should meet the following criteria:

Labor. Must be recommended by a labor organization representing employees in the shipbuilding, ship repair, or shipbreaking industry.

Industry. Must be recommended by an industry association representing the shipbuilding, ship repair or shipbreaking industry or must be a firm with experience in shipbuilding, shipbreaking or ship repair.

State or Federal Safety and Health Officials. Must be a Federal or State employee with responsibilities in occupational health and safety and with experience in the shipbuilding, repair or breaking industry.

Professional Organizations/National Standards-Setting Groups. Must represent a professional organization or national standards-setting group that regulates or represents occupational safety and health interests in shipbuilding, breaking and repair.

Nominations for these positions must be forwarded to Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3647, Docket S-024, 200 Constitution Avenue, NW., Washington, DC 20210, by August 11, 1988. Nominations must include the person's name, social security number, title, position, organization, interest represented, address, phone number, experience, qualifications, and resume.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. In accordance with the Act, this charter will be filed 15 days from the date of this publication.

If there is not sufficient interest in this Advisory Committee, or if the parties expressing interest do not adequately represent the issue involved, OSHA will set aside this process and continue with traditional rulemaking activities.

Interested persons are invited to submit comments by August 11, 1988, regarding the establishment of the Shipyard Employment Standards Advisory Committee. Such comments should be addressed to Docket S-024, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3670, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of June, 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-14377 Filed 6-24-88; 8:45 am]

BILLING CODE 4510-23-M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants to twenty-seven (27) law school clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 53, No. 47, page 7815 of the **Federal Register** of March 10, 1988, a total of $1,100,000 will be awarded to the following schools:

Name of school	Amount
1. State University of New York at Buffalo	$30,000
2. Yeshiva University/Benjamin N. Cardozo School of Law	50,000
3. Union University/Albany Law School	21,891
4. Catholic University of Puerto Rico	20,000
5. Catholic University of America/Columbus Law School	49,981
6. University of Maryland	30,000
7. North Carolina Central University	48,775
8. Tulane University	39,000
9. University of North Carolina	40,000
10. Southern Illinois University at Carbondale	49,448
11. University of Chicago	50,000
12. Thomas M. Cooley Law School/Sixty Plus Center, Inc	50,000
13. Villanova University	25,000
14. Valparaiso University	27,715
15. University of Dayton	49,550
16. University of Denver	50,000
17. Texas Southern University	45,110
18. St. Louis University	45,000
19. Univeristy of Nebraska	49,525

Name of school	Amount
20. Gonzaga School of Law/University Legal Assistance	40,000
21. University of Iowa	50,000
22. Northwestern School of Law	50,000
23. University of North Dakota	39,005
24. University of Wisconsin	25,000
25. McGeorge School of Law	30,000
26. University of California at Berkeley	45,000
27. University of Utah	50,000
Total	1,100,000

These one-year grants are awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(F) of this Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. Grant awards will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Program Development and Substantive Support Division of the Legal Services Corportation on or before July 27, 1988.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Legal Services Corporation, Program Development and Substantive Support, 400 Virginia Avenue, SW., Washington, DC 20024–2751 (202) 863–1837.

SUPPLEMENTARY INFORMATION: These grants are made to support the law schools' provision of legal services to eligible clients through clinical programs. By helping to develop and expand law school clinics, the Corporation educates law students to the problems of poor persons. These clinics encourage future lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts as members of the private bar.

Date: June 22, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–14451 Filed 6–24–88; 8:45 am]

BILLING CODE 6820–35–M

NATIONAL ECONOMIC COMMISSION

Meetings

AGENCY: National Economic Commission.

ACTION: Notice of commission meeting.

SUMMARY: The National Economic Commission ("the commission") will hold a public meeting on July 12, 1988. The commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, enacted December 22, 1987.

Date, Time and Place: July 12, 1988 3 p.m.–5 p.m., Room 406 Dirksen Senate Office Building, Washington, DC.

Agenda: The meeting will be devoted to an examination of the roles of Federal, state and local governments. In addition, there will be a background staff presentation on Federal entitlement programs. The commission members will be briefed by staff and specially invited elected representatives

FOR FURTHER INFORMATION CONTACT: Jim Hildreth at 425–8986, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88–14366 Filed 6–24–88; 8:45 am]

BILLING CODE 6820–45–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on July 13, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 13, 1988—9:00 a.m. until the conclusion of business

The Subcommittee will discuss SECY–88–147, "Integration Plan for Closure of Severe Accident Issues."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 21, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–14436 Filed 6–24–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 119 to Facility Operating License No. DPR–23 issued to Carolina Power & Light Company, which revised the Technical Specifications for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment modifies the Technical Specifications to remove the restriction limiting operating power to 1380 MWt when only two safety injection pumps are operable, to permit operation at a steady state reactor core power level not to exceed 2300 MWt with two safety injection pumps operating, and to restore power peaking

factor (Fq) to 2.32 from the current value of 2.26 when two safety injection pumps are operable.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 19, 1988 (53 FR 17996). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated May 7, 1988, and supplemented May 16 and 20, 1988, (2) Amendment No. 119 to License No. DPR-23, and (3) the Commission's related Safety Evaluation and Environmental Assessment. The May 16 and 20, 1988 submittals provided supplemental information and corrections which did not alter the action as noted in the **Federal Register** on May 19, 1988. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 19535. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 20th day of June 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-14401 Filed 6-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-08833; License No. 20-15266-01; EA 88-54]

Joslin Diabetes Center, Inc., Boston, MA; Order Imposing Civil Monetary Penalty

I.

Joslin Diabetes Center, Boston, Massachusetts, (licensee) is the holder of Byproduct Material License No. 20-15266-01 (licensee) issued by the Nuclear Regulatory Commission (Commission or NRC) which authorizes the licensee to perform *in vitro* studies and laboratory research. The license was originally issued on September 23, 1972, was most recently renewed on April 2, 1987, and is due to expire on September 30, 1988.

II.

An NRC safety inspection of the licensee's activities under the license was conducted on January 27-28, 1988. During the inspection, the NRC staff determined 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 was served upon the licensee by letter dated April 5, 1988. 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 (NOV) by two letters both dated April 28, 1988. In its responses, the licensee admitted that the violations occurred as stated in the NOV but requested that the civil penalty be reduced or eliminated.

III.

After consideration of the licensee's responses and the statement of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the violations occurred as stated but, for reasons set forth in the attached Appendix, the penalty proposed for the violations described in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced to $625.

IV.

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that,

The licensee pay a civil panalty in the amount of Six Hundred Twenty-Five Dollars ($625) 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 shall 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, with a copy to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

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:

Whether, on the basis of the admitted violations, this Order should be sustained.

Dated at Rockville, Maryland, this 13th day of June 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix Evaluation and Conclusion

On April 5, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during an NRC inspection. Joslin Diabetes Center, Inc., responded to the Notice by two letters dated April 28, 1988. In its responses the licensee admitted that the violations occurred, but requested that the civil penalty be reduced or eliminated. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

Restatement of Violations.

A. 10 CFR 20.101(a) requires that no licensee possess, use, or transfer licensed material in such a manner as to cause any individual in a restricted area to receive in any period of one calendar quarter a total occupational radiation exposure (dose) in excess of 18.75 rems to the hands and forearms.

Contrary to the above, during the fourth calendar quarter of 1987, an individual working with phosphorus-32 in a restricted area received a cumulative radiation exposure (dose) of 35.13 rems to his right hand.

B. 10 CFR 20.201(b) requires each licensee to make such surveys as (1) may be necessary to comply with the regulations in Part 20 and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radiation under a specific set of conditions.

Contrary to the above, during the fourth calendar quarter of 1987, a research investigator used a new procedure to handle millicurie quantities of phosphorus-32, but a survey (evaluation) was not performed to assure that the individual handling this material would not receive a radiation dose to his extremities in excess of the level specified in 10 CFR 20.101(a).

C. 10 CFR 20.405(a) requires, in part, that the NRC be notified in writing within 30 days of the occurrence of an exposure to an individual to radiation in excess of the applicable limits of 10 CFR 20.101.

Contrary to the above, during the fourth calendar quarter of 1987, an individual research investigator received a radiation exposure to the right hand in excess of the limits set forth in 10 CFR 20.101, and although the licensee's consultant (Harvard University Environmental Health and Safety Department) became aware of this overexposure upon receipt of the individual's processed film badge result on January 13, 1988, a written report was not made to the NRC until February 24, 1988.

D. Condition 13 of License No. 20-15266-01 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in an application dated February 24, 1984, with attachments. One of those attachments is entitled, "Special Instructions for the Use of Phosphorus-32 August 31, 1983."

1. Paragraph 4 of this attachment requires that whenever a new procedure involving phosphorus-32 is used, a dry run shall be performed under the supervision of the Radiation Safety Office in order to familiarize the user with the reactions and any unusual circumstances that may be inherent within the experiment.

Contrary to the above, during the fourth calendar quarter of 1987, an investigator performed experiments with phosphorus-32 using a new procedure and, prior to the use of this procedure, a dry run was not completed to familiarize the user with certain unusual circumstances, specifically, the potential for high radiation dose rates to the extremities associated with the experiment.

2. Paragraph 7 of this attachment requires that in any experiment in which more than 2 millicuries of phosphorus-32 is to be employed, a designated representative of the Harvard staff will be present to assist in monitoring the safety of the experiment.

Contrary to the above, during the fourth calendar quarter of 1987, an experiment involving the use of 20 millicuries of phosphorus-32 was performed by a research investigator without the designated representative of the Harvard staff being present to assist in monitoring the safety of the experiment.

3. Paragraph 6 of this attachment requires any users of phosphorus-32 to be familiar with the content and safety precautions specified in a New England Nuclear (NEN) bulletin, "Phosphorus-32: Handling and Hazards."

Contrary to the above, as of January 28, 1988, a research investigation using phosphorus-32 was not familiar with the contents and safety precautions specified in the NEN bulletin.

E. 10 CFR 19.11(a) and (b) require that current copies of Parts 19 and 20, the license, license conditions, documents incorporated into the license, license amendments and operating procedures be posted, or that a notice be posted describing these documents and where they may be examined.

Contrary to the above, on January 28, 1988 the documents required to be posted by 10 CFR 19.11(a) and (b) were not posted nor was a notice posted describing these documents and where they could be examined.

These violations are classified in the aggregate as a Severity Level III problem (Supplements IV and VI).

Cumulative Civil Penalty—$2,500—assessed equally among the violations.

Summary of Licensee's Response

The licensee admits all of the seven violations, six of which were directly related to the overexposure incident. However, the licensee requests reduction or elimination of the civil penalty based on its previous performance record and demonstrated efforts to assure radiation safety, changes made in its radiation safety program prior to the violations, and its prompt corrective action. The licensee also asserts that, as a non-profit institution whose funding is used for the treatment and cure of diabetes, the civil penalty would represent a significant financial burden. In addition, the licensee described its corrective actions.

NRC Evaluation

The NRC, in its letter dated April 5, 1988, transmitting the Notice of Violation, acknowledged that the licensee had a prior good enforcement history, and also acknowledged that the licensee had identified the overexposure and had ensured that its consultant verbally informed the NRC of the overexposure. As noted in the letter, while these factors would normally result in at least partial mitigation of the civil penalty, the NRC decided that any adjustment to the civil penalty amount was inappropriate since (1) the licensee's written report of the overexposure was not made to the NRC within 30 days, as required; (2) the licensee's corrective actions were not viewed as unusually prompt and extensive; and (3) the licensee's staff and/or consultant had an opportunity to prevent the overexposure or identify and correct the deficiencies leading to the overexposure sooner, but failed to do so.

The licensee in its April 28, 1988 response, acknowledged that the written report of the overexposure was not submitted within 30 days, as required. Further, the licensee indicated that its consultant had not informed it of the October 1987 film badge result until January 1988, and although not addressed by the licensee, the consultant apparently took no action on his own prior to that time to ascertain the cause of the unusually high reading. The NRC has reconsidered the licensee's corrective actions as well as their past performance since 1977, which consisted of only one violation during four NRC inspections since that time. The licensee's corrective actions included: (a) Taking immediate steps to prevent further exposure; (b) modifying procedures for monitoring radioisotope use and verifying film badge reports including developing a system for timely monitoring of the return of results on all film badges, and intensifying supervision of the type of experiment that contributed to the overexposure; (c) modifying the education program; and (d) increasing review and supervision of the researcher who received the overexposure.

Based upon a reconsideration of the licensee's corrective actions and past performance, the NRC has determined that a 75% reduction in the civil penalty amount is appropriate. Full mitigation is

not warranted because of the licensee's opportunity in November 1987 to detect and prevent this overexposure as well as the circumstances of the overexposure, i.e., changing the experiments without an adequate evaluation of the potential exposure rates and performing the experiments withot a "dry run."

NRC Conclusion

The licensee has provided an adequate basis for a 75% reduction in the proposed civil penalty. Therefore, a civil penalty in the amount of $625 should be imposed.

[FR Doc. 88-14403 Filed 6-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Company of Colorado; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 60 to Facility Operating License No. DPR-34, to Public Service Company of Colorado, which revised the Technical Specifications for operation of the Fort St. Vrain Nuclear Generating Station, located in Platteville, Colorado. The amendment will be effective 90 days after its date of issuance.

The amendment revised certain setpoints for the Plant Protective System to allow for instrumentation errors.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on May 9, 1988 (53 FR 16481). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributed to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated August 1972.

For further details with respect to this action, see (1) the application for amendment dated February 8, 1988, (2) Amendment No. 60 to Facility Operating License No. DPR-34, and (3) the Environmental Assessment and Finding of No Significant Impact (53 FR 22239). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Greeley Public Library, City Complex Building, Greeley, Colorado. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 20th day of June, 1988.

For the Nuclear Regulatory Commission.

Kenneth L. Heitner,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nucelar Reactor Regulation.

[FR Doc. 88-14402 Filed 6-24-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25807; File No. SR-CBOE-88-10]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change of Chicago Board Options Exchange, Inc. Relating to the Extension of the Near-Term Options Expiration Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 3, 1988 the Chicago Board Options Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") proposes to extend the stock options pilot program, which provides for four expiration months, including two near-term months, to December 31, 1988. The Exchange also requests permanent approval of the pilot program prior to its expiration in December.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In June 1985, in conjunction with the other options exchanges, the CBOE implemented a stock option pilot program for certain January cycle stock options.[1] Under the terms of the pilot, the traditional January trading cycle was altered to ensure that (i) one-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times. Since that time, the pilot program has been extended and expanded to all equity options on all three expiration cycles.[2]

The purpose of the pilot program is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the program since its inception, the CBOE has found that the pilot has satisfied investor's preferences for trading near-term options.

The Exchange, therefore, proposes to continue the pilot program until December 31, 1988, and requests that the

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[1] *See* Securities Exchange Act Release No. 22099 (May 31, 1985), 50 FR 23862, approving SR-CBOE-85-03 to allow for implementation of the pilot program using monthly instead of quarterly expiration cycles.

[2] *See* Securities Exchange Act Release No. 23461 (July 23, 1986), 51 FR 27296, approving SR-CBOE-86-21 to expand the pilot program to include all January cycle stock options and extend the program for six additional months; Securities Exchange Act Release No. 24193 (March 9, 19897), 52 FR 8123, approving SR-CBOE-87-2 to extend the pilot program for four additional months; and Securities Exchange Act Release No. 24788 (August 10, 1987), 52 FR 31458, approving SR-CBOE-87-32 to expand the pilot program to include February and March cycle stock options and extend the program for one additional year.

program be permanently approved prior to that date.

The CBOE believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act"), and in particular section 6(b)(5), by continuing a pilot program designed to facilitate transactions and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Other

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, so that the pilot program can continue without interruption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regualtions thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the pilot program can continue without interruption. In addition, the Commission previously has solicited comment on this and other near-term expiration pilot programs submitted by other options exchanges and has not received any negative comments on the operation of these pilot programs. Moreover, the current pilot program, which has been in effect for a year, has operated effectively and generally has been well received. Finally, the Commission's approval is limited until December 31, 1988 or until the Commission acts on the CBOE's request for approval of the pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements will respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 18, 1988.

It is therefore ordered, pursuant to section 19(b)(2) ofthe Act,[3] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

June 16, 1988.

[FR Doc. 88-14456 Filed 6-24-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 21, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Bank of New England Corp.
Common Stock, $.80 Par Value (File No. 7-3509)
Brazil Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-3510)
Careercom Corp.
Common Stock, $.01 Par Value (File No. 7-3511)
Chicago Milwaukee Corp.
Common Stock, $1.00 Par Value (File No. 7-3512)
Chicago Pacific Corp.
Common Stock, $.01 Par Value (File No. 7-3513)
CRI Insured Mortgage II
Common Stock, $.01 Par Value (File No. 7-3514)
CyCare Systems Inc.
Common Stock, $.01 Par Value (File No. 7-3515)
EMC Corp.
Common Stock, $.01 Par Value (File No. 7-3516)
Finevest Foods Inc.
Common Stock, $.01 Par Value (File No. 7-3517)
Global Growth & Income Fund Inc.
Common Stock, $1.00 Par Value (File No. 7-3518)
Genentech, Inc.
Common Stock, $2.00 Par Value (File No. 7-3519)
MFS Intermediate Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3520)
Oppenheimer Multi Sector Income Trust
Common Stock, $.01 Par Value (File No. 7-3521)
Rodman & Renshaw Capital Group Inc.
Common Stock, $.09 Par Value (File No. 7-3522)
Templeton global Income Fund
Common Stock, $.01 Par Value (File No. 7-3523)
Thortec International Inc.
Common Stock, $.25 Par Value (File No. 7-3524)
Zenith National Insurance Corp.
Common Stock, $1.00 Par Value (File No. 7-3525)
American Maize Products Co.
Class A, $.80 Par Value (File No. 7-3526)
BDM International, Inc.
Class A, $2.50 Par Value (File No. 7-3527)
Manufactured Homes Inc.
Common Stock, $.50 Par Value (File No. 7-3528)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 13, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for

[3] 15 U.S.C. 78s(b) (1982).

[4] 17 CFR 200.30-3(a)(12) (1986).

hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14459 Filed 6-24-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 21, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Florida Steel Corporation
Common Stock, $1.00 Par Value (File No. 7-3529)
Integrated Resources, Inc.
Common Stock, $0.10 Par Value (File No. 7-3530)
Thompson Medical Company, Inc.
Common Stock, $0.10 Par Value (File No. 7-3531)
Tootsie Roll Industries, Inc.
Common Stock, $0.69 4/9 Par Value (File No. 7-3532)
Weis Markets, Inc.
Common Stock, $0.33 1/3 Par Value (File No. 7-3533)
Central Maine Power Company
Common Stock, $5.00 Par Value (File No. 7-3534)
Empressa Nacional de Electricidad, S.A.
American Depositary Shares (File No. 7-3535)
SCOR U.S. Corp.
Common Stock, $0.30 Par Value (File No. 7-3536)
NACCO Industries, Inc.
Class A Common Stock, $1.00 Par Value (File No. 7-3537)
Newhall Resources
Depositary Units (File No. 7-3538)
Oakwood Homes Corporation
Common Stock, $0.50 Par Value (File No. 7-3539)
Omnicare, Inc.
Common Stock, $1.00 Par Value (File No. 7-3540)
PHH Group, Inc.
Common Stock, No Par Value (File No. 7-3541)
Plains Petroleum Company
Common Stock, $0.01 Par Value (File No. 7-3542)
Quanex Corporation
Common Stock, $0.50 Par Value (File No. 7-3543)
Royce Value Trust, Inc.
Common Stock, $0.001 Par Value (File No. 7-3544)
Rykoff-Sexton, Inc.
Common Stock, $0.10 Par Value (File No. 7-3545)
Santa Anita Companies (The)
Common Stock, $0.10 Par Value (File No. 7-3546)
Seagull Energy Corporation
Common Stock, $0.10 Par Value (File No. 7-3547)
Sizeler Property Investors, Inc.
Common Stock, $0.01 Par Value (File No. 7-3548)
Weingarten Realty Investors
Shares of Beneficial Interest (File No. 7-3549)
Wolverine World Wide, Inc.
Common Stock, $1.00 Par Value (File No. 7-3550)
Wyle Laboratories
Common Stock, Par Value (File No. 7-3551)
Wynn's International, Inc.
Common Stock, $1.00 Par Value (File No. 7-3552)
Nova Corporation of Alberta
Common Shares, Without Par Value (File No. 7-3553)
Midway Airlines, Inc.
Common Stock, $0.01 Par Value (File No. 7-3554)
The Thai Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-3555)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 13, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14426 Filed 6-24-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 21, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Security Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Lamson & Sessions Co.
Common Stock, $0.10 Par Value (File No. 7-3556)
Legg Mason, Inc.
Common Stock, $0.10 Par Value (File No. 7-3557)
Longs Drug Stores Corp.
Common Stock, No Par Value (File No. 7-3558)
SPX Corporation
Common Stock, $10.00 Par Value (File No. 7-3559)
Tech-Sym Corporation
Common Stock, $0.10 Par Value (File No. 7-3560)
Varo, Inc.
Common Stock, $0.10 Par Value (File No. 7-3561)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 13, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14427 Filed 6-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16447; 811-5362]

Guild Gold Fund; Application June 22, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Guild Gold Fund.

Relevant 1940 act sections: Order requested under section 8(f).

Summary of Application: Application for an order declaring that Applicant has ceased to be an investment company.

Filing date: The application was filed on May 31, 1988. An amendment, the substance of which has been set forth in a letter to the Commission dated June 20, 1988, and which thus is included herein, will be filed during the notice period.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues contested. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 23410 Civic Center Way, Suite E-10, Malibu, California 90265.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, law clerk, (202) 272-3022 or Curtis R. Hilliard, Special Counsel, (202) 272-3030 (Division of Intestment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 285-4300).

Applicant's Representations

1. Applicant registered under the 1940 Act on Form N-8A on October 16, 1987 as a diversified, open-end investment management company. Applicant filed a Registration Statement on Form N-1A under the Securities Act of 1933 on Octoer 9, 1987. The Registration Statement has not been declared effective however, and the initial public offering of Applicant's shares never commenced. No sales of Applicant's securities have been made.

2. Applicant is a business trust created and existing under the laws of Massachusetts. At the time of filing this application, Applicant has no securityholders.

3. Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

4. Applicant has no outstanding assets other than minimum trust assets of $100.00, its name and status as a Massachusetts business trust and as a registered investment company. Applicant has no outstanding liabilities.

5. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs. Applicant will file with the Secretary of the Commonwealth of Massachusetts to terminate the trust.

7. Applicant is excused under Rule 30b1-1 from filing a semi-annual report on Form N-SAR because its registration statement never became effective.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14457 Filed 6-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16445; 811-4853]

MassMutual Equity Investors Trust; Application

June 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: MassMutual Equity Investors Trust.

Relevant 1940 Act section: Application filed pursuant to section 8(f).

Summary of application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing date: The application was filed on June 2, 1988.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1295 State Street, Springfield, MA 01111.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney, (202) 272-3047, or Brion R. Thompson, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as an open-end diversified, management investment company. Organized as a Massachusetts business trust, Applicant became registered under the 1940 Act and filed its registration statement pursuant to section 8(b) of the 1940 Act on September 26, 1988. On the same date, Applicant registered an indefinite number of its shares under the Securities Act of 1933, but has never commenced a public offering of such shares.

2. On April 15, 1988, Applicant's Board of Directors approved an Agreement and Plan of Reorganization under which Applicant transferred all its assets and liabilities to MassMutual Value Stock Fund ("Series"), a series of MassMutual Integrity Funds, a registered investment company under the 1940 Act (File No. 811-3420). Immediately thereafter, Applicant distributed the shares of the Series received to its sole shareholder.

After such transfer Applicant's sole shareholder owned as many full and fractional shares of the Series, with the same net asset value, as the number of shares of Applicant owned immediately prior to the transfer. Applicant represents that such exchange was based upon relative net asset values and that as of April 14, 1988, Applicant had a net asset value of $25,167,840, or $10.34 per share.

3. Applicant will be dissolved under the laws of The Commonwealth of Massachusetts on or about the date Applicant is granted an order declaring that it has ceased to be an investment company. Applicant is not a party to any litigation or administrative proceeding, and does not propose to engage in any business activities other than those necessary to effectuate the winding up of its affairs. Applicant has no securityholders and no assets, liabilities or debts.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14458 Filed 6-24-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting; Hawaii

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m., on Wednesday, August 3, 1988, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 5311, Honolulu, Hawaii, 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 Charles T. C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850—(808) 541-2990.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 22, 1988.

[FR Doc. 88-14454 Filed 6-24-88; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting; Maryland

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting from 4:00 p.m. to 6:00 p.m., on Wednesday, June 29, 1988, at the Redwood Towers, 22nd Floor, 217 East Redwood Street, Baltimore, Maryland, 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 Charles Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202—(301) 962-2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 22, 1988.

[FR Doc. 88-14455 Filed 6-24-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 45663]

Emerald Tours, Ltd. and World Classics, Ltd.; Enforcement Proceeding; Assignment of Proceeding

Served: June 22, 1988.

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 88-14421 Filed 6-24-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-6-29]

Fitness Determination of Renown Aviation, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Renown Aviation, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: June 22, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-14422 Filed 6-24-88; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 88-048]

Towing Safety Advisory Committee; Public Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on July 28, 1988 in Room 2415, U. S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. The agenda, which includes docketed rulemakings where indicated, is expected to be as follows:

1. Approval of mintues from March 1988 TSAC meeting

2. Reports on the following items:

(a) Licensing of Pilots (CGD 84-060).

(b) Inland Radar Observer Courses.

(c) Assistance Towing Licensing (CGD 87-017).

(d) Licensing of Maritime Personnel (CGD 81-059).

(e) Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks (CGD 85-061).

(f) Drydock and Tailshaft Requirements.

(g) Hazardous Substances Regulations (CGD 86-034).

(h) Tankerman Requirements (CGD 79-116).

(i) Regulations Implementing Annex V (CGD 88-002).

(j) Special Area Designation of Gulf of Mexico.

(k) IMO/MARPOL Initiatives.

(l) IMO Status Report: Global Maritime Distress and Safety Systems.

(m) ABS Towing Rules Questionnaire.

(n) Operating a Commercial Vessel While Intoxicated (CGD 84–009).

(o) Drug Detection for Merchant Marine Personnel (CGD 86–067).

(p) Mandatory Alcohol and Drug Testing Following Serious Marine Incident (CGD 86–080).

(q) OSHA's Proposed Benzene Standard.

(r) Air/Vapor Quality Control/Recovery.

(s) NAV Rules Update.

(t) Any other matter properly brought before the Committee. Where appropriate, reports on the above items may be followed by TSAC discussion, deliberation, and recommendations concerning these subjects, including rulemaking projects.

3. Summary of Action Items.

4. Adjournment.

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 30 copies of written material should be submitted to the Executive Director no later than 26 July 1988.

FOR FURTHER INFORMATION CONTACT: CDR R. J. Asaro, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–MP–3), Washington, DC 25093–0001, (202) 267–0449.

Dated: June 21, 1988.

R. J. Asaro,

Commander, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88–14424 Filed 6–24–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–047]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on July 27, 1988 in Room 3442–44–46 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, DC. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.

2. Discussion of the Following topics:

(a) Personnel Manning and Licensing.

(b) Tug-Barge Construction, Certification and Operations.

(c) Port Facilities and Operations.

(d) Personnel Safety and Work Place Standards.

(e) Miscellaneous:

(1) Air Quality/Vapor Control/Recovery.

(2) NAV Rules Update.

3. Presentation of any new items for consideration of the Subcommittees.

4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: CDR R.J. ASARO, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–MP–3), Washington, DC 20593–0001, (202) 267–0449.

Dated: June 21, 1988.

R.J. Asaro,

Commander, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88–14425 Filed 6–24–88; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

Initial Inventory of U.S-Flag Launch Barges

AGENCY: Maritime Administration, DOT.

ACTION: Initial inventory of launch barges, reported as of March 2, 1988.

SUMMARY: Pursuant to section 1(b)(2) of Pub. L. No. 100–329, enacted June 7, 1988, the following initial inventory of U.S.-flag launch barges, reported as of March 2, 1988, is being published. Identification of those that are qualified to engage in the coastwise trade is in process, as well as the name and address of the person to whom inquiries concerning such vessels may be made. This additional data will be included in subsequent publications of an updated inventory mandated by section 1(b)(3) of the statute.

REPORTED U.S.—FLAG LAUNCH BARGES

Index	Vessel name	Owner	Current registry	Built		Length	Depth	Reported		Approx. launch capacity	Volume	L X B X D cubic feet	Estimated full load displace	Ratio displace/launch cap.
				Country	Year	Beam		GRT	DWT					
1	KSC 700	Kaiser	U.S.	Korea	1985	700	182	40	42,727	50,000	40,200	5,096,000	116,480	2.9
2	Intermac 650	McDermott	U.S.	Japan	1980	650	170	40	26,834	40,000	40,200	4,420,000	101,029	2.5
3	Intermac 627	do	U.S.	South Korea	1978	580	160	36			22,800	3,340,800	76,361	3.3
4	Intermac 600	do	U.S.	Japan	1973	500	120	33	15,189	15,600	15,600	1,980,000	45,257	2.9
5	Oceanic 93	do	U.S.	do	1976	450	150	30	11,676		14,700	2,025,000	46,286	3.1
6	MWB-403	MWB, INC	U.S.	United States	1979	400	105	25	9,561	17,954	6,300	1,050,000	23,718	3.8
7	BAR 267	Brown & Root	U.S.	do	1966	380	100	25	8,136		5,900	950,000	21,714	3.7
8	SF-4000	Santa Fe	U.S.	Taiwan	1978	400	100	25	9,028	12,000	5,400	1,000,000	22,857	4.2
9	Oceanic 91	McDermott	U.S.	United States	1964	402	90	22		4,500	4,500	795,960	18,193	4.0
10	Bar 396	Sause	U.S.	do	1976	304	90	22	2,975		3,100	601,920	13,758	4.4
11	Intermac 404	McDermott	U.S.	do	1976	300	90	20			3,100	540,000	12,343	4.0
12	Bar 397	Brown & Root	U.S.	do	1979	300	90	20	3,310		3,100	540,000	12,343	4.0
13	Launcher 500	Sidmar	U.S.	do	1982	315	90	19	4,908		3,100	538,650	12,312	4.0
14	Tideland 021	McDermott	U.S.	do	NA	240	72	17	2,180		2,700	393,760	6,715	2.5
													Average	3.5

Sources:
(1) Ocean construction locator, December, 1987
(2) Barnett & Casbarian, Naval Arch.
(3) American Bureau of Shipping.
(4) Akin, Gump, Strauss, Hauer & Feld.
(5) MARAD Office of Domestic Shipping

In addition, one operator has recommended including in the inventory certain barges not presently configured as launch vessels but which it represents could readily be reconfigured for that purpose. The barges in question are identified below:

CROWLEY BARGES JACKET LAUNCHING CAPABILITY

Owner	Barge name	Length (feet)	Breadth (feet/inches)	Depth (feet)	Jacket launch weight L.T. (approx.)	Flag	Built—location/year
Crowley	Cordova	400	76	20	4,900	USA	Beth., SF/1969.
Do	Juneau	400	76	20	4,900	USA	Beth., SF/1970.
Do	Kenai	400	76	20	4,900	USA	Beth., SF/1968.
Do	Ketchikan	400	76	20	4,900	USA	Beth., SF/1970.
Do	Kodiak	400	76	20	4,900	USA	Beth., SF/1965.
Do	McKinley	400	76	20	4,900	USA	Beth., SF/1969.
Do	Nikiski	400	76	20	4,900	USA	Beth., SF/1968.
Do	Palmer	400	76	20	4,900	USA	Do.
Do	Malolo	400	76	20	4,900	USA	Do.
Do	Isla Bonita	400	99/6	20	6,600	USA	Beth., SF/1974.
Do	Isla Del Sol	400	99/6	20	6,600	USA	Do.
Do	St. Thomas	400	99/6	20	6,600	USA	Todd, Houston/1970.
Do	Barge 400	400	99/6	20	6,600	USA	Beth., SF/1970.
Do	Barge 406	400	99/6	20	6,600	USA	Beth., SF/1974.
Do	Barge 407	400	99/6	20	6,600	USA	Do.
Do	Barge 408	400	99/6	20	6,600	USA	Do.
Do	Barge 409	400	99/6	20	6,600	USA	Do.
Do	Barge 410	400	99/6	20	6,600	USA	Do.
Do	Barge 411	400	99/6	20	6,600	USA	Do.
Do	Barge 414	400	99/6	20	6,600	USA	Beth., SF/1975.
Do	Barge 415	400	99/6	20	6,600	USA	Do.
Do	Barge 416	400	99/6	20	6,600	USA	Do.
Do	Barge 417	400	99/6	20	6,600	USA	Do.
Do	Barge 419	400	99/6	20	6,600	USA	Do.
Do	Barge 420	400	99/6	20	6,600	USA	Do.
Do	Lanai	400	99/6	25	8,000	USA	Beth., SF/1976.
Do	Molokai	400	99/6	25	8,000	USA	Do.
Do	Barge 450-2	400	99/6	25	8,000	USA	Do.
Do	Barge 450-3	400	99/6	25	8,000	USA	Do.
Do	Barge 450-4	400	99/6	25	8,000	USA	Do.
Do	Barge 450-6	400	99/6	25	8,000	USA	FMC, Portland/1981.
Do	Barge 450-7	400	99/6	25	8,000	USA	Do.
Do	Barge 450-8	400	99/6	25	8,000	USA	Beth., SF/1981.
Do	Barge 450-9	400	99/6	25	8,000	USA	Do.
Do	Barge 450-10	400	99/6	25	8,000	USA	FMC, Portland/1981.
Do	Barge 450-11	400	99/6	25	8,000	USA	FMC, Portland/1982.
Do	Barge 500-1	400	105	20	8,500	USA	Do.
Do	Barge 500-2	400	105	20	8,500	USA	FMC, Portland/1983.
Do	Barge 500-3	400	105	20	8,500	USA	Do.
Do	Barge 500-4	400	105	20	8,500	USA	Do.

Public comment is invited on the completeness and accuracy of the foregoing inventory, particularly information as to coastwise qualification, and on the proposal to include vessels capable of being readily converted to launch barges with identification of any such vessels in addition to those listed above. All such comments should be filed in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 by 5:30 p.m. on July 15, 1988.

By Order of the Maritime Administrator.

Date: June 23, 1988.

James E. Saari,

Secretary, Maritime Subsidy Board.

[FR Doc. 88-14553 Filed 6-24-88; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 123
Monday, June 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

June 22, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: June 29, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 880th Meeting—June 29, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 96-012, Pacific Gas and Electric Company
CAP-2.
Project No. 619-009, Pacific Gas and Electric Company
CAP-3.
Docket No. UL88-23-001, City of Seattle, Washington
CAP-4.
Project No. 9874-001, Michiana Hydro Electric Power Corporation
CAP-5.
Project No. 9690-003, Orange and Rockland Utilities, Inc.
Project No. 9754-002, Rio Hydroelectric Associates, Inc.
CAP-6.
Project Nos. 7791-003, 8235-003 and 8915-002, Hydroelectric Development, Inc.
CAP-7.
Project No. 9951-001, Adirondack Hydro Development Corporation
CAP-8.
Project Nos. 9009-001 and 002, Pan Pacific Hydro, Inc.
CAP-9.
Omitted
CAP-10.
Project No. 10226-001, Town of Summersville, West Virginia
Project No. 10227-001, City of Manassas, Virginia
CAP-11.
Project No. 2803-001, Pennsylvania Hydroelectric Development Corporation
CAP-12.
Docket No. ER88-303-001, Bangor Hydro-Electric Company
CAP-13.
Docket Nos. ER86-368-018, ER86-368-005, ER86-638-001, ER86-638-002 and ER86-709-002, El Paso Electric Company
CAP-14.
Docket No. ER88-316-001, Commonwealth Edison Company
CAP-15.
Docket Nos. ER85-204-008 and ER85-603-006, South Carolina Generating Company, Inc.
CAP-16.
Docket No. ER83-657-003, Houston Lighting and Power Company
CAP-17.
Docket No. ER88-330-000, Idaho Power Company
CAP-18.
Docket No. ER88-151-000, Canal Electric Company
CAP-19.
Docket No. ER86-570-002, Idaho Power Company
Docket Nos. EL87-8-001 and EL87-8-003, Pacific Power and Light Company
CAP-20.
Docket No. QF87-548-000, Tarkington Independent School District
CAP-21.
Docket No. RE81-35-002, Boston Edison Company
CAP-22.
Docket No. EL88-14-000, James E. O'Neil, Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities and Carriers v. Montaup Electric Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM87-24-000, Procedures for the Assessment of Civil Penalties under section 31 of the Federal Power Act
CAM-2.
Docket No. RM87-13-000, Implementation of section 8 of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants with Projects at a New Dam or Diversion Seeking Benefits under the Public Utility Regulatory Policies Act of 1978
CAM-3.
Docket No. RM87-15-000, Regulations Implementing the National Environmental Policy Act of 1969
CAM-4.
Docket No. RM88-23-000, Deletion of §§ 2.51, 2.100 and 2.101 of the Commission's Regulations
CAM-5.
Docket No. IN86-5-009, Mobil Exploration and Producing North America, Inc.
CAM-6.
Docket No. GP87-72-000, West Virginia Department of Energy, Oil and Gas Division

Consent Gas Agenda

CAG-1.
Docket Nos. TQ88-2-9-000 and TM88-1-9-000, Tennessee Gas Pipeline Company
CAG-2.
Docket No. RP88-187-000, Columbia Gas Transmission Corporation
CAG-3.
Docket No. RP88-184-000, El Paso Natural Gas Company
CAG-4.
Omitted
CAG-5.
Docket Nos. RP88-150-000, 001 and TA88-5-42-000, Transwestern Pipeline Company
CAG-6.
Docket Nos. TA88-4-33-000 and RP88-136-000, El Paso Natural Gas Company
CAG-7.
Docket No. TA88-3-8-000, South Georgia Natural Gas Company
CAG-8.
Docket Nos. RP88-140-001 and TQ88-2-5-000, Midwestern Gas Transmission Company
CAG-9.
Docket No. TQ88-2-37-000, Northwest Pipeline Corporation
CAG-10.
Docket Nos. TM88-3-20-000 and RP88-188-000, Algonquin Gas Transmission Company
CAG-11.
Docket No. RP88-178-000, Algonquin Gas Transmission Company
CAG-12.
Omitted
CAG-13.
Docket Nos. RP88-165-000 and TQ88-1-4-000, Granite State Gas Transmission, Inc.
CAG-14.
Docket No. RP88-180-000, Trunkline Gas Company
CAG-15.
Docket No. RP88-44-004, El Paso Natural Gas Company
CAG-16.
Docket No. RP88-181-000, Sea Robin Pipeline Company
CAG-17.
Docket No. RP88-95-001, Canyon Creek Compression Company
CAG-18.
Docket No. RP87-86-003, KN Energy, Inc.
CAG-19.
Omitted
CAG-20.
Docket No. RP86-35-011, Great Lakes Gas Transmission Company
CAG-21.
Omitted
CAG-22.
Docket No. RP85-193-004, North Penn Gas Company

CAG-23.
Docket Nos. RP87-78-033, RP87-78-034 and CP88-258-000, Penn-York Energy Corporation
CAG-24.
Docket No. ST88-2205-000, Llano, Inc.
CAG-25.
Docket No. TA88-4-29-001, Transcontinental Gas Pipe Line Corporation
CAG-26.
Docket Nos. RP88-47-003 and RP88-47-004, Northwest Pipeline Corporation
CAG-27.
Docket No. RP88-112-001, Inter-City Minnesota Pipelines Ltd., Inc.
CAG-28.
Docket Nos. RP88-93-004 and RP88-40-002, Questar Pipeline Company
CAG-29.
Docket No. TA88-2-8-002, South Georgia Natural Gas Company
CAG-30.
Docket Nos. RP88-95-000, RP88-95-001 and RP88-95-002, Canyon Creek Compression Company
CAG-31.
Docket Nos. RP88-14-002 and TA88-1-7-005, South Carolina Pipeline Corporation v. Southern Natural Gas Company
CAG-32.
Docket Nos. RP86-32-009, RP86-68-009, RP86-155-006, RP87-33-009, TA87-3-43-002 and 004 and TA88-1-43-003, Williams Natural Gas Company
CAG-33.
Docket No. RP88-27-007, United Gas Pipe Line Company
CAG-34.
Docket Nos. ST85-2-002, ST85-468-002, ST85-471-002, ST85-475-002, ST85-647-002, ST85-621-002, ST85-1145-002, ST85-513-002, ST85-624-002 and ST85-708-002, Gulf South Pipeline Company
CAG-35.
Docket Nos. TA88-1-22-000 and TA88-1-22-001, CNG Transmission Corporation
CAG-36.
Docket Nos. RP86-165-002 through -004 and RP86-166-001 through -003, Kentucky West Virginia Gas Company
CAG-37.
Docket No. RP88-71-001, El Paso Natural Gas Company
CAG-38.
Docket No. RP87-26-028, Tennessee Gas Pipeline Company
CAG-39.
Docket Nos. RP88-68-003 and RP87-7-033, Transcontinental Gas Pipe Line Corporation
CAG-40.
Omitted
CAG-41.
Omitted
CAG-42.
Docket No. RP88-130-001, Western Transmission Corporation
CAG-43.
Docket No. ST79-23-005, Louisiana Intrastate Gas Corporation
CAG-44.
Docket No. ST81-260-011, Enogex, Inc.
CAG-45.
Omitted
CAG-46.
Docket No. TA84-1-53-018, KN Energy, Inc.
CAG-47.
Omitted
CAG-48.
Docket No. RI88-27-000, Tenneco Oil Company
CAG-49.
Docket Nos. CI73-334-001 and CI73-476-001, Mobil Exploration and Producing North America, Inc.
Docket Nos. CI74-610-001 and CI80-133-002, Mobil Oil Exploration and Producing Southeast, Inc. v. ANR Pipeline Company
CAG-50.
Docket No. CI88-381-001, Maxus Exploration Company
CAG-51.
Omitted
CAG-52.
Docket No. CI88-253-000, MM Resources, Inc.
CAG-53.
Docket No. CI88-59-000, Conoco, Inc., Cities Service Oil and Gas Corporation, Texaco Producing, Inc. and AGIP Petroleum Company, Inc.
CAG-54.
Docket No. CP88-3289-001, Transcontinental Gas Pipe Line Corporation
CAG-55.
Docket No. CP88-12-001, Columbia Gas Transmission Corporation
CAG-56.
Docket No. CP88-207-001, Panhandle Eastern Pipe Line Company
CAG-57.
Docket No. CP88-8-001, Great Lakes Gas Transmission Company
CAG-58.
Docket No. RP88-13-001, James River Corporation of Nevada v. Northwest Pipeline Corporation
Docket Nos. CP88-111-001 and CP87-328-002, Northwest Pipeline Corporation
CAG-59.
Omitted
CAG-60.
Docket No. CP84-183-004, Transcontinental Gas Pipe Line Corporation
CAG-61.
Docket No. CP88-146-001, Placid Oil Company
CAG-62.
Docket No. CP87-175-000, Texas Eastern Transmission Corporation
CAG-63.
Docket Nos. CP84-441-020 and CP80-65-060, Tennessee Gas Pipeline Company
CAG-64.
Omitted
CAG-65.
Omitted
CAG-66.
Docket No. CP87-490-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-67.
Docket No. CP68-245-001, Tennessee Gas Pipeline Company
CAG-68.
Docket No. CP88-282-000, South Georgia Natural Gas Company
CAG-69.
Docket No. CP87-445-000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-70.
Docket No. CP87-492-000, Algonquin Gas Transmission Company
CAG-71.
Docket No. CP88-147-000, MIGC, Inc.
CAG-72.
Docket No. CP88-283-000, Canyon Creek Compression Company
CAG-73.
Omitted
CAG-74.
Docket No. CP87-524-000, Texas Gas Transmission Corporation
CAG-75.
Docket No. CP88-205-000, Williams Natural Gas Company
CAG-76.
Omitted
CAG-77.
Omitted
CAG-78.
Docket No. CP73-184-002, Colorado Interstate Gas Company, a Division of Colorado Interstate Company
Docket No. CI73-485-002, CIG Exploration, Inc.
CAG-79.
Docket No. IN83-1-000, Amoco Production Company, Monsanto Oil Company, Shell Oil Company, Kirby Exploration Company, Champlin Petroleum Company and Exxon Corporation

I. Licensed Project Matters

P-1.
Project No. 2959-000, City of Seattle, Washington
Project No. 5305-001, Western Power, Inc.
Project No. 5853-000, Western Hydro Electric, Inc.
Project Nos. 6220-001 and 6221-000, Weyerhauser Company
Project No. 6310-000, Gull Industries, Inc. Order addressing the stayed licenses and license applications examined in the Final Environmental Impact Statement prepared for the Snohomish River Basin, Washington.
P-2.
Project No. 1250-001, City of Pasadena Water and Power Department. Order addressing the application for new license filed by the City of Pasadena, California.

II. Electric Rate Matters

ER-1
Docket No. ER88-302-000, Pacific Gas aand Electric Company. Order determining whether the provisions of an interconnection agreement relating to reserved transmission service, coordination service control area service and other charges are just and reasonable.
ER-2.
Docket No. ER84-348-001, American Electric Power Service Corporation. Opinion and order determining whether the terms and conditions of the transmission equalization agreement are reasonable.

