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Monday
October 2, 1989

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WHO: The Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

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WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

NEW YORK, NY

WHEN: October 24; at 1:00 p.m.
WHERE: Room 305A, 26 Federal Plaza, New York, NY.
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center. 212–264–4810.

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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 685]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 685 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 285,000 cartons during the period October 1 through October 7 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 685 (7 CFR part 910) is effective for the period October 1 through October 7 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action 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 Agricultural Marketing Agreement 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 lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross 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 handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act, 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on September 26, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 12 to 1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.985 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.985 Lemon Regulation 685.

The quantity of lemons grown in California and Arizona which may be handled during the period October 1, 1989 through October 7 1989, is established at 285,000 cartons.

Dated: September 27 1989.

Charles R. Brader,
Director, Fruit and Vegetable Division.

[FR Doc. 89-23176 Filed 9-28-89; 8:45 am]
BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1477

Disaster Payment Program for 1989 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: Public Law 101-82, the Disaster Assistance Act of 1989 (the 1989 Act), provides assistance to eligible producers for losses of 1989 crop production due to damaging weather or

related conditions in 1988 or 1989. This final rule revises 7 CFR part 1477 to set forth the regulations which are necessary to establish the criteria to be used in making assistance available to eligible producers for 1989 crop losses.

EFFECTIVE DATE: This final rule shall become effective on October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond K. Aldrich, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC. Telephone: (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "major" since the program will have an annual effect on the economy exceeding $100 million. A final regulatory impact analysis is available from the above named individual.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the Disaster Payment Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of the federal assistance program to which this rule applies are: Title—Cotton—10.052; Feed Grain—10.055; Wheat—10.058; Rice—10.065; as found in the Catalog of Federal Domestic Assistance.

This program/activity 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).

Background

The 1989 Act provides that disaster payments for prevented planting and low yield losses will be made available to producers of 1989 crops of wheat, feed grains, upland and extra long staple cotton, and rice (target price commodities); peanuts; sugar; tobacco; soybeans; sunflowers; and nonprogram crops. With respect to producers of target price commodities who are enrolled in the 1989 acreage reduction programs, in order to be eligible to receive such a payment, the loss of production of the crop must be greater than 40 percent of the farm's expected production determined on the basis of yields established as prescribed in the 1989 Act. However, if a producer on the farm had crop insurance on the disaster affected crop under the Federal Crop Insurance Act, the crop loss requirement for that producer is 35 percent. With respect to producers of target price commodities which are not enrolled in the 1989 acreage reduction programs, the loss requirement is 50 percent. Producers of peanuts, sugar beets, sugar cane, and tobacco must have incurred a production loss of 40 percent on the farm, or 35 percent if a producer had crop insurance on the commodity for which disaster benefits are requested. Producers of soybeans and sunflowers must have incurred a 45 percent loss and producers of nonprogram crops must have incurred a loss of 50 percent in order to be eligible to receive such payment.

The 1989 Act also provides that any person who has qualifying gross revenues in excess of $2,000,000 annually shall not be eligible to receive any disaster payment. The 1989 Act provides that qualifying gross revenue means, if a majority of the person's annual income is received from farming, ranching, and forestry operations, the gross revenue from such operations. With respect to persons who receive less than a majority of their annual income from such operations, the gross revenue from all sources will be considered. For purposes of determining a "person", 7 CFR part 1477 provides that the provisions of 7 CFR part 1497 shall be used. The provisions of § 1497.8 refer only to farming operations. However, this gross revenue determination requires the review of an entity's non-farm income. Accordingly, for purposes of determining whether two or more entities shall be considered to be one "person" the income from all entities, whether or not an individual entity is engaged in farming, shall be used.

The 1989 Act also provides with respect to any loss of production on a farm which is in an amount equal to 40 percent, or 35 percent for producers with crop insurance, or less that such producers on the farm who received 1989 crop advance deficiency payments will not be required to refund that portion of such advance which would otherwise be required to be refunded if market prices increase to a level which would require repayment in accordance with section 107C of the Agricultural Act of 1949, as amended (the 1949 Act). The amount of production which shall be subject to forgiveness shall be the lesser of the amount of disaster loss or 35 to 40 percent, as applicable, of expected production.

The 1989 Act also provides that producers who did not request advance deficiency payment with respect to crops for which such advances were made available may now request an advance payment. Accordingly, 7 CFR part 1477 provides that such a request must be made by November 1, 1989.

The 1989 Act established the basic payment rates which will be used in making disaster payments. The actual payment rates will be 65 percent of the basic rate established for each crop.

For producers who are participating in the 1989 acreage reduction programs for target price commodities, the basic payment rate is the target price of the commodity. For producers of target price commodities who are not enrolled in these programs, the basic payment rate is the basic county loan rate established for the commodity. With