Miscellaneous Agenda

M-1.
Reserved

M-2.
Reserved
M-3.
Docket No. RM87-16-001, Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts. Order on requests for rehearing and clarification.
M-4.
Docket Nos. CI87-548-001, CI87-558-001, CI88-157-001 and CI88-154-001, Conoco Inc. Order on rehearing regarding limited-term certificates and permanent abandonment.
M-5.
Docket No. CI84-10-007, Felmont Oil Corporation and Essex Offshore, Inc. Order on rehearing regarding validity of abandonment policy.

I. Pipeline Rate Matters

RP-1.
Docket No. IS87-14-000, *et al.*, Buckeye Pipe Line Company. Interlocutory appeals concerning confidential treatment of oil pipeline cost data produced under protective order.
RP-2.
Omitted

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
(A) Docket No. CP87-451-007, Northeast U.S. Pipeline Projects
Docket Nos. CP85-294-000, CP85-190-000, CP85-190-001 and CP85-190-002, Transcontinental Gas Pipe Line Corporation. Order on additional discrete projects.
(B) Docket Nos. CP87-131-000 and CP87-131-001, Tennessee Gas Pipeline Company. Order on Phase I facilities for Niagara Spur Expansion.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14528 Filed 6-23-88; 2:51 pm]
BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:13 p.m. on Tuesday, June 21, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,053 (Amendment)
Knoxville Consolidated Office, Knoxville, Tennessee

Requests for assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Matters relating to the possible closing of certain insured banks.

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: June 22, 1988.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 88-14498 Filed 6-23-88; 11:15 am]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:12 a.m. on Wednesday, June 22, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) A request for assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (2) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: June 23, 1988.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 88-14539 Filed 6-23-88; 3:07 pm]
BILLING CODE 6714-01-M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 30, 1988, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposed Disability Regulations.
(2) Setting of FTEs and Organizational Alignment.
(3) Work Stoppage—Springfield Terminal Railway Company—November 12, 1987.
(4) Board Order 75-1, Restating the Administrative Organization and Functions of the Board.
(5) Occupational Disability Standards.
(6) Registration for Unemployment Benefits by Mail.
(7) Benefit-Cost Analysis for the Initial Claims Initiative (ICI) and Employment Data Maintenance (EDM) Systems.
(8) Reclassification of the Tucson district office to a full-time base point and the Phoenix base point to a district office.
(9) Proposed Changes in the RUIA Regulations.

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disabled Widow's Annuity, Barbara A. Rome.
(B) Appeal from Referee's Denial of Disability Annuity, John J. Banning.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: June 21, 1988.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 88-14449 Filed 6-22-88; 5:05 pm]
BILLING CODE 7905-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1404]

TIME AND DATE: 8 a.m. (EDT), June 29, 1988.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 8, 1988.

Action Items

A—Budget and Financing

A1. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Condenser Circulating Water Motor and Pump—Inspection and Rebuild Unit 2 at Browns Ferry Nuclear Plant.

B—Purchase Awards

B1. Invitation AA-06367A—Design, Furnish, and Install a Posttensioning System at Great Falls Dam.

B2. Amendment to Contracts 68P-84-T1 and 71P65-99-1 with Westinghouse Electric Corporation for Fuel Supply for Sequoyah and Watts Bar Nuclear Plants.

D—Personnel Actions

D1. Supplement to Personal Services Contract No. TV-65787A with Merz and McLellan, Consulting Engineers, Newcastle Upon Tyne, England, for Performance of Source Inspection Services When Required on TVA-Purchased Equipment Being Manufactured in Europe, Requested by Office of Nuclear Power.

D2. Supplement to Personal Services Contract No. TV-70519A with S.G. Pinney & Associates, Inc., Port St. Lucie, Florida, for Engineering and Technical Support Related to Nuclear Protective Coating During Modifications to TVA Nuclear Plants, Requested by office of Nuclear Power.

E—Real Property Transactions

E1. Exchange of Surface Rights Required for the Completion of Reclamation Program at the Fabius Coal Mines Located in Jackson County, Alabama, Involving up to a Maximum of 700 Acres.

E2. Sale of Permanent Easement to United Cities Gas Company Affecting 0.05 Acre of Tellico Reservoir Land in Loudon County, Tennessee, for the Construction, Operation, and Maintenance of a Natural Gas Metering and Regulating Facility.

E3. Filing of Condemnation Cases.

F—Unclassified

F1. Supplement to Contract No. TV-67999A with City of Hardin, Kentucky, Covering Arrangements for Performance by TVA of Certain Monitoring Activities Related to the City's Artificial Wetlands Wastewater Treatment System.

F2. Contract No. TV-74750A Between TVA and Alabama Department of Economic and Community Affairs, Office of Employment and Training, to Continue a Training Program for Unemployed Craftspersons.

F3. Contract No. TV-74866A Among State of Alabama Community Colleges in Gadsden, The University of Alabama, the City of Gadsden, and TVA Under Which the Parties will Cooperate to Continue a Project to Establish a Joint Research and Training Center.

F4. Contract No. TV-74867A with Walker College at Jasper, Alabama, to Establish a Rural Industrial Incubator Center.

F5. Supplement to Interagency Agreement (TV-59928A) Between TVA and Agency for International Development Covering Arrangements for TVA's Assistance in the Bioenergy Program.

F6. Changes in Approval Authorities in Various TVA Codes.

F7. Revision to TVA Code Relating to Designation of Employees to Administer Affidavits and Oaths.

F8. Proposed TVA Code Relating to Accounting—Payment Certification.

F9. Changes in Composition of List of Agency Officials Authorized to Certify Vouchers.

*F10. Recommendation for a Temporary Increase in the Severance Pay Rate for Annual Employees.

*F11. Proposed Change to the Rules and Regulations of the Retirement System.

F12. Proposed Changes to the Terms and Conditions of the Voluntary Retirement Savings and Investment Plan for Members of the TVA Retirement System.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: June 22, 1988.

W.F. Willis,

General Manager.

[FR Doc. 88-14494 Filed 6-23-88; 10:59 am]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 53, No. 123
Monday, June 27, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 943-08-4220-10; CA 17849]

Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In notice document 88-11820 appearing on page 19055 in the issue of Thursday, May 26, 1988, make the following correction:

In the second column, under T. 11 N., R. 2 W., in Sec. 10, the second line should read "S½S½S¼".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 505

Labor Standards on Projects or Productions Assisted by Grants From the National Endowments for the Arts and Humanities

Correction

In rule document 88-13931 beginning on page 23540 in the issue of Wednesday, June 22, 1988, make the following corrections:

1. On page 23540, in the second column, in the first complete paragraph, in the 2nd and 18th lines, "of" should read "on".

2. On page 23541, in the first column, in the second complete paragraph, in the third line, "my" should read "by".

§ 505.5 [Corrected]

3. On page 23543, in the third column, in § 505.5(b)(1)(iv), in the second line, "weekly" was misspelled.

BILLING CODE 1505-01-D

federal register

Monday
June 27, 1988

Part II

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 361 and 365

The State Vocational Rehabilitation Services Program and the State Independent Living Rehabilitation Services Program; Notice of Intent To Regulate

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 361 and 365

The State Vocational Rehabilitation Services Program and the State Independent Living Rehabilitation Services Program

AGENCY: Department of Education.

ACTION: Notice of intent to regulate.

SUMMARY: The Secretary of Education provides notice that the Department intends to amend the regulations implementing the State Vocational Rehabilitation Services Program and the State Independent Living Rehabilitation Services Program authorized under Titles I and VII, Part A of the Rehabilitation Act of 1973, as amended, in order to reduce regulatory burden in accordance with the Department's Regulatory Program.

DATES: All comments, suggestions, or recommendations in response to this notice must be received on or before August 26, 1988.

ADDRESSES: All comments concerning this notice should be addressed to Mr. Mark Shoob, Rehabilitation Services Administration, Department of Education, Mary E. Switzer Building, Room 3036, 330 C Street, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Shoob, telephone (202) 732-1402.

SUPPLEMENTARY INFORMATION: The revision of Rehabilitation Services Administration regulations in 34 CFR Part 365 is included in the Department's Regulatory Program for 1985, 1987, and 1988. These regulations incorporate by cross-reference many regulations in 34 CFR Part 361. Both parts contain numerous requirements that are authorized but not mandated by statute. Some of the provisions are written in a verbose and unclear way. The purpose of regulatory revision would be to improve the administration and effectiveness of these two programs by (1) removing or amending non-statutory requirements if they impose burdens on grantees that outweigh their programmatic usefulness or beneficial effects, (2) placing discretion at the State and local level if practicable and appropriate, and (3) clarifying essential requirements that are worded in an overly prescriptive and confusing way.

The Department is publishing this notice of intent to regulate to give interested parties an opportunity to consider the types of burden reduction that would most improve program efficiency and effectiveness and to suggest particular regulatory provisions that warrant removal or revision, prior to the publication of specific proposed regulations. Examples of the kinds of regulatory burdens that would be addressed in a notice of proposed rulemaking are: (1) Regulations that impose paperwork and reporting requirements that are not compelled by statute and may be onerous, such as the requirement that State plans include charts showing the organizational structure of the State vocational rehabilitation agency and the requirement that written agreements be entered into if State vocational rehabilitation agencies participate in cooperative programs or joint projects with other State agencies; (2) regulations that impair State administrative discretion by requiring adherence to specific Federal standards rather than simply requiring States to establish standards or promulgate necessary regulations; and (3) regulations that may need simplification and clarification, such as the definition of "state and local funds" and the scope of allowable maintenance payments under the vocational rehabilitation program.

(Authority: 29 U.S.C. 711(c) and 796 a-d-1)

Dated: June 21, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-14337 Filed 6-24-88; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
June 27. 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 141, and 143

Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules; Notice of Public Hearings

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 141, and 143

[Docket No. 25627]

Regulatory Review of Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearings.

SUMMARY: This notice announces two public hearings to solicit information from the public for a regulatory review of aircraft pilot and flight instructor, pilot school, and ground instructor certification rules. Specific topics to be addressed during the hearings appear in this notice under the section entitled "Topics for Discussion." Topics not listed in this notice will be considered if there is sufficient interest and sufficient time available for consideration of the topic. The information and views learned at these hearings will be used by the FAA to review the existing regulations and to explore regulatory alternatives for issues raised during the hearings.

DATES: The public hearings will be held on July 26 and July 27, 1988 in Washington, DC and on August 3 and August 4, 1988 in Oshkosh, Wisconsin.

ADDRESSES: The public hearings will be held at the following locations:

(1) July 26 and 27, 1988, from 9:00 a.m. to 3:00 p.m., at the Federal Aviation Administration Building, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC 20591. Registration will begin at 8:00 a.m. on each day of the hearing.

(2) August 3 and 4, 1988, from 7:00 p.m. to 10:00 p.m., at the Federal Aviation Administration Building, Wittman Field, Oshkosh, Wisconsin 54901. Registration will begin at 6:00 p.m. on each day of the hearing.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at a hearing or questions about the logistics of the hearings should be directed to Linda Williams, Safety Regulations Division (APR-200), Office of Program and Regulations Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9685.

Questions concerning the subject matter of the hearings should be directed to John Lynch, or Edna French (Manager), Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Participation at a Hearing

Each person who wishes to present a statement at a hearing should direct the request, and submit a copy of any written material to be presented orally during a hearing, to the person listed in the section entitled "**FOR FURTHER INFORMATION CONTACT.**" A request to present a statement and a copy of written material to be presented orally during the first hearing must be received by the FAA on or before July 15, 1988. A request to present a statement and a copy of written material to be presented orally during the second hearing must be received by the FAA on or before July 19, 1988. Each person making a request to present a statement and submitting written material should indicate which hearing they wish to attend and should provide an estimate of the time needed for the oral presentation. Requests to present a statement that are received after the deadlines contained in this notice will be accepted if there is time available during the hearing; however, the names of those individuals may not appear on the written agenda. Following receipt of material to be presented at a hearing, the FAA will develop an agenda that will be available at the hearing. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Persons who are unable to attend the hearings may mail their comments, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-204), Docket No. 25627, 800 Independence Avenue SW., Washington, DC 20591. Persons unable to attend the hearings also may deliver their comments, in duplicate, to the Federal Aviation Administration, Rules Docket, Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments that are mailed or delivered to the FAA must be marked "Docket No. 25627." Comments may be inspected at Room 915G between 8:30 a.m. and 5:00 p.m., Monday through Friday (excluding Federal holidays).

Background

In 1962, Part 20 of the Civil Air Regulations, entitled "Pilot and Instructor Certificates," was recodified as Part 61 of the Federal Aviation Regulations, "Certification: Pilots and Flight Instructors" (27 FR 7955; August 10, 1962). The last major revision of Part 61 was completed in 1973 (38 FR 3156; February 1, 1973).

"Airman Agency Certificates," Part 50 of the Civil Air Regulations, was recodified as Part 141, "Pilot Schools" (27 FR 6656; July 13, 1962). The last major revision to Part 141 was completed in 1974 (39 FR 20146; June 6, 1974); since then, Part 141 has been amended only once (47 FR 46064; October 14, 1982).

The rules pertaining to ground instructors, Part 51 of the Civil Air Regulations, were recodified as Part 143, "Ground Instructors" (27 FR 6661; July 13, 1962). Four amendments of Part 143 have been adopted; the last of these amendments was promulgated in 1971 (36 FR 2864; February 11, 1971). Since 1973, 19 amendments to Part 61 have been promulgated to meet the needs of the aviation industry in an increasingly complex and demanding environment. In addition, approximately 3,000 individuals and organizations have filed petitions for exemption with the FAA since 1974. The FAA also has received numerous petitions for rulemaking and letters from the public regarding the regulations contained in Part 61. The FAA believes that the great number of public requests, together with technological advances in aircraft, training equipment, and air traffic control procedures, necessitate a review of Part 61 and, because of their dependent nature, a review of Part 141 and Part 143.

These hearings constitute the first of two phases to review the pilot and flight instructor, pilot school, and ground instructor certification rules. Information obtained at the hearings will enable the FAA to evaluate the existing regulations in terms of policy and safety considerations that have surfaced since the last major regulatory review. The first phase of the regulatory review process will focus on immediate concerns, National Transportation Safety Board (NTSB) recommendations to the FAA, the issues in past petitions for rulemaking, and requests for exemption received from the public. After the public hearings, the FAA will begin a regulatory review that will include a major research effort by the FAA to determine and establish certification standards commensurate with long-range regulatory needs. As part of the regulatory review, the FAA intends to conduct two analyses. The data and factual information developed in the first analysis will be used to identify pilot and instructor certification tasks and the underlying knowledge, skills, and abilities necessary to operate

different categories, classes, and types of aircraft in today's environment. The objective of the first analysis is to support FAA decision-making concerning the following subjects:

1. Evaluation of the rules of Parts 61, 141, 143, and revision of the rules, if appropriate.

2. Definition of written and performance testing requirements for certificates and ratings issued by the FAA.

3. Guidance to the aviation industry in developing pilot and instructor training programs.

Data and information gained from the first analysis will be placed in the public docket and be available to the public and the aviation industry. An action plan, which describes, in detail, the methodology to be used by the FAA during the first analysis, has been placed in Docket No. 25627. Any person may examine the docket at the Rules Docket, Federal Aviation Administration, Room 915G, 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 5:00 p.m., Monday through Friday (excluding Federal holidays).

The data and information developed in the second analysis will be used by the FAA to identify performance requirements, human factor elements, and training requirements for professional or air carrier flight crews through the year 2000 and beyond. The FAA currently is developing an action plan for the second analysis. The FAA will include the plan in the docket so that it will be available to all interested persons.

The FAA believes that the two-phase regulatory review would provide a cooperative effort between the FAA and the aviation community to address the immediate and long-term needs of the aviation community at all levels. The FAA anticipates that the public hearings and the regulatory review could affect significantly the future of pilot and instructor training and certification in the United States.

Topics for Discussion

The FAA requests the participation of all interested persons, and the identification of data, literature, statistics, research papers, or other documents, available in the public sector, that may be relevant to the issues involved in pilot and flight instructor, pilot school, and ground instructor requirements and training. Public participation would allow the FAA to consider thoroughly the topics specifically contained in this notice or raised during the regulatory review and would provide a valid and reliable basis for regulatory review of the regulations. All comments will be reviewed and considered in any future rulemaking proceedings by the FAA regarding Parts 61, 141, or 143.

Participants in the public hearings are invited to express views and to make recommendations for regulatory changes. The issues and topics for discussion have been identified on the basis of regulatory amendments previously adopted by the FAA, petitions for exemption, letters, petitions for rulemaking, NTSB recommendations, and FAA evaluations of training and certification rules.

Participants also should address any economic consequences (e.g., implementation costs, potential savings) of the views or changes that they recommend. The FAA encourages those persons submitting comments to include any source of supporting data that may be applicable to the views or recommendations.

Although the FAA has considerable data on many of the recommendations and questions listed below, any additional data that the public may have on these recommendations and questions is requested. The FAA invites comment on the following specific topics.

1. NTSB Recommendations

a. NTSB Recommendation A-78-43: Recommendation to amend certain sections of Parts 61 and 141 to incorporate those ground and flight training items listed in FAA Report No. FAA-RD-77-26, "General Aviation Pilot Stall Awareness Training Study."

b. NTSB Recommendation A-79-96: Recommendation to amend § 61.57 to require a person who serves as pilot in command of a multiengine aircraft to have successfully completed a flight review in that class of aircraft within the preceding 24-calendar months.

c. NTSB Recommendation A-79-97: Recommendation to amend § 61.57 to require a person who serves as pilot in command of a multiengine aircraft to successfully demonstrate those multiengine flight maneuvers listed in the appropriate practical test guide (with special emphasis on those flight maneuvers relating to power loss) during the flight review recommended by NTSB Recommendation A-79-96.

d. NTSB Recommendation A-80-25: Recommendation to amend § 61.57(c) by adding provisions that establish increased currency standards for a person who serves as pilot in command of tail-configured airplanes

e. NTSB Recommendation A-82-127: Recommendation to amend Parts 61 and 141 by establishing a minimum curriculum for those schools that conduct initial pilot qualification training in turbojet airplanes. The NTSB recommended that this curriculum establish minimum training in aerodynamics and meteorological and physiological aspects of high performance, high altitude flight.

f. NTSB Recommendation A-82-128: Recommendation to require an applicant seeking an initial type rating in a turbojet airplane to have completed an FAA-approved training curriculum which establishes minimum training hours.

g. NTSB Recommendation A-82-129: Recommendation to require applicants seeking type ratings in turbojet airplanes to successfully demonstrate pilot competency in handling characteristics of high altitude flight at airspeed ranges compatible with the specific flight envelope for that airplane.

2. Terminal Control Area (TCA) Task Force Recommendation No. 24

Recommendation to revise Part 61 to require flight instructors to report to the FAA the completion of all biennial flight reviews.

3. Addition or Deletion of Pilot and Instructor Certificates and Ratings

a. What additional pilot, flight instructor, and ground instructor certificates and ratings (e.g., powered/self launching glider ratings) are needed?

b. Which pilot, flight instructor, and ground instructor certificates or ratings should the FAA consider to be obsolete or unnecessary?

4. Type Rating Requirements

a. What changes should the FAA consider to the type rating certification requirements of Part 61?

b. What changes should the FAA consider on the issue of when a type rating is required?

c. What changes should the FAA consider to improve the pilot-in-command proficiency requirements of § 61.58 and the second-in-command proficiency requirements of § 61.55?

5. Annual Check and Recency of Experience Requirements

a. What changes should the FAA consider concerning the biennial flight review requirements of Part 61?

b. Should the FAA establish additional criteria concerning recency of experience requirements?

6. Minimum Certification Requirements

a. What changes should the FAA consider to improve the pilot and instructor eligibility standards?

b. Should the FAA establish a minimum age eligibility standard for student pilots to log flight time toward a pilot certificate?

c. What experience requirements are appropriate for flight instructors providing instruction to persons applying for a flight instructor certificate?

d. Should applicants for a flight instructor certificate be required to demonstrate spins on flight tests (in the case of airplanes) and autorotations (in the case of helicopters)? If so, what is the justification for establishing these additional requirements?

7. Pilot and Instructor Privileges and Limitations

a. What changes are needed concerning pilot and instructor privileges and limitations?

b. Should the FAA consider expanding some pilot and instructor privileges and limitations? If so, what privileges and limitations should be considered?

c. What changes to the ground instructor ratings and privileges are necessary and appropriate?

8. Military Pilots and Foreign Pilots

a. What changes should the FAA consider concerning FAA certificates issued to rated military pilots or to former rated military pilots on the basis of military pilot qualifications and experience?

b. What additional safety considerations should the FAA address concerning FAA pilot certificates issued to foreign pilots who do not understand or speak English?

9. Flight and Ground Instructor Endorsements and Recordkeeping

a. What revisions should the FAA consider to the written test and flight test prerequisites of Part 61?

b. What changes are appropriate regarding flight instructor endorsements for student pilot solo flights?

c. What changes are necessary concerning flight instructor recordkeeping requirements?

d. Should the regulations allow flight instructors to place limited endorsements on student cross-country flights (e.g., limited endorsements concerning weather minimums, wind limitations, or specified time frames for commencement or completion of a trip)?

e. What changes are appropriate regarding the amount of flight instruction that an instructor may give in a 24-hour period (including instruction given in a simulator or training device)?

10. Schools Certificated Under Part 141

a. Are there alternatives to the "pass-rate" percentage requirements of § 141.5(b) used to determine the quality of instruction given to students in order for an applicant to receive approved pilot school status?

b. Are there alternatives to the "pass-rate" percentage requirements of § 141.63(b)(2) used to measure and ensure the quality of instruction given to students by a pilot school in order for the school to retain examining authority status?

c. Are there alternatives to the "pass-rate" percentage requirements of § 141.83(a) used to measure and ensure the quality of instruction given to students by a pilot school in order for the school to retain approved pilot school status?

d. What measures can be developed to ensure that Part 141-approved curricula and training course outlines evolve to meet changing training and regulatory needs?

e. What changes are appropriate for the chief flight instructor or the assistant chief flight instructor with respect to eligibility and currency requirements?

f. What changes are appropriate concerning a chief flight instructor's availability and responsibilities during times when flight instruction is being conducted (including availability and responsibilities during instruction at a satellite base)?

g. What should be required of a chief flight instructor with respect to the designation of assistants to conduct phase and end-of-course flight checks?

h. Which additional certificates and ratings should the FAA allow an approved pilot school to add to the school's examining authority?

i. What are some appropriate limitations and allowances that need to be addressed concerning flight students who transfer between Part-141 approved pilot schools?

j. What alternatives should the FAA consider concerning the rules that relate to the recordkeeping requirements of Part 141?

k. What changes should the FAA consider to the method by which a provisional pilot school progresses to approved pilot school status?

11. Clarification of Terms and Definitions

a. How should the phrase "preflight planning," as it is used in Part 61, be defined?

b. How should the phrases "high performance airplane" and "complex airplane" be defined and what restrictions or privileges are applicable to the operation of those airplanes? For example, should commercial certification requirements be revised to allow the use of airplanes (e.g., turbojet or turboprop airplanes) that are more sophisticated than implied by the current definition of "complex airplane?"

c. What kinds of operations should be covered or excluded by the phrase "compensation or hire?"

In addition to consideration of the issues listed above, the FAA may consider rulemaking action that would eliminate obsolete phrases and sections of the regulations and that would result in minor editorial changes to Parts 61, 141, 143.

Hearing Procedures

The following procedures are established by the FAA to facilitate the hearings:

1. There will be no admission fee or other charge to attend and to participate in the hearings. The hearings will be open to all persons who register on the day of the hearing subject to availability of space in the hearing room. If practicable, the hearings may be accelerated to enable adjournment of the hearing in less time than currently is scheduled for each hearing.

2. Representatives of the FAA will preside over the hearings. A panel of FAA personnel involved in the regulatory review process will be present at each hearing.

3. Each hearing will be recorded by a court reporter. A transcript of the hearings and any material accepted by the hearing panel during the hearing will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

4. The FAA will review and consider all material presented by a participant at a hearing and all comments will be placed in the public docket. Position papers or material presenting views or arguments related to the discussion topics may be accepted at the discretion of the presiding officer. The FAA requests that persons participating in a hearing provide sufficient copies of material to be presented or submitted for distribution to the hearing panel and to other participants at the hearing. The FAA anticipates that a minimum of 25 copies will be needed for distribution.

5. Statements may be made by members of the hearing panel to facilitate discussion of the issues or to clarify issues. Any statement made during the hearing by a member of the

hearing panel is not intended to be, and should not be construed as, a position of the FAA on the regulatory review.

6. The hearings are designed to solicit public views and information on pilot and flight instructor, pilot school, and ground instructor certification rules. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual will not be subject to cross-examination by any other participant; any member of the hearing panel is entitled to ask questions in order to clarify a statement made at a hearing or a statement contained in material submitted by a hearing participant.

Issued in Washington, DC, on June 21, 1988.

Robert L. Goodrich,

Director, Office of Flight Standards.

[FR Doc. 88-14258 Filed 6-24-88; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
June 27, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 105 and 115
Fair Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 105 and 115

[R-88-1195; Docket FR-2012]

Fair Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: HUD is revising its regulations setting forth the procedures to be followed in processing complaints alleging the occurrence of discriminatory housing practices under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968). This rule reorganizes the provisions of Part 105, and adds more specific descriptions of the procedures used to investigate fair housing complaints, to make a determination to resolve matters raised in complaints and to try to eliminate and correct alleged discriminatory housing practices by informal means. In Part 115, HUD has updated a reference to sections of Part 105 which are being revised.

DATE: This rule will become effective on October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Wagner Jackson, Director, Office of Fair Housing Enforcement and section 3 Compliance, Department of Housing and Urban Development, Room 5208, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-6836. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619) directs that the authority and responsibility for administering the Act shall be in the Secretary of Housing and Urban Development.

The Department of Housing and Urban Development published procedural regulations governing its complaint processing under the Act, at 24 CFR Part 105, on December 22, 1971 (36 FR 24458), which have remained essentially unchanged until now.

Since publication of Part 105, several courts, in connection with civil actions brought under the Fair Housing Act, have provided judicial interpretations on the standing of individuals as aggrieved persons to file suit and of the time limitations for filing of civil actions. Further, HUD has adopted policies regarding the investigation of complaints, the conciliation of cases and the referral of matters to the Department of Justice, in addition to those set forth in the published regulations.

In order to clarify procedural requirements for the filing of complaints with the Secretary, to indicate time limitations on the filing of civil actions in cases involving complaints, and to describe fully its policies for processing complaints and attempting to resolve matters, HUD is revising and expanding its complaint procedures regulations.

Although Part 105 is procedural in nature, HUD desired the views of interested persons with respect to the revisions which it is making. Accordingly, HUD published a proposed rule in the **Federal Register** on October 16, 1984 (49 FR 40528), setting forth the proposed revisions and asking for submission of comments by December 17, 1984.

HUD received a total of 17 public comments on the proposal (including several comments received after the due date), plus a comment from HUD's Boston Regional Office (Region I). Of the 17 public comments, four were from city or county fair housing or civil rights agencies, four were from State agencies, and four were from private fair housing or civil rights groups serving metropolitan areas. One comment was submitted by the National Association of Realtors (NAR) and two comments by the Institute of Real Estate Management of NAR. The remaining two comments were from the National Committee Against Discrimination in Housing (NCDH) and the NAACP Legal Defense and Educational Fund (which joins in and supports the NCDH comments).

Seven public commenters explicitly supported the proposed revised regulations in general, with four of the public commenters specifically finding the proposed new regulations to be an improvement over existing provisions. Five other public commenters were basically supportive, with some suggestions for improvement, while four commenters indicated their objection to particular provisions of the proposed new regulations.

I. Subpart A—Purpose and Definitions

Section 105.1 Purpose.

Section 105.1 of the proposed rule was nearly identical in language to the corresponding section of the current regulations. Although no comments addressed this section, HUD has made several technical changes in it. First, a sentence was added to emphasize that, while the Part 105 regulations govern the processing of Fair Housing complaints only, there are other civil rights authorities which may also be applicable in a particular case. Second, HUD added references to section 109 of the Housing and Community Development Act of 1974, which prohibits discrimination in HUD's community development programs. Third, citations have been added to HUD regulations which implement the referenced civil rights authorities.

II. Subpart B—Complaints

Section 105.11 Submission of information.

Section 105.11 provides for the submission of information concerning alleged discriminatory housing practices to the HUD Assistant Secretary for Fair Housing and Equal Opportunity, who has been delegated the Secretary's authority to administer the Fair Housing Act. Paragraph (b) of this section provides for the use of such information for enforcement procedures under other civil rights authorities.

NCDH suggested that HUD clarify that the "standing" requirement for filing a Fair Housing Act complaint under section 810(a) (complaint by an "aggrieved person") does not apply to initiation of appropriate enforcement procedures under § 105.11(b). The procedures referred to in § 105.11(b) are initiated by HUD on the basis of information which may be obtained from any source, not just "aggrieved persons". HUD does not intend that these sources of information be limited by the language of § 105.11(b), which concerns only information disclosed through a Fair Housing Act complaint. In addition, the language of § 105.11(b) is not intended to limit the authority of the Assistant Secretary to accept information from people who are not "aggrieved persons" for the purposes of conducting section 808 studies and activities and making referrals to the Attorney General under sections 813 and 901 of the Fair Housing Act. Although HUD does not believe that the change suggested by NCDH is needed in § 105.11(b), that paragraph has been revised to make it clear that HUD may concurrently initiate compliance reviews under the cited civil rights authorities and to include a reference to section 109 of the Housing and Community Development Act of 1974.

Section 105.12 Complaints to be filed by an aggrieved person.

Section 105.12 provides for the filing of a Fair Housing Act complaint by an "aggrieved person" and contains a definition of that term.

NCDH questioned the inclusion of the phrase, "in the opinion of the Assistant

Secretary", in the first sentence of § 105.12. By including that phrase, HUD did not intend to limit the classes of persons who might constitute "aggrieved persons". The courts have taken a very expansive view of those categories of persons who are considered to be aggrieved persons and who thus have standing to maintain an action under the Fair Housing Act. Such persons would also be aggrieved persons for the purpose of filing a complaint with HUD. Therefore, as suggested by NCDH, the term "aggrieved person" would encompass testers or other persons who receive false information about housing availability, fair housing organizations that claim to be injured by a respondent's discriminatory practices, residents of an apartment complex who are denied the benefits of interracial associations and residents of neighborhoods which have been adversely affected by alleged discriminatory practices. In order to avoid any misinterpretation of § 105.12, the questioned phrase has been removed.

Section 105.13 Persons against whom complaints may be filed.

In the proposed rule, a new § 105.13 was included to indicate that, under the Fair Housing Act, a complaint may be filed against any person alleged to be or have been engaged, or be about to engage, in any discriminatory housing practice. It was also proposed, in paragraph (b) of § 105.13, that any person who directs or controls, or who has the right to direct or control, the conduct of another person be responsible for the discriminatory housing practices of such other person.

The latter provision was based on judicial precedents (cited in the preamble to the proposed rule) that persons involved in the sale, rental or financing of dwellings have a nondelegable duty to assure that all conduct relating to any aspect of the sale, rental or financing of dwellings complies with the Fair Housing Act and that a person who supervises, directs or employs other persons can be legally responsible for actions of such other persons which violate the Fair Housing Act.

Two commenters supported this section as an accurate embodiment of the Fair Housing Act case law, and another praised the insertion in this section of the "concept of nondelegable duty" which has been enunciated in many Fair Housing Act decisions. A State commission recommended that § 105.13(b) be revised to state specifically that complaints may be filed against persons who control or direct other persons who commit discriminatory housing practices.

NAR strenuously objected to adoption of paragraph (b) in the form proposed. NAR contended that the judicial decisions do not establish a rule of absolute liability (without fault) as paragraph (b) would impose. NAR argued that the decided cases focus only on the liability of a broker for conduct of his or her salespersons, but do not mandate absolute liability on the basis of mere right "to direct or control" without reference to instructions, policies, compliance programs and other actions of the principal. The NAR affiliate was also critical of paragraph (b). In response, it is not HUD's intent to impose absolute liability on any principal; the intent, in proposing paragraph (b), was to follow the law enunciated by the courts in recent Fair Housing Act cases with respect to the liability of a principal for acts of an agent. Any defenses that could be raised in court could also be raised by a respondent to a complaint filed with HUD (see discussion of § 105.18). HUD has revised the language of paragraph (b) of § 105.13 to provide that a complaint may be filed against a directing or controlling person with respect to the discriminatory acts of another only if the other person was acting within the scope of his or her authority as employee or agent of the directing or controlling person.

Section 105.14 Where to file complaints

Section 105.14 of the proposed rule provided that complaints may be filed by mail with the Office of Fair Housing and Equal Opportunity in Washington, with any HUD Regional or Field Office, or with any other duly authorized representative of the Assistant Secretary for Fair Housing and Equal Opportunity.

In addition, § 105.16 of the proposed rule would have effected a change from § 105.15 of the current regulations to specify that the Assistant Secretary has authorized State and local agencies administering fair housing laws found by HUD, pursuant to 24 CFR Part 115, to provide substantially equivalent rights and remedies to those available under the Act to receive complaints on behalf of HUD.

One commenter suggested that § 105.14 be revised to make it clear that complaints may be filed by *mail* with any duly authorized representative of the Assistant Secretary, including substantially equivalent agencies. Two others recommended that the provision in § 105.16 which authorizes substantially equivalent agencies to accept fair housing complaints for HUD be moved to § 105.14, for purposes of clarity (or that a cross-reference to § 105.16(a) be added in § 105.14). HUD has made both clarifying changes in § 105.14.

In this final rule, § 105.14 has been substantially revised and split into four paragraphs. Paragraph (a), pertaining to the filing of complaints with HUD, provides for filing either in person or by mail. The listing of HUD Regional and Field Offices referred to in this paragraph has been revised to provide current addresses.

Paragraph (b), a new provision, provides for the telephonic receipt of information to be contained in a complaint. Under this paragraph, information provided by telephone will be reduced to writing on the prescribed complaint form by a HUD employee. At this point, the complaint will be considered to be filed, for purposes of the 180-day limitation on the filing of complaints under section 810(b) of the Fair Housing Act (see discussion of changes made in § 105.17(b), below). The complaint form will then be sent to the aggrieved person for signature and attestation.

Paragraph (c) of § 105.14 specifically provides that Fair Housing Act complaints may also be filed in person or by mail with any substantially equivalent State or local agency. That term is defined to include not only an agency recognized by HUD under 24 CFR Part 115 as administering a substantially equivalent fair housing law but also an agency with which HUD has entered into an agreement to refer complaints to the agency under the "interim referral" provisions of § 115.11. Thus, any reference in Part 105 to a "substantially equivalent State or local agency" would include an agency authorized to accept complaints under an interim referral agreement with HUD. A sentence has also been added to make it clear that complaints filed with any substantially equivalent State or local agency shall be considered to be "dual filed" (i.e., filed both with the agency, under its own law, and with HUD, under the Fair Housing Act).

Paragraph (d) of § 105.14, describing the processing of complaints by HUD, is unchanged in substance from the proposal.

Section 105.15 Contents of complaints.

Proposed § 105.15, specifying the information that should be contained in a complaint, contained no changes from the regulations previously in effect. Nevertheless, NAR recommended adding a provision to § 105.15 requiring

an aggrieved person who is a "tester" to so indicate in the complaint. NAR argued that knowledge of the status of an aggrieved person as a "tester" or bona fide "home seeker" is relevant both to HUD's selection of procedure for processing complaints under Subpart D and to the respondent's ability to identify the basis of the complaint and the potential for conciliation. HUD believes that paragraph (d) of § 105.15, which requires "a concise statement of the facts * * * constituting the alleged discriminatory housing practice", should result in sufficient disclosure to enable the respondent to ascertain the basis of the complaint.

Section 105.16 Form of complaint; amendments.

Section 810(b) of the Fair Housing Act provides that complaints may be reasonably and fairly amended at any time. Consistent with this provision, § 105.16 of the proposed rule stated that amendments to cure technical defects or omissions may be made at any time during the pendency of a complaint and shall be deemed to be made as of the original filing date of the complaint. The proposed section also provided that amendments to a complaint to add other respondents may be made at any time during the pendency of the complaint.

NAR objected to treatment in § 105.16(c) of a failure to identify a respondent as a "technical defect or omission". NAR contended that, at a minimum, amendment to add a respondent should not be permitted after completion of the investigation. NAR further asserted that such amendment should be allowed only as a matter of discretion and not as a matter of "right". The NAR affiliate was concerned that, with no limitation on the number of complaints and amendments that can be filed, a respondent could be forced to spend an undue amount of time monitoring and responding to complaints.

As HUD has previously stated, it does not interpret the Fair Housing Act to impose upon a private individual the obligation of identifying all persons responsible for discriminatory actions at the time of complaint filing. An aggrieved person should have the right to amend a complaint for any reasonable and fair purpose, including the addition of respondents, at any time. HUD also sees no undue burden on respondents resulting from the right of the aggrieved person to amend. Accordingly, the substance of § 105.16(c) has not been changed from the proposed section, although editorial changes have been made.

In addition to the changes made in paragraph (c) of § 105.16, HUD has revised the language of paragraphs (a) and (b) of that section. Material relating to the acceptance of complaints by a substantially equivalent State or local agency has been removed from paragraph (a) of § 105.16, because that subject is now covered by paragraph (c) of the revised § 105.14 (see discussion of § 105.14, above).

In paragraph (b) of § 105.16, the third sentence has been revised to make it clear that any written statement which substantially sets forth the allegations of a discriminatory housing practice under the Fair Housing Act (i.e., meets the requirements of § 105.15), whether received by HUD or by a substantially equivalent State or local agency, shall be accepted by HUD as a Fair Housing Act complaint. It is HUD's view that such a statement will constitute a Fair Housing Act complaint unless there is an indication that the aggrieved person intended not to file with HUD, even if the statement does not specifically refer to the Fair Housing Act and even if it is written on a form for filing a complaint under State or local law.

Section 105.17 Filing of complaints.

HUD has added language to § 105.17(a) to make it clear that a complaint is considered to have been filed with HUD when it is received by HUD or dual filed with HUD through a substantially equivalent State or local agency, if the complaint meets the requirements of §§ 105.15 and 105.16. HUD has also added language to paragraph (b) of § 105.17 to make it clear that information provided by telephone to a HUD office and reduced to writing pursuant to § 105.14(b) will constitute "written information" received by HUD for purposes of meeting the 180-day period for the filing of complaints under section 810(b) of the Fair Housing Act. (Additional changes which HUD has made in § 105.17 (a) and (c) are discussed below).

Sections 105.17(a), 105.45, 105.55 and 105.74. Notices to aggrieved persons.

Section 810(d) of the Fair Housing Act states, in part:

> If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action * * *

As a result of the evolution of the case law, HUD has adopted a policy of notifying aggrieved persons by letter, at the time of complaint receipt or upon HUD reactivation of processing of a case referred to a substantially equivalent State or local agency (see § 105.20 of the current regulations), of the time limits under section 810(d). A similar letter has been sent to aggrieved persons after thirty days of HUD processing of a complaint. These letters advise that the failure to file suit within 60 days of HUD receipt of complaints could result in the loss of the right to file a civil action under section 810(d). These letters also advise aggrieved persons of their right to file a civil action under section 812 of the Fair Housing Act at any time within 180 days of the alleged discriminatory housing practice.

In an attempt to assure that the rights of aggrieved persons to file civil actions under the Fair Housing Act are not compromised in its complaint processing, HUD proposed to incorporate its present administrative practice into the complaint processing regulation. Thus, HUD proposed to add a new § 105.45, advising the public of the specific procedures HUD has adopted to assure that aggrieved persons are aware of the time limitation for the filing of civil actions under the Fair Housing Act.

In addition, § 105.17(a) of the proposed rule (filing of complaints) represented a substantial revision of the section of the regulations describing the issuance of notices (§ 105.16 of the current regulations). Revision of existing notice procedures was also proposed in §§ 105.55 and 105.74.

HUD received several general comments relating to the time needed to process complaints. One commenter, a local fair housing group, wanted HUD to seek the funding necessary to enable it to investigate and conciliate complaints within the 60-day statutory time limit. Another commenter, NCDH, urged HUD to comply with its statutory obligation under section 810(d) to investigate all complaints and make its determinations within the prescribed 30-day period. Accordingly, NCDH recommended adding language to the regulations to require HUD, within 30 days after receiving a complaint, to investigate the complaint and give notice whether it intends to resolve the complaint. Since it is usually not possible, especially with a recalcitrant respondent or in complex pattern-and-practice cases, to investigate a complaint fully within 30 days, HUD is not adopting this recommendation. HUD believes that it can adequately protect an aggrieved person's right to file a civil action by providing timely notice of such right.

One local fair housing group states that the proposed addition of a new

§ 105.45 (notification of right to file civil action) would be a definite improvement over present practices. However, a number of commenters suggested revision of the proposed language in § 105.45.

NCDH and a local fair housing group urged retention of at least a part of the existing regulatory procedure for notices to aggrieved persons. They recommended that, in complex cases where it would be impossible for HUD to process the complaint within the 60-day time limit, the regulation should provide for certification by the Assistant Secretary that a period longer than 30 days is needed to process the complaint. Thus, in cases where the Assistant Secretary so certifies, the procedures outlined in §§ 105.16(a) and 105.34 of the current regulations (in which the 30-day period was deemed to begin with receipt by the aggrieved person of notice from the Assistant Secretary) would continue to apply. However, it was urged that, in such cases, aggrieved persons be given notice (1) that the courts are divided on the issue of when the 30-day period starts to run and (2) that, even where HUD certifies that additional time is required to process the complaint, aggrieved persons may be foreclosed from filing suit under section 810(d) if they do not commence the action within 60 days after filing the complaint.

In *Green* v. *Ten Eyck,* 572 F.2d 1233 (8th Cir. 1978), the current regulations in this area were declared "invalid" by a U.S. Court of Appeals. Although the question of the starting point of the second 30-day period under section 810(d) has not yet been settled, HUD believes that the regulations should be revised to assure that aggrieved persons will not lose their right to bring suit under section 810(d) under the holding in *Green* v. *Ten Eyck.* Accordingly, HUD has not adopted the NCDH recommendation that the prior procedures be retained.

HUD Region I commented that duplicative notices are burdensome, unnecessary and confusing to the aggrieved person. Region I suggested that there be only one letter to the aggrieved person acknowledging receipt of the complaint and notifying him or her of the right to bring suit under sections 810(d) and 812 and the 1866 Act within the applicable time frames. While this suggestion has merit with respect to efficiency, HUD believes that the average aggrieved person, who may not be schooled in the law, would be better protected by the several notices provided for under paragraphs (b), (c) and (d) of § 105.45.

A local civil rights group believes that § 105 45(b) should be changed to provide specifically for notices in referral situations. This commenter recommended that, when a notice of referral is sent out under § 105.20, the aggrieved person should be advised at the same time that there will be an investigation of his or her complaint by the substantially equivalent agency and that, if a negotiated settlement is not reached in that process, or if the proceedings at the substantially equivalent agency do not move with "reasonable promptness", or for other good cause, HUD will reactivate the complaint for further investigation, review and/or conciliation. The aggrieved person should be advised further of the separate right to sue (1) under section 812, within 180 days of the last occurrence of discriminatory conduct alleged in the complaint (and that this right is unrelated to the administrative proceedings), and (2) under section 810(d), between the 31st and 60th day after the complaint is reactivated by HUD. The aggrieved person should also be advised at this time of the additional notices that will be sent under § 105.45(c) and (d).

In response to this comment, language has been added to § 105.20 to require that the notice to the aggrieved person of the referral of the complaint to a State or local fair housing agency include information concerning the right of the aggrieved person to commence a civil action under section 812, within 180 days of the last occurrence of the discriminatory housing practice, or under section 810(d), within 60 days after any reactivation of the complaint by HUD from the State or local agency pursuant to § 105.22. In addition, HUD has made several editorial changes in § 105.20, as described more fully below.

Section 105.17(c) Continuing practice.

Proposed § 105.17(c) provided that, for the purpose of determining whether a complaint is timely filed in a case involving allegations of a continuing unlawful practice, HUD will accept and process any such case where the complaint is filed within 180 days of the last alleged occurrence of that practice. This provision is intended to incorporate specifically in the complaint processing rule the concept of "continuing violations" of the Fair Housing Act. This concept has been used in equal employment opportunity cases under Title VII of the Civil Rights Act of 1964 and was applied by the Supreme Court to a Fair Housing Act case in *Havens Realty Corp.* v. *Coleman,* 455 U.S. 363 (1982).

NCDH and a local fair housing group noted that § 105.17(c) did not define the term "continuing practice". Both commenters recommended that the provision be enlarged to provide examples of what HUD considers to be continuing practices. In response, HUD has restated § 105.17(c) in the language used in the *Havens* opinion. Under the revised paragraph, a complaint which alleges not just one incident of unlawful discriminatory conduct, but an unlawful practice that continues, as manifested in a number of incidents of such conduct, will be timely if filed within 180 days of the last alleged occurrence of that practice.

Section 105.18 Service of complaints; filing of answers.

The NAR affiliate commented that, in §105.18, the seven-day period provided for filing an answer to a complaint is not always sufficient to compile all the facts necessary to respond properly. Since the seven-day period in the proposed section is the same as that provided in the prior regulations and has not proved to be a problem in the past, HUD has not changed it. However, in response to the comment submitted by NAR, HUD has added a sentence to § 105.18 to make it clear that a respondent may assert any defenses in an answer to a complaint which might be available to a defendant in a court of law. In addition, references to "amended complaint" have been added to § 105.18, and minor editorial changes have been made.

III. Subpart C—Referral of Complaints to State and Local Agencies

It was proposed that a new Subpart C, referral of Complaints to State and Local Agencies, be added to Part 105. The proposed rule incorporated the procedures contained in § 105.18 of the prior regulations, but with two modifications. First, in proposed § 105.21, a provision was added to clarify that, even while HUD is taking no further action under section 810 of the Fair Housing Act where a referral to a State or local agency has been made, HUD may investigate matters in a complaint which raise issues cognizable under other civil rights authorities applicable to HUD programs.

Second, in connection with the reactivation of referred complaints, proposed § 105.22 described more fully the basis on which HUD routinely will recall complaints for failure of the State or locality to process matters with reasonable promptness. It was HUD's intention that the reactivation provisions of § 105.22 would apply to any Fair Housing Act complaint originally filed with a substantially equivalent State or local agency pursuant to §§ 105.14(c) and 105.17(a),

as well as to complaints originally filed with HUD.

Section 105.20 Notification and referral to State or local fair housing agencies.

The Massachusetts Commission Against Discrimination and HUD Region I both stated that cases in which a HUD office, division or employee is the respondent should be investigated by HUD and not referred to a substantially equivalent agency. In practice, such cases have been handled by HUD, and HUD agrees that such practice should continue. However, HUD does not consider it necessary to add an exception for such situations to the regulations.

A city agency suggested that the first sentence in § 105.20 be clarified to state that the Assistant Secretary shall "refer" the complaint to the substantially equivalent State or local agency, rather than "notify" the agency of it. HUD has revised that sentence to include both terms, stating that the Assistant Secretary shall both notify the agency of the filing of the complaint and refer the complaint to the agency. Similar revisions have also been made in §§ 105.21 and 105.22. In addition, the first sentence of § 105.20 has been revised to incorporate the term "substantially equivalent State or local agency", which is defined in § 105.14(c), and to eliminate the reference to determinations under Part 115, made redundant by the addition of § 105.14(c).

Section 105.21 Cessation of action on referred complaints.

The Connecticut Commission on Human Rights and Opportunities recommended adding a provision to § 105.21 to require HUD to confer with the referral substantially equivalent agency before taking "other appropriate action" on a complaint which has been referred to the agency. HUD believes that mandating such consultation, regarding matters involving HUD programs respecting which HUD has independent compliance authority, would be inappropriate. Accordingly, this recommendation has not been adopted.

NCDH suggested that language be added to § 105.21 to make it clear that the referral of a complaint by HUD to a substantially equivalent agency does not preclude HUD from providing assistance to that agency in the processing of the complaint, nor does it prevent HUD from sharing information with the Attorney General under Sections 813 and 901. It is HUD's position that referral of a complaint to a substantially equivalent agency will not prevent either action by HUD; since there has been no problem in the past, HUD does not believe that it is necessary to address this are in the regulations.

One commenter found the last clause of § 105.21(a) to be confusing, particularly the reference to "proceedings under this part for the Fair Housing Act". HUD agrees, and the entire reference to suspension of proceedings has been removed from the text of the paragraph. In addition, the caption of the section has been changed to "Cessation of action on referred complaints."

The same commenter suggested that, to avoid confusion paragraph (b) of § 105.21 should refer to "other complaints" or "complaints involving the same parties, under E.O. 11063 and Title VI," instead of "matters in a complaint". HUD does not believe that the proposed language is confusing on the point referred to, and the suggested change has not been made.

HUD Region I suggested adding to § 105.21(b), as "other civil rights authorities", section 504 of the Rehabilitation Act of 1973 and section 109 of the Housing and Community Development Act of 1974. In response, HUD has removed the list of other civil rights authorities from § 105.21(b) and referred the reader to § 105.1(b), to which a reference to section 109 has been added. No reference to section 504 has been included, however, since section 504 does not overlap with the provisions of Title VIII.

In addition, editorial revisions have been made in both paragraphs of § 105.21, including incorporation of the term "substantially equivalent State or local agency".

Section 105.22 Reactivation of referred complaints.

There were several lengthy comments received on proposed § 105.22, which concerns reactivation of referred complaints. Three agency commenters believe that the 60- and 90-day deadlines in paragraph (b)(1) of § 105.22 are too short.

The Massachusetts Commission Against Discrimination characterized those two time limits as "unreasonable and impractical" and stated that they would severely impair the agency's ability to resolve complaints successfully. The Massachusetts Commission would prefer flexible time standards for investigation and conciliation, and it recommended that the existing standard for reactivation of referred complaints be retained.

The Pennsylvania Human Relations Commission, while acknowledging that the proposed language of § 105.22 does not compel reactivation at the expiration of the 60- and 90-day time periods, objected that the regulation would establish an unrealistic benchmark triggering HUD to "consider reactivation". The Pennsylvania Commission strongly urged HUD to reconsider the proposed language in § 105.22 and to permit HUD Regional Offices to interpret "reasonable promptness" in light of each agency's administrative procedures and the particularities of each case.

A city agency (Boston) doubted that the creation of a mandatory 60-day deadline for completion of investigations, although reasonable, will result in improved disposition of complaints. That agency thought it more likely that a 60-day deadline would just discourage thorough investigations. Similarly, a 90-day limit on completion and conciliation or enforcement efforts should not be imposed without regard to individual case requirements. While conciliation efforts should normally be completed within that time, complex issues or scheduling difficulties of counsel may delay the process by more than 30 days after completion of the investigation. The agency recommended that, in the introductory language to § 105.22(b), the word "shall" be changed to "may". In addition, a specific exception should be provided for a delay requested by either party.

On the other hand, NCDH believed that the proposed time periods are reasonable; and the Connecticut Commission stated that it currently "meets or exceeds" those time periods in processing "the majority" of HUD-referred complaints. The Connecticut Commission, however, recommended that § 105.22 specifically require that HUD confer with the referral agency, to find out why a time period has not been met, before "routinely" reactivating the complaint.

Along the same line, the City of Boston Fair Housing Commission recommended adding a provision to require the Assistant Secretary to review cases individually and allow cases to remain with the substantially equivalent agency beyond 60 or 90 days when there are appropriate reasons for doing so.

One commenter, a civil rights agency, urged routine reactivation whenever a deadline is not met, to preserve the right of an aggrieved person to file a civil action under section 810(d). However, HUD believes that the aggrieved person's right will be adequately protected by the notice requirements contained in §§ 105.20 and 105.45(c).

NAR also recommended routine reactivation, but for different reasons. NAR pointed out that delays in processing are costly to all parties, but impact particularly on respondents with respect to such matters as credit ratings, recruitment of employees, business reputation, public image, and sale, lease or financing of the subject property. Arguing that "prompt disposition is essential to equity", NAR urged strict adherence to the processing deadlines.

Because of the confusion which appears to have resulted from the proposal, HUD has decided to remove the 60- and 90-day guidelines proposed in § 105.22(b) from this complaint processing regulation and to continue to use a procedure similar to that provided in § 105.20 of the current regulations. Under the revised § 105.22(b), a certification for reactivation would be made routinely when the referral agency has not, within thirty days after it has received the complaint, commenced proceedings with respect to the complaint, or when the agency has commenced proceedings within that time but has failed to carry the proceedings forward with reasonable promptness, in the judgment of the Assistant Secretary. However, HUD has added a provision requiring the HUD Regional Office to confer with the referral agency before making a certification for reactivation of a case, to ascertain the reason for any delay in processing by the agency. If HUD has reason to believe that the agency will proceed expeditiously, HUD may elect to leave the complaint for a reasonable time, notwithstanding the expiration of the thirty-day period.

NCDH expressed two related concerns regarding § 105.22. First, NCDH suggested that, where HUD has entered into memoranda of understanding with substantially equivalent agencies which provide for immediate reactivation of complaints, an exception for such arrangement should be incorporated into § 105.22. HUD does not believe that a regulatory exception is necessary to permit it to carry out the provisions of a memorandum of understanding.

Second, NCDH questioned why HUD wants to limit "routine" reactivation of referred complaints under § 105.22(b)(2) to cases where State or local law does not provide access to a State or local court. NCDH recommends amendment of § 105.22(b)(2) to provide for "routine" reactivation of cases where the State or local judicial remedy is not substantially equivalent to that afforded under Federal law. However, since under 24 CFR Part 115 a grant of recognition of substantial equivalency is not a determination that the judicial protection and enforcement of the rights embodied in a State or local fair housing law are substantially equivalent to those found in the Fair Housing Act, HUD would have to set up a new procedure to make such a determination. Thus, it is not practical for HUD to adopt the standard recommended by NCDH. Accordingly, no change has been made in paragraph (b)(2).

A local agency suggested that the language of § 105.22(b)(1) be revised so that the terminology used will better fit the types of complaint processing functions carried on by State and local agencies. For example, the agency proposes changing "commenced an investigation" to "commenced processing", a broader term encompassing mediation, settlement, litigation for temporary restraining orders, and discovery, as well as investigation. Since HUD has employed the statutory term "commenced proceedings" in its revision of paragraph (b)(1), the agency's suggestion for revision has not been adopted.

NAR recommended adding a paragraph (b)(3) to § 105.22 to provide for certification for reactivation of a referred case when a substantially equivalent agency complaint is inconsistent with or contrary to the terms of any agreement between HUD and the respondent or inconsistent with HUD programs, policies or guidelines. The purpose of this provision is to prevent a situation such as occurred when HUD referred to the Maryland Human Relations Commission complaints against real estate brokers for conduct alleged to violate the Fair Housing Advertising regulations (24 CFR Part 109) where it should have been clear from the face of the complaints that the allegations were not cognizable under the Fair Housing Act or the HUD Fair Housing Advertising regulations. Although HUD has not added the recommended paragraph to § 105.22, it will take steps to prevent recurrence of the situation described above, including implementation of a policy of examining fair housing complaints arising in substantially equivalent jurisdictions in order to determine whether a discriminatory practice under the Fair Housing Act has been alleged prior to making a referral to the recognized State or local agency.

IV. Subpart D—Procedures for Enforcement of Complaints

It was proposed that a new Subpart D, Procedures for Enforcement of Complaints, be added to the regulations. This subpart indicates the purposes of HUD investigations (§ 105.31) and describes the nature of HUD systemic, accelerated and rapid response processing (§§ 105.32, 105.33 and 105.34). The subpart also amplifies the Assistant Secretary's authority to have access to information reasonably necessary for investigations (§ 105.35), to seek the cooperation and utilize the services of Federal, State and local agencies (§ 105.36) and to issue and enforce subpoenas and interrogatories (§ 105.37). The provisions of this subpart reflect existing procedures followed by HUD in the investigation of Fair Housing Act complaints.

Section 105.31 Investigations.

NCDH suggested that § 105.31 be revised to make it clear that investigators will be expected to interview the aggrieved person, the respondent and/or its representative or agents, and any testers or witnesses to the incident. HUD agrees that the investigative process should, where possible, include all of the interviews mentioned by NCDH, in order to develop the information and factual data specified in § 105.31. However, HUD does not believe that a revision of § 105.31 is necessary to accomplish that purpose, since those procedures will be prescribed in the revised HUD handbook to be issued in connection with this revision of Part 105.

NCDH also recommended that § 105.31 provide for the use of testing or auditing, where appropriate, in the investigation of complaints. NCDH pointed out that, in many cases, testing or auditing provides the only competent evidence available to prove that a respondent has engaged in unlawful conduct. While HUD will consider evidence developed through testing or auditing by fair housing groups or representatives of an individual aggrieved person in determining whether to resolve a complaint, HUD's staff, as a matter of policy, does not engage in testing or auditing at this time.

Section 105.32 Systemic processing.

A local fair housing group commented that § 105.32 should provide some time constraints on systemic processing. This commenter recommended that, in the absence of new powers, HUD should carry out systemic processing in the same way as processing of other Title VIII complaints and with the same time constraints. Because of the complexity or novelty of the issues in systemic cases, it is HUD's view that processing will necessarily take longer for many systemic cases. For that reason, and because the volume of systemic cases is

relatively small, HUD has decided not to impose any time constraints on cases processed under § 105.32.

The same fair housing group also found the final sentence in § 105.32 to be unclear, and it suggested clarifying the reference to "Fair Housing Act requirements". HUD has revised that sentence to provide that systemic investigations can focus also "on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Fair Housing Act."

The Massachusetts Commission commented that § 105.32 should state clearly that systemic cases should be referred to substantially equivalent agencies under §§ 105.20 and 105.21, just like any other complaint. HUD Region I asked whether HUD can retain jurisdiction of a systemic case without having to obtain a waiver from the substantially equivalent agency of its exclusive jurisdiction under §§ 105.20 and 105.21. HUD interprets proposed §§ 105.20 and 105.21 as requiring all cases, including systemic cases, to be referred to the appropriate substantially equivalent agency, unless a waiver of the requirement has been obtained from that agency.

Section 105.33 Accelerated processing.

With regard to § 105.33, which contains provisions for an "accelerated processing" procedure, two local agencies and a local fair housing group commented that the two-day requirement for completing investigation of a case is too short. One of the local agencies urged HUD not to tie itself to any specific processing time of less than 30 days, and the other suggested replacing the two-day requirement with language such as "as expeditiously as possible". HUD believes that the proposed accelerated processing procedure, with limited investigation in a very short time frame, should be available in cases where the HUD Regional Office thinks it would be efficacious in obtaining the housing unit for the aggrieved person and in resolving other issues. However, HUD agrees that the two-day requirement is not sufficiently flexible, and it has been replaced with a provision requiring the investigatory process to be concluded as expeditiously as possible. In addition, minor editorial changes have been made in paragraphs (a) and (b) of § 105.33.

One of the agencies noted that, although the proposed procedure would be internal to HUD, State and local agencies frequently adopt the Federal procedure, and Federal agencies at times impose their procedures on their State and local counterparts. If any limit such as the proposed two-day time period were to be imposed on State and local agencies, compliance would be especially difficult for agencies without separate fair housing sections or for State agencies which have long distances to cover. In response, HUD points out that these procedural requirements do not apply to substantially equivalent agencies and that it is not contemplated that they will be made applicable to those agencies in the future. Furthermore, as noted above, the time period for investigation has now been made more flexible.

A local fair housing group commented that the accelerated processing procedure produces no documentation, so that, if conciliation fails, there is little to proceed to court with. This commenter has apparently misunderstood the accelerated processing procedure. Under this procedure, the Assistant Secretary has made an investigation of the complaint and, pursuant to § 105.55, either a determination to resolve the complaint or a decision not to proceed further, so that there is documentation.

Section 105.34 Rapid response processing.

Rapid response processing under § 105.34 may be used where the dwelling continues to be available and the aggrieved person is interested only in obtaining the dwelling. NCDH recommended that rapid response processing should be used whenever the dwelling is still available and the aggrieved person is interested in securing it, regardless of whether the aggrieved person is interested in other forms of relief or whether the respondent agrees to have the complaint processed under this procedure. HUD points out that, if the dwelling is still available and the aggrieved person is interested both in obtaining it and in other forms of relief, accelerated processing could meet those objectives. As noted above, the accelerated processing procedure can accommodate resolution of other issues, through conciliation, in addition to securing the unit. Moreover, under either accelerated or rapid response processing, HUD can change to the regular processing procedure if it does not appear that further processing under the special procedure is appropriate.

With regard to the other aspect of NCDH's comment, HUD cannot force the rapid response processing procedure on an unwilling respondent. Sections 810 and 811 of the Fair Housing Act entitle both the aggrieved person and the respondent to an investigation, which is not provided under rapid response processing. Thus, removal of the requirement for agreement by the respondent would be prejudicial to the respondent's statutory rights.

To ensure that the aggrieved person and the respondent are able to make an informed choice as to rapid response processing, HUD has added a provision to paragraph (b) of § 105.34 which requires that they be advised of their statutory right to an investigation. This provision also requires that advice be given of the respondent's right under § 105.18 to a seven day period within which to file an answer to the complaint. A further revision to paragraph (b) provides that, if the respondent has not waived his or her right to the seven day period, the fact finding conference (provided for under the rapid response processing procedure) shall not be held until the respondent has filed an answer or the period has expired, whichever occurs earlier.

Two local fair housing groups were concerned that, under rapid response processing, the aggrieved person is asked to forego any monetary damages, and HUD is required to forego its duty to ensure that the public interest is served through affirmative action, reporting, monitoring, training and other remedies. HUD has designed the special processing systems provided in §§ 105.32–105.34 to suit different purposes. Where the aggrieved person is interested only in securing the available dwelling, HUD has found rapid response processing, which is used only if agreed to by the aggrieved person and the respondent, to be effective for that purpose. If the concerns of the aggrieved person and/or HUD go beyond obtaining the dwelling, HUD can designate the accelerated processing procedure, which can accommodate resolution of other specific issues, such as monetary damages, in addition to obtaining the unit, or HUD can utilize the regular processing procedure.

There was only one comment relating to the fact finding conference procedure proposed in § 105.34 in connection with rapid response processing of complaints. The commenter, a local agency, stated its view that housing complaints are not particularly suitable for fact finding conferences, since emotional levels run high in these cases. The agency recommended a provision with sufficient flexibility to permit staff to determine whether a fact finding conference is preferable to on-site investigation or telephone interviewing. HUD has decided not to make the suggested change, since investigation of

the complaint would be an alternative (under paragraph (e) of § 105.34) if there were no resolution of the matter at the fact finding conference. Moreover, as stated above, the fact finding conference procedure is used only when both the respondent and the aggrieved person agree to rapid response processing.

Issues Common to sections 105.33 and 105.34

A number of comments concern special processing in general or deal with issues common to both §§ 105.33 and 105.34. For example, three commenters (NCDH and two local fair housing groups) questioned why the procedures provided under these sections are limited to cases involving respondents who own, manage or control not more than a certain number of units. These commenters saw no relationship between the number of units and the method of processing. NCDH stated that the availability of accelerated or rapid response processing logically turns on whether the complaint presents a complex factual situation, whether the dwelling is still available and whether the aggrieved person is interested in securing the unit. Absent proof that there are other comparable dwellings controlled by the respondent that are available to the aggrieved person, the number of units owned or managed by the respondent does not appear to be germane.

In response, HUD believes that respondents who own or control a large number of units and have discriminatory policies are more likely than other respondents to settle with an aggrieved person by providing a unit, in order to get rid of the complaint, without actually changing the policies. Thus, it is important to proceed against the larger owners, managers or agents under a procedure which involves a full investigation of the policies and procedures for the sale or rental of dwellings involved in the complaint and can result in more comprehensive relief. Since neither accelerated nor rapid response processing is designed for that purpose, those procedures would not be appropriate in cases involving large owners, managers or agents. HUD believes that the 25-unit limit is an appropriate dividing line.

With regard to the 25-unit limit in §§ 105.33 and 105.34, it is noted that the language proposed in the two sections was not identical. The language has been revised in both sections (§§ 105.33(a) and 105.34(a)) to state that the special processing provided in the respective sections may generally be used for a complaint when "the respondent owns, manages or controls not more than 25 dwelling units". In addition, the term "complainant", which inadvertently appeared in the two proposed sections, has been replaced by the term "aggrieved person".

On the more basic issue, two local civil rights groups believe that §§ 105.33 and 105.34 will not work effectively. It was argued that the shorter time periods provided in these sections should not be adopted in the regulations because valuable time (out of the statutory 30-day period provided before the litigation clock begins to run) would have to be spent in determining whether a particular complaint met the requirements for "accelerated processing" or "rapid response processing". They recommended that HUD maintain the flexibility to process certain cases in less than 30 days if it is possible and appropriate to do so, but that it should not mandate three different types of complaint processing procedures. HUD could assign different priorities to complaints, but the primary goal should be to complete the investigation and conciliation in all cases within 30 days. In response, HUD is not mandating specific complaint processing procedures, but rather trying to provide options for different processing procedures to suit appropriate situations. Moreover, time spent in accelerated or rapid response processing is not wasted time; material developed in special processing can still be used later if the complaint is not resolved or settled and it is necessary to continue to investigate complaints under regular processing. It is HUD's intention, in all cases, to complete investigations as rapidly as possible.

Section 150.36 Cooperation with Federal, State and local agencies.

A local agency suggested that § 105.36, providing for cooperation with Federal, State and local agencies, be limited to agencies receiving funding from HUD under the Fair Housing Assistance Program (see 24 CFR Part 111) or to agencies in jurisdictions which have been recognized by HUD as having substantially equivalent fair housing laws (see 24 CFR Part 115). However, section 816 of the Fair Housing Act, on which § 105.36 is based, provides for the HUD Secretary to cooperate with State and local agencies, without any limitations such as those suggested by this commenter. HUD has not only declined to insert any such limitation in § 105.36, it has gone further and removed the language in the proposed section that limited cooperation with State and local agencies to those "administering fair housing laws or ordinances."

The same commenter found the reference in § 105.36 to "other appropriate Federal agencies" to be unclear. This provision is drawn from section 808(d) of the Fair Housing Act, which requires all executive departments and agencies to cooperate with the HUD Secretary to further the purposes of the Fair Housing Act. HUD does not believe that any further clarification of the regulatory provision is needed.

Section 105.37 Subpoenas, interrogatories and investigative powers.

No public comments were received with respect to proposed § 105.37, governing the investigative powers of the Assistant Secretary provided under section 811 of the Fair Housing Act. However, HUD realized that it might be more helpful to a person reading the regulations if the statutory provisions were spelled out in § 105.37, rather than just referred to, as in the proposed section. Accordingly, paragraph (a) of proposed § 105.37 has been split into two paragraphs and revised to incorporate much of the language of subsections (a) and (b) of section 811. Paragraphs (b) and (c) of proposed § 105.37 have been redesignated as paragraphs (c) and (d), respectively, and contain only editorial changes from the proposal.

Section 105.39 Petition to revoke or modify subpoena.

Subsection (d) of section 811 of the Fair Housing Act provides for a procedure under which any person served with a subpoena may petition the Secretary of HUD to revoke or modify the subpoena. HUD has determined that it is appropriate to advise the public of that procedure by including a provision for it in the final rule. A new § 105.39 has been added for that purpose. Although there has not been an opportunity for public comment on this new section, the Department finds (pursuant to 5 U.S.C. 553(b)(B)) that notice and public procedure on the new § 105.39 are unnecessary because it does not go beyond the language of the statute, except for a sentence stating where to file a petition. The new provision reflects the delegation of the Secretary's authority in this area to the Assistant Secretary for Fair Housing and Equal Opportunity.

Section 105.41 Settlement of complaints during investigatory process.

With regard to § 105.41, NCDH stated its belief that the provision for settlement of complaints during the investigatory process is a reasonable means of encouraging informal resolution of complaints without need of complete investigation or formal fact finding. However, a local agency had a problem with the third sentence of § 105.41, which provides that a settlement executed during the investigatory process shall be considered as "constituting a withdrawal of the complaint". It suggested substituting the phrase "constituting a request for closure" for the quoted language, to make the HUD procedure compatible with State/local practice.

HUD has reconsidered the inclusion of proposed § 105.41 in revised Part 105. Proposed § 105.41 provided that the Assistant Secretary may "encourage and facilitate" the settlement of the complaint before the issuance of a determination to resolve the complaint. While HUD procedures and the statute do not preclude such settlements, it is currently not HUD's policy, in most circumstances, to encourage the parties to negotiate settlements outside of our established conciliation procedures. Accordingly, we do not believe that it is appropriate to include this provision in the final rule.

However, a change similar to that suggested by the local agency has been made with respect to § 105.50 (see discussion below).

V. Subpart E—Determinations

Section 105.50 Determination to close a complaint administratively.

As proposed, § 105.50 set forth procedures for notifying persons of HUD's determination to dismiss a complaint. HUD has changed the terminology used in this section from "dismiss a complaint" to "close a complaint administratively", to make the HUD procedure more compatible with the practices of State and local agencies. HUD Region I questioned the acceptance of a complaint if it is dismissible on its face. That office stated that it should not be necessary to log in and assign a case number to a complaint that comes to HUD in nominally acceptable form if it is clear that the complaint will be closed administratively because of inadequacies on its face. While HUD will continue to follow the current practice of screening out complaints which fail to meet the standards of §§ 105.15 and 105.16, a complaint which is considered to be filed under paragraph (a) of § 105.17 may be closed administratively only as provided in § 105.50. Accordingly, once a complaint is considered filed, it must be processed under this part until it is disposed of. Otherwise, an aggrieved person could have a filed complaint closed administratively without the safeguards of notice and opportunity for reconsideration provided by paragraphs (b) and (c) of § 105.50.

With regard to paragraph (c) of § 105.50, a local fair housing group contended that five days is not enough time in which to ask for reconsideration. This group recommended that the provision require notice by certified mail, with 10 days in which to request reconsideration. HUD believes that the five-day time period (provided as well under the current regulations) is adequate. Moreover, the addition of another 5 days would further delay a process which is already under criticism for its length. However, a requirement for use of certified mail for sending the notice would be helpful in establishing the time of its receipt, which is important in light of the short time period invovled. Accordingly, requirements for notice by certified mail have been inserted in paragraph (b) of § 105.50.

Section 105.55 Determination to resolve a complaint.

Several comments concerned paragraph (c) of § 105.55. A local fair housing group recommended that, where the Assistant Secretary, based on an investigation, determines not to proceed further on a complaint, more than five days be provided for making a request for reconsideration (see discussion of a similar comment by the same group under § 105.50(c), above). The group pointed out that it takes longer than five days just to get the Final Investigative Report, which is often needed in deciding whether to ask for reconsideration. As stated above, HUD believes that the five-day time period is adequate, and HUD does not want to build unnecessary delay into the process. Moreover, as indicated in the discussion of § 105.61(c) below, a "summary of facts" from the Final Investigative Report will be made available without delay, if the report has been completed at the time of the request for the summary, and promptly upon completion, if it has not yet been completed. A requirement for notice by certified mail has been inserted in paragraph (c) of § 105.55 (see discussion concerning addition to similar requirements in § 105.50(b), above).

A local agency asked why the regulations require newly discovered evidence for reconsideration under § 105.50(c) but not under § 105.55(c). After consideration of the reasons for the difference in treatment, HUD has revised § 105.50(c) so that the requirement of additional allegations based on newly discovered evidence will be imposed only if the determination to close a complaint administratively is based on the inadequacy of the facts as alleged (otherwise, the request for reconsideration may be granted for good cause shown). Since, in the case of a determination to close a complaint on the basis of inadequacy of facts alleged, the burden is already on the aggrieved person to allege facts sufficient to state a valid claim for relief under the Fair Housing Act, the additional burden is not unfair. On the other hand, a determination to close a complaint administratively on the basis of the facts alleged *as amplified by an investigation* is functionally similar to a determination not to resolve a complaint, which is based on the facts as developed in the investigation. Since the conduct of the investigation is not within the control of the aggrieved person, HUD believes it to be inappropriate to place the burden of discovering new evidence on the aggrieved person. A sentence has also been added to § 105.55(c) to provide that a request for reconsideration of a determination not to resolve a complaint may be granted for good cause shown.

VI. Subpart F—Informal Endeavors to Eliminate or Correct Discriminatory Housing Practices

Section 105.61 Access to information gathered in investigations.

HUD has heretofore taken the view that efforts to obtain resolution of complaints by informal methods may be aided by the avoidance of controversy over the details of factual material developed in investigations. Therefore, HUD has not in the past made investigative records available to parties to a complaint during the pendency of the matter. Since the revision in proposed § 105.61 represented a substantial change in current HUD procedures, HUD specifically requested comments on the impact of the release of investigative materials on informal resolution of matters, particularly from persons who have been parties or who have represented parties in conciliation activities.

Three public commenters (the Maine Human Rights Commission, a local fair housing group and NCDH) supported the

disclosure of information to parties as provided in § 105.61.

The Maine Commission, whose investigative files are by statute open to the public, found that release of information to the parties has aided in resolution attempts. Access to investigative information assists the parties in making realistic decisions about offering terms of settlement, as well as accepting or rejecting them.

The local fair housing group stated its belief that the risk of provoking further dispute, embarrassment or ill will between the parties is outweighed by the benefits of disclosing investigative information. Information that clearly points to an illegal act would move respondents to settle more quickly. In addition, better facts enable aggrieved persons to make more informed decisions about bringing suit in court.

NCDH took the position that § 105.61 is too restrictive. It opposed the provision which limits disclosure of information during an investigation only to situations where the Assistant Secretary deems such disclosure necessary for securing appropriate relief, arguing that nothing in the Fair Housing Act requires or justifies such a restriction. Its experience indicated that the free exchange of information between the parties and HUD is more likely to lead to an expeditious resolution of complaints. HUD has decided to retain the requirement for approval of disclosure of information in § 105.61(a), but it is contemplated that such approval will ordinarily be given routinely by HUD regional offices.

The Connecticut Commission on Human Rights and Opportunities also supported disclosure, but to a limited extent. It recommended that either (1) the disclosure provision of § 105.61(a) be limited to investigative materials gathered by HUD (i.e., that it not be applicable to files of substantially equivalent agencies) or (2) disclosure be restricted to sharing general summaries of investigative materials (in accordance with its own disclosure policy).

A city agency, however, opposed disclosure to the parties of investigative information during the course of investigation. On the basis of its experience, the agency took the position that conciliation is aided by avoidance of controversy over the details of factual material developed during investigation. The agency also believes that disclosure might result in problems with non-party witnesses, who could be subject to intimidation. In response, HUD has revised § 105.61(a) to permit such disclosure only after completion of the conciliation process.

It is HUD's intention that disclosure of information to parties and witnesses will be limited to information and reports developed through HUD's investigative efforts. In addition, HUD will take appropriate care, in connection with reactivated complaints that had been referred to a substantially equivalent agency, to avoid any disclosure of information developed by that agency which would result in a violation of restrictions imposed by State law. This can be handled by revisions to the Memoranda of Understanding between HUD and affected substantially equivalent agencies. Of course, the disclosure provisions of § 105.61 do not apply to the release by a State or local agency, pursuant to its law, of information developed in the course of an investigation by that agency and contained in files which are in the possession of that agency. Accordingly, no change in the regulation is required in that regard.

However, HUD has decided that it would not be appropriate for § 105.61(c) to authorize the release of the complete Final Investigative Report (FIR) during the pendency of proceedings on a complaint, as proposed. Instead, paragraph (c) has been revised to require the inclusion of a self-contained "summary of facts" section in the FIR, setting forth a summary of facts constituting the basis for the Assistant Secretary's determination either to resolve or not to resolve the complaint. This "summary of facts" is the material that HUD will release to the parties to the complaint or their representatives.

With regard to specific issues raised by the language of § 105.61, a local fair housing group inquired whether paragraph (a) can be interpreted to permit fair housing centers, as representatives of aggrieved persons, to have access to investigative information. HUD agrees that is the appropriate interpretation. On a similar point, NCDH suggested adding a specific reference to attorneys in paragraph (a). HUD interprets the word "representatives" as including "attorneys", but does not believe that any clarification of paragraph (a) is necessary on that point.

The same local fair housing group suggested that paragraph (a) of § 105.61 should provide some guidance as to how information may be requested, more specific criteria as to when data may be released, and an administrative appeal mechanism to handle denials. It also made similar suggestions concerning paragraph (c) of that section. HUD believes that these matters can be dealt with more appropriately in a HUD handbook rather than in the regulation itself.

This fair housing group also questioned the need to make disclosure of the Final Investigative Report (FIR) under paragraph (c) more restrictive than information disclosure under paragraph (a), since it does not allow direct access to the FIR by representatives of the parties. It suggested that paragraph (c) be revised to allow representatives of the parties to obtain copies of the FIR and other documents to which the parties themselves have access. A similar recommendation was made by NCDH. HUD has included in § 105.61(c) a provision making the "summary of facts" section of the FIR available to the aggrieved person, the respondent or any of the representatives of either party.

The same local fair housing group was concerned that paragraph (c) place the burden of requesting the FIR on the parties, stating that this may become an obstacle to exercise of rights by aggrieved persons, given the short limitation period under Title VIII. HUD believes this concern to be without substance.

Another local fair housing group suggested that paragraph (c) impose a time constraint on HUD for providing the FIR, such as five days after receipt of a request. Although HUD does not agree that such a time limit would be appropriate, a provision has been inserted in paragraph (c) requiring HUD to make the summary of facts section of the FIR available promptly upon written request, if it has been completed at the time of the request, or promptly upon completion of the report, if it has not yet been completed.

Sections 105.67 and 105.70

Section 105.67 (types of relief for aggrieved persons) describes the types of remedies that may be sought as appropriate for aggrieved persons, including monetary relief, other make-whole relief and injunctive relief to eliminate discriminatory policies or practices. Section 105.70 (types of provisions in the public interest) indicates the types of remedies to be sought, as appropriate, for the public interest. Such types of relief are elimination of discriminatory housing practices, prevention of future discriminatory housing practices, affirmative activities, reporting and monitoring.

With regard to § 105.67, two local fair housing groups and NCDH urged HUD to include "punitive damages" in paragraph (a) as a type of monetary relief which may be sought, in

conciliation, for an aggrieved person, in appropriate circumstances. They argued that, since punitive damages can be awarded in civil actions brought under Title VIII, and since respondents will be seeking a full release of all claims as part of the settlement, the regulation should provide for punitive damages as an element of the settlement. Although monetary damages other than actual damages are usually not provided for in conciliation agreements, it is HUD's intent that the rule not preclude the possibility of seeking punitive or exemplary damages for an aggrieved person in an appropriate situation. Accordingly, paragraph (a)(1) has been revised to provide for "damages", rather than "actual damages".

NCDH and a local fair housing group questioned the distinction between "relief" in § 105.67 and "provisions" in § 105.70. NCDH suggested that the term "relief" be used in § 105.70 in place of "provisions", for consistency. The fair housing group suggested merging § 105.70 with § 105.67, since the two sections complement and serve each other. It further argued that the separation of the two sections is inconsistent with the desire of victims of housing discrimination to obtain relief, beyond the housing unit and damages, which will benefit others who may follow them. HUD does not believe that the proposed language is either misleading or inconsistent with the attainment of complete relief in the conciliation process, and the suggested changes have not been made.

Section 105.74 Notification where voluntary compliance is not obtained.

A local fair housing group recommended that § 105.74 be revised to require that HUD notify the aggrieved person, prior to expiration of the 180-day limit of section 812 of the Fair Housing Act, of the deadline date and the need to take legal action before that date. The aggrieved person is notified several times of his or her right to commence a civil action under section 812 "within 180 days of the last occurrence of a discriminatory housing practice" (see § 105.45). At the time that a failure to obtain voluntary compliance has been determined, the 180-day deadline will have passed in many cases, especially where the complaint was filed with HUD late in the 180-day period. Moreover, HUD considers it administratively impracticable to compute the section 812 deadline date for each complaint and to provide that information in a notice to the aggrieved person. Accordingly, HUD has made no change in the language of § 105.74.

Section 105.75 Confidentiality of conciliation conferences.

Paragraph (c) of § 105.75 states that nothing in the confidentiality provisions of the section shall be construed to prevent the Assistant Secretary from disclosing the results of his or her informal endeavors, including publishing any conciliation agreement. This is a change in policy on which HUD specifically solicited comments.

Seven public commenters (three local fair housing/civil rights groups, two State agencies, one city agency and NCDH) indicated support for the proposed policy change enunciated in § 105.75(c). Three commenters (the Connecticut Commission, a city agency and a local civil rights group) explicitly agreed with HUD's belief that the beneficial effects of publishing conciliation agreements outweigh the concern that potential disclosure may deter some respondents from entering into such agreements. Two commenters, the Pennsylvania and Connecticut Commission, had concerns about the provisions based on a possible conflict between the proposed provision and State law. The NAR affiliate opposed the provision, contending that it will discourage the settlement of complaints.

The Pennsylvania Commission pointed out that section 9(c) of the Pennsylvania Human Relations Act permits the Commission to publish the *terms* of any conciliation, but prohibits disclosure of the identity of the parties involved. The Commission was concerned about the interpretation of "the results of his or her informal endeavors" and whether the phrase is intended to include the work products of substantially equivalent agencies or joint conciliation documents. If so, it objected to any interpretation which would conflict with the Pennsylvania statute.

The Connecticut Commission stated that section 46a–84(b) of the Connecticut General Statutes prohibits it from disclosing what has occurred during its conciliation endeavors, provided that it may disclose the terms of conciliation after a complaint has been adjusted. It noted that the Memorandum of Understanding between it and HUD prohibits the disclosure of any information given to HUD by it relating to its conciliation efforts. The Commission recommended that § 105.75 be revised to make clear that its disclosure provision is restricted to HUD-conducted conciliation efforts. In the case of conciliation efforts conducted jointly with substantially equivalent agencies, the section should provide that no disclosure may be made until after the matter is resolved and that it be restricted to the terms of the conciliation agreement.

In response to these concerns, HUD has added a sentence to § 105.75(c) limiting the permissible disclosure by the Assistant Secretary to (1) a summary description of the results obtained through his or her conciliation efforts or (2) any conciliation agreement entered into as a result of such efforts. It is not intended that the disclosure include any work product developed solely by a substantially equivalent agency or any information in a joint conciliation document that would result in violation of a requirement (or prohibition) imposed by State law. It is contemplated that Memoranda of Understanding with substantially equivalent agencies will be revised to accommodate particular State law problems concerning disclosure of information under both § 105.61 and § 105.75.

NCDH stated its belief that the current high incidence of housing discrimination, especially in geographic areas where there are few fair housing complaints filed, is largely attributable to a lack of awareness among minority homeseekers of their right to fair housing. In its view, the publication of conciliation agreements will serve to enhance that awareness and will also stand as a disincentive against discrimination by firms that wish to avoid adverse publicity.

The Maine Commission noted that, under its policy, conciliation agreements are treated as public information, and that there have been few demands by respondents for confidentiality.

One local fair housing group suggested that HUD issue routine press releases on each signed conciliation agreement. Rather than bind itself to issuance of press releases in every case, HUD intends to limit its press releases to cases of precedential importance or involving matters of particular interest to the public.

Another local fair housing group urged that the aggrieved person, as well as the Assistant Secretary, should have the right of disclosure. HUD points out that the parties to a conciliation agreement are not restrained by HUD from disclosure of its provisions. However, restraints on disclosure by parties may be included in the agreement itself, by agreement of the parties.

Section 105.76 Resolution of complaints.

The Connecticut Commission opposes the bifurcated conciliation process set forth in § 105.76. This commenter argued that, if a respondent is free to negotiate a separate agreement which addresses

concerns of only the aggrieved person, there is little incentive to agree to general provisions, such as record keeping, reporting and other affirmative requirements, in the conciliation agreement. The Commission suggested that, if HUD retains the proposed approach, it include a provision to the effect that private agreements between aggrieved persons and respondents will not preclude HUD from taking further appropriate action to address matters raised in the original complaints. It is HUD's position that, under the language of § 105.76 as proposed, the failure of HUD and a respondent to agree on the public interest provisions of a conciliation agreement will not bar the Assistant Secretary from taking further appropriate action under § 105.80, even if the aggrieved person and the respondent reach a separate agreement. While HUD does not believe that this commenter's suggested change is necessary, HUD has removed the final sentence of paragraph (b)(2) so as not to encourage settlements outside of the procedural framework of Part 105. Of course, the aggrieved person and the respondent can always enter into an agreement between themselves outside of the conciliation process, even in the absence of the referenced sentence.

A local civil rights group suggested that § 105.76 be revised to provide aggrieved persons a role in determining what relief if necessary to vindicate the public interest. This is particularly appropriate when one of the aggrieved persons is an orgnization which has filed a complaint on behalf of its members and which has experience in identifying those issues which are important to the community. This group suggested the following specific revisions to § 105.76: (1) Require agreement of the aggrieved person in paragraph (a)(2), in addition to the Department and the respondent; (2) insert "the aggrieved person" after "The Department" in paragraph (b)(2); and (3) revise the first clause of the undesignated final sentence to read: "If the Department and the respondent do not agree on provisions vindicating the public interest, * * *". HUD does not agree that the aggrieved person should have a veto power with respect to the public interest provisions of a conciliation agreement. While HUD welcomes the comments and suggestions of aggrieved persons on these matters, particularly when they are fair housing organizations, HUD wishes to retain control in this area, in the interest of consistency in overall policy. Of course, an aggrieved person retains the ultimate right to refuse to sign a proposed conciliation agreement.

Section 105.77 Review of compliance.

A local fair housing group suggested changing "may" to "must" in the first sentence of § 105.77. Requiring HUD staff to monitor every conciliation agreement is not the most effective use of HUD's limited resources. Compliance reviews will be done either on a sampling basis or if HUD has reason to believe that a particular agreement is not being complied with. Accordingly, HUD has not made the suggested change in § 105.77.

Section 105.80 Other action by the Assistant Secretary.

Section 105.80 describes other actions which can be taken by the Assistant Secretary to enforce HUD civil rights responsibilities with respect to fair housing, where voluntary compliance has not been obtained and an evaluation of the evidence indicates on balance that there has been a discriminatory housing practice. The Connecticut Commission supported this listing of other actions, but suggested inclusion in § 105.80 of some standards or criteria for decisions as to what action to take, particularly for referral of cases to the Department of Justice for further action. HUD needs to retain the discretion to take whatever action, or combination of actions, may be appropriate under the civil rights authorities listed in § 105.80. Since the circumstances of each individual case will dictate what action is appropriate, it is not practicable to provide the suggested standards or criteria in the regulations.

HUD has revised paragraph (a)(4) of § 105.80 to add a reference to proceedings under section 109 of the Housing and Community Development Act of 1974 and its related regulation.

VII. Part 115—Recognition of Jurisdiction with Substantially Equivalent Laws

NCDH was concerned that the proposed rule did not address the proviso in section 810(d) of the Act which bars civil actions in Federal court where the aggrieved person has a judicial remedy under a State or local fair housing law. NCDH suggested that HUD clarify that a determination of "substantial equivalence" under 24 CFR Part 115 does not necessarily establish that a State or local law provides for judicial remedies sufficient to bar Federal court jurisdiction of an action under section 810(d). The revision to Part 115 published by HUD on August 9, 1984 (49 FR 32046) takes care of this problem. Revised § 115.3(b) provides that a State or local fair housing law may be determined to be substantially equivalent to the Fair Housing Act "even though it either does not contain an express provision for access to State or local courts, or does allow access to State or local courts but does not provide the full panoply of judicial remedies provided under the Act." It further provides that a grant of recognition of substantial equivalency under Part 115 "is not a determination that the judicial protection and enforcement of the rights embodied in a State or local fair housing act are substantially equivalent to those found in the Act."

Conforming Amendment to 24 CFR 115.10(a)

Paragraph (a) of § 115.10 contains a reference to §§ 105.18–105.20 of the current regulations. Because of the revision of Part 105, it is necessary to amend § 115.10(a) to conform the reference to the new sections of Part 105 as adopted by this final rule. Accordingly, the reference has been changed to read "§§ 105.20–105.22 of this chapter."

VIII. Findings and Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was listed under Sequence Number 1010 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854

at 13887) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. It would serve to relieve part of the regulatory burden on real estate developers, some of whom constitute small entities, but its effect is not expected to exceed the threshold set forth in the Act.

The information collection requirement contained in this rule has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB Control Number is 2529–0011.

The Catalog of Federal Domestic Assistance program number is 14.400.

List of Subjects

24 CFR Part 105

Fair housing.

24 CFR Part 115

Fair housing, Intergovernmental relations.

Accordingly, Subchapter A of Chapter 1 of Subtitle B of Title 24 of the Code of Federal Regulations is amended as follows:

PART 105—FAIR HOUSING

1. Part 105 is revised to read as follows:

Subpart A—Purpose and Definitions

Sec.
105.1 Purpose.
105.2 Definitions.

Subpart B—Complaints

105.11 Submission of information.
105.12 Complaints to be filed by an aggrieved person.
105.13 Persons against whom complaints may be filed.
105.14 Where to file complaints.
105.15 Contents of complaints.
105.16 Form of complaints; amendments.
105.17 Filing of complaints.
105.18 Service of complaints; filing of answers.

Subpart C—Referral of Complaints to State and Local Agencies

105.20 Notification and referral to substantially equivalent State or local agencies.
105.21 Cessation of action on referred complaints.
105.22 Reactivation of referred complaints.

Subpart D—Procedures for Enforcement of Complaints

105.31 Investigations.
105.32 Systemic processing.
105.33 Accelerated processing.
105.34 Rapid response processing.
105.35 Access to information.
105.36 Cooperation with Federal, State and local agencies.
105.37 Subpoenas, interrogatories and investigative powers.
105.39 Petition to invoke or modify subpoena.
105.45 Notification of right to file civil action.

Subpart E—Determinations

105.50 Determination to close a complaint administratively.
105.55 Determination to resolve a complaint.

Subpart F—Informal Endeavors to Eliminate or Correct Discriminatory Housing Practices

105.60 General.
105.61 Access to information gathered in investigations.
105.65 Objectives of conciliation.
105.67 Types of relief for aggrieved persons.
105.70 Types of provisions for the public interest.
105.73 Inability to obtain voluntary compliance.
105.74 Notification where voluntary compliance is not obtained.
105.75 Confidentiality of concilation conferences.
105.76 Resolution of complaints.
105.77 Review of compliance.
105.80 Other action by the Assistant Secretary.

Appendix—List of Department of Housing and Urban Development Regional Offices and Jurisdictional Areas and Field Offices.

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3601–3619; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—Purpose and Definitions

§ 105.1 Purpose.

(a) The regulations set forth in this part contain the procedures established by the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development for carrying out his or her responsibility with respect to any complaint filed with the Department under section 810 of the Fair Housing Act, 42 U.S.C. 3610.

(b) Although these regulations govern the processing of Fair Housing Act complaints only, there are other civil rights authorities which may also be applicable in a particular case. Thus, where a person charged with a discriminatory housing practice in a complaint filed under section 810 of the Fair Housing Act is also prohibited from engaging in similar practices under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), Executive Order 11063 of November 20, 1962, on Equal Opportunity in Housing (27 FR 11527–30, November 24, 1962), or other applicable law, such person may also be subject to action by the Department of Housing and Urban Development or other Federal agency under the rules, regulations, and procedures prescribed from time to time pursuant to Title VI (24 CFR Parts 1 and 2), section 109 (24 CFR 570.602)), Executive Order 11063 (24 CFR Part 107), or other applicable law.

§ 105.2 Definitions.

As used in this part,

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

(b) "Department" means Department of Housing and Urban Development.

(c) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806 of the Fair Housing Act.

(d) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(e) "Family" includes a single individual.

(f) "Fair Housing Act" means Title VIII of the Civil Rights Act of 1968, as amended, Pub. L. 90–284, 42 U.S.C. 3601–3619.

(g) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(h) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(i) "To rent" includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

Subpart B—Complaints

§ 105.11 Submission of information.

(a) The Assistant Secretary shall receive information concerning alleged discriminatory housing practices under the Fair Housing Act from any person. Where the information constitutes a complaint within the meaning of the Fair Housing Act and this part and is furnished by an aggrieved person (as defined in § 105.12), it shall be deemed

filed under § 105.17. Where additional information is required for purposes of perfecting a complaint under the Fair Housing Act, the Department shall advise what additional information is needed and shall provide appropriate assistance in the filing of such complaint.

(b) If the information disclosed so warrants, the Department may also concurrently invoke its authority to initiate compliance reviews under other appropriate civil rights authorities, such as E.O. 11063 on Equal Opportunity in Housing, Title VI of the Civil Rights Act of 1964, or section 109 of the Housing and Community Development Act of 1974, and the information may also be made available to any other Federal, State or local agency having an interest in the matter.

§ 105.12 Complaints to be filed by an aggrieved person.

Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur, within the meaning of section 810 of the Fair Housing Act (hereinafter an "aggrieved person"), may file a complaint no later than 180 days after the alleged discriminatory housing practice occurred. Such complaint may be filed with the assistance of an authorized representative of the aggrieved person, including any organization acting on behalf of the aggrieved person.

§ 105.13 Persons against whom complaints may be filed.

(a) A complaint may be filed against any person alleged to be or have been engaged, or to be about to engage, in a discriminatory housing practice.

(b) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising or financing of dwellings or the provision of brokerage services relating to the sale of rental of dwellings if such other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is or has been engaged, or is about to engage, in a discriminatory housing practice.

§ 105.14 Where to file complaints.

(a) Complaints may be filed in person or by mail with Fair Housing, Department of Housing and Urban Development, Washington DC 20410, or any Regional or Field Office of the Department. A list of Regional Offices (with their addresses and areas of jurisdiction) and Field Offices (with their addresses) is contained in an appendix to these regulations.

(b) In addition, information to be contained in a complaint may be provided by telephone to any such office of the Department. Information provided by telephone shall be reduced to writing on the prescribed complaint form by an employee of the Department and sent to the aggrieved person to be signed and attested to as provided in § 105.16(a).

(c) Complaints may also be filed in person or by mail with any substantially equivalent State or local agency. As used in this part, the term "substantially equivalent State or local agency" shall include not only a State or local agency which administers a fair housing law found by the Department, under 24 CFR Part 115, to provide rights and remedies which are substantially equivalent to the rights and remedies provided in the Fair Housing Act, but also a State or local fair housing agency with which the Department has entered into a written agreement under § 115.11 of this chapter providing for the referral of complaints to the agency. Complaints filed with a substantially equivalent State or local agency shall be considered to be dual filed with both the agency, under its own law, and the Department, under the Fair Housing Act.

(d) Generally, complaints will be processed through the Department's Regional Administrator having jurisdiction in the State in which the alleged discriminatory housing practice occurred. However, where a complaint has been identified for systemic processing pursuant to § 105.32, that complaint may be processed in the Office of the Assistant Secretary in Washington, DC.

§ 105.15 Contents of complaints.

Each complaint must contain substantially the following information:

(a) The name and address of the aggrieved person.

(b) The name and address of the person against whom the complaint is filed ("respondent").

(c) A description and the address of the dwelling which is involved, if appropriate.

(d) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2529-0011.)

§ 105.16 Form of complaint; amendments.

(a) Each complaint shall be in writing and signed by the aggrieved person and shall be attested to before a notary public or a duly authorized representative of the Assistant Secretary. Such signing and attestation may be made at the time of the investigation.

(b) The Assistant Secretary may also require complaints to be made on prescribed forms. Complaint forms shall be available to all persons in any Regional or Field Office of the Department or in any substantially equivalent State or local agency. Notwithstanding the requirement for use of the prescribed form, any written statement which substantially sets forth the allegations of a discriminatory housing practice under the Fair Housing Act (including any such statement filed with a substantially equivalent State or local agency) shall be accepted as a Fair Housing Act complaint by the Department. Appropriate assistance in filling out forms and in filing a complaint shall be provided by personnel in any of those offices.

(c) Complaints may be reasonably and fairly amended at any time, to cure technical defects or omissions, including failure to attest to a complaint, to clarify or amplify the allegations in a complaint, or to add other respondents; and any amendment shall be deemed to be made as of the original filing date.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2529-0011.)

§ 105.17 Filing of complaints.

(a) A complaint shall be considered to be filed when it is received by the Department, or dual filed with the Department through a substantially equivalent State or local agency, in such form as is found reasonably to meet the standards of §§ 105.15 and 105.16. The aggrieved person shall be notified of the date of filing and of his or her right to bring court action under sections 810 and 812. (See § 105.45)

(b) Notwithstanding paragraph (a) of this section, a complaint may be deemed filed, for purposes of the 180-day period for the receipt of complaints by the Department under section 810(b) of the Fair Housing Act, upon the receipt of written information (including information provided by telephone and reduced to writing by an employee of the Department) sufficiently precise to identify the parties and describe generally the action or practice complained of.

(c) Where a complaint alleges not just one incident of conduct made unlawful under the Fair Housing Act, but an unlawful practice that continues, as manifested in a number of incidents of such conduct, the complaint shall be deemed timely if filed within 180 days of the last alleged occurrence of that practice.

§ 105.18 Service of complaints; filing of answers.

Upon the filing of a complaint within the meaning of § 105.17(a), and upon any amendment of such a complaint, a copy thereof shall be furnished to the respondent by certified mail or through personal service by Department representatives. The respondent may file an answer to the complaint or amended complaint at any time prior to the expiration of seven days after the date he or she receives the copy of the complaint or amended complaint. The respondent may assert any defense which might be available to a defendant in a court of law. The answer must be attested to before a notary public or a duly authorized representative of the Assistant Secretary. With the consent of the Assistant Secretary, an answer may be amended at any time. The Assistant Secretary shall permit an answer to be amended whenever he or she believes it would be reasonable and fair to do so.

Subpart C—Referral of Complaints to State and Local Agencies

§ 105.20 Notification and referral to substantially equivalent State or local agencies.

Whenever a fair housing law administered by a substantially equivalent State or local agency provides rights and remedies substantially equivalent to those provided by the Fair Housing Act for a discriminatory housing practice alleged by an aggrieved person in a complaint filed with the Assistant Secretary under the provisions of Subpart B, the Assistant Secretary shall notify the agency of the filing of the complaint and refer the complaint to the agency for investigation and processing. The Assistant Secretary shall give the aggrieved person and the respondent notice in writing of such notification and referral. The notice to the aggrieved person shall also advise the aggrieved person of his or her right to commence a civil action in an appropriate United States District Court under section 812 of the Fair Housing Act, within 180 days of the last occurrence of the discriminatory housing practice complained of, or under section 810(d), within 60 days after any reactivation of the complaint by the Assistant Secretary pursuant to § 105.22. Notices under this section shall be sent by certified mail.

§ 105.21 Cessation of action on referred complaints.

(a) When a substantially equivalent State or local agency has been notified of a complaint and the complaint has been referred to it pursuant to § 105.20, no further action shall be taken by the Assistant Secretary hereunder except as provided in § 105.22.

(b) Notwithstanding the notification of the substantially equivalent State or local agency and the referral of the Fair Housing Act complaint to it pursuant to § 105.20, the Assistant Secretary may take appropriate action to review or investigate matters in the complaint which raise issues cognizable under other civil rights authorities applicable to Department programs (see § 105.1(b)).

§ 105.22 Reactivation of referred complaints.

(a) Whenever a substantially equivalent State or local agency has been notified of the filing of a complaint and the complaint has been referred to it pursuant to § 105.20, the Assistant Secretary may reactivate the complaint for processing by the Department if he or she certifies that in his or her judgment the protection of the rights of the parties or the interest of justice require such action.

(b) Such certification shall be made routinely under the following circumstances:

(1) When the substantially equivalent State or local agency has not, within thirty days from the date that it received the notification and complaint, commenced proceedings with respect to the complaint, or when the agency has commenced proceedings within that time but has failed to carry the proceedings forward with reasonable promptness, in the judgment of the Assistant Secretary. However, no such certification shall be made under this subparagraph until after the appropriate HUD Regional Office has conferred with the agency to ascertain the reason for the delay in processing of the complaint. If the Assistant Secretary has reason to believe that the agency will proceed expeditiously following the conference, the Assistant Secretary may leave the complaint with the agency for a reasonable time, notwithstanding the expiration of the thirty-day period.

(2) Where, upon completion of State or local processing, the complaint has not been resolved to the satisfaction of the Assistant Secretary and the applicable State or local law fails to provide access to a State or local court.

Subpart D—Procedures for Enforcement of Complaints

§ 105.31 Investigations.

Generally, the purposes of an investigation of a complaint under the Fair Housing Act are:

(a) To obtain oral and documentary information concerning the events or transactions that are involved in the alleged discriminatory housing practice identified in the complaint.

(b) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(c) To develop factual data necessary for the Assistant Secretary to make a determination as to whether to attempt to eliminate or correct the alleged discriminatory housing practice by the informal methods of conference, conciliation and persuasion, or to initiate other enforcement actions provided for in § 105.80, including referral of the matter to the Department of Justice for the consideration of the initiation of civil or criminal actions provided under the Fair Housing Act.

§ 105.32 Systemic processing.

Where the Assistant Secretary determines that the alleged discriminatory practices in a complaint are pervasive or institutional in nature or that the processing of the complaint will involve complex issues, novel questions of fact or law or will impact on a large number of persons, the complaint may be identified for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations can focus not only on documenting facts involved in the alleged discriminatory housing practice which is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Fair Housing Act.

§ 105.33 Accelerated processing.

(a) Complaints regarding the rental of a dwelling which do not present complex factual issues or do not involve a respondent with a substantial number of dwellings may be investigated on an accelerated basis. Complaints designated for accelerated processing will involve only situations in which the dwelling sought is available, the respondent owns, manages or controls not more than 25 dwelling units, and the aggrieved person and respondent agree to such processing and the waiver of the

provisions of § 105.18 relating to the filing of answers.

(b) Upon service of the complaint on the respondent, the investigation of matters shall be commenced promptly, and the investigatory process shall be concluded as expeditiously as possible.

(c) Where accelerated processing fails to result in informal resolution pursuant to Subpart F of this part, the complaint may be investigated further under § 105.31 or § 105.32.

§ 105.34 Rapid response processing.

(a) Where an aggrieved person asserts an alleged discriminatory housing practice involving a dwelling which continues to be available and the aggrieved person is interested only in obtaining the dwelling, the Assistant Secretary may designate the matter for rapid response processing prior to assigning the complaint for investigation under § 105.31 or § 105.32. Rapid response processing will be used only where the respondent owns, manages or controls not more than 25 dwelling units.

(b) When a complaint is designated for rapid response processing, the aggrieved person and the respondent shall be advised of their statutory right to have the Department investigate the complaint and of the respondent's right under § 105.18 to file an answer to the complaint within seven days after receiving a copy of the complaint. If the respondent and the aggrieved person agree to rapid response processing, a fact finding conference shall be scheduled as soon as feasible. However, if the respondent has not waived his or her right to the seven day period for the filing of an answer to the complaint, the conference shall not be held until the respondent has filed an answer or the period has expired, whichever occurs earlier.

(c) In addition to a discussion of the allegations involved in the complaint and matters raised in answer thereto, the Department shall provide the aggrieved person and the respondent an opportunity to negotiate a resolution. These efforts to resolve the matter shall not be considered part of the Department's processing of a complaint and shall not be made public by the Department or used in an investigation.

(d) Where the aggrieved person and the respondent agree to a remedy proposed at this conference, the Department shall consider the complaint as resolved and shall take no further action on matters raised in the individual complaint. Since the remedy in such cases is primarily limited to the offer and acceptance of a dwelling, a written agreement need not be used. However, the Department shall not close a case until the remedy agreed upon has been provided.

(e) Complaints which are not settled through rapid response processing may be subject to further investigation under § 105.31 or § 105.32.

§ 105.35 Access to information.

Pursuant to section 811(a) of the Fair Housing Act, the Assistant Secretary, in conducting investigations under this part, shall be provided access at all reasonable times to premises, records, documents, individuals, and other possible sources of evidence. The Assistant Secretary may also examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of an investigation.

§ 105.36 Cooperation with Federal, State and local agencies.

The Assistant Secretary, in processing Fair Housing Act complaints, may seek the cooperation and utilize the services of State and local agencies and other appropriate Federal agencies.

§ 105.37 Subpoenas, interrogatories and investigative powers.

(a) The Assistant Secretary shall seek voluntary cooperation of all persons in investigations under this part. However, whenever any person fails to cooperate voluntarily, the Assistant Secretary may issue subpoenas to compel his or her access to, or the production of, the materials described in § 105.35, or to compel the appearance of any person described in § 105.35, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the U.S. District Court for the district in which the investigation is taking place.

(b) Upon written application to the Assistant Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Assistant Secretary, to the same extent and subject to the same limitations as subpoenas issued by the Assistant Secretary under paragraph (a) of this section. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at the respondent's request.

(c) The legality of each issuance of subpoenas or interrogatories shall be approved by the General Counsel of the Department or his designee.

(d) Payment of witness and mileage fees shall be made as provided for in section 811(c) of the Fair Housing Act in an amount allowed under the rules governing such payment by the U.S. District Courts. Fees payable to a witness summoned by subpoena issued at the request of a respondent shall be paid by the respondent.

§ 105.39 Petition to revoke or modify subpoena.

(a) Any person served with a subpoena pursuant to § 105.37 may, within five days after such service, petition the Assistant Secretary in writing to revoke or modify the subpoena. Such petition shall be submitted to the Assistant Secretary by mailing or otherwise delivering it to the Office of the Department which issued the subpoena.

(b) The Assistant Secretary shall grant the petition if he or she finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

§ 105.45 Notification of right to file civil action.

(a) The Assistant Secretary shall notify all parties to Fair Housing Act complaints in writing of the availability of a civil action under section 810(d) and section 812 of the Fair Housing Act.

(b) In acknowledging receipt of allegations of discriminatory housing practices, the Assistant Secretary shall notify the aggrieved person that, under section 810(d) of the Fair Housing Act, if the Assistant Secretary has been unable to obtain voluntary compliance within 30 days after the filing of a complaint, the aggrieved person may file a civil action within 30 days thereafter. The notification shall advise the aggrieved person that the failure to file suit within that 60-day time limit may result in the loss of the right to file suit under section 810(d). In addition, the aggrieved person shall be advised of his or her right to commence a civil action under section 812 in an appropriate U.S. District Court within 180 days of the last occurrence of the discriminatory housing practice complained of.

(c) Whenever a Fair Housing Act complaint, referred to a State or local fair housing agency under § 105.20, is reactivated by the Assistant Secretary pursuant to § 105.22, the Assistant Secretary, in notifying the aggrieved

person of the Department's reactivation, shall advise the aggrieved person that, under section 810(d), if the Assistant Secretary is unable to obtain voluntary compliance within 30 days of the date of reactivation, a civil action may be commenced within 30 days thereafter. The notice shall advise the aggrieved person that the failure to file suit within that 60-day time limit may result in the loss of the right to file suit under section 810(d). In addition, the aggrieved person shall be advised of his or her right to commence a civil action under section 812 in an appropriate U.S. District Court within 180 days of the last occurrence of the discriminatory housing practice complained of.

(d) Thirty days after the receipt of a complaint which the Department is processing or thirty days after the reactivation of a complaint which had been referred to a State or local agency for processing, the Assistant Secretary shall notify the aggrieved person in writing of his or her right to file suit under section 810(d) within 30 days. The aggrieved person also shall be advised or his or her right to commence a civil action under section 812 in an appropriate U.S. District Court within 180 days of the last occurrence of the discriminatory housing practice complained of.

Subpart E—Determinations

§ 105.50 Determination to close a complaint administratively.

(a) Where the allegations of a complaint on their face, or as amplified by an investigation, disclose that the complaint is not timely filed or otherwise fails to state a valid claim for relief under the Fair Housing Act, the Assistant Secretary may close the complaint administratively without further action.

(b) If the Assistant Secretary decides to close a complaint administratively under paragraph (a) of this section, he or she shall notify the aggrieved person by certified mail of the disposition of the case. The respondent shall also be notified by certified mail in any case where he or she has been served with a copy of the complaint.

(c) Any party adversely affected by a determination under this section may, within 5 days of receipt of notice of the determination, request that the Assistant Secretary reconsider this action. However, if the determination to close the complaint administratively was made solely on the basis of the allegations of the complaint (without amplification by an investigation), a request for reconsideration may be granted only on the basis of additional allegations based on material evidence not previously avaiable to the party requesting reconsideration; otherwise, the request for reconsideration may be granted for good cause shown.

§ 105.55 Determination to resolve a complaint.

(a) Within 30 days after a complaint is filed, or within 30 days after reactivation by the Assistant Secretary in the case of a complaint referred to a State or local agency and subsequently reactivated pursuant to § 105.22, the Assistant Secretary shall investigate the complaint and give notice in writing to the aggrieved person and to the respondent if the Assistant Secretary intends to take further action with respect to the complaint.

(b) A determination to resolve can be made if analysis of the facts developed in the investigation results in a conclusion that, more likely than not, race, color, religion, sex, or national origin is a factor in an injury to the aggrieved person which has occurred or is about to occur for which the respondent was responsible.

(c) Where the Assistant Secretary, based on the analysis of the facts developed in the investigation, decides not to proceed further in a case, he or she shall notify the aggrieved person and the respondent by certified mail of the determination not to resolve the complaint. Any party adversely affected by such a determination may, within 5 days of receipt of the notice of determination not to resolve the complaint, request that the Assistant Secretary reconsider the action. A request for reconsideration may be granted for good cause shown.

Subpart F—Informal Endeavors to Eliminate or Correct Discriminatory Housing Practices

§ 105.60 General.

(a) When the Assistant Secretary has decided to resolve a complaint pursuant to section 810(a) of the Fair Housing Act, he or she shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion.

(b) Informal endeavors by the Assistant Secretary need not be terminated even if the aggrieved persons has commenced a civil action in an appropriate court under the Fair Housing Act, but all efforts to obtain complaince by voluntary means shall immediately terminate when such civil action comes to trial, unless the court specifically requests assistance from the Assistant Secretary.

§ 105.61 Access to information gathered in investigations.

(a) No information contained in a complaint or developed in connection with an investigation by the Assistant Secretary shall be made a matter of public information during the pendency of a Fair Housing Act complaint before the Department. However, upon the completion of the conciliation process, the Assistant Secretary may authorize the disclosure of specific information or reports to the aggrieved person, the respondent, or any of their representatives or witnesses, where the Assistant Secretary deems such disclosure necessary for securing appropriate relief.

(b) This provision does not apply to disclosures to representatives of interested Federal, State, and local authorities as may be appropriate or necessary to the carrying out of their responsibilities for the administration and enforcement of civil rights requirements, nor to the publication of data derived from such information in a form which does not reveal the identity of aggrieved persons, respondents, or persons supplying the information.

(c) The Final Investigative Report of the Assistant Secretary with respect to a complaint shall contain a "summary of facts" section, setting forth a summary of the facts constituting the basis for the Assistant Secretary's determination either to resolve or not to resolve the complaint. The "summary of facts" section of the Final Investigative Report shall be made available to the aggrieved person or to the respondent, or to any of the representatives of either, promptly upon written request, if the report has been completed at the time of the request, or promptly upon completion of the report, if it has not yet been completed.

§ 105.65 Objectives of conciliation.

In conciliating a complaint, the Assistant Secretary shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent shall satisfactorily remedy any violations of the rights of the aggrieved person and shall take such action as will assure the elimination of discriminatory housing practices or the prevention of their accurrence in the future. The terms of such settlement shall be reduced to a written conciliation agreement, signed by the aggrieved person and respondent and, for the Secretary of Housing and Urban Development, by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her representative. Such conciliation agreement shall seek

to protect the interests of the complainant, other persons similarly situated, and the public interest.

§ 105.67 Types of relief for aggrieved persons.

The following are types of relief that may be sought, as appropriate, for an aggrieved person in conciliation.

(a) Monetary relief, which may include one or more of the following:

(1) Damages, including damages caused by humiliation or embarrassment.

(2) Attorney fees.

(b) Other make-whole relief to the aggrieved person, which may include one or more of the following where they are within the control of the respondent:

(1) The dwelling at issue.

(2) A comparable dwelling.

(3) The provision of services or facilities in connection with a dwelling.

(4) Other specific relief.

(c) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person.

§ 105.70 Types of provisions for the public interest.

The following are types of provisions that may be sought, as appropriate, for the public interest.

(a) Elimination of discriminatory housing practices.

(b) Prevention of future discriminatory housing practices.

(c) Affirmative activities.

(d) Reporting requirements.

(e) Monitoring and enforcement activities.

§ 105.73 Inability to obtain voluntary compliance.

Should a respondent fail or refuse to confer with the Assistant Secretary or his or her representative, or should an aggrieved person or a respondent fail or refuse to make a good faith effort to resolve any dispute, or should the Assistant Secretary find for any other reason that voluntary agreement is not likely to result, the Assistant Secretary may terminate his or her efforts to conciliate the complaint.

§ 105.74 Notification where voluntary compliance is not obtained.

The aggrieved person and the respondent shall be notified in writing by certified mail when the Assistant Secretary has determined that he or she is unable to obtain voluntary compliance through informal methods of conference, conciliation, or persuasion, and the aggrieved person shall be notified of his or her legal right to file a civil action under section 810(d) and section 812 of the Fair Housing Act.

§ 105.75 Confidentiality of conciliation conferences.

(a) Once the Assistant Secretary has decided to resolve a complaint and the aggrieved person and respondent have agreed to participate in informal endeavors by the Assistant Secretary for such purposes, nothing that is said or done in the course of informal endeavors may be made public, or used as evidence in a subsequent proceeding under Title VIII, without the written consent of the persons concerned.

(b) Any employee of the Department who makes public any information relating to informal endeavors under this section shall be subject to the penalties enumerated in section 810(a) of the Fair Housing Act.

(c) This section shall not be construed to prevent the Assistant Secretary from disclosing the results of his or her informal endeavors, including publishing any conciliation agreement. Such disclosure shall be limited to:

(1) A summary description of the results obtained through his or her; conciliation efforts or

(2) Any conciliation agreement entered.

§ 105.76 Resolution of complaints.

(a) A conciliation agreement shall be executed if:

(1) The aggrieved person and the respondent agree to the relief accorded the aggrieved person; and

(2) The Department and the respondent agree to the provisions vindicating the public interest. Such provisions will contain affirmative activities clearly necessary to protect the public interest.

(b) A conciliation agreement may not be executed if:

(1) The aggrieved person and the respondent do not agree on the relief to be accorded the aggrieved person; or

(2) The Department and the respondent do not agree on provisions vindicating the public interest.

§ 105.77 Review of compliance.

The Assistant Secretary may, from time to time, review compliance with the terms of any conciliation agreement. Whenever the Assistant Secretary has reasonable cause to believe that a respondent has failed to comply with a conciliation agreement, the Assistant Secretary may take such enforcement action as is provided for under the agreement or as may be appropriate, including referral of the matter to the Attorney General with a recommendation for the filing of a civil action in the name of the Secretary of Housing and Urban Development for the enforcement of the terms of the conciliation agreement.

§ 105.80 Other action by the Assistant Secretary.

(a) If voluntary compliance has not been obtained and the Assistant Secretary has terminated efforts at conciliation in a case where, after evaluation of the investigation, the evidence on balance indicates that there has been a discriminatory housing practice, the Assistant Secretary may pursue one or more of the following courses of action:

(1) Recommend to the Attorney General of the United States that he or she institute a civil action under section 813 of the Fair Housing Act for relief against a pattern or practice of resistance to the full enjoyment of any of the rights granted by the Act or denial of rights under the Act to a group of persons raising an issue of general public importance.

(2) Refer the matter to the Attorney General for such other action as he or she may deem appropriate.

(3) Take appropriate steps to initiate proceedings leading to the debarment of the respondent from participation in HUD programs and activities pursuant to Part 24 of this Title.

(4) Take appropriate steps to initiate proceedings pursuant to:

(i) 24 CFR Part 1, implementing Title VI of the Civil Rights Act of 1964;

(ii) 24 CFR 570.912, implementing section 109 of the Housing and Community Development Act of 1974; or

(iii) 24 CFR Part 107, implementing Executive Order 11063.

(5) Inform any other Federal agency appearing to have an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

(b) This section shall not preclude:

(1) The referral of any matter to the Attorney General at any time where the Assistant Secretary determines that a complaint may involve a pattern or practice of discriminatory conduct or a denial of rights raising an issue of general public importance; or

(2) The initiation at any time of activity leading to the imposition of administrative sanctions where the Assistant Secretary determines that such action is necessary to the effective operation and administration of Federal programs or activities, including supervision and exercise of regulatory responsibility.

Appendix—Lists of Department of Housing and Urban Development Regional Offices and Jurisdictional Areas and Field Offices

1. *HUD Regional Offices*

Region and office name	Address	Jurisdictional area
I. Boston Regional Office.	Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Rm 375, Boston, MA, 02222-1092.	Massachusetts, New Hampshire, Rhode Island, Vermont.
II. New York Regional Office.	26 Federal Plaza, New York, NY, 10278-0068.	New Jersey, New York, Puerto Rico, Virgin Islands.
III. Philadelphia Regional Office.	Liberty Square Building, 105 S. 7th Street, Philadelphia, PA, 19106-3392.	Delaware, District of Columbia, Maryland, Virginia, West Virginia.
IV. Atlanta Regional Office.	Richard B. Russell, Federal Building, 75 Spring Street SW., Atlanta, GA, 30303-3388.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V. Chicago Regional Office.	300 South Wacker Drive, Chicago, IL, 60606-6765.	Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin.
VI. Fort Worth Regional Office.	1600 Throckmorton, Post Office Box 2905, Fort Worth, TX, 76113-2905.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII. Kansas City Regional Office.	Professional Building, 1103 Grand Avenue, Kansas City, MO, 64106-2496.	Iowa, Kansas, Missouri, Nebraska.
VIII. Denver Regional Office.	Executive Tower Building, 1405 Curtis Street, Denver, CO, 80202-2349.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX. San Francisco Regional Office.	Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA, 94102-3448.	Arizona, California, Hawaii, Nevada, Guam, American Samoa.
X. Seattle Regional Office.	Arcade Plaza Building, 1321 Second Avenue, Seattle, WA, 98101-2054.	Alaska, Idaho, Oregon, Washington.

2. *HUD Field Offices*

Alabama

Birmingham Office, Daniel Building, 15, South 20th Street, Birmingham, Alabama 35233-2096

Alaska

Anchorage Office, 701 C Street, Box 64, Anchorage, Alaska 99513-0001

Arizona

Phoenix Office, One North First Street, Third Floor, Post Office Box 13468, Phoenix, Arizona 85002-3468

Tucson Office, 100 North Stone Avenue, Suite 410, Tucson, Arizona 85701-1467

Arkansas

Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 722201-3523

California

Fresno Office, 1630 E. Shaw Avenue, Suite 138, Fresno, California 93710-8193

Los Angeles Office, 1615 W. Olympic Boulevard, Los Angeles, California 90015-3801

Sacramento Office, 777 12th Street, Suite 200, Sacramento, California 95814-1997

San Diego Office, Federal Office Building, 880 Front Street, Room 553, San Diego, California 92188-0100

Santa Ana Office, 34 Civic Center Plaza, Box 12850, Santa Ana, California 92712-2850

Caribbean Islands

Caribbean Office, Federico Degetau Federal Building, U.S. Courthouse, Room 428, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918-2276

Connecticut

Hartford Office, 330 Main Street, First Floor, Hartford, Connecticut 06106-1860

Delaware

Wilmington Office, Federal Building, 844 King Street, Room 1304, Wilmington, Delaware 19801-3519

District of Columbia

Washington, DC Office, HUD Building, 451 Seventh Street SW., Room 3158, Washington, DC 20410-5500

Florida

Coral Gables Office, Gables 1 Tower, 1320 South Dixie Highway, Coral Gables, Florida 33146-2911

Jacksonville Office, 325 West Adams Street, Jacksonville, Florida 32202-4304

Orlando Office, Federal Office Building, 80 North Hughey Avenue, Room 410, Orlando, Florida 32801-2226

Tampa Office, 700 Twiggs Street, Room 527, Post Office Box 172910, Tampa, Florida 33672-2910

Hawaii

Honolulu Office, 300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96850-4991

Idaho

Boise Office, Federal Building—U.S. Courthouse, Post Office Box 042, 550 West Fort Street, Boise, Idaho 83724-0420

Illinois

Springfield Office, 524 S. Second Street, Room 672, Springfield, Illinois 62701-1774

Indiana

Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204-2526

Iowa

Des Moines Office, Federal Building, 210 Walnut Street, Room 259, Des Moines, Iowa 50390-2155

Kansas

Topeka Office, Frank Carlson Federal Building, 444 Quincy, Room 370, Topeka, Kansas 66683-0001

Kentucky

Louisville Office, 601 W. Broadway, Post Office Box 1044, Louisville, Kentucky 40201-1044

Louisiana

New Orleans Office, Fisk Federal Building, 1661 Canal Street, New Orleans, Louisiana 70112-2887

Shreveport Office, New Federal Building, 500 Fannin Street, Shreveport, Louisiana 71101-3077

Maine

Bangor Office, 263 State Street, Ground Level, Bangor, Maine 04401-5435

Maryland

Baltimore Office, the Equitable Building, 3rd Floor, 10 N. Calvert Street, Baltimore, Maryland 21202-1865

Michigan

Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226-2592

Flint Office, Gil Sabuco Building, Room 200, 352 S. Saginaw Street, Flint, Michigan 48502-1953

Grand Rapids Office, 2922 Fuller Avenue, NE., Grand Rapids, Michigan 49505-3409

Minnesota

Minneapolis-St. Paul Office, 220 Second Street, South, Minneapolis, Minnesota 55401-2195

Mississippi

Jackson Office, Dr. A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269-1096

Missouri

St. Louis Office, 210 North Tucker Boulevard, St. Louis, Missouri 63101-1997

Montana

Helena Office, Federal Office Building, Drawer 10095, 301 S. Park, Room 340, Helena, Montana 59626-0095

Nebraska

Omaha Office, Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102-1622

Nevada

Las Vegas Office, 1500 East Tropicana Avenue, 2nd Floor, Las Vegas, Nevada 89119-6516

Reno Office, 1050 Bible Way, P.O. Box 4700, Rena, Nevada 89505-4700

New Hampshire

Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101-2487

New Jersey

Camden Office, The Parkade Building, 519 Federal Street, Camden, New Jersey 08103-9998

Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102-5504

New Mexico

Albuquerque Office, 625 Truman Street, NE., Albuquerque, New Mexico 87110-6443

New York

Albany Office, Leo W. O'Brien Federal Building, N. Pearl Street and Clinton Avenue, Albany, New York 12207-2395

Buffalo Office, Mezzanine, Statler Building, 107 Delaware Avenue, Buffalo, New York 14202-2986

North Carolina

Greensboro Office, 415 North Edgeworth Street, Greensboro, North Carolina 27401-2107

North Dakota

Fargo Office, Federal Building, P.O. Box 2483, 653 2nd Avenue North, Fargo, North Dakota 58108-2483

Ohio

Cincinnati Office, Federal Office Building, Room 9002, 550 Main Street, Cincinnati, Ohio 45202-3253

Cleveland Office, One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, Ohio 44115-1832

Columbus Office, 200 North High Street, Columbus, Ohio 43215-2499

Oklahoma

Oklahoma City Office, Murrah Federal Building, 200 NW 5th Street, Oklahoma City, Oklahoma 73102-3202

Tulsa Office, Robert S. Kerr Building, 440 S. Houston Avenue, Room 200, Tulsa, Oklahoma 74127-8923

Oregon

Portland Office, 520 Southwest Sixth Avenue, Portland, Oregon 97204-1596

Pennsylvania

Pittsburgh Office, 412 Old Post Office Courthouse Building, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219-1906

Rhode Island

Providence Office, 330 John O. Pastore Federal Building and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903-1785

South Carolina

Columbia Office, Strom Thurmond Federal Building 1835-45 Assembly Street, Columbia, South Carolina 29201-2480

South Dakota

Sioux Falls Office, 300 Building, 300 N. Dakota Ave., Suite 116, Sioux Falls, South Dakota 57102-0311

Tennessee

Knoxville Office, One Northshore Building, 1111 Northshore Drive, Knoxville, Tennessee 37919-4090

Memphis Office, One Memphis Place, 200 Jefferson Avenue, Suite 1200, Memphis, Tennessee 38103-2335

Nashville Office, One Commerce Place, Suite 1600, Nashville, Tennessee 37239-1600

Texas

Dallas Office, 525 Griffin Street, Room 106, Dallas, Texas 75202-5007

Houston Office, National Bank of Texas Building, 2211 Norfolk, Suite 300, Houston, Texas 77098-4096

Lubbock Office, Federal Office Building, 1205 Texas Avenue, Lubbock, Texas 79401-4093

San Antonio Office, Washington Square, 800 Dolorosa Street, San Antonio, Texas 78207-4563

Utah

Salt Lake City Office, 324 South State Street, Suite 220, Salt Lake City, Utah 84111-2321

Vermont

Burlington Office, Room B-311 Federal Building, 11 Elmwood Avenue, P.O. Box 1104, Burlington, Vermont 05402-1104

Virginia

Richmond Office, 701 East Franklin Street, Richmond, Virginia 23219-2591

Washington

Spokane Office, West 920 Riverside Avenue, Spokane, Washington 99201-1075

West Virginia

Charleston Office, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301-1795

Wisconsin

Milwaukee Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203-2289

Wyoming

Casper Office, 4225 Federal Office Building, P.O. Box 580, 100 East B Street, Casper, Wyoming 82602-1918

PART 115—RECOGNITION OF JURISDICTIONS WITH SUBSTANTIALLY EQUIVALENT LAWS

2. The authority citation for Part 115 continues to read as follows:

Authority: Secs. 810(c), 816, Civil Rights Act of 1968, 42 U.S.C. 3610(c), 3616; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

3. Paragraph (a) of § 115.10 is revised to read as follows:

§ 115.10 Consequences of recognition.

(a) Where all alleged violations of the Act contained in a complaint received by the Assistant Secretary appear to constitute violations of a State or local fair housing law within a jurisdiction that has been recognized as having a substantially equivalent fair housing law, the complaint shall be referred promptly to the appropriate State or local agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint, except as provided for by the Act and by §§ 105.20-105.22 of this chapter.

* * * * *

Dated: May 20, 1988.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88-14285 Filed 6-24-88; 8:45 am]

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federal register

Monday
June 27, 1988

Part V

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62053A; FLR 3369-2]

Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends existing rules controlling the processing, distribution in commerce, and use of PCBs by excluding additional materials containing less than 50 parts per million (ppm) polychlorinated biphenyls (PCBs) from regulation under section 6(e) of the Toxic Substances Control Act (TSCA) which generally prohibits the manufacturing, processing, distribution in commerce, and use of PCBs. EPA has found that activities allowed under this rule will not present unreasonable risks of injury to public health or the environment.

EFFECTIVE DATE: This rule shall be effective July 27, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202-554-1404), TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is issuing this regulation to:

(1) Eliminate the Viton elastomer glove requirement for workers servicing heat transfer and hydraulic systems.

(2) Allow certain equipment and materials that have been adequately decontaminated to be used and distributed in commerce.

(3) Maintain the 3 parts per billion (ppb) effluent limit for releases from pulp and paper mills.

(4) Allow the use of waste oil containing <50 ppm PCBs as a fuel in certain combustion units.

(5) Exclude from the ban on processing, distribution in commerce, and use, certain products containing <50 ppm PCBs that were "legally" manufactured, processed, distributed in commerce or used prior to October 1, 1984.

I. Background

Section 6(e) of TSCA generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. Under section 6(e)(2), the Agency may authorize non-totally enclosed uses of PCBs upon a determination that such uses will not present an unreasonable risk of injury to health or the environment. Also, under section 6(e)(3), EPA may by rule grant 1-year exemptions from the general manufacture, processing, and distribution in commerce prohibitions. Such exemptions may be granted where the petitioner can demonstrate:

(1) That the activity to be exempted will not present an unreasonable risk of injury to health or the environment.

(2) That good faith efforts have been made to develop a substitute for PCBs which does not present an unreasonable risk.

In the **Federal Register** of May 31, 1979 (44 FR 31514), EPA issued its first regulation implementing the TSCA section 6(e)(2) and section 6(e)(3) prohibitions. That first rule (the PCB Ban Rule) included among its provisions a general exclusion from regulation for those activities involving PCBs at levels less than 50 parts per million (ppm). The only exception to the general exclusion for activities involving less than 50 ppm materials was a prohibition on the use of waste oil as a dust suppressant, sealant, or coating. This prohibition applied to waste oils with any detectable levels of PCBs.

The Environmental Defense Fund (EDF) successfully challenged this general 50 ppm regulatory cutoff, and on October 30, 1980, the U.S. Court of Appeals for the District of Columbia Circuit remanded the Ban Rule to EPA for further action consistent with its opinion. The Court determined that there was not substantial evidence in the record which would support the decision to exclude generally from regulation all materials containing PCBs at concentrations less than 50 ppm. The Court stated that a proper exclusion would need to be more finely tailored to the purposes of excluding ambient sources of PCBs, or, be premised upon a finding that the designated cutoff does not present an unreasonable risk of injury to health or the environment. The rulemaking history of the PCB Ban Rule is described in detail in the proposed "Exclusions, Exemptions and Use Authorizations" Rule published July 8, 1987 (52 FR 25838).

On February 20, 1981, the Chemical Manufacturers Association (CMA), EDF, and other industry intervenors in the *EDF* v. *EPA* litigation, filed a joint motion with EPA seeking a stay of the court's mandate. The Court granted the joint motion on April 13, 1981, thereby staying the issuance of its mandate pending the development by EPA of additional regulations concerning PCBs with concentrations less than 50 ppm.

EPA undertook the regulation of PCBs in concentrations less than 50 ppm in two phases. On October 21, 1982, the Agency issued the Closed and Controlled Waste Manufacturing Process Rule (47 FR 46980) which excluded from the general prohibitions a limited number of chemical manufacturing processes defined as "closed" or "controlled waste" processes. These processes either resulted in no PCB releases or releases only in controlled waste streams. In essence, the Closed and Controlled Rule allowed limited new manufacture of PCBs, but only when the PCBs were controlled and not released to the environment.

On July 10, 1984, EPA completed the second phase of rulemaking concerning low concentration PCBs. The "Uncontrolled Rule" (49 FR 28154) was issued regulating manufacturing processes generating low concentration PCBs in other than "closed" and "controlled waste" processes as well as other activities involving previously generated low concentration PCBs. This second Rule excluded from regulation additional manufacturing processes that generated PCBs as byproducts and impurities and allowed the limited recycling of PCBs in the manufacture of asphalt roofing materials and paper products. EPA found that these additional activities could be excluded from the general prohibition on the manufacture, processing, distribution in commerce, and use of PCBs because these other activities do not present an unreasonable risk of injury to public health or the environment.

On October 1, 1984, the date that the Uncontrolled Rule became effective, the court lifted its stay and any activity involving any quantifiable level of PCBs was banned unless EPA had specifically excluded, exempted, or authorized the activity by regulation (49 FR 28173, July 10, 1984).

The practical effect of this action was to make illegal many activities involving previously generated PCBs which were neither anticipated nor specifically evaluated during the development of the Uncontrolled Rule. Many activities involving low concentrations of previously generated PCBs were now prohibited, regardless of the fact that they may have presented no greater risk than certain activities specifically allowed in the July 10, 1984 rule.

Petitions seeking judicial review of the July 10, 1984 rule were filed on September 24, 1984, in the U.S. Court of Appeals for the District of Columbia Circuit by the American Paper Institute (API), the Fort Howard Paper Company (Ft. Howard), the Outboard Marine Corporation (OMC), and the American

Die Casting Institute (ADCI). The challenges were consolidated for resolution, and the Chemical Manufacturers Association (CMA) entered the litigation as an intervenor and respondent. EPA recognized the concerns of the petitioners, and on August 7, 1986, EPA entered into a settlement agreement. EPA agreed to propose specific amendments to the July 10, 1984 regulation to address the concerns of the petitioners.

EPA proposed, in the **Federal Register** of July 8, 1987 (52 FR 25838), to amend the July 10, 1984 PCB Rule (the "Uncontrolled Rule") by excluding additional materials from regulation based on EPA's determination that activities involving these materials do not present an unreasonable risk of injury to health or to the environment. In the July 8, 1987 proposed rule, EPA proposed the following amendments to the regulations governing the processing, distribution in commerce, and use of PCBs.

1. To generally authorize the processing, distribution in commerce, and use of products containing less than 50 ppm PCBs provided that the PCBs present in the products were legally manufactured, processed, distributed in commerce, and/or used prior to October 1, 1984. The only exception that EPA proposed to this generic exclusion of activities involving less than 50 ppm PCBs, was to place limitations on the use of oil containing less than 50 ppm PCBs as a fuel. EPA proposed to restrict the burning of oil containing less than 50 ppm PCBs to industrial boilers and furnaces, which EPA believes, as a class, will provide for more efficient combustion than nonindustrial boilers and furnaces.

2. To authorize the distribution in commerce of equipment and other materials contaminated with PCBs from a spill, provided that such materials are decontaminated in accordance with EPA's applicable PCB spill cleanup policies.

3. To eliminate the water discharge limit of less than 3 micrograms per liter (3 ug/L), roughly 3 parts per billion (ppb), for total Aroclors leaving a paper processing site.

4. To eliminate the requirement that owners of hydraulic and heat transfer systems provide Viton elastomer gloves for workers servicing this equipment, and that workers wear these gloves when servicing heat transfer and hydraulic systems.

Of the proposed amendments, the proposal to generally authorize the processing, distribution in commerce, and use of products containing less than 50 ppm PCBs (with a restriction on the use of oil containing less than 50 ppm as a fuel in nonindustrial boilers) was the most significant of the July 8, 1987 proposals and drew the most comment. The Agency invited comments on various aspects of its proposal regarding products containing less than 50 ppm PCBs, including the exposure assessment that supports the Agency's decision to prohibit the burning of low-concentration PCB waste oil in nonindustrial boilers and furnaces. In the proposed rule, EPA indicated that it would use any new information submitted to the Agency to reconsider the appropriateness of its approach concerning the burning of oil containing less than 50 ppm PCBs as a fuel, with the option of excluding all used oil products (with less than 50 ppm PCBs) from regulation, without any restrictions on burning or other recycling activities.

EPA received over 40 comments during the public comment period which closed on September 8, 1987. EPA received comments from a number of different sources, including electrical utilities, chemical manufacturers, heavy equipment manufacturers, pulp and paper mills, members of trade associations, the electrical equipment service industry, and an environmental group.

The comments are summarized in "Response to Comments on the NPR for Amendments to the Uncontrolled PCBs Rule," June 1988. Several comments were also received following the close of the comment period, which EPA accepted and considered as they contained information not available earlier. On September 21, 1987, EPA held an informal hearing in Washington, DC at the request of the Electrical Apparatus Service Association (EASA). EASA addressed the issues of the buying and selling of used transformers, salvaging and rebuilding operations, and the effect of the Proposed Rule on this service industry. Six EASA members provided testimony on various provisions of the Proposed Rule, and a transcript of the hearing appears in the Docket.

EPA has considered all comments received in response to the Proposed Rule (as well as comments received after the close of the comment period) and has modified the rule where appropriate. A more detailed explanation of regulatory development history is presented in the Preamble to the Exclusions, Exemptions and Use Authorizations Proposed Rule of July 8, 1987. A brief overview of the final rule follows.

II. Overview of the Amendments

A. General Exclusion for Products Containing Less than 50 PPM PCBS

On October 1, 1984 (the effective date of the Uncontrolled Rule), the Court of Appeals for the District of Columbia Circuit lifted the stay of mandate that had been in place since the Court's decision to remand to EPA the general 50 ppm regulatory cutoff for PCBs. The effect of this action was to ban all PCB-related activities that were not specifically excluded, authorized, or exempted by EPA under TSCA regulations (40 CFR Part 761). The rule made illegal many activities involving previously generated PCBs at concentrations of less than 50 ppm. EPA had not anticipated the many activities that would be banned when the general 50 ppm cutoff was removed, and many of these activities were not evaluated during the development of the 1984 Uncontrolled Rule.

CMA and others raised specific concerns about the effect of this ban on the distribution in commerce, further processing, and use of products containing less than 50 ppm PCBs that were produced legally before October 1, 1984, but which were in storage for use or distribution in commerce when the Uncontrolled Rule became effective. These products, they argued, should be allowed to be further processed, distributed in commerce, and used, but EPA did not specifically authorize or exempt these products by the terms of the Uncontrolled Rule. EPA agreed with the principle that materials containing less than 50 ppm PCBs that were legally in existence before October 1, 1984 should be allowed to be further processed, distributed in commerce, and used. Accordingly, EPA agreed to address these concerns in a proposed rule.

In the July 8, 1987 proposed rule, the Agency proposed to amend the existing regulations by generally excluding from the TSCA section 6(e) prohibitions the processing, distribution in commerce, and use of products containing less than 50 ppm PCBs, provided these products were legally manufactured, processed, distributed in commerce, or used prior to October 1, 1984. The term "legally," as used in this exclusion, includes products created from PCB activities allowed by EPA by regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs. The only exception that EPA proposed to this generic 50 ppm cutoff for processing, distribution in commerce, and use of PCBs was a restriction on the use of oil containing less than 50 ppm as

a fuel in nonindustrial boilers and furnaces. Materials containing less than 50 ppm PCBs as a result of a spill of 50 ppm or greater material after the effective date of the disposal regulations (July 2, 1979) are not excluded from regulation by the terms of this provision.

In this final rule, EPA has adopted this generic exclusion based upon its determination that activities involving products containing less than 50 ppm PCB generally do not present an unreasonable risk of injury to human health or the environment. EPA's analyses demonstrate that the incremental risks associated with the processing, distribution in commerce, and use of products with PCB levels up to 50 ppm are outweighed by the tremendous costs that would be incurred by banning the further processing, distribution in commerce, and use of PCBs at these levels.

While EPA has included used oil products containing less than 50 ppm PCBs within the class of "excluded PCB products," the Agency is restricting the use of PCB containing oil as a fuel. EPA has also determined that the burning of PCB containing oil in concentrations below 50 ppm in industrial boilers and furnaces does not present an unreasonable risk to public health or the environment under normal operating conditions. However, the finding of no unreasonable risk for the use of PCB-containing oil as a fuel does not include the burning of PCB containing oil under combustion conditions which are likely to promote the formation of polychlorinated dibenzofurans (PCDFs). EPA believes that among known classes of boilers and furnaces, nonindustrial boilers and furnaces are most likely to create combustion conditions conducive to the formation of PCDFs and that the burning of PCB containing oil as fuel during startup and shutdown operations in industrial boilers and furnaces are also likely to create combustion conditions conducive to incomplete combustion. Further, PCDFs are considered to be more toxic than PCBs and their formation and release during the burning of oil under certain combustion conditions in nonindustrial boilers and furnaces could present a significant risk to public health and the environment. Thus, EPA is restricting the burning of oil containing less than 50 ppm PCBs as a fuel to industrial boilers and furnaces except during startup and shutdown operations.

B. Land Application of Sewage Sludges

Land application practices involving PCBs at levels less than 50 ppm are governed by provisions of non-TSCA regulatory programs. Therefore, EPA is not addressing the land application of sewage sludges under this rule because any risks from these activities can be eliminated or reduced by action taken under other laws administered by EPA. EPA has the authority to manage sewage sludge and other wastes containing less than 50 ppm PCBs (43 FR 24803, June 7, 1978), under the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA) programs. Further discussion of this issue can be found in the Proposed Rule at 52 FR 25855.

C. Use Authorization for Hydraulic and Heat Transfer Systems—Requirement for Use of Viton Gloves

In the 1979 Ban Rule (44 FR 31514), EPA authorized the non-totally-enclosed use of PCBs at concentrations of 50 ppm or greater in hydraulic systems and in heat transfer systems (40 CFR 761.30 (d) and (e)). The 1979 use authorizations contained conditions relating to testing and retrofitting which were designed to reduce the concentrations of PCBs in these systems to levels less than 50 ppm by July 1, 1984.

In the July 10, 1984 Uncontrolled Rule, EPA authorized the use of PCBs in hydraulic and heat transfer systems at concentrations less than 50 ppm for the remainder of their useful lives. EPA found that the continued use of these systems did not present an unreasonable risk of injury to public health or the environment. The 1984 use authorization, however, imposed a condition on the continued use of this equipment which required owners of systems to provide workers with Viton elastomer gloves for protection against dermal exposure to PCBs. Outboard Marine Corp. (OMC) and the American Die Casting Institute (ADCI) raised concerns about the Viton glove requirements in a settlement discussion with EPA. They believed this requirement unnecessary to prevent unreasonable risk.

After reviewing the record for its original decision to require the use of Viton gloves, EPA found that the cost associated with requiring the use of gloves was significantly higher than originally estimated. Further, EPA also found that the risks posed by servicing heat transfer and hydraulic equipment containing less than 50 ppm PCBs did not outweigh the large costs associated with requiring the use of Viton gloves, or any other effective glove that is commercially available.

Accordingly, EPA is amending the authorization for hydraulic and heat transfer systems containing less than 50 ppm PCBs by eliminating the conditions requiring owners to provide, and maintenance workers to wear, gloves formulated from Viton elastomer. After evaluating economic information not examined during the 1984 rulemaking, and updating EPA's estimate of the concentration of PCBs in these systems as of 1987, EPA has determined that the servicing of heat transfer and hydraulic systems without gloves does not present an unreasonable risk of injury to public health or the environment.

The Agency wishes to emphasize that the use of impermeable gloves to prevent dermal contact with PCB-containing fluids may be warranted but the choice of such protection will be dependent on factors such as the duration of occupational exposure, concentration of PCB-containing fluid, and the costs and permeability of the glove material.

D. Water Discharge Limit of 3 PPB Total Aroclors for Pulp and Paper Processes

The July 10, 1984 rule permitted PCB recycling activities among two manufacturing industries—asphalt roofing materials manufacturers and manufacturers of pulp and paper products. Five conditions were set forth in the definition of "recycled PCBs," including a limitation on the level of PCBs allowed in water effluents. The effluent limit in the Uncontrolled Rule limited the amount of Aroclor PCBs in water discharged from these PCB processing sites to less than 3 micrograms per liter (μg/L) for total Aroclors (roughly 3 parts per billion (3 ppb)).

Petitioners, Fort Howard and the American Paper Institute, filed a joint petition challenging the 3 ppb total Aroclors discharge limit for pulp and paper mills. The major concerns were that the regulation did not allow for excursions above 3 ppb due to higher PCB levels in recycled paper entering the process and that the TSCA concentration-based standard unfairly penalized those mills who conserved water and had a decreased volume flow in their effluent discharges.

EPA proposed to eliminate the 3 ppb water effluent standard for PCBs leaving pulp and paper mills for several reasons, including: (1) EPA's belief that PCB discharges from pulp and paper mills are being adequately regulated by state permitting authorities, and (2) EPA's recognition that under the recently enacted CWA, Congress now requires that all states adopt water quality criteria within 2 years for chemicals which have been evaluated by EPA. Since water quality criteria exist for PCBs, EPA believed that it had additional assurance that all PCB

effluents from recycling processes would be controlled, eliminating the need for section 6 action under TSCA.

EPA has considered the comments and data submitted on the adequacy of state permitting programs and concluded that it is necessary, at this time, to retain the water discharge limit in the definition of "Recycled PCBs" given the present status of some state NPDES permits and the foreseeable delays in implementing state revisions of water quality standards.

In addition, in light of comments received, that indicated a concentration-based standard unfairly penalized those mills who conserved water, the final rule requires manufacturers who process raw materials contaminated with Aroclor PCBs to comply with either a concentration or a mass-based limit. Allowing for a mass-based limitation (i.e., discharge requirements may be met by limiting the volume flow) is consistent with the Clean Water Act's approach to restricting discharges as well as the approach followed by states under their discharge-permitting authorities. EPA believes it prudent to be consistent with approaches already used by the Agency and state authorities and permit writers for controlling the PCB discharge limit into water. Allowing for a mass-based limitation will continue to regulate the absolute amount of PCBs added to the environment from a point source. EPA has not changed the 3 ppb standard for discharges from asphalt roofing material manufacturing because those manufacturers have not indicated a problem in meeting that standard.

E. Materials Decontaminated Pursuant To Spill Cleanup Policies

The PCB Spill Cleanup Policy (40 CFR Part 761, Subpart G) became effective on May 4, 1987. The policy establishes uniform cleanup levels for specified spill types and locations. The policy prescribes cleanup levels for different types of "spills" according to the PCB concentrations involved in the spill, the type of material contaminated, and the spill location. The Spill Cleanup Policy reaffirms a longstanding Agency policy of allowing the continued processing, distribution in commerce, and use of materials that have been cleaned to Agency standards.

In the July 8, 1987 proposal, EPA proposed to authorize the distribution in commerce and use of materials, equipment, and structures that had been decontaminated in accordance with applicable spill cleanup policies in effect at the time of decontamination, or if not previously decontaminated, then decontaminated at the time of distribution in commerce. Although these materials will be contaminated with low levels of PCBs, EPA proposed to authorize these activities because EPA has already determined that this residual level of contamination will not present unreasonable risks of injury to public health or the environment.

This final rule addresses materials contaminated with low level PCBs that resulted from a spill of controlled material (PCBs in concentrations of 50 ppm or greater). EPA is excluding from the TSCA section 6(e) prohibitions on the distribution in commerce and use of any equipment, structures, and other materials contaminated with PCBs, that are not otherwise authorized by 40 CFR Part 761, provided that these "materials" were decontaminated in accordance with applicable PCB cleanup policies in effect at the time of decontamination, or, if not previously decontaminated, then decontaminated at the time of distribution in commerce in accordance with the current cleanup policy.

III. Discussion of Amendments

Forty-two comments were received during the comment period. The majority of the comments received in this rulemaking generally agree with the amendments proposed in the July 8, 1987 Federal Register notice. However, several modifications to the rule were suggested by the commentors. This Unit of the Preamble discusses the major comments made in response to the proposed rule, EPA's responses to these comments, EPA's findings, and the rationale for any additional regulatory requirements. Refer to the support document "Response to Comments received on the NPR for Amendments to the Uncontrolled PCBs Rule," which appears in the Rulemaking Record for EPA's responses to comments not addressed here.

A. 50 PPM Regulatory Cutoff

1. *Excluded PCB Products.* EPA's July 8, 1987 proposed rule generally excluded from the TSCA section 6(e) prohibitions, the processing, distribution in commerce, and use of products containing less than 50 ppm PCB concentration provided these PCB-containing products were legally manufactured, processed, distributed in commerce, or used prior to October 1, 1984. The term "legally" as used in this exclusion includes activities and products created by these activities EPA allowed by regulation, by exemption petition, by settlement agreement, or pursuant to other Agency approved programs. EPA requested comments on its case studies of the costs and benefits of regulating PCBs in concentrations below 50 ppm in: Investment casting waxes and products contaminated with inadvertently generated PCBs prior to the effective date of the Uncontrolled Rule. The following addresses those comments and identifies other examples of products that are included in this generic exclusion.

There was strong general support from all commentors on the proposal to generally exclude from further regulation products that were legally contaminated with previously generated PCBs at levels under 50 ppm prior to October 1, 1984. The proposal was supported by chemical manufacturers, other industries, and by utilities concerned with TSCA prohibitions on the repair and rebuilding of electrical equipment. EPA received no comments on this proposal from environmental groups.

The major criticism expressed about the general exclusion for products contaminated at less than 50 ppm was EPA's lack of clarity in defining what activities and "products" were excluded from regulation by the 50 ppm cutoff. Particularly, these commentors support EPA in its decision to exclude a broader class of products than was described by the precise terms of the definition set forth in the Settlement Agreement, but ask that EPA clarify the regulatory language to better express this intent.

The precise terms of the Settlement Agreement call for the Agency to propose to authorize the processing, distribution in commerce, and use of existing stocks of products contaminated with PCBs at concentrations less than 50 ppm, in cases where these products were legally manufactured, processed, or distributed in commerce before October 1, 1984. As noted in comments by Southern California Gas Company (SoCalGas), strictly limiting the definition of what is excluded would have the effect of placing any products contaminated by "ambient" PCBs after the 1984 date within a class of products still subject to the ban on processing, distribution in commerce, and use. The result is seen by SoCalGas to be at odds with the Agency's expressed intent not to regulate "old" or ambient" PCBs at levels of less than 50 ppm (52 FR 25843, July 8, 1987). SoCalGas is concerned that by a strict reading of the rule, many of the products contaminated with low levels of PCBs from historic PCB uses or during recycling activities would still be regulated.

The Agency acknowledges the validity of these comments. It is the Agency's intent to allow the processing, distribution in commerce, and use of

PCBs in concentrations below 50 ppm provided that:

a. The PCBs were legally manufactured before October 1, 1984.

b. If the PCBs were processed, distributed in commerce, or used before October 1, 1984, they were legally processed, distributed in commerce or used.

c. The resulting PCB concentration (i.e., below 50 ppm) is not a result of dilution, or leaks and spills of PCBs in concentrations over 50 ppm after the effective date of the disposal regulations.

The only exceptions to the general 50 ppm cutoff for the use of previously generated PCBs are EPA prohibitions on the use of PCBs at any detectable concentration as a sealant, coating, or dust control agent, and the use of PCBs at ≥2 ppm as a fuel in nonindustrial boilers and furnaces. Since EPA received many comments on its proposal to restrict the use of less than 50 ppm material as a fuel in nonindustrial boilers and furnaces, EPA has summarized these comments separately in Unit III.B of this document.

In response to an information request in the July 8, 1987 proposal, the Outboard Marine Corporation (OMC) submitted data on the concentration of PCBs in investment casting waxes. At the time of the Proposed Rule, the Agency supported the inclusion of investment casting waxes among the class of excluded products based upon mathematical modeling which estimated average PCB contamination in these waxes to be 10 ppm. The Outboard Marine Corporation survey data, collected over the last 2 years, indicated that only 18 percent of the approximately 70 samples tested contained detectable levels of PCBs. The average PCB concentration for those samples was 14 ppm. This information confirms the Agency's earlier estimates and supports the inclusion of investment casting waxes among the general PCB products exclusion.

The comments also expressed strong and uniform support for the proposed products exclusion and its effect on the further use, processing, and distribution in commerce of components derived from non-PCB electrical equipment (PCB electrical equipment containing less than 50 ppm PCBs in dielectric fluids).

Several commentors requested that the rule make express reference to heat transfer and hydraulic equipment, and other miscellaneous equipment in use, or in storage for reuse, which has been in contact with material less than 50 ppm PCBs, rather than leaving this class of equipment inferentially covered by the broad products language. The Agency has included these items and their fluids as examples of products covered by the exclusion. Hydraulic and heat transfer equipment which has been retrofilled and "reclassified" according to TSCA procedures and regulations falls within this class of excluded products. General Motors Corporation submitted cost data on the effects of removing the prohibition of distribution in commerce and processing of this equipment. Two General Motors facilities would experience an approximate $3 million savings when the TSCA prohibitions against distribution in commerce of non-PCB heat transfer and hydraulic equipment in use or in storage are lifted.

EPA also notes that component parts derived from the rebuilding or salvaging of electrical equipment containing PCBs at levels less than 50 ppm qualify as "excluded PCB products". In addition to component parts, the exclusion also includes such activities as buying, selling, and servicing of used non-totally enclosed transformers that contain fluids with concentrations of less than 50 ppm PCBs. As noted in the Proposed Rule, 52 FR 25854, the Agency believes that recycling activities involving these components do not present any significantly greater risks than other activities connected with the unrestricted use of non-PCB electrical equipment.

Two commentors requested that the exclusion for non PCB equipment recycling activities be extended to PCB-contaminated electrical equipment (containing concentrations of 50 to 500 ppm PCB). The Electrical Apparatus Service Association (EASA) and Utility Solid Waste Activities Group (USWAG) joined in seeking the extension of the exemption to components from PCB-contaminated electrical equipment, or in the development of a new decontamination method which would allow electrical utility operating companies to continue their activities. Concern was raised about current inventories of used components which would be used in the repair of PCB-contaminated transformers. In most cases, these components are no longer manufactured, and the entire transformer may be rendered useless without the necessary used replacement parts.

EPA notes that the regulations presently authorize a utility that owns used components removed from electrical equipment owned by the same utility company to use these component parts in the repair of other equipment under its ownership. However, if a component part from PCB-contaminated electrical equipment is used to repair non-PCB equipment, the equipment must be considered to be PCB-contaminated after repair.

In responses to EASA's comments EPA also notes that the existing PCB regulations already provide a mechanism for "decontaminating" PCB-contaminated electrical equipment so that it may be treated in the same manner as non PCB electrical equipment. The PCB regulations allow the reclassification of PCB-contaminated electrical equipment. Once reclassified, a piece of equipment may be salvaged for parts without restriction.

Finally, TSCA section 6(e) provides EPA with the authority to grant exemptions from the prohibition on distribution in commerce. This mechanism is available for those who demonstrate to EPA that their activity will not present an unreasonable risk of injury to public health and the environment and that good faith efforts have been made to develop a substitute for PCBs in the activity. For example, in 1984 the Agency granted the members of EASA a 1-year exemption to process and distribute in commerce PCB-contaminated transformers and component parts. The 1-year exemption would allow EASA time to inform its members how to comply with the PCB regulations, thereby allowing EASA members time to phase out their PCB related activities that required exemptions.

EPA is adopting the generic 50 ppm exclusion for processing, distribution in commerce, and use, based on the Agency's determination that the use, processing, and distribution in commerce of products with less than 50 ppm PCB concentration will not generally present an unreasonable risk of injury to health or the environment. EPA could not possibly identify and assess the potential exposures from all the products which may be contaminated with PCBs at less than 50 ppm. However, EPA concluded that the majority of the hypothetical exposures developed in support of the July 10, 1984 rule were not significant, and in incidents where higher exposures were calculated, further evaluation of the assumptions showed that the estimated exposures overestimated actual expected exposures from the products. EPA believes that the qualitative conclusions reached in 1984 with regard to products (with concentrations up to 50 ppm) from excluded manufacturing practices apply with equal force to the products excluded by this final rule. In addition, EPA has concluded that the costs associated with the strict prohibition on PCB activities are large

and outweigh the risks posed by these activities (see 49 FR 28179, July 10, 1984).

B. Use of PCBs Below 50 PPM as a Fuel

The July 8, 1987 proposed rule proposed to amend the PCB regulations to, in general, authorize used oil recycling activities (use, processing, and distribution in commerce) involving used oil containing less than 50 ppm PCBs. Specifically, EPA proposed to include used oil among products excluded from regulation under the definition of "excluded PCB products." However, EPA proposed to restrict used oil recycling activities by prohibiting the burning of used oil containing any quantifiable level of PCBs as a fuel in nonindustrial boilers.

The proposed rule also proposed to amend the definition of "qualified incinerator" codified at 40 CFR 761.3. EPA proposed to delete the reference to approved high efficiency boilers under 761.60(a)(3) and to replace that deleted language with a reference to the high efficiency boiler criteria and notification requirements set forth in § 761.60(a)(2). The proposal required the same combustion conditions as previously required but sought to replace the approval requirements with the simpler requirement of notification to the EPA Regional Administrator as stated in § 761.60(a)(2)(iii)(B).

The proposal also sought to make another class of combustion facilities eligible for burning used oils with less than 50 ppm PCBs. EPA proposed to include combustion facilities recognized as acceptable for burning off specification "used oil fuels" under 40 CFR Part 266, Subpart E. This second class consists of the industrial "furnaces" and "boilers" which are identified in 40 CFR 266.41(b) and whose owners have notified EPA of their used oil burning activities. The criteria for these boilers and furnaces are identified in 40 CFR 260.10.

Today's rule allows the burning of oil containing between 2 and 49 ppm PCBs as a fuel in RCRA-approved industrial boilers and furnaces. The rule requires that RCRA approved units used to burn PCB oil between 2 and 49 ppm must be operating at normal operating temperatures (this requirement prohibits burning such fuels during either startup or shutdown operations). By prohibiting the use of oil as a fuel between 2 and 49 ppm PCBs during startup and shutdown operations for these units, EPA is effectively eliminating another source where conditions are conducive to the incomplete combustion of PCBs and the formation of PCDFs. The prohibition on the use of this oil during startup and shutdown operations is consistent with the Agency's current regulations for disposing mineral oil dielectric fluid (50–499 ppm PCBs) in high efficiency boilers set forth in 40 CFR 761.60(a)(2)(iii)(A)(5). Similar to the requirements in todays rule, the existing rules regarding high efficiency boilers limit the fuel feed rate for PCBs. Section 761.60(a)(2)(iii)(A)(4) states that mineral oil dielectric fluid cannot compose more than 10 percent, 5–49.9 ppm PCBs, (on a volume basis) of the total fuel feed rate. EPA believes that the requirements for burning PCB fluid between 2 and 49 ppm PCBs during startup and shutdown operations in industrial boilers and furnaces should be consistent with the existing disposal rules set forth in 40 CFR 761.60.

Today's rule also prohibits the burning of oil containing detectable concentrations of PCBs in nonindustrial boilers and furnaces because these units, as a class, are more likely than RCRA-approved industrial boilers and furnaces to operate under combustion conditions that are conducive to the volatilization of PCBs and the formation of toxic products from the incomplete combustion of PCBs.

In the Proposed Rule, EPA concluded that nonindustrial boilers are typically small to medium size unmanned units that may not achieve optimum combustion conditions when burning fuel that the unit was not designed to burn. EPA believed that very few, if any, of these units are equipped with emissions control equipment, while many industrial boilers/furnaces are so equipped. Further, nonindustrial units are more likely to be located in an urban setting where sources are frequently clustered together, they generally have lower stack heights, and have a sporadic mode of operation. Emissions plumes from numerous sources can overlap and increase ambient air concentrations of PCBs and PCDFs while simultaneously exposing a larger population. In contrast, large boilers and industrial furnaces are more likely to be operated by trained operators and equipped with combustion controls to maintain combustion efficiency when burning fuels mixed with low concentration PCBs.

The Agency requested comments on its proposal to prohibit the burning of used oil containing less than 50 ppm PCBs in nonindustrial boilers. (See 52 FR 25854, July 8, 1987). Several commentors asserted that all used oil products under 50 ppm should be excluded from all TSCA regulations, including burner restrictions. Several commentors who opposed the burner restrictions focused their objections on the risk assessment that EPA developed in support of its proposal. Two commentors stated that the assessment overstated the potential of PCDF formation, and criticized the conservative assumptions in the risk assessment, including the frequency and duration of used oil burning in residential boilers. However, EPA did not receive substantive information to allow the Agency to reevaluate the risk of PCDF formation and make the required finding that such burning does not present unreasonable risks. Commentors did not provide information to support an adjustment to the assumptions underlying the assessment for the potential for PCDF formation such as combustion efficiency, residential combustion unit sizes and types, operating temperatures, formation of PCDF's under differing combustion conditions, etc.

In the risk assessment developed for the proposed rule, the Agency concluded that inhalation exposures associated with the volatilizing of PCBs during the burning of used oil (with PCBs at the 50 ppm level or lower) in small boilers were not significant. However, the Agency's quantitative oncogenic risk for the potential inhalation exposures associated with the formation and release of polychlorinated dibenzofurans (PCDFs) from small- and medium-sized nonindustrial boilers (which may operate under inefficient conditions) was considered significant because the risks fall into the 1×10^{-3} to 1×10^{-4} range. Moreover, only 23 percent of this oil is burned this way; a prohibition does not create great economic impact. Since EPA received no data which refutes the risk assessment, the final rule retains the prohibition on the use of waste oil containing less than 50 ppm PCB as a fuel in nonindustrial boilers. Nonindustrial boilers include but are not limited to those located in single or multifamily residences; commercial establishments (such as hotels, office buildings, laundries, service stations, greenhouses); and institutional establishments (colleges, hospitals, schools, prisons).

In this rule, EPA is designating within the class of "incinerators" qualified to burn oil containing between 2 ppm and 50 ppm PCBs those:

(1) Incinerators approved for PCB destruction under § 761.70.

(2) High efficiency boilers which operate under the conditions of § 761.60(a)(2)(iii)(A) and whose owners have notified EPA of their used oil burning activities under § 761.60 (a)(2)(iii)(B).

(3) Incinerators approved under the authority of RCRA section 3005(c).

(4) Industrial furnaces and boilers which are identified in 40 CFR 260.10

and 40 CFR 266.41(b), and whose owners have notified the Agency of their used oil burning activities. The list of industrial furnaces includes cement kilns, lime kilns, phosphate kilns, aggregate kilns (including asphalt kilns), coke ovens, blast furnaces; and smelting, melting, and refining furnaces. Furthermore, under these RCRA rules, the Regional Administrator may designate additional enclosed, controlled flame combustion devices as "boilers" on a case-by-case basis as stated under criteria set out in 40 CFR 260.32. Boilers designated under 40 CFR 260.32 by a Regional Administrator would also qualify as incinerators for the burning of oil containing 2 ppm to 49 ppm PCBs.

One commentor, Econ, Inc., criticized the lack of specificity in combustion criteria for boilers, suggesting that boiler operators could comply with a regulation that specified proper boiler operating parameters. This commentor asked that the final rule specify the combustion criteria (e.g. temperature, residence time, pressure, excess oxygen) that operators must attain. Another commentor took a contrary view, asserting that the rule should remain faithful to the RCRA approach of specifying only classes of eligible industrial boilers and furnaces, without restricting the specifics of operation.

EPA has determined not to include, within the scope of this rulemaking, a determination of combustion criteria for boilers, nor to set combustion goals that operators must attain, because, the Agency plans to propose, under RCRA, technical standards for burning off-specification used oil fuel in boilers and industrial furnaces. This rulemaking would take into account when and how these wastes can be burned safely in these devices. It would also include combustion criteria and most likely control emissions of toxic organics. While EPA will not develop such combustion criteria in the present rulemaking, the Agency will reexamine TSCA controls on the burning of less than 50 ppm PCB oils after the development of the RCRA standards and combustion criteria.

Several commentors agreed that used oil burning should be limited to the larger industrial boilers and furnaces, but they objected to regulatory requirements for certification and notification. These commentors were most frequently concerned about the chilling effect that the certification and notification requirements would have on the availability of oil-burning capacity among the desirable industrial burners. While a concern was expressed that any regulation of qualified burners would have deleterious effects, most of the criticism was directed at the proposal to allow burning of PCB-containing used oil only in the industrial boilers and furnaces whose owners have previously notified the Agency under either RCRA or TSCA of their oil or waste burning activities. The argument most frequently made was that very few industrial burners have accepted EPA's invitation to register and burn "off-specification" used oil fuel, so that the RCRA Burn Ban regulation has in fact been an impediment to the marketing of these fuels to the larger industrial boilers capable of efficient combustion.

Based upon its experiences following the promulgation of similar notification requirements under RCRA, EPA disagrees that the notification requirement of this rule will create a significant disincentive for the burning of oil containing 2 ppm to 49 ppm in industrial furnaces and boilers. As part of the rule regulating the burning of used oil for energy recovery (40 CFR Part 266, Subpart E), marketers and burners of off-specification used oil fuels are subject to certain administrative requirements, including a one-time notification as to waste burning activities and the securing of an EPA identification number. The notification provides the Agency with the number, type and location of burners. In order to minimize the reporting burden, burners which previously notified the Regional Administrator of their waste as fuel activities (see §§ 266.35(b) and 266.44(b)) are considered under the present rule to be eligible to burn under 50 ppm PCB waste oil without additional notification.

Burners which have not previously complied with 40 CFR §§ 266.35(b) and 266.44(b) are required to file a TSCA notification with the Regional Administrator and receive acknowledgement of the receipt of the notification prior to burning. This acknowledgement merely serves as a confirmation that EPA has received notification and does not serve as an approval or endorsement by EPA of the adequacy of the notifier's combustion unit or business practices.

Under this final rule, before an eligible burner accepts its first shipment of used oil fuel containing less than 50 ppm PCBs from a marketer, he is required to provide the marketer a one time written and signed notice certifying that he will burn the used oil only in an incinerator (§ 761.3) or in a combustion device identified in 40 CFR 266.41(b).

Marketers will be required to retain copies of their used oil analyses (or other information relating to PCB levels in oil) for 3 years; they would also be required to retain a copy of each certification that they have received from burners from the date of the last transaction with that burner.

There were strong objections expressed in several comments for keeping the RCRA reference to space heaters, 40 CFR 266.41(b)(2)(iii), that burn waste oil generated on-site. The RCRA provision was initially enacted in response to concerns expressed by the automotive oil industry that suggested that banning the burning of used oil in space heaters would severely disrupt the flow of used oil and possibly encourage disposal of automotive waste oils in municipal landfills. The National Oil Recyclers Association suggested that this exception flies in the face of all the discussion about significant risks in small boilers. Others amplified on the poor combustion performance of these units, particularly, their low stack temperature, small chambers, and poor efficiency during start up.

In addition, the Agency received comments on the proposed rule which indicated PCB used oil fuels are frequently burned in space heaters outside the automotive industry, i.e., transformer repair and servicing shops. In light of these comments the Agency has reconsidered the proposal to allow burning of PCB used oil fuels in space heaters. The Agency has determined that continuing to allow the burning of PCB used oil fuels only in the automotive industry's space heaters will not present an unreasonable risk to human health or the environment provided the provisions of 40 CFR 266.41(b)(2)(iii) (A), and (C) are met. However, EPA is prohibiting the burning of said fuel in space heaters outside the automotive industry area where the risks are likely to be greater. The Agency is allowing the burning of PCB used oil fuels from the automotive industry because it does not expect used oil from automotive sources to routinely contain PCBs in concentrations significantly above the level of detection. In addition, because of the historic uses of PCBs in electrical equipment and heat transfer and hydraulic equipment, EPA assumes the vast majority of PCB-containing used oil originates from industrial nonautomotive sources. Thus, EPA does not expect that a large quantity of PCB-containing used oil will in fact be burned in automotive-industry space heaters.

The burning of PCB used oil as fuel in areas including but not limited to transformer repair shops, where PCB

concentrations are likely to be well above the level of detection (i.e., 2 ppm) presents a greater likelihood for the formation of highly toxic byproducts associated with the poor combustion of higher concentration PCBs in these devices. Therefore, EPA, to remain consistent in avoiding such risks, is prohibiting the burning of PCB used oil as fuel in space heaters outside the automotive industry.

Several commentors have requested that the Agency clarify the term "detectable level of PCBs" which is used to describe the used oils to which this burning restriction applies (40 CFR 761.20(e)). The preamble of the Proposed Rule (52 FR 25854) stated that "detectable" means "practical limit of quantitation (i.e., 2 ppm). The Chemical Manufacturers Association recommended that EPA include this clarification in the regulatory language by referring specifically to the definition, "less than 2 micrograms per gram from any resolvable gas chromatographic peak," previously included in the TSCA regulations for nondetectable PCBs in products of closed waste manufacturing processes (47 FR 46995, October 21, 1982). This definition has been accepted by the Agency and will be incorporated in the Rule to clarify which used oils are considered to have detectable PCBs.

Several comments were received which addressed the availability of analytical methods for meeting the level of detection and the impact of this level on recycling and burning of waste oil for fuel. James River Corporation and Texaco Inc. requested that the Agency consider a level higher than the one proposed—specifically—5 ppm—which was felt would meet the goals of the regulation and the concerns for feasibility expressed by recyclers. Other thresholds suggested were 20 ppm (on the grounds that it was feasible in the field); 25 ppm, or even 35 ppm.

The Agency has determined that analytical procedures have been demonstrated to be capable of accurately and reproducibly determining the concentration of PCBs in Bunker C Fuel Oil at 2 ppm using a quantitation procedure based on one congener per homolog standard. Both Gas Chromatography/Electron Capture and Gas Chromatograph/Hall Detector Electron Capture are effective and easily implemented. Therefore, the level of quantitation (articulated in earlier TSCA regulations—47 FR 46995) is specified as 2 ppm.

A large number of comments addressing an alternative PCB threshold implicitly endorsed blending to meet any specified PCB threshold. These comments pointed out that the TSCA prohibitions on dilution do not apply where a regulation specifically allows it, and that allowing blending would make the rule consistent with the RCRA Burn Ban Rule. It was also suggested that blending would facilitate the injection of the fuel into the boiler, and result in better combustion and destruction of the PCBs.

Unlike RCRA regulations for hazardous waste disposal, the TSCA PCB disposal regulations dictate different disposal requirements depending upon the concentration of PCBs in the waste. This approach was adopted because EPA recognized that PCBs are ubiquitous in the environment and are present in measurable quantities as contaminants in many materials. EPA struggled to establish a manageable disposal system that recognized the widespread contamination that 30 or so years of indiscriminant disposal created yet one that would strictly control the disposal of any PCBs removed from use after the Congressional ban in 1977. The result was a disposal system based upon PCB concentrations in waste and a strict prohibition against dilution as a mechanism for avoiding proper disposal.

Allowing blending-down to either below the level of detection or below 50 ppm PCBs under this rule would be a departure from EPA's longstanding position that requires material once tested for PCB concentration to be treated under the regulations based upon its measured concentration. EPA is acutely aware of the difficulties in effectively monitoring compliance with the prohibition on dilution and is concerned about the potential avenue that it would be opening up for the improper disposal of 50 ppm or greater materials in allowing blending-down to either below the level of detection or below 50 ppm in this rule. Therefore, EPA is maintaining its longstanding policy to prohibit dilution.

EPA's proposal to allow batch testing by marketers as a way of saving analytical testing costs met with approval in the comments. The National Oil Recyclers note that, by the time a shipment of used oil reaches a processing plant, it is a mixture of oil from several generators. They maintain that the cost of testing each individual sample before it was added to a shipment would be prohibitive. In addition, they indicate that turn-around time for laboratory tests may range from a few days to 2 weeks, unless a high surcharge is paid for priority service. Costs for PCB testing have been cited as ranging from $25 to $65 per sample. With the low current markets in waste oil, as highlighted in comments from Harbor Oil, Inc., the expense of requiring individual samples, rather than batch testing, would be prohibitive. The Agency regulations, therefore, allow for batch testing, along with certification. It is important to note that, if any PCBs at a concentration of 50 ppm or greater have been added to the container, then the total container contents must be considered as having a PCB concentration of 50 ppm or greater for purposes of complying with the disposal requirements of 40 CFR 761.60. Batch testing, along with proper records documentation, provides for an environmentally sound program for collecting and burning oils with detectable levels of PCBs while at the same time preserving and protecting our limited waste oil markets.

This final rule makes the TSCA regulations more consistent with the Agency's overall strategy for regulating the recycling of used oil. After evaluating the risks posed by these activities, EPA has determined that the use, processing, and distribution in commerce of used oil containing less than 50 ppm PCBs does not generally present an unreasonable risk of injury to human health or the environment. EPA is not able to determine that burning used oil as fuel in nonindustrial boilers will not present an unreasonable risk. EPA believes that the burning of PCB-containing used oil fuels in combustion facilities which operate under inefficient combustion conditions will promote the formation of highly toxic PCDFs; (see 52 FR 25849–50 for further discussion on exposure risks associated with the incomplete combustion of PCBs).

Due to the potential for the formation of PCDFs in inefficient combustion facilities burning PCB-containing used oil, EPA believes that it is prudent to adopt an approach in this final rule which is consistent with that of the RCRA Burn Ban Rule for burning hazardous waste and off-specification used oil fuels. EPA believes that the rationale set forth in the RCRA Burn Ban Rule preamble for designating nonindustrial boilers as the prohibited class of combustion facilities (50 FR 49191) provides a compelling argument for similarly restricting the burning of used oil products containing PCBs at the less than 50 ppm level. This prohibition on burning PCB-contaminated oils in non-industrial boilers will afford an interim measure of prudent control until EPA completes its ongoing comprehensive evaluation of combustion conditions in various boilers and furnaces. Upon completing this evaluation, EPA will promulgate rules prescribing combustion performance

standards under RCRA. The net result will be to allow or disallow burning of hazardous waste fuels based on actual combustion capabilities rather than their classification as an "industrial" or "nonindustrial" boiler or furnace.

In addition to a consideration of the toxicity of PCBs and the magnitude of exposure to humans and the environment, the TSCA unreasonable risk standard requires EPA to consider the economic impacts and other societal costs associated with the regulation of a chemical. EPA evaluated the economic impacts of maintaining the current prohibition of all used oil recycling activities. (see Ref. 28, Support Document entitled "PCB Rule Revision: Cost-Effectiveness Analysis and Estimates of Exposed Population.") EPA concludes that the risks associated with the recycling (use, processing, and distribution in commerce) of used oil products containing less than 50 ppm PCBs are generally outweighed by the enormous costs associated with prohibiting such activities, the cost associated with depriving society of the benefits of recycled oil products, and the net reduction in environmental protection associated with a curtailment in recycling activities. Secondly, EPA believes that the net regulatory impact on restricting the burning of used oil containing less than 50 ppm PCBs to industrial boilers and furnaces will be insignificant. This final rule makes PCB-containing used oil (<50 ppm PCBs) available to a much larger universe of eligible combustion facilities than allowed under the previous regulation. The availability of these combustion facilities (qualified incinerators, industrial furnaces, industrial boilers, utility boilers, etc.) and the availability of other recycling markets (e.g., other industrial uses and rerefining) should provide more than adequate capacity to handle any market shifts caused by the prohibition on burning in nonindustrial boilers. EPA believes that the oil management system has already responded to the Burn Ban Rule by diverting the bulk of used oil fuels away from the nonindustrial boiler market, and any further diversion resulting from this final rule should be minimal. For these reasons, EPA concludes that allowing the burning of PCB-containing used oil fuels (<50 ppm PCBs) under the conditions set forth in this document will not present an unreasonable risk of injury to health or the environment.

In this final rule, to be consistent with the approach adopted by the RCRA Burn Ban Rule for marketers and burners of used oil fuel, EPA is implementing a combination of limited testing requirements, prohibitions, and recordkeeping requirements for burners and marketers of used oil fuel between 2 and 49 ppm PCBs. These provisions are to help ensure compliance with the prohibition on burning this PCB used oil fuel in nonindustrial boilers and furnaces.

For regulatory purposes used oil fuel is presumed to contain PCBs above the practical limit of quantitation (i.e., 2 ppm) and therefore would be subject to these restrictions, unless the marketer obtains PCB analyses (test data) or other information documenting that the used oil fuel does not contain detectable levels of PCBs. The Agency believes that presuming used oil to be contaminated with PCBs above 2 ppm is a prudent regulatory tool to ensure the proper burning of waste oils. This is not meant to imply that all waste oil is, without question, contaminated with PCBs above the level of detection, as test data and other information documenting the oil's concentration will demonstrate. The first person who makes the claim that the used oil fuel does not contain PCBs at quantifiable levels must obtain the analyses or "other information" to support his claim. The "other information" could include personal, special knowledge of the source and composition of the used oil, or a certification from the generator claiming that the oil does not contain PCBs above the practical limit of quantitation (2 ppm).

The prohibitions apply to both burners and "marketers" (as defined in 40 CFR 761.3). A person may market (process or distribute in commerce) used oil at levels between the practical limit of quantitation (2 ppm) and 50 ppm for energy recovery only to those burners who qualify either as a "qualified incinerator" under 40 CFR 761.3 or as a combustion device identified in 40 CFR 266.41(b). Before an eligible burner accepts its first shipment of used oil fuel containing PCBs at concentrations <50 ppm, but >2 ppm from a marketer, he will be required to provide the marketer a one-time written notice certifying that he will burn the used oil only in a qualified incinerator (§ 761.3) or in a combustion device identified in § 266.41(b). Marketers will be required to retain copies of their used oil analyses (or other information relating to PCB levels in oil) for 3 years; they would also be required to retain a copy of each certification that they have received from burners from the date of the last transaction with the burner.

By imposing the requirements on marketers and burners EPA believes it will effectively ensure compliance with the prohibition on the burning of used oil fuel in nonindustrial boilers. This is consistent with the RCRA Burn Ban Rule which imposes recordkeeping and reporting requirements controls to prohibit burning of off-specification used oil fuels in nonindustrial boilers.

C. Viton Glove Requirement

The Circuit Court's decision overturning EPA's rule which would allow a general 50 ppm cutoff, effectively prohibited the use of heat transfer and hydraulic systems containing less than 50 ppm PCBs. So, EPA, in the July 10, 1984 rule authorized the use of PCBs at concentrations less than 50 ppm in these systems for the remainder of their useful lives provided owners of these systems provided workers performing repair and maintenance operations on these systems with Viton elastomer gloves to protect against dermal exposure to PCBs (40 CFR 761.30(d)(6) and 761.30(e)(6)).

The Viton glove requirement was the subject of many comments received after promulgation of the July 10, 1984 rule. Due to the interest aroused by this requirement, EPA reexamined the potential exposures and economic impacts presented by the inclusion of a protective clothing requirement referring exclusively to gloves formulated from Viton elastomer. After considering additional economic information which was not considered during the previous rulemaking and after further evaluation of the potential exposures, the Agency has concluded that the Viton elastomer glove requirement is not necessary to protect against any unreasonable risks presented by the continued use of authorized heat transfer and hydraulic systems. Therefore, EPA proposed to delete the requirement from the use authorizations for heat transfer and hydraulic systems.

Several comments were received which supported the proposal to eliminate the exclusive Viton glove requirement for workers performing maintenance on heat transfer and hydraulic systems. General Motors Corporation suggested that the 1984 risk assessment greatly overstated the concentration of PCBs actually in the equipment. The data show that the average concentration of PCBs in hydraulic and heat transfer equipment to be 12 ppm. The commentor indicated that the assumption used in the 1984 risk assessment, that the PCB concentrations are constant at 50 ppm over the entire period of exposure, is not consistent with the fact that the equipment does leak and is topped off with fluids containing no PCBs. The General Motors

data are consistent with the Agency conclusions expressed in the July 8, 1987 (52 FR 25841) proposed rule that the majority of the presently authorized hydraulic and heat transfer systems have PCB concentrations well below 50 ppm and support EPA's belief that the actual lifetime average PCB exposures resulting from servicing of heat transfer and hydraulic systems should be at least one order of magnitude less than those predicted by the 1984 assessment.

All commentors agree that the risk to maintenance workers did not warrant the costs associated with the exclusive Viton polymer requirement. The National Institute for Occupational Safety and Health (NIOSH) agreed that recommending only the use of Viton gloves is overly restrictive and not warranted based on recent research findings conducted for NIOSH by the Los Alamos National Laboratory (LANL). A number of alternative glove materials were suggested (Viton SFe, butyl, neoprene, Saranex Tyvek, nitrile, Teflone) which were shown to provide good protection against a PCB mixture (52 percent Aroclor 1254 in 48 percent trichlorobenzene) for at least 8 hours. The LANL studies, while developing information relative to the effectiveness of glove materials when handling high concentration PCBs, do not address effectiveness of lower cost glove materials for use with low concentration PCB mineral oils.

The Agency recognizes the concern expressed by NIOSH for worker protection during such time as they are engaged in contact with PCBs and strongly recommends the use of impermeable gloves and clothing designed to prevent skin contact with PCBs, particularly when PCBs are present in concentrations of 500 ppm or greater. The choice of glove material will depend on the concentration of PCBs, the duration of occupational contact with PCBs, and the cost and permeability of the glove material.

The Viton glove requirement arose from concerns caused by a May, 1984 exposure assessment conducted in support of the July 10, 1984 rule. (For details of the exposure assessment see Vol. 4 of support document for the July 10, 1984 rule entitled "Exposure Assessment for Incidentally Produced Polychlorinated Biphenyls"). The hypothetical worst case dermal exposure presented in this report was believed, at the time significant enough to justify the imposition of the Viton glove requirement. However, upon further examination, EPA has concluded that the 1984 assessment overstates the likely dermal exposures and associated risks and that the estimated exposures do not justify the imposition of the enormous costs associated with the previous protective glove requirement.

EPA also considered information not previously examined by the Agency concerning the costs to industry associated with the exclusive Viton glove requirement. At the time of the July 10, 1984 rule, Viton elastomer was the only material known to EPA which possessed the necessary resistance to PCB breakthrough. Although the costs of the Viton gloves were significant, EPA reasoned that the incremented costs associated with the inclusion of the Viton glove requirement were minimal relative to the costs which industry would incur without a use authorization for less than 50 ppm systems.

However, in response to numerous comments received after the July 10, 1984 rule, EPA reexamined the costs associated with the Viton glove requirement and found them to be exorbitant in light of the "worst-case" exposures estimated in the exposure assessment. The incremental costs associated with the Viton glove requirement are in the order of $600 million over 10 years. The Agency has concluded that the potential risks presented by these activities do not warrant the imposition of incremental costs of this magnitude.

As a result of the 1984 risk assessment which over estimated the risk of dermal occupational exposure to repair and maintenance workers and the incremented costs associated with the Viton glove requirement the Agency is amending the use authorizations for hydraulic and heat transfer systems by eliminating the conditions requiring owners to provide repair and maintenance workers with gloves formulated with Viton elastomer.

D. 3 PPB Water Effluent Limitation

The Uncontrolled PCB Rule set forth, among other things, the category of "recycled PCBs" processes that are excluded from the TSCA section 6(e) bans on manufacturing, use, and distribution in commerce. These excluded processes involved manufacturers who use raw materials contaminated with Aroclor PCBs to manufacture new products instead of using virgin materials. Recycling old products yields both environmental and economic benefits since that practice conserves natural resources, reduces energy use, and reduces solid waste generation.

In response to the proposal to exclude these activities in the Uncontrolled PCB Rule, EPA received information from only two manufacturing industries: The asphalt roofing materials manufacturers and manufacturers of pulp and paper products. After evaluating whether these specific activities would present unreasonable risks of injury to health and the environment, EPA announced in the July 10, 1984 rule that it would exclude these PCB recycling products and processes (pulp and paper and asphalt roofing), if certain conditions are met.

The provision which excludes "recycled PCBs" from the section 6(e) prohibitions is codified at 40 CFR 761.1(f). The term "recycled PCBs" is defined at 40 CFR 761.3 by five conditions that limit Aroclor PCB concentrations in the products, wastes, water discharges, and air emissions. EPA determined in the final Uncontrolled PCBs Rule that PCB recycling activities conducted under these conditions would not present an unreasonable risk of injury to health or the environment.

The specific provision in the definition of "recycled PCBs" (40 CFR 761.3) that is the subject of this rulemaking pertains to provision number (4) which establishes the limits on releases of Aroclor PCBs in water discharges from sites processing paper products. The final rule retains the existing concentration-based discharge limit, but otherwise amends the provision by allowing a mass-based limitation. Provision number (4) stated: "The amount of Aroclor PCBs added to water discharged from a processing site must at all times be less than 3 micrograms per liter ($\mu g/1$) for total Aroclors (roughly 3 parts per billion)."

Petitioners, Ft. Howard and API, raised objections to this condition as it relates to discharges from mills in the pulp and paper industry. The major concerns were that the language which limited discharges to 3 ppb "at all times" (a concentration-based limitation) penalized paper mills which, in the interest of water conservation, decreased their volume flow or releases and, as a result, exceeded the 3 ppb limitation. EPA received no objections to this provision from the asphalt roofing industry.

EPA reexamined the 3 ppb Aroclors discharge limit for pulp and paper mills in light of the petitioners' claims and other comments received by the Agency. As a result, the Agency proposed to eliminate from the definition of "recycled PCBs" the provision limiting Aroclor PCB releases in water discharges from pulp and paper mills to 3 ppb.

EPA received comments both pro and con on this proposal. Some commenters

supported the proposal to eliminate the 3 ppb limitation because they believed that PCBs in the effluents from pulp and paper mills were being adequately controlled under the CWA permit programs. They contended that the states and EPA regional offices are in fact doing an adequate job regulating PCB discharges in their NPDES permits.

EPA also received comments that opposed the proposal to eliminate the 3 ppb limitation, arguing that the current state of regulation by the states is inadequate to control discharges from pulp and paper mills and therefore a TSCA effluent limit should be maintained to exclude these activities from the processing prohibition. These commenters argued that removing this limit would create a gap in controlling PCB discharges into water.

At this time EPA has not established an effluent guideline for PCBs under the CWA. Although states have begun to revise their water quality standards under the Water Quality Act of 1987 for CWA toxic pollutants, this process will take longer than the expected 2 years to implement. EPA has considered the concerns about the adequacy of controls on PCB effluents through individual permits and concluded that it is appropriate to retain a water discharge limit in the definition of "recycled PCBs" given the present status of some state NPDES permits and the delays in implementing state revisions of water quality standards. EPA reached this conclusion in view of the fact that there is currently no effluent limitation guideline or standard for discharges of PCBs from pulp and paper mills and in view of the ongoing but as yet incomplete process in implementing state revision of water quality standards. Any subsequent PCB discharge standard promulgated under the CWA would obviate the need for a limitation in this rule, and EPA would revoke the limitation at that time.

The final rule describes the limit in a manner which requires manufacturers in the pulp and paper industry who use raw materials contaminated with Aroclor PCBs to comply with either a concentration or mass-based limit. Comments on the Uncontrolled Rule and the July 8, 1987 proposal to amend that rule pointed out the shortcomings in EPA's approach to establishing a water discharge limit solely as an absolute concentration limit. EPA agrees that the PCB water discharge limit in this rule should be consistent with mass-based approaches already used by EPA and state authorities and permit writers under the CWA.

When EPA established the 3 ppb water discharge limit forled PCBs, the intent was to control these additional uncontrolled PCBs released into the environment. The 3 ppb limit represented a level determined by EPA to be a universally achievable and reliable level of quantitation (LOQ) which would best ensure, together with the other restrictions in the definition, that no unreasonable risk of injury to health or environment would be posed by these manufacturing processes. Under the CWA, discharges are limited by a variety of technology-based effluent limitations and standards with more stringent water quality-based standards applied as needed. When EPA promulgated the Uncontrolled PCBs Rule, the Agency did not intend to create inconsistencies in the approaches to regulation of discharges.

Comments on the proposed rule show that establishing an equivalent mass limitation on water discharges from recycled PCBs activities would provide an equivalent level of protection as the 3 ppb limit. Allowing a mass limitation would regulate the absolute amount of PCBs added to the environment from a point source. EPA has considered these comments and decided that as an alternative to the 3 ppb concentration-based limit, persons may comply with this concentration limit converted to a mass-based limitation. Conversion from concentration to mass-based limitations can be accomplished by multiplying the appropriate subcategory flow factor (average wastewater flow expressed as kl per kkg product) for a facility by the concentration limit (expressed in ppb) and an appropriate conversion factor (1.0E–06) to obtain the amount of PCBs allowed per weight of product (expressed as kg PCBs per kkg product). The total daily discharge allowance for PCBs would then be calculated by multiplying the amount of PCBs allowed per weight of product by the annual average daily production for the facility (expressed as kkg product per day). Further guidance to convert the concentration-based standard to the mass-based limitation is available in the public record.

E. Distribution in Commerce and Use of Decontaminated Equipment, Structures, and Materials

In the July 8, 1987 proposed rule, EPA proposed to exclude from regulation an additional class of materials contaminated with PCBs at levels below 50 ppm (or the applicable cleanup standard for solid surfaces). Unlike the class of products discussed earlier in this rule, the PCBs discussed in this section did not originate from contamination resulting from historic manufacturing, use, or recycling activities. Rather, the <50 ppm concentration levels (or the applicable cleanup standards for solid surfaces) present in these materials are associated with leaks and spills (i.e. improper disposal) of >50 ppm material. That is, the residual PCBs remain after proper cleanup of a spill of controlled material.

EPA proposed to formally exclude from the TSCA section 6(e) prohibitions on use and distribution in commerce, certain equipment, structures, and other materials that have inadvertently become contaminated with PCBs because of spills from, or proximity to, a PCB Item with PCB concentrations greater than 50 ppm provided that these materials were decontaminated to the specified level below 50 ppm PCBs in accordance with applicable EPA PCB cleanup policies at the time of decontamination. Spills in this case must not have been the result of any intentional discharge of PCBs, and the contamination must be attributable to PCB Items and activities which are themselves authorized.

The proposal also excluded from regulation the PCB use prohibition on materials or equipment which became contaminated with PCBs prior to the effective date of the section 6(e) bans and which have not undergone decontamination under any EPA PCB cleanup policy. However, these materials would have to be decontaminated according to current PCB cleanup policies set forth in EPA's nationwide spill cleanup policy.

The proposal was not intended to act as an alternative to the reclassification provision in 40 CFR Part 761 for PCB Equipment, PCB Articles, or other PCB Items containing PCBs. The availability of decontamination as a means of allowing the further use and distribution in commerce of PCB Items is limited to the decontamination procedures specified in 40 CFR 761.79 for PCB Containers and movable equipment in storage areas. The July, 1987 proposal was intended to merely codify an existing (though not specifically authorized) practice.

Two commentors agreed with the proposal to allow the distribution in commerce and processing of equipment and other materials that are adequately decontaminated in accordance with spill cleanup policies. One commentor objected to the terms of the proposal in codified § 761.20(c)(5) arguing that it could be construed to apply even to the metalworking, machining, or similar equipment in which used oil with under 50 ppm PCBs is used.

As stated above, this exclusion addresses equipment, structures, and other materials that have inadvertently become contaminated with PCBs >50 ppm as a result of a spill and have subsequently been decontaminated according to the appropriate spill cleanup procedures at the time of decontamination. The proposed language in § 761.20(c)(5) does not clearly set forth the Agency's intention that equipment, structures, and other materials covered by this exception are those which have inadvertently become contaminated with PCBs above 50 ppm because of spills from, or proximity to, a PCB Item whose use was authorized. Section 761.20(c)(5) has been modified to be consistent with this intent.

Since the promulgation of EPA's nationwide PCB Spill Cleanup Policy (52 FR 10688), specific cleanup levels have been established for different types of spills according to the PCB concentration involved in the spill, the type of material contaminated, and the spill location. Spills of less than 50 ppm PCBs are not covered under this policy.

In establishing this cleanup policy for typical PCB spills, EPA recognized that the risks posed by spills of PCBs vary, depending upon spill location and the amount of PCBs spilled. The PCB cleanup policy requires cleanup of PCBs to different levels depending upon spill location, the potential for exposure to residual PCBs remaining after cleanup, the concentration of the PCBs initially spilled and the nature and size of the population potentially at risk of exposure. Thus, this cleanup policy applies the most stringent requirements for spill cleanup to areas where there is the greatest potential for human exposures to spilled PCBs. Implicitly, the further use, processing, and distribution in commerce of materials decontaminated in accordance with the provisions of the nationwide cleanup policy will not present an unreasonable risk.

Since the effective date of the nationwide cleanup policy (May 4, 1987), the provisions of the policy have superseded the regional policies previously in effect. This amendment, of course, excludes from regulation eligible materials already decontaminated in conformity with regional policies prior to that date.

IV. Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record of this final rulemaking. This record includes basic information considered by the Agency in developing this final rule, including appropriate **Federal Register** notices, published and unpublished reports, economic and exposure analyses, and various communications before the final rule was issued. A full list of these materials will be available on request from EPA's TSCA Assistance office listed under "**FOR FURTHER INFORMATION CONTACT**." However, any Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection.

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs): Disposal and Marking Rule," Docket No. OPTS-66005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Use in Closed and Controlled Waste Manufacturing Processes." Docket No. OPTS-62017, 47 FR 46980, October 21, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers." Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(6) Official Rulemaking Record for "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Response to Individual and Class Petitions for Exemption." Docket No. OPTS-66006A, 49 FR 28154, July 10, 1984.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations." Docket No. OPTS-62032A, 49 FR 28172, July 10, 1984.

(8) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Transformers." Docket No. OPTS-62035D, 50 FR 29170, July 17, 1985.

(9) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Response to Exemption Petitions." Docket No. OPTS-66008E, 51 FR 28556, August 6, 1986.

B. Federal Register Notices

(10) 46 FR 27617, May 20, 1981, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacture of PCBs in Concentrations Below Fifty Parts Per Million: Possible Exclusion from Manufacturing Prohibition; Advance Notice of Proposed Rulemaking.

(11) 44 FR 31514, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions."

(12) 44 FR 53438, September 13, 1979, USEPA, "Criteria for Classification of Solid Waste Disposal Facilities and Practices."

(13) 47 FR 47980, October 21, 1982, USEPA, "Polychlorianted Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Use in Closed and Controlled Waste Manufacturing Processes."

(14) 47 FR 52066, November 18, 1982, USEPA, "Pulp, Paper, and Paperboard Point Source Category Effluent Limitations Guidelines and New Source Performance Standards; Proposed Rule."

(15) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Exclusions, Exemptions, and Use Authorizations: Proposed Rule."

(16) 49 FR 28172, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBS): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Exclusions, Exemptions, and Use Authorizations: Final Rule."

(17) 49 FR 28154, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Response to Individual and Class Petitions for Exemptions."

(18) 50 FR 19170, July 17, 1985, USEPA, "Polychlorinated Biphenyls in Electrical Transformers: Final Rule."

(19) 50 FR 49212, November 29, 1985, USEPA, "Hazardous Waste Management System: Recycled Used Oil Standards: Proposed Rule."

(20) 50 FR 49258, November 29, 1985, USEPA, "Hazardous Waste Management System; General,

Identification and Listing of Hazardous Waste: Used Oil; Proposed Rule."

(21) 50 FR 49164, November 29, 1985, USEPA, "Hazardous Waste Management System: Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces."

(22) 51 FR 28556, August 8, 1986, USEPA, "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Response to Exemption Petitions."

(23) 51 FR 41900, November 19, 1986, USEPA, "Identification and Listing of Hazardous Waste: Used Oil: Notice Announcing Decision Not To Adopt Proposed Rule Listing Used Oil as a Hazardous Waste.

(24) 52 FR 10688, April 2, 1987, USEPA, "Polychlorinated Biphenyls Spill Cleanup Policy."

(25) 52 FR 25838, July 8, 1987, USEPA, "Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations; Proposed Rule."

C. Support Documents

(26) August 7, 1986 Settlement Agreement filed with United States Court of Appeals for the District of Columbia Circuit, in Docket Nos. 84-1481 and 85-1118.

(27) USEPA, OPTS, EED, Versar, Inc., "Assessment of Exposures Resulting from Recycle/Reuse of Used Oil Containing PCBs at Levels Less Than 50 PPM" (January, 1987).

(28) USEPA, OPTS, ETD, Putnam, Hayes and Barlett, Inc., "PCB Rule Revision, Cost Effectiveness Analyses and Estimates of Exposed Population" (March, 1987).

(29) USEPA, OTS Versar, Inc., "Development of a Study Plan for Definition of PCBs Usage, Wastes, and Potential Substitution in the Investment Casting Industry." (January, 1976).

(30) USEPA, OPTS, ETD, ICF, Inc. "Costs of Prohibiting Reclaimed Investment Casting Wax Containing PCBs Below 50 PPM" (DRAFT) (September, 1985).

(31) USEPA, OPTS, EED, US Congress House of Reps., January 17, 1985 letter from Honorable Ralph Regula to William Prendergast, EPA, forwarding January 10, 1985 letter from constituent, Charles LeBeau, Cambridge Mill Products, Inc.

(32) USEPA, OPTS, EED, Letter from John A. Moore, EPA to Honorable Ralph S. Regula (January 3, 1985).

(33) USEPA, OPTS, EED, "Potential PCDF Formation during Combustion of Used Oil Containing Low Levels of PCBs."

(34) USEPA, OPTS, EED, "Exposure Estimates for the Amendment to the PCB Regulation." (November 20, 1986).

(35) USEPA, OPTS, EED, "Exposure Estimates for the Amendment to the PCB Regulation" (December 23, 1986).

(36) USEPA, OPTS, EED, "A Manual for the Preparation of Engineering Assessments" (September 1, 1984).

(37) USEPA, OPTS, EED, Letter from C. Nelson Schlatter, Edmont Corporation to Dr. John Moore, EPA (October 15, 1984).

(38) USEPA, OPTS, EED, Letter from Dr. John A. Moore, EPA to C. Nelson Schlatter, Edmont Corporation (November 15, 1984).

(39) USEPA, OPTS, EED, Letter from Oswald Schindler, Intermarket Latex Inc. to Martin Halper, EPA (November 13, 1984).

(40) USEPA, OPTS, ETD, "Addendum to the Heat Transfer and Hydraulic Systems RIA" (undated).

(41) USEPA, OPTS, ETD, "PCB Glove Requirement Costs: Present Value" (February, 1987).

(42) USEPA, OW, PCB Information Survey, deink Direct Dischargers by Region and NPDES Permit Numbers (November, 1984).

(43) USEPA, OPTS, EED, Letter from Richard S. Wasserstrom, American Paper Institute, Inc. to Alan Carpien, EPA (October 11, 1984).

(44) USEPA, OPTS, EED, Letter from Richard J. Kissel, Attorney for ADCI and OMC to John A. Moore, EPA (October 24, 1984).

(45) USEPA, OPTS, EED, Letter from Alan Carpien, EPA to Richard J. Kissel, Attorney for ADCI and OMC (November 20, 1984).

(46) USEPA, OPTS, EED, Letter from Timothy S. Hardy, Attorney for CMA to Alan Carpien, EPA (November 27, 1984).

(47) USEPA, OPTS, EED, Letter from Richard S. Wasserstrom, API to Alan Carpien, EPA (August 20, 1985).

(48) USEPA, OPTS, EED, letter from Timothy S. Hardy, Attorney for CMA, to Alan Carpien, EPA (August 28, 1985).

(49) USEPA, OPTS, EED, Letter from Jeffrey C. Fort, Attorney for ADCI and OMC to Alan Carpien, EPA (November 22, 1985).

(50) USEPA, OPTS, EED, Letter From Suzanne Rudzinski, EPA to Timothy S. Hardy, Attorney for CMA (January 21, 1986).

(51) USEPA, OPTS, EED, Letter from Robert J. Fensterheim, CMA to Suzanne Rudzinski, EPA (March 19, 1985).

(52) USEPA, OPTS, EED, Letter from Robert J. Fensterheim, CMA to Suzanne Rudzinski, EPA, June 17, 1985).

(53) USEPA, OPTS, EED, Letter from Suzanne Rudzinski, EPA to Robert J. Fensterheim, CMA (July 17, 1985).

(54) USEPA, OPTS, EED, Letter from Toni K. Allen, Attorney for USWAG, to Lee M. Thomas, Administrator, EPA (August 12, 1986).

(55) USEPA, OPTS, EED, Letter from John A. Moore, EPA to Toni K. Allen, Attorney for USWAG (September 9, 1986).

(56) USEPA, OPTS, EED, Letter from Suzanne Rudzinski, EPA to George Fekete, Jr., Pennwalt Corporation (October 22, 1986).

(57) USEPA, OPTS, EED, Letter to Suzanne Rudzinski, EPA from Paulette Vest, Vest Metal Company (October 22, 1986).

(58) USEPA, OPTS, EED, Letter from Suzanne Rudzinski and John J. Neylan III, EPA to Lt. General Vincent M. Russo, Defense Logistics Agency (August 28, 1986).

(59) NIOSH (1977), Criteria for recommended standard . . . occupational exposure to polychlorinated biphenyls (PCBs). U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 77-225.

(60) USEPA, OSW, List of Facilities Who Burn Waste Fuel—Data Request for OPPI/IMS (August 10, 1987).

(61) Lake Michigan Toxic Pollutant Control/Reduction Strategy (Final Draft), May 9, 1986.

(62) USEPA, OW, Development Document for Proposed Effluent Limitation Guidelines and Standards for Control of Polychlorinated Biphenyls in the Deink Subcategory of the Pulp, Paper, and Paperboard Point Source Category (October, 1982).

(63) USEPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH, "Test Method—The Determination of Polychlorinated Biphenyls in Transformer Fluid and Waste Oils" (September 1982).

(64) USEPA, OSW, TAB, Letter from Alvia Gaskill, RTI to Denise A. Zabinski, EPA (November 5, 1987).

(65) USEPA, OSW, "A Risk Assessment of Waste Oil Burning in Boilers and Space Heaters" (January 1984).

(66) USEPA, OSW, EAB, Temple, Barker and Sloane, Inc., "Background Document: Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil" (November 1985).

(67) USEPA, OAQPS, "Waste Oil Combustion Cancer Risk Assessment" (October 1987).

(68) USDOJ/US Court of Appeals, Letter from I.J. Grishaw to G.A. Fisher (August 8, 1986).

(69) USEPA, OPTS, EED, Memo to Rulemaking Record from R. La Shere re: Meeting with W. Gendreau of Pioneer Fuel (September 10, 1987).

(70) USEPA, OPTS, EED, Letter from D.M. Keehner, EPA to Mark Van Putten, National Wildlife Federation (September 11, 1987).

(71) USEPA, OPTS, EED, Memo to Rulemaking Record from Jane Kim, "1984 Survey of State and Regional Permitting Personnel Concerning Limitations on PCB Discharges by Deinking Mills." (October 22, 1987).

(72) USEPA, OW, ITD, Memo from Wendy Smith, to Tom Simons, EED, OPTS, USEPA re: Office of Water Information for Amendments to Uncontrolled Rule (January, 1988).

(73) Ft. Howard Paper Company, Copies of Discharge Monitoring Report Forms for Ft. Howard Paper Company in Muskogee, OK, from January 1985 to May 1987.

(74) Ft. Howard Paper Company, Whole Fish Tissue PCB Study, Ft. Howard Corporation, Muskogee, OK. NPDES Permit No. OK 0034321. Final Report (December 10, 1987).

(75) Ft. Howard Paper Company, Expired and Current NPDES Discharge Permits for Ft. Howard Paper Corporation, Muskogee, OK.

(76) State of Wisconsin, Dept. of Natural Resources, Ft. Howard Paper Company, Green Bay, WI, NPDES Discharge Monitoring from January 1982 to October 1987, WPDES Permit # WI-0001848.

(77) USEPA, ORD, OHEA, Drinking Water Criteria Document for Polychlorinated Biphenyls (PCB's) May, 1987. Prepared for ODW, USEPA ECOA-CIN-414.

(78) USEPA, Region VIII, Comments on the Draft Final Regulation, Titled Polychlorinated Biphenyls; Exclusions, Exemptions, and Use Authorizations Including Information on Startup of Coal Fired Power Plants (March 15, 1988).

(79) USEPA, OTS, EED, CRB, Response to Comments on the Notice of Proposed Rulemaking for Amendments to the Uncontrolled PCB Rule (June 1988).

(80) USEPA, OW, EGD, Development Document for Effluent Limitations Guidelines and Standards for the Pulp, Paper, and Paper-Board and the Builders' Paper and Board Mills, Point Source Categories. EPA 440/1-82/025, October 1982.

(81) EPA, OTS, Guidance for Conversion of Water Discharge Concentration-based Standards to Mass Based Limitations for PCBs under TSCA (May 1988).

V. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291 issued February 17, 1982, EPA must judge whether a rule is a "major rule," and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this final rule is not a "major rule" because it does not meet the criteria set forth in section 1(b) of the Executive Order.

The effect on the economy will be the avoidance of significant costs which would otherwise be incurred if EPA maintained the existing use authorizations for hydraulic and heat transfer systems, which include the Viton glove requirement. Likewise, the rule avoids the substantial costs associated with maintaining existing prohibitions of activities involving products containing low levels (under 50 ppm) of PCB contamination.

No significant increases in prices are expected to occur as a result of this rule. No significant adverse effects are expected on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act) (15 U.S.C. 601 *et. seq.*, Pub. L. 96-534, September 19, 1980), requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis described the impact of the proposed rule on small business entities. Section 605(b) of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

In accordance with section 605(b) of the Act, EPA certifies that this rule will not have a significant impact on a substantial number of small businesses. The rule is, in fact, nondiscriminatory in its impact on business entities, and the impact on all business entities is generally to exclude from regulation activities currently prohibited under TSCA section 6(e), and not previously authorized, exempted, or excluded by regulation. Small businesses will share equally in the benefits of this rule, including the elimination of the Viton glove requirement in the use authorization for hydraulic and heat transfer systems, and the general exclusion for products contaminated with PCBs at levels below 50 ppm. Any impact on small business entities is not appreciably greater than the impact already being borne by these entities under the existing prohibition on burning offspecification used oil in nonindustrial boilers. This rule will implement the limited restrictions on burning PCB-containing used oil (under 50 ppm) in a manner such that any additional economic burdens will be borne primarily by the marketers of the used oil.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal agencies. Under OMB Control Number 2070-0008, OMB has approved an information collection request submitted by EPA in connection with the recordkeeping and reporting requirements which facilitate the implementation and enforcement of the Uncontrolled PCBs Rule. Further, under OMB Control Number 2050-0047, OMB has approved the information collection requirements (including invoice shipping papers, certifications, and used oil analysis) which facilitate the implementation of the prohibition on burning certain used oil fuels in nonindustrial boilers. OMB has also approved the provisions of this final rule, which requires that information related to PCBs in used oil fuels be added to the existing information collections previously approved by OMB.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and Recordkeeping requirements.

Dated: June 8, 1988.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G also issued under 15 U.S.C. 2614, and 2616.

2. In § 761.1 by adding paragraph (f)(4) to read as follows:

§ 761.1 Applicability.

* * * * *

(f) * * *

(4) Except as provided in § 761.20 (d) and (e), persons who process, distribute in commerce, or use products containing excluded PCB products as defined in § 761.3, are exempt from the requirements of Subpart B of this Part.

3. In § 761.3 by adding and alphabetically inserting a definition for "Excluded PCB products," "Market/Marketers," and "Quantifiable Level/Level of Detection," and by revising the definitions for "Qualified Incinerator" and "Recycled PCBs" to read as follows:

§ 761.3 Definitions.

* * * * *

"Excluded PCB products" means PCB materials which appear at concentrations less than 50 ppm, including but not limited to:

(1) Non-Aroclor inadvertently generated PCBs as a byproduct or impurity resulting from a chemical manufacturing process.

(2) Products contaminated with Aroclor or other PCB materials from historic PCB uses (investment casting waxes are one example).

(3) Recycled fluids and/or equipment contaminated during use involving the products described in paragraphs (1) and (2) of this definition (heat transfer and hydraulic fluids and equipment and other electrical equipment components and fluids are examples).

(4) Used oils, provided that in the cases of paragraphs (1) through (4) of this definition:

(i) The products or source of the products containing < 50 ppm concentration PCBs were legally manufactured, processed, distributed in commerce, or used before October 1, 1984.

(ii) The products or source of the products containing < 50 ppm concentrations PCBs were legally manufactured, processed, distributed in commerce, or used, i.e., pursuant to authority granted by EPA regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs;

(iii) The resulting PCB concentration (i.e. below 50 ppm) is not a result of dilution, or leaks and spills of PCBs in concentrations over 50 ppm.

* * * * *

"Market/Marketers" means the processing or distributing in commerce, or the person who processes or distributes in commerce, used oil fuels to burners or other marketers, and may include the generator of the fuel if it markets the fuel directly to the burner.

* * * * *

"Qualified incinerator" means one of the following:

(1) An incinerator approved under the provisions of § 761.70. Any level of PCB concentration can be destroyed in an incinerator approved under § 761.70.

(2) A high efficiency boiler which complies with the criteria of § 761.60(a)(2)(iii)(A), and for which the operator has given written notice to the appropriate EPA Regional Administrator in accordance with the notification requirements for the burning of mineral oil dielectric fluid under § 761.60(a)(2)(iii)(B).

(3) An incinerator approved under section 3005(c) of the Resource Conservation and Recovery Act (42 U.S.C. 6925(c)) (RCRA).

(4) Industrial furnaces and boilers which are identified in 40 CFR 260.10 and 40 CFR 266.41(b) when operating at their normal operating temperatures (this prohibits feeding fluids, above the level of detection, during either startup or shutdown operations).

"Quantifiable Level/Level of Detection" means 2 micrograms per gram from any resolvable gas chromatographic peak, i.e. 2 ppm.

* * * * *

"Recycled PCBs" means those PCBs which appear in the processing of paper products or asphalt roofing materials from PCB-contaminated raw materials. Processes which recycle PCBs must meet the following requirements:

(1) There are no detectable concentrations of PCBs in asphalt roofing material products leaving the processing site.

(2) The concentration of PCBs in paper products leaving any manufacturing site processing paper products, or in paper products imported into the United States, must have an annual average of less than 25 ppm with a 50 ppm maximum.

(3) The release of PCBs at the point at which emissions are vented to ambient air must be less than 10 ppm.

(4) The amount of Aroclor PCBs added to water discharged from an asphalt roofing processing site must at all times be less than 3 micrograms per liter (μg/L) for total Aroclors (roughly 3 parts per billion (3 ppb)). Water discharges from the processing of paper products must at all times be less than 3 micrograms per liter (μg/1) for total Aroclors (roughly 3 ppb), or comply with the equivalent mass-based limitation.

(5) Disposal of any other process wastes at concentrations of 50 ppm or greater must be in accordance with Subpart D of this part.

4. In § 761.20 by revising paragraph (a) and the introductory text of paragraph (c), and by adding paragraphs (c) (5) and (e), and the OMB control number to read as follows:

§ 761.20 Prohibitions.

* * * * *

(a) No persons may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30, except that:

(1) An authorization is not required to use those PCBs or PCB Items which consist of excluded PCB products as defined in § 761.3.

(2) An authorization is not required to use those PCBs or PCB Items resulting from an excluded manufacturing process or recycled PCBs as defined in § 761.3, provided all applicable conditions of § 761.1(f) are met.

(3) An authorization is not required to use those PCB Items which contain or whose surfaces have been in contact with excluded PCB products as defined in § 761.3.

(4) An authorization is not required to apply sewage sludges, contaminated with PCBs below 50 ppm, to land when regulated by authorities under the Clean Water Act and the Resource Conservation and Recovery Act.

* * * * *

(c) No persons may process or distribute in commerce any PCB, or any PCB Item regardless of concentration, for use within the United States or for export from the United States without an exemption, except that an exemption is not required to process or distribute in commerce PCBs or PCB Items resulting from an excluded manufacturing process as defined in § 761.3, or to process or distribute in commerce recycled PCBs as defined in § 761.3, or to process or distribute in commerce excluded PCB products as defined in § 761.3, provided that all applicable conditions of § 761.1(f) are met. In addition, the activities described in paragraphs (c) (1) through (5) of this section may also be conducted without an exemption, under the conditions specified therein.

* * * * *

(5) Equipment, structures, or other materials that were contaminated with PCBs because of spills from, or proximity to, a PCB Item >50 ppm, and which are not otherwise authorized for use or distribution in commerce under this part, may be distributed in commerce, provided that these materials were decontaminated in accordance with applicable EPA PCB spill cleanup policies in effect at the time of the decontamination or, if not previously decontaminated, at the time of the distribution in commerce.

* * * * *

(e) In addition to any applicable requirements under 40 CFR Part 266, Subpart E, marketers and burners of used oil who market (process or distribute in commerce) for energy recovery, used oil containing any quantifiable level of PCBs are subject to the following requirements:

(1) *Restrictions on marketing.* Used oil containing any quantifiable level of PCBs (2 ppm) may be marketed only to:

(i) Qualified incinerators as defined in 40 CFR 761.3.

(ii) Other marketers identified in 40 CFR 266.41(a)(1).

(iii) Burners identified in 40 CFR 266.41(b). Only burners in the automotive industry may burn used oil generated from automotive sources in used oil-fired space heaters provided the provisions of 40 CFR 266.41(b)(2)(iii) (A), (B) and (C) are met. The Regional Administrator may grant a variance for a boiler that does not meet the 40 CFR 266.41(b) criteria after considering the criteria listed in 40 CFR 260.32 (a) through (f). The applicant must address the relevant criteria contained in 40 CFR 260.32 (a) through (f) in an application to the Regional Administrator.

(2) *Testing of used oil fuel.* Used oil to be burned for energy recovery is presumed to contain quantifiable levels (2 ppm) of PCB unless the marketer obtains analyses (testing) or other information that the used oil fuel does not contain quantifiable levels of PCBs.

(i) The person who first claims that a used oil fuel does not contain quantifiable level (2 ppm) PCB must obtain analyses or other information to support that claim.

(ii) Testing to determine the PCB concentration in used oil may be conducted on individual samples, or in accordance with the testing procedures described in § 761.60(g)(2). However, for purposes of this part, if any PCBs at a concentration of 50 ppm or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of 50 ppm or greater for purposes of complying with the disposal requirements of this part.

(iii) Other information documenting that the used oil fuel does not contain quantifiable levels (2 ppm) of PCBs may consist of either personal, special knowledge of the source and composition of the used oil, or a certification from the person generating the used oil claiming that the oil contains no detectable PCBs.

(3) *Restrictions on burning.* (i) Used oil containing any quantifiable levels of PCB may be burned for energy recovery only in the combustion facilities identified in paragraph (e)(1) of this section when such facilities are operating at normal operating temperatures (this prohibits feeding these fuels during either startup or shutdown operations). Owners and operators of such facilities are "burners" of used oil fuels.

(ii) Before a burner accepts from a marketer the first shipment of used oil fuel containing detectable PCBs (2 ppm), the burner must provide the marketer a one-time written and signed notice certifying that:

(A) The burner has complied with any notification requirements applicable to "qualified incinerators" (§ 761.3) or to "burners" regulated under 40 CFR Part 266, Subpart E.

(B) The burner will burn the used oil only in a combustion facility identified in paragraph (e)(1) of this section and identify the class of burner he qualifies.

(4) *Recordkeeping requirements.* The following recordkeeping requirements are in addition to the recordkeeping requirements for marketers found in 40 CFR 266.43(b)(6) (i) and (ii), and for burners found in 40 CFR 266.44(e).

(i) *Marketers.* Marketers who first claim that the used oil fuel contains no detectable PCBs must include among the records required by 40 CFR 266.43(b)(6)(i), copies of the analysis or other information documenting his claim, and he must include among the records required by 40 CFR 266.43(b)(6)(ii), a copy of each certification notice received or prepared relating to transactions involving PCB-containing used oil.

(ii) *Burners.* Burners must include among the records required by 40 CFR 266.44(e), a copy of each certification notice required by paragraph (e)(3)(iii) of this section that he sends to a marketer.

(Approved by the office of Management of Budget under OMB control number 2050-0047)

§ 761.30 [Amended]

5. In § 761.30 by removing paragraphs (d) (6) and (7) and paragraphs (e) (6) and (7).

6. In § 761.30, in the introductory text of paragraphs (d) and (e), by revising the reference "paragraphs (d) (1) through (7)" to read "paragraphs (d) (1) through (5)" and the reference "paragraphs (e) (1) through (7)" to read "paragraphs (e) (1) through (5)" respectively.

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Part VI

Department of Energy

48 CFR Part 970

Acquisition Regulations on Management and Operating Contractor Purchasing; Final Rule

DEPARTMENT OF ENERGY

48 CFR Part 970

Acquisition Regulations on Management and Operating Contractor Purchasing

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy today adopts a final rule which will provide a standard for purchasing activities of DOE's management and operating (M&O) contractors. The rule is intended to centralize the Department of Energy Acquisition Regulations (DEAR) coverage for M&O contractor purchasing in one subpart; to make that coverage comprehensive; and to update and appropriately alter the existing provisions applicable to M & O contractors.

EFFECTIVE DATE: This rule will be effective July 27, 1988.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under Regulatory Flexibility Act
C. Review Under Paperwork Reduction Act
II. Comments on Proposed Rule
A. Publication of Proposed Rule
B. Discussion of Comments Received
1. General
2. Specific

I. Procedural Requirements

A. Review Under Executive Order 12291

This final rule is exempt from review by the Office of Management and Budget under E.O. 12291 of February 17, 1981, pursuant to an exemption for procurement regulations as discussed in OMB Bulletin No. 85-7, dated December 14, 1984.

B. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act), 5 U.S.C. 601-612, requires, in part, that an agency prepare an initial regulatory flexibility analysis for any rule, unless it determines that the rule will not have a "significant economic impact" on a substantial number of small entities. This final rule concerns the purchasing policies and procedures used by DOE M&O contractors. While many subcontractors may be small businesses, the proposed rule imposes no significant burdens and will have no significant impact on small entities. Therefore, as required by section 603(b) of the Act, DOE certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and, accordingly, no regulatory flexibility analysis has been prepared.

C. Review Under Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this final rule. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

II. Comments on Proposed Rule

A. Publication of Proposed Rule

The Department of Energy issued a proposed rule (52 FR 30997, August 18, 1987) announcing its intention to revise that portion of the Department of Energy Acquisition Regulation (DEAR) dealing with management and operating contractor purchasing. Comments were requested through October 2, 1987.

In response to the proposed rule, the Department of Energy received 14 sets of comments. Of those all but two were either from the Department's management and operating contractors or its operations offices. Of those two sets of comments one was received from the Office of Federal Procurement Policy, and the other was from the Canadian Embassy.

The comments received, along with the responses thereto, are as follows:

B. Discussion of Comments Received

1. General

General comments were received covering either portions of the preamble or issues not related to any specific provision of the proposed rule. This preamble will not address the comments that relate to the proposed rule's preamble since none have pointed out any inaccuracies or omissions, and the preamble is not regulatory in nature. The remaining general comments were made by one commenter. We respond to each as follows:

a. The commenter stated that the numbering system of 970.50 as it was proposed "does not track" with the relevant FAR or DEAR Parts, making it "more difficult to find the subsection in the FAR when using the DEAR, or vice versa." We, of course, are aware that the numbering system within the proposed rule, specifically within 970.5004, does not reflect the FAR numbering scheme. We believe this subpart to be sufficiently short to minimize any negative effects of the numbering system.

We have noted, however, that our selection of 970.50 as the number for this subpart may have been misleading. By using the numbering system of the remainder of Part 970, the use of Subpart 970.50 suggests that its subject matter should be extraordinary contractual actions as such actions relate to management and operating contracts, it is not. Therefore, we have chosen Subpart 970.71 as the new designation. From this point forward in this preamble all references will be to the new numbering system as opposed to that of the proposed rule.

The preamble of the proposed rule (52 FR 31000 August 18, 1987) contained a redesignation table to show the new location of material that existed throughout 970. Since the only change to that table as a result of the new subpart numbering is that the two digits following the decimal point in the "New Section" column will be "71" rather than "50," we are not republishing the redesignation table.

b. "Make-or-Buy should be covered * * *." We have altered 970.7104-6 to provide guidance on this subject.

76. "Coverage should be included concerning the relationship between DEAR 970 and the various DOE/M&O operating contracts." We believe the proposed rule to be clear that 970.71 establishes a baseline which Heads of Contracting Activities (HCAs) and contracting officers will follow in their oversight of M&O contractors. It is the standard that M&O contractors are required to meet. It does not, however, directly regulate M&O contractors. The clause at 970.5204-22 is intended to assure M&O contractor cooperation in achieving this standard. That clause should be added at the time of the annual fee negotiation but no later than the extension of an existing contract or the award of a new contract.

d. "Several sections of the subject document make reference to DOE Orders * * * If these Orders are to be applicable to M&Os, they should be incorporated into future operating contracts." Various DOE orders are referenced in 970.71. Again, this subpart establishes the standard upon which the cognizant DOE contract administration personnel judge the various aspects of performance of an M&O contrator. While practice may vary, management and operating contracts contain a provision(s) that allows for DOE

contracting officers to pass on to the contractors the requirements of appropriate DOE orders; therefore, individual orders need not be identified in M&O contracts.

2. Specific

At 970.7101(a) of the proposed rule, one commenter suggested that the phrase "as authorized pursuant to FAR Subpart 17.6" be inserted at the end of the first sentence. This has not been done because, while FAR Subpart 17.6 does recognize the concept of management and operating contracts, the Department of Energy used such contracts, based upon authorities arising principally from the Atomic Energy Act, long before the FAR was promulgated. A statement such as that suggested is unnecessary and may make it appear that DOE is relying upon the FAR as its sole authority for entering into management and operating contracts.

The same commenter suggested that the word "corporate" in the second sentence of 970.7101(b) be replaced with a more generic word like "organization" to more clearly encompass the diverse entities that are management and operating contractors. We have adopted this comment. Also, a typographical error has been corrected in the second sentence of 970.7101(b).

At 970.7102(a) one commenter has suggested rewording the qualifying phrase of the parenthetical phrase, i.e., "(For the purposes * * * Head of Contracting Activity alone.)" We have adopted this comment. That commenter also suggested that the approval of M&O-developed qualified products lists, etc., at 970.7104–9(b), be delegable. Because of the effects of such lists on competition, we believe it important to retain the approval at the Head of Contracting Activity level. We have, however, added 970.7104–28(f)(1) to the list. That provision provides for HCA authorization of certain A–E and constructor relationships, indicative of a conflict of interest. That commenter has also suggested substituting "general" for "day-to-day" in the last sentence of this section because of its being, in the commenter's opinion, more in keeping with the contracting officer's oversight role insofar as M&O contractors are concerned. We have not made this change. Oversight by the contracting officer within the context established by this final rule must be a day-to-day matter.

At 970.7102(b)(1) seven commenters took exception to the requirement for a review of the contractor's purchasing system and methods every three years. Three suggested that once every five years would be appropriate. The other four would delete the requirement or make it coincide with the cycle for or be a part of Contractor Purchasing System Reviews (CPSRs). The duration of a CPSR is normally no longer than two weeks. That time must be spent in reviewing purchase files, assessing individual transactions, and identifying any systemic weaknesses. The time period allotted for a CPSR does not allow sufficient time for the review team to also perform the detailed review of a contractor's entire purchasing system and methods, as required by 970.7102(b)(1). We have changed this provision to provide for a review at the time of contract award or contract extension.

Four comments were received with regard to 970.7102(b)(2). Two commenters recommend the insertion of "and approval" after "review." We have adopted the substance of these comments. Another commenter expressed a concern over the subjective nature of "substantive impact." We believe that "substantive impact" imparts the intended threshold of review. Any such adjectival description will be subjective in nature. Therefore, we have not changed this provision. The same commenter wondered if the term "subcontracting practices" suggests a subtle distinction as opposed to "purchasing practices" or "purchasing methods." We have, therefore, substituted "purchasing system and methods." The same commenter has also questioned whether "one-time changes ('deviations')" are intended to be encompassed by this provision. The answer is that the "changes" intended here are those to the written description of the contractor's purchasing system and methods. This provision would, therefore, not encompass transactional deviations. Other provisions of this subpart, e.g., 970.7102(b) and 970.7108, may result in DOE review of transactional deviations.

At 970.7102(b)(4) one commenter has suggested that the phrase "contractor's management of the purchasing function" is limiting, and "purchasing" should be changed to "acquisition." We have inserted "all facets of" after "contractor's management of" to assure that CPSRs include planning, receiving, inspection, cost analysis, etc.

The same commenter has suggested, at 970.7102(c), the insertion of a phrase that provides for the M&O contract to have a higher priority should its provisions conflict with this subpart. We have not made such a change. This subpart is intended as direction to DOE HCAs and contracting officers, governing their oversight of M&O contractor purchasing activities. Contractors will be required by the clause at 970.5204–22 to cooperate with the DOE contracting officer and bring their purchasing systems and methods into conformity with Subpart 970.71.

At 970.7103 (b) and (c) we have at our own initiative made minor wording changes to better reflect the roles of the HCA and the DOE contracting officer in administration of management and operating contracts. References to 970.7103(c) below reflect the addition of a new paragraph (c), which was originally proposed as paragraph (b).

At 970.7103(c)(1) a commenter has suggested the insertion of "delivery schedule" after "quality." We have added "timely and" before "efficient" in recognition of this comment.

At 970.7103(c)(3)(i) one commenter believed "and in adequate time" to be redundant considering 970.7103(c)(3)(viii). We disagree. The time consideration at 970.7103(c)(3)(i) deals with planning and timely submission of the requirement to the M&O's purchasing office, while at 970.7103(c)(3)(viii) the concern is the amount of time allowed for receipt of proposals to assure an effective competition. Another commenter has questioned this subsection, noting a Federal preference for "performance requirements." This subsection is intended to result in as complete a description of the requirement as is possible, whether by detailed specifications or performance specifications.

At 970.7103(c)(3)(v) one commenter suggests inserting "for a resonable time" after "solicitation." We do not believe the change is necessary, particularly in light of 970.7103(c)(3)(viii). The same commenter suggests changing "and" before "(B)" to "and/or." In order to make clear the intended meaning, we have moved the phrase "as appropriate" to follow "(B) use." The same commenter has also questioned whether "in the local area" is not "overly restrictive." We believe that phrase makes it clear that when an adequate number of qualified sources are located in the local area, solicitation of those firms is sufficient to satisfy the duty to publicize the requirement.

At 970.7103(c)(3)(vi) one commenter suggested changing "equal access" to "uniform access." We have not made the change, believing "equal access" more descriptive of our intended meaning.

At 970.7103(c)(3)(vii) a commenter suggested substituting "fair and reasonable" for "Government's best interest." We have not made the change. We believe that there is a difference,

from a business standpoint, between acquiring goods or services at a "fair and reasonable" cost or price and acquiring them at a cost or price that is in the M&O contractor's customer's (the Government's) best interest, the latter being a more demanding standard. This is the case even though M&O contractors are not purchasing agents for DOE.

At 970.7103(c)(3)(xi) one commenter has questioned the phrase "all potential proposers," stating the provision as written "seems unnecessarily restrictive in view of the more liberal approach of [Federal Acquisition Regulation] 15.606(b)." We disagree with the observation but have altered the wording for the sake of clarity, substituting "all firms that received a copy of the solicitation or, after the due date, all firms submitting a proposal."

At 970.7103(c)(3)(xii) one commenter states that "'clarification' should not be considered as a part of 'negotiation.'" The relevant portion of this provision has been rewritten to reflect that a management and operating contractor's purchasing system and methods may provide for the contractor's clarifying ambiguities in a given offeror's or offerors' proposal(s) without the need to undertake negotiations with all the proposers then under consideration for award, where other proposals contain no ambiguities, and the integrity of the purchasing process is maintained.

At 970.7103(c)(3)(xiii) one commenter has suggested that we include a reference to the Department of Defense (DOD) Debarred List. Any debarments and suspensions by DOD should appear in the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors, the purview of which is Government-wide. Three other commenters have suggested the substitution of "responsible" for "capable." We have purposely avoided, to the extent possible, the use of terms of art in Federal procurement, believing their use in the context of M&O purchasing could result in the imposition of many detailed Federal procurement concepts upon the Federal norm. See preamble to the proposed rule at 52 FR 30998, 30999 (Aug. 18, 1987). Here and elsewhere, we have attempted to use words that express the substance of the Federal concept without the attendant obligations that have evolved by case law or regulation.

At 970.7103(c)(4) one commenter questioned the extent to which clauses otherwise required may be omitted when making small purchases, particularly in light of "purchases on an oral contract basis." We believe the proposed provision to be sufficiently clear and, from a policy standpoint, complete. Certainly oral contracts should be entered into cautiously assuring a fail-safe system of contract terms, order, receipt, inspection, payment, and other concerns. We believe that these issues can be dealt with in an M&O contractor's purchasing system and methods and reviewed and approved by the cognizant DOE contracting officer.

At 970.7103(c)(5) two commenters stated that the last sentence is too restrictive, seeming to require the use of the *Commerce Business Daily*. We have changed the provision to make it clear that publication of appropriate requirements in the *Commerce Business Daily* is one method that may be used to promote participation by the described types of business concerns.

At 970.7103(c)(7) one commenter has questioned whether application of the FAR cost principles to subcontracts is intended to result in direct dealing between the subcontractor and the Government contracting officer. In this provision the M&O contractor's relationship with its subcontractor(s) is not intended to be any different from the relationship between a non-M&O contractor with its subcontractor(s). No direct relationship between the subcontractor and the Government is intended. In awarding and administering its subcontracts, the M&O contractor is expected to exercise the discretion in matters relating to the cost principles reserved by the FAR for the Government contracting officer in Federal prime contracts.

At 970.7104 we have added a sentence at our own initiative which requires contracting officers to assure that M&O contractors' purchasing systems and methods provide for appropriate alteration of required FAR and DEAR clauses to reflect the relationship of the parties.

At 970.7104–2 one commenter has suggested the substitution of "970.7104–9" for "970.0407." We have adopted this change.

At 970.7104–7(a) one commenter recommends deletion of the list of DEAR and FPMR authorities for purchase of the listed special items because, according to that commenter, the noted citations refer in many cases to directives which have expired, have been superseded, or no longer apply for other reasons. We have made no change but will undertake a study to ascertain whether the primary guidance should be revised.

At 970.7104–8 one commenter has requested a more definitive statement of what should be subjected to lease versus purchase analysis. We believe that this is a matter to be addressed by the M&O contractor in its proposed procedures, which would be reviewed and approved by the cognizant contracting officer, except for establishment of thresholds for application which are to be approved by the HCA. As noted earlier in this preamble, we have added a paragraph (b) to discuss the decision to make goods or perform services in house versus acquiring them by purchase and have retitled the subsection to reflect this change.

At 970.7104–9(b) two commenters questioned the provision, one requesting more detailed guidance and the other recommending the delegation of the requirement relating to HCA approval prior to the use of some form of qualified list. We have made a change to emphasize the need for both the M&O and the DOE officials responsible for oversight to periodically review any such lists to delete items that are no longer subject to the concerns for which they were originally included in the list.

At 970.7104–10 four commenters have questioned the proposed coverage, each essentially recommending some form of greater reliance on the M&O determination of the likelihood of potential organizational conflict of interest in its subcontracting. We have not altered the proposed coverage. The DOE contracting officer is the only individual authorized to analyze the likelihood of an organizational conflict of interest. These provisions affect only subcontracts falling into one or more of the classes described at 909.570–5(a).

One of those commenters also noted that application of DEAR organizational conflict of interest (OCI) provisions to "consultants" as well as subcontractors results in OCI requirements which overlap and conflict with the requirements at 970.2272, "Conduct of employees and consultants of DOE management and operating contractors." We believe that the provisions, in fact, do not conflict though they may in certain limited circumstances overlap. The organizational conflict of interest provisions at 970.7104–10 apply to subcontracts for specific types of services, whether performed by "subcontractors" or "consultants," the latter term merely being a subset of the former.

The coverage at 970.2272 applies to management and operating contractors' employees, in their capacities as M&O contractor employees and as outside consultants. Portions of it also apply to outside consultants hired by the M&O as "special employees" or subcontractors. Paragraphs (c), (d), and (g) of 970.2272,

in the case of consultants subcontracted for by an M&O contractor, cover similar concerns as are treated by portions of the organizational conflict of interest provisions of 909.57. Therefore, we do not believe that the provisions conflict.

At 970.7104–11 one commenter has suggested that cost or pricing data should be required only in the case of noncompetitive subcontracts and that this requirement is subject to OMB clearance under the Paperwork Reduction Act. By statute, cost or pricing data are required for contracts and subcontracts in the absence of "adequate price competition," not merely in the case of noncompetitive purchases. See Pub. L. 98–369, Title VII, section 2712. Paragraph (b) has clearly excluded from the requirement for cost or pricing data those situations in which there is adequate price competition. This requirement's coverage is merely restating, at the new location, coverage already existing at 970.1508–1, which has previously been subjected on OMB's Paperwork Reduction Act review.

At 970.7104–12 one commenter has suggested that this subsection not contain mandatory provisions but rather that the listed provisions merely be used to establish a guideline. We disagree and have made no changes. At 970.7104–12(a) another commenter has suggested that the provision concerning "unilateral initiation of small business set-asides" be rewritten so as to remove any implication that those set-asides should be initiated. We disagree. The FAR at 19.502–2, one of the citations listed, establishes the criteria for establishing small business set-asides. M&O contractors are expected to base their decisions to unilaterally set a requirement aside on those criteria.

At 970.7104–12(b) a commenter has suggested that the phrase "questions concerning small disadvantaged business * * *" be altered so as not to result in an overly broad interpretation causing the referral of unnecessary questions to the Small Business Administration. We agree and have made the language more focused. At 970.7104–12(c) two commenters recommended that the small purchase class set-aside remain at $10,000 in accord with current coverage at 970.1901(c). We have chosen to continue to reflect the Federal small purchase set-aside threshold as stated in the proposed rule.

At 970.7104–12(d) a commenter has suggested qualifying the $3,000,000 construction class set-aside threshold by making provision for firms with "sufficient financial capabilities." We have not made the change. Any firm selected must have sufficient financial capabilities whether under a set-aside or an unrestricted solicitation. That concern is merely one of many very important considerations that result in an M&O contractor's being able to affirm that a prospective awardee is capable of performing the work.

At 970.7104–12(e) one commenter has suggested an alternative method of providing for a set-aside program for small disadvantaged businesses. In support of its position the commenter states that the proposed set asides may detract from opportunities for small businesses and woman-owned businesses and that determining a fair and reasonable price with limited competition may be more difficult. We have made no changes. We believe that there are sufficient subcontracting opportunities for all kinds of businesses. We also believe that the M&O contractors can determine whether a fair and reasonable price has been offered. Further, this provision established a procedure that is discretionary, not mandatory.

At 970.7104–12(g) four commenters have suggested that the utilization reports be required semi-annually, rather than quarterly. Paragraph 12(g) merely reflects the provision at 952.219–9 which modifies the clause at FAR 52.219–9. The FAR clause requires contractors to submit the SF 294 semi-annually and the SF 295 quarterly. The DEAR modification deletes the requirement for the SF 295 entirely but requires the SF 294 to be submitted quarterly. Paragraph 12(g), therefore, is stating what M&O contracts should already require. Furthermore, this requirement is not new. Paragraph 12(g) is the restatement of the current provision at 970.1901(f). We have made no change.

At 970.7104–16 one commenter would like to have M&O contractors furnished with Davis-Bacon wage determinations. The determinations are published periodically in the **Federal Register** or are otherwise available from the Department of Labor. We have deleted reference of FPR Temp. Reg. 70 as a result of the publication of Federal Acquisition Circular 84–34. Another commenter was concerned that these provisions may be "redundant" considering similar provisions in the FAR. That same commenter has made a similar observation with regard to 970.7104–21 (environmental and occupational safety and health programs); 970.7104–22 (Buy American Act); 970.7104–24 (bonds and insurance); 970.7104–26 (taxes); and 970.7104–28 (construction and A/E contracts). This coverage is not redundant. It adopts or reflects the applicability of certain portions of FAR coverage in the subcontracting practices of M&O contractors. We believe the commenter apparently did not consider that the FAR regulates prime contracts awarded by the Federal government. The proposed rule and this final rule are intended to provide a comprehensive baseline by which DOE personnel will oversee the subcontracting activities of DOE management and operating contractors.

At 970.7104–22 one commenter has suggested raising the Procurement Executive's approval threshold to $100,000. We have not adopted this comment. A second commenter has suggested a revision of the penultimate sentence of paragraph (c) to correct an omission. We have added "the period of effectiveness" to the list of items which must be specified on the authorization and have otherwise clarified this portion of paragraph (c).

A third commenter has questioned entirely the application of the Buy American Act to the subcontracting practices of DOE's M&O contractors. The Buy American Act does not apply *per se* to contractors. However, 41 U.S.C. 10a provides that "[o]nly such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use." Therefore, since all purchases of goods by management and operating contractors are for carrying out the Department's mission, the purchases of those contractors are to be made in accordance with the Buy American Act. Therefore, we have changed "through" in the first sentence to "as reflected in" to communicate the statutory nature of this requirement. The activities of DOE are exempt from the General Agreement on Tariffs and Trade.

At 970.7104–24 one commenter has made four comments suggesting specific word changes to assure that it should be the first tier subcontractor, not the prime management and operating contractor, that is obligated by the Miller Act (40 U.S.C. 270a–270f) to provide performance and payment bonds.

We have made minor word changes in this provision to reflect what we believe to be the reality of application of the Miller Act to the circumstance when a management and operating contractor awards a contract for the construction,

alteration, or repair of federally owned premises. Apparently some first-teir subcontractors have defended their claims brought under performance and payment bonds which were required under their subcontracts by alleging that the Miller Act obligations are the responsibility, not of the subcontractor, but of the prime management and operating contractor, particularly where the M&O is a construction manager.

Our analysis is as follows: First, we believe that the Miller Act will apply in this circumstance since the work to be performed under the subcontract will be for "the construction, alteration, or repair of any public building or work of the United States." We also believe that it is the subcontractor, not the management and operating contractor, that fits the definition of "contractor" within the Act. The "contractor" is that party who receives the award in excess of $25,000 for the construction, alteration, or repair of any public building or public work of the United States.

Our revisions reflect the obligation of the DOE contracting officers to assure that management and operating contractor's purchasing systems and methods provide for M&O contractors' acquiring from their first-tier construction subcontractors performance and payment bonds that are consistent with Miller Act. It is our intention that this obligation reflect not only DOE's opinion about the application of the Act but that the requirement is also levied as a matter of policy. Should a court hold in some other manner as to the application of the Miller Act, the performance and payment bonding requirements will remain.

At 970.7104-24(a)(1) one commenter has suggested inserting "construction" before "subcontracts under cost-reimbursement type subcontracts." We have adopted this comment. Another commenter has suggested adding "or equal" after "Standard Form 25." We have not adopted this comment. The SF 25 is readily available, provides a uniformity of approach in this particularly important area, and has been proven by the test of time. A third commenter, a current M&O contractor, states in relation both to 970.7104-24 and 970.7104-25 that as it does more work involving environmentally hazardous materials, its subcontractors are unable to acquire a comprehensive general liability policy "for bodily injury and property damage caused by the actual or threatened release of pollutants." It says that as a result it is receiving "an increasing number of requests for indemnification from potential subcontractors." As a result it recommends that DOE initiate a process to provide indemnification under Pub. L. 85-804 for a class of subcontractors, i.e., "those performing remedial work under designated programs." This comment and its proposed action are well beyond the scope of this rulemaking. Any such policy change is a decision to be made by the Department's senior management. This regulation would be one place a change in procedure should be reflected but any substantive action must be undertaken, analyzed, and addressed by other elements of DOE.

At 970.7104-25 one commenter has opined that the coverage as to indemnification should be "reviewed by the Department of Justice." The coverage at 970.7104-25 of the proposed rule merely referred the reader to 970.2870 wherein the DEAR discusses the coverage given to M&O contractors pursuant to the Price-Anderson Act. DEAR 970.2870 then provides a clause, entitled "Statutory Indemnity," that is to be used in appropriate M&O subcontracts which clause merely recites for the subcontractor the protection which the Price-Anderson Act may provide it in the case of nuclear incident. DOE is not creating any systemic policy on indemnification.

At 970.7104-25 we have at our own initiative changed the reference to 970.2870 to specify paragraphs (f) and (g) of that section which pertain to indemnification of subcontractors. This was done for the sake of greater accuracy but also because, at the time of publication of this final rule, certain other portions of 970.2870 are no longer effective due to the expiration of the Department's authority to enter into indemnity agreements with prime contractors under the Price-Anderson Act. Paragraph (f) and (g) of 970.2870, however, are still valid as to subcontractors of those M&O contractors which currently hold Price-Anderson indemnification agreements executed prior to the expiration of the Department's authority. We intend to make appropriate changes to 970.2870 at such time as DOE's Price-Anderson indemnification authority is re-authorized.

At 970.7104-28(a), in the first sentence, "assume" has been corrected to "assure." At 970.7104-28(b) one commenter has suggested inserting the phrase "by the M&O contractor" after "prepared" to assure that it is understood that the M&O itself may prepare the independent estimate. We have altered the provisions of this subsection in another way to achieve the intended meaning.

At 970.7104-28(c) another commenter has suggested the deletion of this subparagraph in its entirety, believing that this requirement for the use of uniform design considerations in planning DOE facilities "defeats the intent of utilizing the management and operating contractor's experience, expertise and initiative under its prime contract" and that the responsibility for "preparation of specification does not reside in the purchasing activity." We disagree. Because of the many DOE locations, the disparate types of facilities to be modified or constructed and the extensive expertise involved, we believe there must be a uniform baseline for the preparation of specifications and the organization of construction in the planning and execution of the work. This provision must remain because specifications are a necessary part of the purchase of A-E and construction work. We have, however, edited the language of paragraph (c) to make it clearer.

At 970.7104-28(d) a commenter has recommended the addition of the phrase "or a comparable agreement form approved by the contracting officer." The commenter states that to do so would allow "for lease or rental of other equipment as well." Because of the context and title of this provision, it would be unlikely that the commenter's intention would be achieved by the suggested change. In any event we are not making a change to this provision because the standard agreement has proved itself over time.

At 970.7104-28(e) a commenter interprets the provision as ambiguous, stating, on the one hand, that a contractor's system "must reflect the essence of the Act" while, on the other hand, it "does not preclude the consideration of other factors * * *" The last sentence of this paragraph has been revised to prevent any such ambiguity.

At 970.7104-28 (f)(1) and (f)(1)(i) through (f)(1)(iii) we have at our own initiative revised the descriptions of situations in which conflicts of interest in architect-engineer and construction subcontracts may arise as to billing of costs or self-inspection. We have deleted the second sentence of 970.7104-28(f)(1), believing it to be generically descriptive of a situation that could have been presented in the examples that followed, but offering no remedial guidance. We believe that with the revisions to 970.7104-28(f)(1)(i) through (f)(1)(iii), the sentence is no longer needed. We have deleted paragraph

(f)(1)(iii), believing changes we have made to (f)(1)(ii) incorporate its meaning. We have revised paragraph (f)(1)(ii) to describe as simply and clearly as we can, the situations that give rise to a self-inspection concern. We have also renumbered the modified paragraph to become (f)(1)(i). We have inserted the phrase "for different projects" in the first sentence of what was paragraph (f)(1)(i) and have renumbered it as paragraph (f)(1)(ii). It is, we believe, descriptive of the concern over conflict of interest in charging costs. Finally, we have renumbered paragraph (f)(1)(iv) to (f)(1)(iii) to reflect the deletion of paragraph (f)(1)(iii) as it was in the proposed rule.

At what was 970.7104–28(f)(1)(iv), now (f)(1)(iii), a commenter objects to the requirement for a subcontractor's accepting liability for consequential damages as a condition to the use of a "turnkey contract." We believe this condition to be appropriate where the subcontractor has been responsible for both the design and the construction of a facility. The same commenter has correctly noted our failure to include "sub" before "contract," "contractor," and "contracts" as those terms appear in this subparagraph.

At 970.7104.30(b) one commenter suggests deletion of the phrase "such as Allowable Costs and Property" in the last sentence stating that, by that commenter's reading, the last sentence implies that the terms of the M&O contract should take precedence over the terms of the subcontract. We have made a change to reflect this comment. The revised last sentence should result in M&O contractors' writing their subcontracts in such a way that subcontracts will be no less demanding than the M&O contract itself. A second commenter questions whether it is intended that, when subcontracts are terminated for any reason other than the termination of the prime M&O contract, the termination provisions of FAR Part 49 governing subcontracts, rather than prime contracts, should govern. It is intended that, where the subcontract termination(s) result from the termination of all or a portion of the prime management and operating contract, the subcontract provisions used by M&O contractors will be in conformity with the noted FAR subparts otherwise governing termination in Federal prime contracts. Where the subcontract termination(s), either for default or convenience, are not as a result of a termination of the prime, the M&O is provided greater discretion, e.g., "general conformity," in designing its subcontract termination provisions. In the interest of avoiding unnecessary duplication we have deleted the first sentence of paragraph (b) and have also altered the fourth sentence from the end of that paragraph by changing "may" to "shall."

At 970.7104–31 a commenter has suggested deletion of "such" before "Government sources of supply." We have made this change.

At 970.7104–33 one commenter states that the provision in the proposed rule "is confusing because of differences in the requirements of FAR Part 30, which is intended to apply to Government agencies, and the requirements specified in the Administration of Cost Accounting Standards clause contained in an M&O contract." We disagree and have made no change. The requirements for covered subcontracts are the same as those for Federal prime contracts.

At 970.7104–36 a commenter asks why the reference for acquisition of real estate is to Subpart 917.74, which is more demanding than the clause at 952.217.70 intended for contracts, including management and operating contracts, in which real estate may be purchased or leased. The clause at 952.217–70 is intended to be included in contracts "where contractors acquisitions are expected to meet the criteria specified in [Subpart 917.74]." The clause requires contracting officer approval prior to the acquisition, lease or disposal of real property. The coverage at Subpart 917.74 is intended to guide the contracting officer in processing any such request. Section 917.7402 provides a procedure for making a request. It is possible that no real property acquisition, lease, or disposal would be foreseen at the time of award or extension of a contract, causing the clause to be omitted. In such cases the final rule provides the necessary direction for the M&O contractor's system and methods to call for submission of a request. Whether the requesting contractor is an M&O or not, the procedure at 917.74 is to be followed in documenting the proposed acquisition and in gaining the contracting officer's approval.

At 970.7104–43 two comments were received. The first commenter finds this provision, as written, misleading and confusing. Its recommendation for correction is to rely upon the criteria for an M&O contractor's property subcontracting practices stated at 41 CFR 109–1.5201(c), the DOE Property Management Regulations. The other commenter would substitute "inconformity with the policies and principles in" for "consistent with." Both comments suggest that the current provision calls for strict compliance with the Federal standard stated at FAR Part 45. That is not our intention. In analyzing these comments we have also noted a failure to consider existing property coverage of the DEAR and the DOE Property Management Regulations. Therefore, we have altered the proposed provision to recognize the merits of both comments and to correct our oversight.

At 970.7104–45, Anti-Kickback Enforcement Act of 1986, we have brought the governing FAR citations up to date.

At 970.7104–46 we have added a provision to reflect the existing requirement of 932.803. Contractors are not obligated by the Assignment of Claims Act and, therefore, need not allow such assignment; however, in instances in which they do, they must deal with right of setoff as provided at 932.803.

At 970.7104–47 two comments were received. One recommends word changes intended to make it clear that the listed clauses are merely examples and that other clauses by their provisions may require flowdown or extension. The other commenter suggests the addition of the Accounts, Records, and Inspection clause at 970.5204–9.

We have not adopted the first comment. There is no intent to bar or limit the flowdown effect of clauses included in any management and operating (prime) contract. The provisions in 970.7104 are intended to establish the minimum requirements that any such contractor must meet in formulating its purchasing system and methods. The list of clauses at 970.7104–47 is merely a recognition of the flowdown or extension requirements of certain clauses required in M&O contracts. Those clauses require no additional guidance or further discussion, so they have merely been listed. If other clauses in the prime contract require flowdown by their terms; the fact that they are not listed does not limit their effect. We have adopted the second comment after assuring that the clause at 970.5204–9 is a required management and operating contract clause. It does provide for flowdown.

At 970.7105 one commenter stated that the proposed coverage needs to be clarified. First, it recommends that the method of purchase from contractor-affiliated sources be left to the HCA. We disagree. These types of purchases, because of the opportunity for favoritism, must be no less regulated than a normal competitive transaction.

In fact, we believe that such purchases must be more strictly regulated.

Secondly, in relation to 970.7105 the same commenter questioned the conditions of allowability of costs incurred in the transactions described at 970.3102–15(b). Those provisions place restrictions on the price a contractor-affiliated source may be paid. We do not now intend to make any substantive change to 970.3102–15(b).

At 970.7105(a)(1) another commenter has questioned the meaning of "independent" as used in this paragraph. It asks whether two divisions are "independent" if both "are controlled by the same parent corporation." The use of "independent" in this paragraph relates to the M&O purchasing function, not whether the contractor-affiliated source is a separate corporation. Therefore, so long as the M&O purchasing function is not doing work for, or is part of, the contractor-affiliated source, this provision would not be violated.

At 970.7105(c) a commenter questioned the conditions governing the allowability of capital cost of money in purchases from a contractor-affiliated source, e.g., with respect to the extent of competition. This regulation is intended to limit the potential conflicts that can occur when an M&O contractor contracts with an affiliated source.

At 970.7107 two comments were received. One commenter suggests inserting "calendar" after "10" and before "days" in paragraph (e). This is what was intended by the regulation. We believe that unless days are described as "business days," rules of regulatory and statutory interpretation call for days to be computed as "calendar days." Therefore, we have not adopted this comment.

The second commeter has noted that the statement about the applicability of the cost recovery provisions of the Competition in Contracting Act to protests involving M&O subcontract awards at paragraph (f) "conflicts with reent [Comptroller General] decision B–227091." The provisions of 970.7107 are essentially a republication of a separate rulemaking that culminated in the final rule published at 51 FR 31339 (September 3, 1986). Until thoroughly argued and decided to the contrary, we will retain the provision as it appeared in the proposed rule.

At 970.7108 one commenter stated that paragraph (a) is not consistent with 970.7102(b)(3). We have compared the two provisions. They are part of the same process, i.e., the HCA's setting the individual transaction review thresholds in 970.7108(a) and ensuring reviews are carried out as part of the basic DOE oversight responsibility in 970.7102(b)(3). We see no inconsistency.

At 970.7108(g) another commenter expressed a concern that the duty of an M&O contractor to document purchases in writing "will eliminate the administrative benefit of placing oral purchases." We will not make any change in this provision. There must be a record of a purchase no matter how "paperless" one intends to design a system. This admonition does not state that oral purchases may not be made by an M&O contractor. It does say that the order must be documented, which we believe is an absolute necessity for any large purchasing activity.

In a second similar comment with regard to 970.7108(h) the same commenter suggested that record retention be limited to six months or such longer period as determined by the contracting officer. We totally disagree. Many portions of the purchase transaction are barely complete in terms of audit responsibility even six months after completion. For instance, such a period would limit the ability of a contractor purchasing system review team to evaluate a purchasing system. This comment also conflicts with paragraph (d) of the clause at 970.7104–9 entitled Accounts, Records, and Inspection. We have not adopted the comment.

At 970.7109 one commenter stated that it considers the requirement for advance notice of award in the case of "fixed price-type subcontracts which exceed $25,000" of paragraph (a)(2) to be "not economically prudent where an M&O contractor has an approved procurement system." This requirement is a recitation of the requirement of section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended. The commenter should, however, take note of paragraph (b) in which the "non-impairment" authority of section 602(d)13 of that Act provides an exemption from the requirement for advance notification with regard to purchases involving "functions derived from the Atomic Energy Commission."

At 970.7109 (a) and (c) a second commenter has questioned whether the advance notice should be submitted "prior to solicitation or after award." It also questioned to whom the notice should be directed. We have added the phrase "to the contracting officer" following "advance notice" and have inserted "proposed" before "award" in paragraph (a) to clarify these points.

A third commenter has stated it believes that paragraph 970.7109(a) conflicts with the HCA's authority to establish thresholds below which M&O contractors need not submit a proposed subcontract award for consent in 970.7108(a). There is no conflict. The requirement for advance notice in 970.7109(a) is a statutory requirement. Consent or approval of such transactions is not required. The requirement for consent or approval by the HCA in 970.7108(a) and 970.7102(b)(3) is a matter of contract administration similar to those of the "Subcontracts" clause at FAR 52.244–2.

At 970.7109(b) another commenter questioned how "an M&O contractor could determine which functions of DOE are considered to be derived from the Atomic Energy Commission." This is a matter that the contractor may resolve with the cognizant contracting officer where there is any doubt; however, that phrase, we believe, communicates the intended meaning, i.e., functions that would have been performed by the Atomic Energy Commission under its authorities in atomic and nuclear missions, particularly pursuant to the Atomic Energy Act of 1954, as amended.

At 970.7109(c) a commenter questioned the use of the phrase "anticipated competition." The point is well taken. We have deleted "anticipated."

With regard to the revision of the contractor purchasing system clause at 970.5204–22, two comments were received. Both comments questioned the last sentence in paragraph (b) wherein it is stated that, "[s]ubcontracts shall be in the name of the contractor and shall not bind or purport to bind the Government." Both commenters are concerned that that sentence calls into question whether the M&O contractor is an agent of DOE and one of them expresses additional concerns over the ability of the M&O to assume administration of M&O subcontracts.

It is the position of DOE that the M&O contractor relationship is unique, involving some of the indicia of a principal-agent relationship, yet it is not an agency relationship. In various instances the Department and its predecessors have asserted an agency to describe the parties' relationships in such matters as state taxation of amounts of Federal money spent by an M&O contractor. *United States v. New Mexico*, 455 U.S. 720 (1982), wherein the Supreme Court recognized the unique nature of the management and operating contractor-Department of Energy relationship but held that there was no agency for the purpose of the State of New Mexico's imposition of compensating use and gross receipts taxes on Federal money spent by a DOE management and operating contractor. In matters relating to purchases by M&O

contractors, the Department objects to any characterization of the relationship as one of purchasing agent. DOE's position has been that M&O subcontractors do not have direct access to the Energy Board of Contract Appeals as a matter of right under the Contract Disputes Act because the M&Os are not, in general, designated as purchasing agents for DOE. DOE has also consistently and successfully asserted before the General Accounting Office that M&O contractors are not DOE purchasing agents with regard to protests against M&O subcontract awards. The sentence in question is intended to make that point clear. As to the second portion of the comment, DOE operations offices should administer M&O subcontracts, if at all, only under the most unusual circumstances.

It should be noted that there are occasional word changes made at our own initiative in the interests of clarity. We have described every such change that has had any meaningful effect on the final rule.

List of Subjects in 48 CFR Part 970

Management and operating contracts.

For the reasons set out in this preamble, Part 970 of Title 48 of the Code of Federal Regulations is amended, as set forth below.

Issued in Washington, DC June 16, 1988.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—[AMENDED]

1. The authority citation for Part 970 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 970.03—[Removed and Reserved]

2. Subpart 970.03 consisting of section 970.0304 is removed and reserved.

970.0407 [Amended]

3. Section 970.0407 is amended by putting a period after "management and operating contractors" in the first sentence and removing the remainder of the sentence.

970.0811, 970.0870, 970.0871, 970.0872 and 970.0902 [Removed]

4. Sections 970.0811, 970.0870, 970.0871, 970.0872, and 970.0902 are removed.

970.0905 [Amended]

5. Section 970.0905 is amended by removing the paragraph designation "(a)" from the first paragraph; removing all of the first paragraph after the third complete sentence; and removing paragraph (b).

970.1508-1 [Amended]

6. Section 970.1508-1 is amended by removing the paragraph designation "(a)" from the first paragraph and removing paragraphs (b) and (c).

970.1901 [Amended]

7. Section 970.1901 is amended by removing paragraphs (a) through (g) and by redesignating paragraphs "(h)" and "(i)" as "(a)" and "(b)," respectively.

Subpart 970.20—[Removed and Reserved]

8. Subpart 970.20 consisting of section 970.2001 is removed and reserved.

970.2202 through 970.2204 [Removed]

9. Sections 970.2202, 970.2203, and 970.2204 are removed.

970.2206 [Amended]

10. Section 970.2206 is amended by removing paragraph (a) and by removing the paragraph designation "(b)" from the remaining paragraph.

970.2208 [Amended]

11. Section 970.2208 is amended by inserting a period after "management and operating contracts" the first time it appears in the paragraph and by removing the remainder of the paragraph.

970.2210 [Amended]

12. Section 970.2210 is amended by removing the paragraph designation "(a)"; removing all of the first paragraph after the first sentence; and removing all of paragraph (b).

970.2213 and 970.2214 [Removed]

13. Sections 970.2213 and 970.2214 are removed.

Subpart 970.25—[Removed and Reserved]

14. Subpart 970.25 consisting of 970.2501 is removed and reserved.

970.2800, 970.2801, 970.2803, 970.2804 and 970.2805 [Removed]

15. Sections 970.2800, 970.2801, 970.2803, 970.2804, and 970.2805 are removed.

970.2903 [Amended]

16. Section 970.2903 is amended by removing the paragraph designation "(a)" from the first paragraph; by inserting a period after "management and operating contracts" the first time it appears and removing the remainder of the paragraph; and by removing paragraph (b).

970.3101-4 [Amended]

17. Subsection 970.3101-4 is amended by removing the paragraph designation "(a)" from the first paragraph; by removing the remainder of the paragraph after the fourth sentence; and by removing paragraph (b).

970.3102-15 [Amended]

18. Subsection 970.3102-5 is amended by:

a. Substituting "contractor-affiliated" for "contractor-controlled" in the title;

b. Substituting "970.71" in place of "970.44" as it appears twice in paragraph (a); and

c. Substituting "contractor-affiliated sources (See 970.7105)" for "contractor-controlled sources (See 970.4404)" in the title of paragraph (b)."

970. 3600 through 970.3605 [Removed]

19. Sections 970.3600, 970.3601, 970.3602, 970.3603, 970.3604, and 970.3605 are removed.

970.3606 [Redesignated as 970.3601]

20. Section 970.3606 is redesignated as section 970.3601.

970.3607 and 970.3608 [Removed]

21. Sections 970.3607 and 970.3608 are removed.

Subpart 970.44—[Removed]

22. Subpart 970.44, consisting of sections 970.4401 through 970.4409, is removed.

Subpart 970.46—[Removed]

23. Subpart 970.46, consisting of section 970.4601, is removed.

970.4901 [Amended]

24. Section 970.4901 is amended by removing "principles" from the title; by removing the paragraph designation "(a)" from the first paragraph; and by removing paragraph (b).

25. Section 970.5204-22, is revised to read as follows:

970.5204-22 Contractor purchasing system.

Contractor Purchasing System (June 1988)

(a) (Name of contractor) shall develop and implement formal policies, practices, and procedures to be used in the award of subcontracts, which purchasing system and methods shall be fully documented and acceptable to DOE, in accordance with the policies set forth in DEAR 970.71. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be

expressly required by the DOE contracting officer.

(b) The obligations of (*name of contractor*) under paragraph (a) above, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(c) In addition to, and without derogation of any rights under paragraph (a) of this clause and any other provision in this contract, (*name of contractor*) shall require all subcontractors to furnish cost or pricing data under those conditions and in accordance with the requirements set forth in FAR 15.804, and shall include in such subcontracts the appropriate clause set forth in 970.5204-24 except as otherwise directed or approved by DOE.

(d) Purchase or transfer of equipment, materials, supplies, or services from a contractor-affiliated source shall be treated in accordance with DEAR 970.7105.

(e) Proposed awards to firms or individuals on either the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE Consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees shall be forwarded to DOE for approval notwithstanding any prior purchasing system acceptance.

(f) (*Nome of Contractor*) shall provide advance notice of proposed subcontract awards in accordance with DEAR 970.7109; shall document purchase in writing; and shall establish and maintain subcontract files which present an accurate and adequate record of all purchasing transactions.

25. Subpart 970.71 is added as follows:

Subpart 970.71—Management and Operating Contractor Purchasing

970.7101 General.
970.7102 DOE responsibility.
970.7103 Policies.
970.7104 Conditions of purchasing by management and operating contractors.
970.7104-1 Contingent fees.
970.7104-2 Record retention requirements.
970.7104-3 Acquisition of utility services.
970.7104-4 [Reserved].
970.7104-5 Leasing of motor vehicles.
970.7104-6 Strategic and critical materials.
970.7104-7 Purchase of special items.
970.7104-8 Purchasing alternative determinations.
970.7104-9 Qualifications requirements.
970.7104-10 Organizational conflicts of interest.
970.7104-11 Cost or pricing data.
970.7104-12 Small business and small disadvantaged business concerns.
970.7104-13 Labor surplus area concerns.
970.7104-14 Convict labor.
970.7104-15 Contract Work Hours and Safety Standards Act (other than construction contracts).
970.7104-16 Labor standards for contracts involving construction.
970.7104-17 Walsh Healey Public Contracts Act.
970.7104-18 Equal employment opportunity.
970.7104-19 Service Contract Act.
970.7104-20 Special disabled and Vietnam Era veterans.
970.7104-21 Application of environmental and occupational safety and health programs.
970.7104-22 Buy American.
970.7104-23 Patents, data, and copyrights.
970.7104-24 Bonds and insurance.
970.7104-25 Indemnification.
970.7104-26 Taxes.
970.7104-27 Audit of subcontractors.
970.7104-28 Construction and architect-engineer (A-E) contracts.
970.7104-29 Quality assurance.
970.7104-30 Termination.
970.7104-31 Authorization for subcontractor's use of Government supply sources.
970.7104-32 Safeguarding classified information.
970.7104-33 Cost Accounting Standards.
970.7104-34 Clean air and water.
970.7104-35 Air transportation by U.S.-flag carriers.
970.7104-36 Acquisition of real property.
970.7104-37 Management, acquisition, and use of information sources.
970.7104-38 Privacy Act.
970.7104-39 Officials not to benefit.
970.7104-40 Subcontractor reporting systems.
970.7104-41 Employment of the handicapped.
970.7104-42 Unclassified controlled nuclear information.
970.7104-43 Government property.
970.7104-44 Foreign travel.
970.7104-45 Anti-Kickback Enforcement Act of 1986.
970.7104-46 Setoff of assigned subcontract proceeds.
970.7104-47 Additional flowdown and extension provisions.
970.7105 Purchasing from contractor-affiliated sources.
970.7106 Procedures for handling mistakes relating to management and operating contractor purchases.
970.7107 Protest of management and operating contractor procurements.
970.7108 Review and approval.
970.7109 Advance notification.
970.7110 Nuclear material transfers.

Subpart 970.71—Management and Operating Contractor Purchasing

970.7101 General.

(a) The Department of Energy contracts for the management and operation of DOE facilities, the design and production of nuclear weapons, energy research and development, and the performance of other services. These management and operating (M&O) contractors have been selected for their technical and managerial expertise and are expected to bring to bear these technical and managerial skills to accomplish the significant Federal mission(s) described in their contracts with, and work plans approved by, DOE.

(b) Purchasing done by management and operating contractors is one area in which the particular skills of the contractors will be brought to bear in order to more readily accomplish the contractors' assigned missions. The contracting procedures of the contractor's organization, therefore, form the basis for the development of a purchasing system and methods that will comply with its contract with DOE and this subpart.

(c) Completion is fundamental to M&O contractor purchasing.

(d) The Federal Acquisition Regulation generally is not directly applicable to the purchasing activities of management and operating contractors. There are, however, certain Federal laws, Executive Orders and Federal and DOE regulations which do pertain to and apply to purchases by management and operating contractors and thus should be reflected in the contractor's purchasing system and methods. These requirements are identified in this subpart.

970.7102 DOE responsibility.

(a) In the Department of Energy, overall responsibility for the oversight of the performance of management and operating contractors, including their purchasing activities, rests with the cognizant DOE contracting activity and, in particular, the Head of Contracting Activity (HCA). Contracting officers are responsible for management and operating contractors' conformance with this subpart and their contracts, and for determining whether those purchasing activities provide timely and effective support to DOE programs. (For the purposes of this subpart, the term "Head of Contracting Activity" includes his or her duly authorized representative except for the HCA actions identified in 970.7104-8(a), 970.7104-9(b), 970.7104-22(c), 970.7104-28(f)(1), and 970.7108(a), which actions are nondelegable. Further, when the term "contracting officer" is used in this subpart, it refers to that individual who has been delegated authority by the HCA for the day-to-day oversight of a management and operating contractors' purchasing activities.)

(b) In carrying out their overall responsibilities, HCAs shall:

(1) Require management and operating contractors to maintain written descriptions of their individual purchasing system and methods and further require that, upon award or extension of the contract, the entire written description be submitted to the

contracting officer for review and acceptance;

(2) Require that any changes to the management and operating contractor's written description having any substantive impact upon the contractor's purchasing system and methods be submitted to the contracting officer for review and acceptance prior to issuance;

(3) Ensure review of individual purchasing actions of certain types or above stated dollar levels by the contracting officer to assure that management and operating contractors implement DOE policies and requirements, as defined in this subpart, in accordance with the contractor's accepted system and methods; and

(4) Ensure that periodic appraisals (e.g. Contractor Purchasing System Review (CPSR) and Surveillance Review) of the contractor's management of all facets of the purchasing function are performed by the contracting officer in accordance with established policies. (See Subpart 944.3 and 970.7108).

(c) In performing the reviews required by paragraphs (b) (1) and (2) and the appraisals of paragraph (b)(4) of this section, HCAs shall assure that contracting officers determine that the contractors' written systems and methods are consistent with this subpart and the provisions of their contracts.

970.7103 Policies.

The following shall apply to the purchasing practices of management and operating contractors. Within these policies it is expected that purchasing systems and methods will vary according to the types and kinds of purchases to be made, the mission needs of the particular programs and facilities, and the experiences, methods, and practices of the contractor. In the development of their purchasing system and methods, contractors are expected to use their experience, expertise, and initiative consistent with this subpart.

(a) The purchasing systems and methods used by management and operating contractors should be well defined, consistently applied, and should follow good business practices appropriate for the requirement and dollar amount of the purchase involved.

(b) Management and operating contractors' purchasing systems should produce the proper balance between the government's decision to use the experience and expertise of these contractors in managing and operating its programs and facilities and the objectives and the attendant requisites of the Federal acquisition process. In evaluating the proper balance between commercial purchasing practices and the requisites of the Federal acquisition process a concept referred to as the "Federal norm" has evolved. The Federal norm refers to those fundamental principles embodied in law and regulation that should be reflected in contractor purchases even though such purchases are not Federal procurements.

(c) DOE has identified the following specific tenets of Federal procurement policy that must be addressed in a contractor's purchasing system:

(1) Purchases must be effected in the manner that will be most advantageous in meeting the overall mission with price, quality, and timely and efficient performance of the contract considered.

(2) Although the Competition in Contracting Act of 1984 (Pub. L. 98-369) is not applicable to management and operating contractor purchases, the contractor's purchasing system and methods must ensure competitive subcontracting consistent with the contractor's efficient performance of the contractual mission and the nature of supplies and services purchased. The objective is to provide fair and effective competition through application of the principles set out below.

(3) The contractor's purchasing system and methods shall ensure that for purchases in excess of those discussed at 970.7103(b)(4) below, all competitors are treated fairly and equitably by:

(i) Describing the requirement as completely as possible and in adequate time to promote competition. [Supplies and services should be purchased through the use of specifications; standards or descriptions which clearly and accurately describe the supplies or services to be purchased];

(ii) Preparing solicitation documents setting forth the contract terms and conditions, describing the requirement clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements;

(iii) Stating in the solicitation the factors that will comprise the basis for award, i.e., lowest evaluated price or a combination of price and technical merit. [In the event of the latter the solicitation shall state the importance of technical considerations versus cost considerations and note any criterion(ia) that is of significantly greater or lesser importance than other criterion];

(iv) Conducting evaluations and making awards in accordance with the stated factors and the descriptions of their importance;

(v) Publicizing the solicitation by (A) distribution to a reasonable number of prospective offerors and (B) use, as appropriate, of such means as plan rooms, journals, expressions of interest or other public notices, or the Commerce Business Daily particularly where there are not adequate numbers of qualified sources in the local area;

(vi) Providing equal access to solicitation data and information;

(vii) Offering sufficient numbers of qualified entities the opportunity to propose, and tailoring the method of carrying out the competition such that there is every expectation that proposals will be received in numbers that will substantiate that the costs or price is in the Government's best interest;

(viii) Allowing sufficient time for preparation and submission of proposals;

(ix) Providing for a uniform time for submission;

(x) Taking precautions to assure that the contents of each proposal are maintained in confidence to prevent technical transfusion and technical leveling;

(xi) Handling responses in a manner to assure fairness and impartiality, and communicating, where necessary to clarify solicitations, with all firms that received a copy of the solicitation or, after the due date, all firms submitting a proposal;

(xii) Conducting negotiations, as appropriate, in such a way as to enhance competition and ensure the understanding of substantive aspects of the offerors' proposals. [A management and operating contractor's purchasing system and methods may provide for receipt of amended proposals following communication with a select group of offerors deemed most likely to receive the award in accordance with the expressed evaluation criteria; for award without communication; and for clarification of ambiguous portions of an offeror's proposal not as a part of negotiations];

(xiii) Awarding only to capable offerors whose offers conform to the solicitation. [Awards shall not be made to firms or individuals listed on the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE List of Debarred, Suspended, Ineligible or Voluntarily Excluded Awardees without prior approval of the DOE contracting officer]; and

(xiv) Ensuring that access authorizations to classified information will not be a limiting factor in obtaining competition except where time will not permit securing additional authorizations.

(4) Small purchases (those valued at $25,000 or less or other value that may be approved by the HCA) should be made by methods designed, considering the award value, to:

(i) Obtain fair and reasonable prices,

(ii) Reduce administrative costs of making such purchases to the minimum required in order to establish the propriety of placing the order at the price paid with the supplier concerned, and

(iii) Improve opportunities for small and small disadvantaged business concerns to obtain a fair proportion of awards.

(5) A fair proportion of supplies and services shall be purchased from small business concerns, small disadvantaged business concerns, labor surplus area concerns, and woman-owned business concerns. Publication of appropriate requirements in the Commerce Business Daily is one method that may be used to promote the participation of such concerns.

(6) Price or cost analyses shall be performed consistent with the principles of FAR Subpart 15.8 and Subpart 915.8 of this regulation.

(7) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 970.7105 and 970.3102-15(b).

(8) The contractor's purchasing system and methods shall establish a dollar value above which the basis for each non-competitive purchase must be clearly documented and a dollar value above which non-competitive purchases must be supported by separate justifications prepared by the requesting organization, and approved at appropriate levels in the contractor's purchasing organization.

(9) The selection of the type of contract to be used should be based on consideration of the nature of the supplies and services required and other circumstances surrounding the purchase. The cost-plus-percentage-of-cost method of contracting shall not be used in any event.

970.7104 Conditions of purchasing by management and operating contractors.

This section and the entire subpart provide the standard against which the cognizant DOE contracting officer shall evaluate the purchasing system and methods of a management and operating contractor. The following specific provisions, some of which are implementations of statute or applicable Government or DOE policies, pertain to purchasing by DOE management and operating contractors. To the extent these provisions allow for the exercise of discretion by management and operating contractors, the contracting officer will use as the standard of compliance the exercise of good business judgment by the management and operating contractor in pursuit of carrying out the contractual mission. Where compliance with this section requires the use of clauses from the FAR or DEAR, the contracting officer shall assure that the purchasing system and methods of the M&O contractor ensure that the relationship between the contractor and subcontractor is clearly described and that references to the Government and the contracting officer are changed, as appropriate, to refer to the contractor.

970.7104-1 Contingent fees.

The policies and requirements of FAR Subpart 3.4 shall be applied to the purchasing activities of management and operating contractors. See 970.5203-1 for the amendment to the clause at FAR 52.203-5.

970.7104-2 Record retention requirements.

The record retention requirements for cost-reimbursement type subcontractors to management and operating contractors shall be in accordance with the clause at 970.5204-9.

970.7104-3 Acquisition of utility services.

When authorized by DOE (subject to appropriate delegation) to acquire utility services, such acquisition shall be in compliance with 970.0803.

970.7104-4 [Reserved]

970.7104-5 Leasing of motor vehicles.

Management and operating contractors shall abide by the provisions of FAR 8.11 and 908.11 in the leasing of motor vehicles.

970.7104-6 Strategic and critical materials.

Management and operating contractors who use strategic and critical materials shall fulfill their requirements in accordance with 908.70.

970.7104-7 Purchases of special items.

(a) Purchase of the following items shall be in accordance with the provisions of the DEAR and FPMR, as shown.

Item	Citation
(1) Motor vehicles	908.7101
(2) Aircraft	908.7102
(3) Office machines	908.7103
(4) Office furniture and furnishings	908.7104
(5) Filing cabinets	908.7105
(6) Security cabinets	908.7106
(7) Alcohol	908.7107
(8) Helium	908.7108
(9) Fuels and packaged petroleum products.	908.7109
(10) Coal	908.7110
(11) Arms and ammunition	908.7111
(12) Relacement materials handling equipment.	908.7112
(13) Calibration services	908.7113
(14) Wiretappinig and eavesdropping equipment.	908.7114
(15) Forms	908.7115
(16) Electronic data processing tapes.	908.7116
(17) Tabulating machine cards	908.7117
(18) Rental of post office boxes	908.7118
(19) Heavy water	908.7121(a)
(20) Precious metals	908.7121(b)
(21) Lithium	908.7121(c)
(22) Products and services of the blind and other severely handicapped.	FPMR 41 CFR 101-26.701
(23) Products made in Federal penal and correctional institutions.	FPMR 41 CFR 101-26. 702

(b) The management and operating contractor's purchasing system and methods may provide for the acquisition of items (3), (4), and (5) above from non-Federal Supply Schedule sources in those circumstances in which items of the same or greater quality may be purchased at a lesser price, or there is otherwise an inability to meet a critical program schedule.

970.7104-8 Purchasing alternative determinations.

(a) Management and operating contractors shall provide in their purchasing systems and methods, using FPMR 41 CFR 101-25.5 as a guide, for a system to determine whether required equipment should be purchased or leased. The system based upon these guidelines shall establish appropriate thresholds for application (as approved by the HCA) of lease-versus-purchase determinations and shall be used in making such determinations:

(i) At time of original acquisition,

(ii) When lease renewals are being considered, or

(iii) At other times as circumstances warrant:

(b) The contracting officer shall assure that the management and operating contractor provides in its purchasing system and methods for a determination of whether to purchase certain goods or services or provide those goods or services within its own organization. While cost may be a significant factor, the determination may also consider such things as efficiency of performance, scheduling, classification and security, control of production or performance, and maintenance of management and operating contractor capabilities.

970.7104-9 Qualifications requirements.

(a) Management and operating contractors are authorized to use Qualified Bidders Lists (QBL), Qualified Material Lists (QML) and Qualified Products Lists (QPL), developed by executive agencies pursuant to FAR Subpart 9.2, for the purchase of goods or services for which list(s) was developed.

(b) Heads of Contracting Activities may authorize management and operating contractors to develop QBLs, QMLs, or QPLs for critical applications; however, management and operating contractors shall not unnecessarily restrict potential suppliers from qualification testing and inclusion among qualified vendors. Management and operating contractors shall provide in their purchasing systems and methods for periodic review of the items or sources on these lists to assure the need to continue the restrictions.

970.7104-10 Organizational conflicts of interest.

(a) Management and operating contractors shall abide, by 909.5 in their purchase of supplies and services as if their subcontractors, including consultants, at any tier were performing the work as prime contractors to DOE.

(b) The cognizant contracting officer is the individual authorized to determine whether there exists, with regard to a proposed subcontract, little or no likelihood of an organizational conflict of interest.

(c) In obtaining disclosure of relevant interests in appropriate potential subcontracts, management and operating contractors may allow proposers to submit their responses directly to the cognizant contracting officer.

970.7104-11 Cost of pricing date.

(a) Management and operating contractors are required to:

(1) Obtain certified cost or pricing date prior to the:

(i) Award of a negotiated subcontract when the subcontract price is expected to exceed $100,000; or

(ii) Modification of any subcontract when the price adjustment is expected to exceed $100,000, unless unrelated and separately priced changes, for which certified cost or pricing data would not otherwise be required, are included.

(2) Incorporate appropriate contract provisions that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of submission of subcontractor defective cost or pricing data, at any tier.

(b) The exemptions from certified cost or pricing data identified by FAR 15.804-3 shall also apply in implementing the above cost or pricing data requirements.

(c) The clause at 970.5204-24 shall be included in management and operating contracts requiring the flowdown of the provision contained therein to subcontractors at all tiers as described therein.

970.7104-12 Small business and small disadvantaged business concerns.

(a) The policies and procedures in the following FAR sections and subpart shall be applied to the purchasing activities of management and operating contractors in their unilateral initiation of small business set-asides: 19.301, 19.302, 19.502-2, 19.502-3, 19.508(b), 19.508(c), 19.508(d), and Subpart 19.7.

(b) Protests received by management and operating contractors regarding small business status shall be referred to the Small Business Administration through the cognizant DOE contracting officer. Inquiries as to whether a given concern qualifies as a disadvantaged business will be forwarded through the cognizant DOE contracting officer to the SBA for response.

(c) Purchases of $25,000 or less awarded through small purchase procedures shall be reserved exclusively for small businesses where there is a reasonable expectation that bids, competitive as to price, quality and delivery, will be obtained from two or more responsible small business concerns.

(d) Purchase by a management and operating contractor of construction estimated to cost $3 million or less, including new construction, and repair and alteration of structures, shall be required to be set aside on a class basis for small business concerns. When, in the judgment of the contractor, a particular acquisition falling within these dollar limits is determined to be unsuitable for a small business set-aside, notification shall be made to the DOE contracting officer. Upon obtaining the approval of the DOE contracting officer, the contractor may proceed to process the acquisition on an unrestricted basis. For acquisition of construction in excess of $3 million, small business set-aside preferences should be considered on a case-by-case basis.

(e) Management and operating contractors may provide in their purchasing systems and methods for the setting aside of requirements for small disadvantaged businesses, provided there are sufficient such qualified entities available to assure effective competition, and provided that the cost or price of the successful offer is found by the M&O contractor to be fair and reasonable.

(f) In pursuit of the objective of M&O purchasing of a fair proportion of supplies and services from the concerns described at 970.7103(b)(5), the HCA may authorize the use of innovative means after approval by the Procurement Executive and the DOE Office of Small and Disadvantaged Business Utilization.

(g) Management and operating contractors shall prepare quarterly reports on utilization of small business, small disadvantaged business, and women-owned small business in accordance with the directions of the DOE contracting officer.

970.7104-13 Labor surplus area concerns.

(a) Management and operating contractors are authorized to unilaterally initiate labor surplus area (LSA) set-asides where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible LSA concerns so as to ensure that awards will be made at fair and reasonable prices. The priorities set forth in FAR 19.504 are to be utilized in determining the type of set-aside to be employed.

(b) Protests received or questions raised by contractors regarding LSA status shall be handled in consultation with the Department of Labor through the DOE contracting officer.

(c) LSA set-aside purchases made by management and operating contractors shall be reported quarterly in a form satisfactory to the DOE contracting officer.

970.7104-14 Convict labor.

The provisions of FAR Subpart 22.2 shall apply to purchases by management and operating contractors.

970.7104-15 Contract Work Hours and Safety Standards Act (other than construction contracts).

The requirements of FAR Subpart 22.3 shall apply to purchases by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

970.7104-16 Labor standards for contracts involving construction.

The requirements of FAR Subpart 22.4 apply to subcontracts involving construction awarded by DOE management and operating contractors to the same extent that they would if the subcontract had been directly awarded by DOE. Subpart 922.4 provides guidance, including examples of work situations, to assist in determining the

applicability of these standards. The Davis-Bacon Act is deemed to apply to purchases by management and operating contrators in accordance with 970.2273.

970.7104-17 Walsh-Healey Public Contracts Act.

The requirements of FAR Subpart 22.6 and this section shall apply to purchases by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

970.7104-18 Equal employment opportunity.

The equal employment opportunity provisions of FAR Subpart 22.8 and Subpart 922.8, of this chapter, including E.O. 11246 and 41 CFR Part 60, are applicable to subcontracts awarded by DOE management and operating contractors.

970-7104-19 Service Contract Act.

(a) It is the policy of DOE that subcontracts awarded by management and operating contractors are subject to the Service Contract Act to the same extent and under the same conditions as contracts awarded directly by DOE.

(b) Subcontracts awarded by management and operating contractors shall include the applicable clause in FPR Temporary Regulation No. 76 or successor FAR coverage with such modifications as would otherwise be appropriate had this clause been included in the prime contract.

970.7104-20 Special disabled and Vietnam Era veterans.

The provisions of FAR Subpart 22.13 shall apply to purchases by management and operating contractors.

970.7104-21 Application of environmental and occupational safety and health programs.

Contracting officers shall assure that management and operating contractors address environmental and occupational safety and health concerns in covered purchases in accordance with 970.2303. Management and operating contractors shall include the clauses at 970.5204-2, 970.5204-26, 952.223-72, and 952.223-75 in appropriate subcontracts and provide for flowdown to appropriate lower tier subcontracts.

970.7104-22 Buy American.

(a) Management and operating contractors are required, as reflected in the contract clauses prescribed at 970.7103-3 and 970.7103-5, to comply with the provisions of the Buy American Act. The list at FAR 25.108(d) contains excepted articles, materials, and supplies which have been determined to be unavailable in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(b) Determination of nonavailability under FAR 25.102 may be made by the DOE contracting officer responsible for the administration of the M&O contract.

(c) When the management and operating contractor's purchasing system and methods have been approved after a review in accordance with 970.7102(b), the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items under individual procurement actions. Each authorization shall be in writing and shall specify a dollar value limit for the aggregate of domestically unavailable items in individual procurement actions. Authorizations for dollar value limits in excess of $25,000 require the prior concurrence of the Procurement Executive. Each authorization shall also specify the effective date, the activity, the division or facility authorized to make the determination, the period of effectiveness, and any special conditions or requirements.

970.7104-23 Patents, data, and copyrights.

Contracting officers shall assure that management and operating contractors' purchasing systems and methods provide for distribution of patent and data rights and copyrights in their purchases in accordance with 970.27.

970.7104-24 Bonds and insurance.

The contracting officer shall assure that management and operating contractors provide in their purchasing systems and methods for obtaining bonds (i.e. bid, performance and payment bonds) from subcontractors as provided in this subsection and in a manner that will assure adequacy and legal sufficiency of all types of bonds and the acceptability of sureties in accordance with this subsection to protect the interests of the United States. The contractor's purchasing system and methods shall treat the obtaining of insurance in accordance with FAR Subpart 28.3 and DEAR Subpart 928.3.

(a) *Performance bonds.*—(1) *Construction subcontracts.* A performance bond on Standard Form 25 (modified to name the M&O contractor as well as the United States of America as obligees) shall be required for all fixed price and unit-price construction subcontracts in excess of $25,000 and subcontracts under cost-reimbursement type subcontracts. The penal amounts shall be determined as set forth in FAR 28.102(a).

(2) *Other than construction subcontracts.* Situations which may warrant the requiring of performance bonds in addition to those listed in FAR 28.103-2(a) are:

(i) Where doubt exists as to the financial or technical ability of likely suppliers.

(ii) Where the subcontractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the subcontractor's ability to perform the proposed work.

(iii) Where other commitments of the subcontractor might delay performance.

(iv) Where a delay in performance of the proposed work might disrupt other operations of the management and operating contractor and impair its overall efficiency; or

(v) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

(b) *Payment bonds.*—(1) *Construction subcontracts.* A management and operating contractor shall be required to obtain from the subcontractor a payment bond on Standard Form 25A, modified to name the management and operating contractor, as well as the United States of America, as obligees for all fixed price and unit-price construction subcontracts in excess of $25,000. The management and operating contractor shall be required to include such a requirement in its cost-reimbursement construction subcontracts in excess of $25,000. The penal amounts shall be determined as set forth in FAR 28.102-2.

(2) *Other than construction subcontracts.* The management and operating contractor may make a determination that it is necessary on an individual subcontract to require payment bonds in connection with other than construction work. Whenever the management and operating contractor has reason to believe that work under a proposed action might be delayed because of concern over the credit standing of a prospective subcontractor, it should consider the advisability of requiring a payment bond.

(c) *Corporate co-sureties.* More than one corporate surety may be accepted as surety upon recognizance, stipulation, bond, or undertaking in connection with either construction or other contracts, provided that in no case will the liability of any such co-surety exceed the

maximum penal sum in which the corporate surety is qualified to any one obligation. On bonds covering contracts other than construction contracts, where the amount of the bond is greater than the limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. Corporate co-sureties need not obligate themselves for the full amount of the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability on the condition that each co-surety bind itself "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

970.7104-25 Indemnification.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for the treatment of nuclear hazards indemnification in subcontracts in accordance with paragraphs (f) and (g) of 970.2870. No subcontractor may be otherwise indemnified except with the prior approval of the Procurement Executive.

970.7104-26 Taxes.

(a) Contracting officers should assure that tax matters are appropriately treated in their review and approval of management and operating contractors' purchasing systems and methods and in their review and approval of individual subcontracts by the contractor.

(b) The purchasing system and methods of a management and operating contractor shall require:

(1) The inclusion of a clause similar to that at 970.5204-23 in cost-type subcontracts of any tier where the prime contract or higher-tier subcontract(s) are cost-type which clause will require the subcontractor to take certain actions with regard to nonpayment, payment, protest, or other treatment of specific taxes.

(2) The inclusion of an appropriate tax clause in all fixed-price purchase orders and subcontracts and should contain provisions covering all tax matters which may require special consideration.

970.7104-27 Audit of subcontractors.

(a) Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for:

(1) periodic postaward audit of cost-reimbursement subcontractors at all tiers and

(2) Audits, where necessary, to provide a valid basis for pre-award cost or price analysis.

Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the management and operating contractor or next higher-tier subcontractor. Management and operating contractors' purchasing systems and methods shall provide, in appropriate cases, for the timely involvement of the management and operating contractor and the DOE contracting officer in resolution of questions of subcontract cost allowability.

(b) Where audits of subcontracts of any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the costs of the subcontract. The contracting officer shall assure that the audit results properly reflect the application of the applicable cost principles of the subcontract (See 970.7103 (b)(7)). In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the management and operating contractor.

970.7104-28 Construction and architect-engineer (A-E) contracts.

(a) *Scope.* Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for acquisition of A-E services and construction in conformance with this subsection. FAR Part 36 and DEAR Part 936 shall be used as guides.

(b) *Independent estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted under management and operating contracts. The services of an architect-engineer, the management and operating contractor, another management and operating contractor, or a construction contractor other than the constructor may be used, as appropriate, in the preparation of the independent estimate.

(c) *Specifications.* Management and operating contractors shall assure that specifications for construction are prepared in accordance with the DOE publication entitled "General Design Criteria Manual" (DOE Order 6430.1, dated December 12, 1983, or successor version) in preparing specifications for construction work.

(d) *Agreement for rental of construction equipment.* Management and operating contractors shall provide in their purchasing systems and methods for the rental of construction equipment from a third party in accordance with the agreement outlined at 936.7102.

(e) *Guidelines for the award of architect-engineer subcontracts.* The Brooks Act, Pub. L. 92-582, establishes the policy and procedures necessary to assure that selection of A-E contractors by the Federal Government is based solely upon the qualifications of competing A-E firms. That Act does not directly govern the award of A-E subcontracts by DOE management and operating contractors. HCAs shall assure that the purchasing systems and methods of management and operating contractors reflect the essence of the Federal policy by providing for selection of A-E subcontractors based primarily upon proposers' qualifications, however, this does not preclude the consideration of other factors, including cost or price, in the selection of A-E subcontractors.

(f) *Prevention of conflict of interest—*

(1) *Limitations on architect-engineer/construction services.* Combinations of subcontracts for architect-engineer and construction services, which may result in self-inspection of construction work, tend to prevent a subcontractor from rendering unbiased decisions, or create difficulties in segregating costs between subcontracts, and should be avoided. Unless otherwise authorized by the HCA, the following relationships shall not be established within any subcontract(s) awarded by a management and operating contractor involving the same firm or affiliated companies:

(i) A subcontract or combination of subcontracts for both architect-engineer and construction services on the same construction project. Should the HCA authorize the M&O to award a subcontract(s) to a firm or affiliates under which it is to be responsible for both design and construction services, Title III inspection services shall be performed by another organization approved by DOE.

(ii) Both a cost-reimbursement subcontract and fixed-price subcontract for different projects if any portion of the work under either subcontract will be performed concurrently in the same general location. This restriction applies to subcontracts for construction services, architect-engineer services, or

construction and architect-engineer services.

(iii) The provisions of paragraph (f)(1)(i) of this section shall not preclude the award of a single subcontract for the delivery of a discrete facility, e.g., "turnkey contract," so long as the subcontractor assumes all liability for defects in design and construction and consequential damages. Such subcontracts should provide for periodic inspection of the construction of the facility by the management and operating contractor or DOE or both.

(2) *Limitation on inspection.* (i) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be purchased from a fixed-price construction subcontractor with respect to its own work. Under cost-reimbursement type subcontracts where the construction subcontractor and architect-engineer subcontractor are the same, some degree of self-inspection may be permitted, but shall not constitute final inspection and acceptance by the Government.

(ii) When one subcontractor is to inspect the work of another, the inspecting subcontractor will be given written instructions by the M&O contractor defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the subcontract, direct any additional work, waive any requirements of the subcontract, or settle any claims or disputes. Copies of the instructions will be given to the subcontractor who is to be inspected, with a request to acknowledge receipt on one copy and return it to the M&O contractor. In this manner, both subcontractors are on notice as to the authority and limitations on the authority of the inspecting subcontractor.

970.7104-29 Quality assurance.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for inspection and acceptance and the use of an appropriate clause. Such provisions shall provide no less protection for the Government than is provided by the contract articles in prime contracts.

970-7104-30 Termination.

(a) The termination clause included in management and operating contracts gives the Government the right to terminate the contract for convenience or default and provides that after receipt of a termination notice the contractor shall, to the extent requested by the contracting officer, cancel existing orders, subcontracts and commitments. Also, management and operating contractors may find it necessary to terminate subcontracts either for default or convenience in the course of exercising responsibilities for program or project performance under the contract rather than as a result of termination of the prime contract. Therefore, contracting officers shall assure that the purchasing systems and methods of management and operating contractors provide for the inclusion of an appropriate termination clause or clauses in their subcontracts. The termination clauses set forth at FAR 52.249-1 through 52.249-14 may be used as guides in the development of subcontract termination clauses.

(b) When subcontracts are terminated as a result of the termination of all or a portion of the prime contract, contractors shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR Subparts 49.1, 49.2, and 49.3. When subcontracts are terminated for reasons other than termination of the prime contract, the contractor shall settle such subcontract terminations in general conformity with the policies and principles in FAR Subparts 49.1, 49.2, and 49.3, and 49.4. In any event, each such termination settlement shall be documented. Those which require approval by the Government pursuant to prime contract requirements or approved procedures must be supported by accounting data and other information as may be directed by the DOE contracting officer. Also, the settlement must be in conformity with the provisions of the subcontract and consistent with provisions of the management and operating contract.

970.7104-31 Authorization for subcontractors' use of Government supply sources.

With the approval of the DOE contracting officer, management and operating contractors may authorize cost-reimbursement type subcontractors, where all higher tier subcontractors are cost-reimbursement types, to acquire materials and services directly from Government sources of supply in accordance with the requirements of 970.51 or the consent of agencies involved.

970.7104-32 Safeguarding classified information.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for the inclusion in appropriate subcontracts of clauses consistent with 970.0404.

970.7104-33 Cost Accounting Standards.

The provisions of FAR Part 30 shall apply to purchases by management and operating contractors.

970.7104-34 Clean air and water.

The provisions of FAR Subpart 23.1 shall apply to purchases by management and operating contractors.

970.7104-35 Air transportation by U.S.- flag carriers.

The provisions of FAR Subpart 47.4 shall apply to purchases by management and operating contractors.

970.7104-36 Acquisition of real property.

Management and operating contractors shall contract for the lease or purchase of real property in accordance with 917.74.

970.7104-37 Management, acquisition, and use of information resources.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods, with regard to the purchase of automatic data processing resources and telecommunication facilities, services, and equipment, for review and approval of requirements in ways that conform to the procedures contained in applicable DOE orders (1360 series and 5300 series, respectively).

970.7104-38 Privacy Act.

Management and operating contractors shall award and administer applicable subcontracts in accordance with FAR Subpart 24.1.

970.7104-39 Officials not to benefit.

Mangement and operating contractors shall abide by the provisions of FAR Subpart 3.1 in the award of subcontracts.

970.7104-40 Subcontractors reporting systems.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for the flowdown of the cost and schedule control system requirement as provided at 970.5204-50. In addition for subcontracts of lesser value, those purchasing systems and methods shall provide for the receipt from subcontractors of status, manpower, and financial information necessary to comply with DOE requirements for financial and performance data for subcontracts at all tiers.

970.7104-41 Employment of the handicapped.

The provisions of FAR Subpart 22.14 shall apply to purchases by management and operating contractors.

970.7104-42 Unclassified controlled nuclear information.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for treatment of unclassified controlled nuclear information in accordance with 10 CFR Part 1017.

970.7104-43 Government property.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for the identification, inspection, maintenance, protection, and disposition of Government property in conformity with the policies and principles in FAR 45, DEAR 945, the Federal Property Management Regulations, the DOE Property Management Regulations, and their contracts.

970.7104-44 Foreign travel.

Contracting officers shall assure that management and operating contractors provide in their purchasing systems and methods for DOE approval consistent with the clause at 952.247-70 of foreign travel under subcontracts.

970.7104-45 Anti-Kickback Enforcement Act of 1986.

Contracting officers shall assure that management and operating contractor purchasing systems and methods provide for compliance in subcontracting with the FAR Subpart 3.502.

970.7104-46 Setoff of assigned subcontract proceeds.

Contracting officers shall assure that the management and operating contractors provide in their purchasing systems and methods that in cases in which they have allowed a subcontractor to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 932.803.

970.7104-47 Additional flowdown and extension provisions.

In addition to the clauses and provisions required to be included in appropriate subcontracts awarded by management and operating contractors, there are certain clauses the provisions of which require flowdown or extension to subcontractors. These are:

Examination of Records by the Comptroller General 970.5203-2
Accounts, Records, and Inspection 970.5204-9
Printing 970.5204-19
Priorities, Allocations, and Allotments 970.5204-33

970.7105 Purchasing from contractor-affiliated sources.

(a) A management and operating contractor may purchase from sources affiliated with the contractor (any division, subsidiary, or affiliate of the contractor or its parent company) in the same manner as from other sources, provided:

(1) The management and operating contractor's purchasing function is independent of the proposed contractor-affiliated source;

(2) The same terms and conditions would apply if the purchase were from a third party;

(3) Award is made in accordance with policies and procedures designed to permit effective competition which have been approved by the contracting officer (See 970.7101(c)). (This requirement for competition shall not preclude acquisition of technical services from contractor-affiliated entities where those entities have a special expertise, and the basis therefor is documented.); and

(4) The award is legally enforceable where the entities are separately incorporated.

(b) Subcontracts for performance of contract work itself (as distinguished from the purchase of supplies and services needed in connection with the performance of work) require DOE authorization and may involve an adjustment of the contractor's fee, if any. If the management and operating contractor seeks authorization to have some part of the contract work performed by a contractor-affiliated source, and that contractor's performance of that work was a factor in the negotiated fee, DOE approval would normally require:

(1) That the contractor-affiliated source perform such work without fee or profit, or

(2) An equitable downward adjustment to the management and operating contractor's fee, if any.

(c) Determination on cost of money allowance as prescribed at FAR 31.205-10 shall be treated as follows:

(1) When a purchase from a contractor-affiliated source results from competition and is in accord with provisions and conditions of paragraphs (a)(1) through (a)(4) of this section, the contractor-affiliated source may include cost of money as an allowable element of the costs of its goods or services supplied to the contractor; provided:

(i) The purchase is based on cost as set forth in 970.3102-15 and

(ii) The cost of money amount is computed in accordance with FAR 31.205-10 and related procedures (see 970.30).

(2) When a purchase from a contractor-affiliated source is made non-competitively, cost of money shall not be considered an allowable element of the cost of the contractor-affiliated source purchase.

970.7106 Procedures for handling mistakes relating to management and operating contractor purchases.

(a) HCAs shall assure that management and operating contractors include in their purchasing systems and methods provision for correction of mistakes in bids and withdrawal of offers.

(b) Such systems shall make provision for correction of mistakes before award only upon the offering by the bidder of clear and convincing evidence of the mistake and the bid intended. Those systems shall distinguish situations in which another bidder's lower bid may be displaced if the correction were to be allowed.

(c) The systems shall deal with mistakes after award and shall result in rescission or reformation of the contract only upon a clear and convincing showing of mutual mistake.

(d) The systems shall allow withdrawal of a bid if there is sufficient evidence to establish a mistake but otherwise does not meet the necessary tests for correction, stated in paragraphs (b) and (c) of this section.

(e) In all cases before any remedial action is allowed, it shall be determined that the mistake was made in good faith and that the interests of the United States are not prejudiced.

(f) Corrections of mistakes or other remedial actions taken pursuant to this section shall be documented by a written statement setting forth the circumstances and basis for such action and shall be made a part of the subcontract file.

970.7107 Protest of management and operating contractor procurements.

(a) The General Accounting Office (GAO) policies on protests state that GAO will consider subcontract-level protests when the subcontracts are "by" or "for" the Government. The term "for" has generally been defined by the GAO as including acquisitions by management and operating (M&O) contractors.

(b) The Department of Energy will also consider protests of acquisitions of M&O contractors.

(c) Upon receipt or notice of a protest filed with the GAO, or with the Department against an M&O contractor acquisition, the cognizant DOE contracting activity shall assure that the M&O contractor is aware of such protest and prepare or coordinate the preparation by the contractor of a report for submittal to the GAO or the Department official deciding the protest. Such a report shall be prepared in accordance with the applicable procedures in FAR Part 33 and Part 933 of the DEAR.

(d) Assistance shall be obtained from the local DOE Counsel in the preparation of the report and any supplementary documents setting forth the position of the contracting activity relative to a protest.

(e) Upon receiving notice of a protest to the Department involving an M&O procurement action prior to award, the contracting activity shall direct that award not be made prior to resolution of such protest unless an HCA request to make award, concurred in by counsel, using the criteria of 933.103(a), and endorsed by the program secretarial officer, is approved by the Procurement Executive. If notice of a protest is filed with the DOE contracting officer within 10 days after award, the contracting activity shall contact the Business Clearance Division, Headquarters, for guidance as to continuation of performance or issuance of a stop work order.

(f) Since the bid protest provisions of the Competition in Contracting Act of 1984 (Pub. L. 98–369) (CICA) only apply to acquisitions by Federal executive agencies, the CICA "stay" provisions (sections 3553 (c) and (d) of Pub. L. 98–369 and cost recovery provisions (section 3554(c), Pub. L. 98–369) do not apply to protests lodged with the GAO that involve M&O contractor acquisitions. Nevertheless, upon receiving notice of a protest to the GAO involving an M&O acquisition whether prior to or after award, the contracting activity shall immediately contact the Business Clearance Division, Headquarters, for guidance on suspending award or suspending performance.

(g) The General Services Board of Contract Appeals hears subcontract level protests involving the purchase of Automatic Data Processing Equipment (ADPE), as defined at 40 U.S.C. 759(a)(2)(A), only in cases in which the prime contractor is acting as a purchasing agent for the Government. Should a protest be lodged against an M&O's purchase of ADPE, upon receiving notice of the protest, the cognizant DOE contracting officer shall promptly notify local counsel and the Office of the Assistant General Counsel for Procurement and Finance, Headquarters (AFCPF). The Department's position on such subcontract level protests shall be coordinated with the AGCPF. The contracting officer, promptly after receipt of a protest, and the decision(s) of the GSBCA, shall also furnish a copy thereof with related pertinent correspondence to the Business Clearance Division, Headquarters.

970.7108 Review and approval.

(a) Heads of Contracting Activities shall establish thresholds by subcontract type and dollar level for the review and approval of proposed subcontracting actions by each management and operating contractor under their cognizance. Such thresholds may not exceed the authority delegated to the Head of the Contracting Activity by the Procurement Executive. In establishing these review and approval thresholds, the Heads of Contracting Activities should consider such factors as the following:

(1) The nature of work to be performed under the management and operating contract;

(2) The size, experience, ability, reliability, and organization of the management and operating contractor's purchasing function;

(3) The internal controls, procedures, and organizational stature of the management and operating contractor's purchasing function; and

(4) Policies with respect to such reviews and approvals established by the Procurement Executive.

(b) Prior approval shall be required for the subcontracting of any work a contractor is obligated to perform under a contract entered into under section 41, entitled Production of Special Nuclear Material, of the Atomic Energy Act of 1954, as amended.

(c) Heads of Contracting Activities shall take such action as may be required to insure compliance with the procedure for purchasing from contractor-affiliated sources or the purchase of specific items, or classes of items, which by the terms of the contract may require DOE approval.

(d) The Heads of Contracting Activities may raise or lower the review and approval thresholds established pursuant to paragraph (a) of this section at any time. Such action may be considered upon the periodic review of the contractor's purchasing system, but in any case those adjusted thresholds may not exceed the approval authority delegated to the Head of the Contracting Activity by the Procurement Executive.

(e) Department of Energy approvals of specific proposed purchases pursuant to this subpart shall communicate that such approval does not relieve the management and operating contractor of any obligation under its prime contract with DOE; is given without prejudice to any rights or claims of the Government thereunder; creates no obligation on the part of the Government to the subcontractor, and is not a predetermination of the allowability of costs to be incurred under the subcontract.

(f) Contracting officers shall assure that management and operating contractors establish and maintain subcontract files which contain those documents essential to present an accurate and adequate record of all purchasing transactions.

(g) Contracting officers shall assure that management and operating contractors document purchases in writing, setting forth the information and data used in determining that the purchases are in the best interest of the Government. The scope and detail of this documentation shall be consistent with the nature, dollar value, and complexity of the purchase.

(h) Heads of Contracting Activities will assure that the contracting activity establishes and maintains files of the documents associated with the review and approval of subcontract actions subject to DOE review and approval. Those files shall include, among other necessary documentation, an appraisal of the proposed action by the contracting activity and a copy of the approving or disapproving document forwarded to the management and operating contractor, containing a listing of any deficiencies, a listing of any required corrective actions, any suggestions, or other relevant comments.

970.7109 Advance notification.

(a) Pursuant to section 304(b) of the Federal Property and Administrative Service Act of 1949, as amended (41 U.S.C. 254(b)) contracting officers shall assure that the written description of the management and operating contractor's purchasing system and methods provides for advance notice to the DOE contracting officer of the proposed award of the following specified types of subcontracts, except as stated in paragraph (b) of this section:

(1) Cost reimbursement-type subcontracts of any award value; and

(2) Fixed price-type subcontracts which exceed $25,000; and

(3) Purchases from contractor-affiliated sources over a value established by the HCA.

(b) Pursuant to section 602(d)13 of the Act (40 U.S.C. 474(13)) referred to in paragraph (a) of this section, the advance notification requirement for the types of purchases listed in paragraphs (a) (1) and (2) of this section shall not apply to subcontracts relating to functions derived from the Atomic Energy Commission.

(c) The advance notice shall contain, as a minimum, a description of work, estimated cost, type of contract or reimbursement provisions, and extent of competition, or justification for a noncompetitive purchase procurement. The contracting officer may at any time request additional information that must be furnished promptly and prior to award of the subcontract.

970.7110. Nuclear material transfers.

(a) Management and operating contractors, in preparing contracts or other agreements in which monetary payments or credits depend on the quantity and quality of nuclear material, shall be required to assure that each such contract or agreement contains a:

(1) Description of the material to be transferred;

(2) Provision specifying the method by which the quantities are to be measured and reported;

(3) Provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) Provision for the use of an independent third party as an umpire to settle unresolved differences in the analytical samples; and

(5) Provision specifying in detail which party shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished, while at the same time minimizing any advantage one party may have over the other.

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Part VII

Department of Education

34 CFR Parts 350 and 357

National Institute on Disability and Rehabilitation Research; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 350 and 357

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the National Institute on Disability and Rehabilitation Research (NIDRR). The regulations are needed to modify the Institute's current Field-Initiated Research Projects program to meet the need for investigator-initiated projects in development and dissemination of new rehabilitation techniques and devices, and to correct problems that the Institute has observed in the evaluation of applications for field-initiated projects. These regulations define the purpose and activities of the program, and specify criteria for selecting applicants to receive awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3070, Washington, DC 20202; deaf or hearing impaired individuals may call (202) 732-1198 for TTY services.

SUPPLEMENTARY INFORMATION: On March 12, 1984, the Secretary published regulations establishing the Field-Initiated Research Projects Program (FIR). The Secretary now amends those regulations to revise and improve that program by: Defining the scope of the program to include certain types of projects for information dissemination and for the development of devices and techniques, as well as research; clarifying the types of projects that can be funded in each of the three categories—research and demonstrations, development, and dissemination; and establishing new selection criteria for the evaluation of applications received in the program.

In the past, the Institute limited the investigator-initiated program to strictly research and demonstration projects. NIDRR received many applications for activities that were research-related, but involved development or dissemination, that were difficult to evaluate under the existing criteria. On the basis of that experience, the Secretary determined that the program should have a broader scope and clearer purpose to accommodate other types of activities authorized under the Institute and necessary to carry out its mission.

Previously, NIDRR used the same selection criteria for FIR and certain other grant competition programs, including various types of Centers. These criteria proved confusing to the peer reviewers and contributed to less than optimum feedback to the applicants. The Secretary is therefore adopting a set of simplified criteria specifically for this program. The new evaluation criteria reflect differences among the three types of projects—research and demonstrations, development, and dissemination—that may be conducted under this program.

The new selection criteria are: Importance of the problem to be addressed; effectiveness of the design of the project in addressing the problem; staffing of the project; and project management and evaluation. The selection criteria remove any reference to Institute funding priorities (a reference that was confusing to potential applicants since the Institute does not establish annual priorities in this program) and eliminate the need for reviewers to determine which criteria are relevant to a given application. The new criteria place greater emphasis on the quality of the project design, and take into account factors that are relevant to evaluating projects for activities other than research. Other aspects of the review and evaluation procedure remain unchanged.

Analysis of Comments and Changes

NIDRR received comments on the proposed regulations from seven respondents. The comments were generally favorable, with a few suggestions for changes in the regulations.

Comment: One commenter stated a concern that the expansion of the program to include development and innovative dissemination projects would dilute the level of funding support available for research, and urged that additional funds be allocated to the program to accommodate the broader scope.

Discussion: The level of funding support for this program is determined each year based on the amount of discretionary funds available to the agency and the extent of need for NIDRR-directed research in priority areas. NIDRR does not anticipate that the expanded scope will dilute significantly the funds available for research. Rather, the new statement of purpose is expected to clarify the types of eligible projects and provide suitable criteria for evaluating them.

Changes: None.

Comment: Several commenters stated that the grant evaluation system affords too much discretion to the Secretary in making awards, diminishing the importance of the scores in the final funding decision.

Discussion: Peer review scores and agency funding recommendations in all programs are advisory to the Secretary, who has the responsibility for making the final decisions on awards. In establishing an investigator-initiated program, the Secretary was mindful of a need to assure that the resulting program would include a balanced research portfolio that would complement, and not duplicate, NIDRR's directed research agenda. Therefore, the Secretary must exercise discretion in selecting from among those applications recommended for funding in this program.

Changes: None.

Comment: Several commenters suggested that the new evaluation criteria requiring evaluation and operations plans are not really applicable to research projects, or at least are not relevant to the same extent as to development and dissemination projects. They urged that the scoring system be revised to reflect this.

Discussion: The Secretary believes that it is important to evaluate research projects in terms of accomplishment of planned activities (e.g., obtaining appropriate subject sample as planned; delivery of complete treatment interventions in a uniform manner as planned). Similarly, the Secretary believes that there must be some management plan for research projects that would indicate how staffing, supervision, recordkeeping, and achievement of interim goals would be monitored and accomplished. Also, the Secretary points out that these elements are only part of the fourth criterion, and that a score is assigned on the overall criterion. The Secretary has, however, modified the elements of that criterion to indicate that the evaluation plan and the plan of operations should be judged according to their appropriateness to the type of project that is being proposed.

Changes: The regulations in § 357.32 have been modified slightly to emphasize that the evaluation and operation plans should be assessed in terms of their appropriateness to the type of project that is proposed.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations specified in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority in the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 350

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped.

34 CFR Part 357

Education, Educational research, Grant programs—education, Handicapped, Manpower training programs, Vocational rehabilitation.

Dated: June 7, 1988.

(Catalog of Federal Domestic Assistance Number 84.133G, National Institute on Disability and Rehabilitation Research)

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by amending Parts 350 and 357 as follows:

PART 350—DISABILITY AND REHABILITATION RESEARCH: GENERAL PROVISIONS

1. The authority citation for Part 350 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

2. Section 350.1 is amended by revising paragraph (b)(7) to read as follows:

§ 350.1 Disability and rehabilitation research.

* * * * *

(b) The Secretary awards financial assistance through nine types of programs.

* * * * *

(7) Field-initiated projects (34 CFR Part 357).

* * * * *

3. Section 350.30 is amended by revising the heading and the second sentence to read as follows:

§ 350.30 What is the peer review process for these programs?

* * * Peer review panels review applications on the basis of the applicable selection criteria in 34 CFR 350.34, 352.31, 353.31, 357.32, 358.32, or 359.31.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

4. Section 350.33 is amended by revising the heading and paragraph (a) to read as follows:

§ 350.33 How does the Secretary evaluate an application under 34 CFR Parts 351, 354, or 355?

(a) The Secretary evaluates an application under 34 CFR Part 351, 354, or 355 on the basis of the selection criteria in § 350.34.

* * * * *

5. Section 350.34 is amended by revising the heading and paragraph (a)(1) to read as follows:

§ 350.34 What selection criteria does the Secretary use in reviewing applications under Parts 351, 354, or 355?

(a) Potential Impact of Outcomes: Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

* * * * *

PART 357—DISABILITY AND REHABILITATION RESEARCH: FIELD-INITIATED PROJECTS

6. The authority citation for Part 357 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

7. The title of Part 357 is revised to read as set forth above.

8. Section 357.1 is revised to read as follows:

§ 357.1 What is the field-initiated projects program?

This program is designed—

(a) To encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to further the purposes of the Institute; and

(b) To support research and demonstration, development, or knowledge dissemination projects as described in § 357.10, that address important activities not supported by Institute-funded research or that complement that research in a promising way.

(Authority: Secs. 200(1); 202(i)(1); 204; 29 U.S.C. 760(1), 761(a)(1), 762)

9. Section 357.120 is revised to read as follows:

§ 357.10 What types of projects are authorized under this program?

The following types of projects may be funded under this program:

(a) Research and demonstration projects, including—

(1) Scientific investigations into the nature of disability and its prevalence and distribution;

(2) Methods of analyzing disability;

(3) Techniques and devices for habilitation, rehabilitation, and restoration of physical, emotional, cognitive, communicative, vocational, and social functioning;

(4) Analyses of social, economic, industrial, geographic, and demographic factors affecting disability and rehabilitation;

(5) Studies of architectural, administrative, employment, and transportation barriers and other problems encountered by individuals with disabilities in their daily lives; and

(6) General scientific and technological inquiries to develop methods and devices to enable persons with disabilities to live with maximum independence, and other comparable research and demonstration activities.

(b) Knowledge dissemination projects related to the dissemination and utilization of new knowledge in disability and rehabilitation, including—

(1) Studies of the most effective means to disseminate new knowledge to disabled consumers and service providers;

(2) Controlled demonstrations of selected techniques to encourage the utilization of new knowledge; and

(3) Studies to develop and test new curricula to train service providers in specific clinical or service skills or in the management of services.

(c) Development projects to—

(1) Design and develop new devices or techniques to assist individuals with disabilities to engage in activities of daily living;

(2) Fabricate prototype devices;

(3) Evaluate prototypes and other important but untested devices in clinical and daily living settings;

(4) Develop standards for assistive devices; and

(5) Develop techniques to promote the manufacture, evaluation, and distribution of new devices.

(Authority: Secs. 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

10. Section 357.32 is revised to read as follows:

§ 357.32 How does the Secretary evaluate an application under this program?

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project. (45 points)*

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target populations;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required disciplines to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

(Authority: Secs. 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

(Approved by the Office of Management and Budget under Control Number 1820-0027)

11. Section 357.33 is amended by revising paragraphs (b)(1) and (b)(2), and removing paragraph (b)(3) to read as follows:

§ 357.33 What are the priorities for funding under this program?

* * * * *

(b) * * *

(1) The proposed project represents a unique opportunity to advance rehabilitation knowledge to improve the lives of individuals with disabilities.

(2) The proposed project complements research already planned or funded by the Institute through annual priorities published in the **Federal Register** or addresses that research in a new and promising way.

(3) [Removed].

[FR Doc. 88-14450 Filed 6-23-88; 10:14 a.m.]

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H.J. Res. 423/Pub. L. 100-341

To designate the third week in June 1988 as "National Dairy Goat Awareness Week." (June 22, 1988; 102 Stat. 623; 1 page) Price: $1.00

S. 1539/Pub. L. 100-342

Rail Safety Improvement Act of 1988. (June 22, 1988; 102 Stat. 624; 16 pages) Price: $1.00

S.J. Res. 249/Pub. L. 100-343

Designating June 14, 1988, as "Baltic Freedom Day." (June 22, 1988; 102 Stat. 640; 1 page) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
300-399	11.00	Jan. 1, 1988
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	[2] Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	July 1, 1968
12 Parts:		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	13.00	Jan. 1, 1988
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988
140-199	9.50	Jan. 1, 1988
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
16 Parts:		
0-149	12.00	Jan. 1, 1988
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1988
17 Parts:		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1987
240-End	19.00	Apr. 1, 1987
18 Parts:		
1-149	15.00	Apr. 1, 1987
150-279	14.00	Apr. 1, 1987
280-399	13.00	Apr. 1, 1987
400-End	8.50	Apr. 1, 1987
19 Parts:		
1-199	27.00	Apr. 1, 1987
200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1987
500-End	24.00	Apr. 1, 1987
21 Parts:		
*1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
*170-199	16.00	Apr. 1, 1988
200-299	5.00	Apr. 1, 1988
300-499	26.00	Apr. 1, 1988
500-599	21.00	Apr. 1, 1987
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
22 Parts:		
1-299	19.00	Apr. 1, 1987
300-End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0-199	14.00	Apr. 1, 1987
200-499	26.00	Apr. 1, 1987
500-699	9.00	Apr. 1, 1987
700-1699	18.00	Apr. 1, 1987
1700-End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1-1.60	13.00	Apr. 1, 1988
§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	21.00	Apr. 1, 1987
§§ 1.501-1.640	15.00	Apr. 1, 1987
§§ 1.641-1.850	17.00	Apr. 1, 1988
§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1987
§§ 1.1401-End	20.00	Apr. 1, 1987
2-29	20.00	Apr. 1, 1987
30-39	13.00	Apr. 1, 1987
40-49	13.00	Apr. 1, 1988
50-299	15.00	Apr. 1, 1988
*300-499	15.00	Apr. 1, 1988
500-599	8.00	[3] Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987

Title	Price	Revision Date
29 Parts:		
0–99	16.00	July 1, 1987
100–499	7.00	July 1, 1987
500–899	24.00	July 1, 1987
900–1899	10.00	July 1, 1987
1900–1910	28.00	July 1, 1987
1911–1925	6.50	July 1, 1987
1926	10.00	July 1, 1987
1927–End	23.00	July 1, 1987
30 Parts:		
0–199	20.00	July 1, 1987
200–699	8.50	July 1, 1987
700–End	18.00	July 1, 1987
31 Parts:		
0–199	12.00	July 1, 1987
200–End	16.00	July 1, 1987
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
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1–39, Vol. III	18.00	[4] July 1, 1984
1–189	20.00	July 1, 1987
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	[5] July 1, 1986
700–799	15.00	July 1, 1987
800–End	16.00	July 1, 1987
33 Parts:		
1–199	27.00	July 1, 1987
200–End	19.00	July 1, 1987
34 Parts:		
1–299	20.00	July 1, 1987
300–399	11.00	July 1, 1987
400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
1–199	12.00	July 1, 1987
200–End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
0–17	21.00	July 1, 1987
18–End	16.00	July 1, 1987
39	13.00	July 1, 1987
40 Parts:		
1–51	21.00	July 1, 1987
52	26.00	July 1, 1987
53–60	24.00	July 1, 1987
61–80	12.00	July 1, 1987
81–99	25.00	July 1, 1987
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425–699	21.00	July 1, 1987
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41 Chapters:		
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1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1987
101	23.00	July 1, 1987
102–200	11.00	July 1, 1987
201–End	8.50	July 1, 1987
42 Parts:		
1–60	15.00	Oct. 1, 1987
61–399	5.50	Oct. 1, 1987
400–429	21.00	Oct. 1, 1987
430–End	14.00	Oct. 1, 1987
43 Parts:		
1–999	15.00	Oct. 1, 1987
1000–3999	24.00	Oct. 1, 1987
4000–End	11.00	Oct. 1, 1987
44	18.00	Oct. 1, 1987
45 Parts:		
1–199	14.00	Oct. 1, 1987
200–499	9.00	Oct. 1, 1987
500–1199	18.00	Oct. 1, 1987
1200–End	14.00	Oct. 1, 1987
46 Parts:		
1–40	13.00	Oct. 1, 1987
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200–499	19.00	Oct. 1, 1987
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49 Parts:		
1–99	10.00	Oct. 1, 1987
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200–399	17.00	Oct. 1, 1987
400–999	22.00	Oct. 1, 1987
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.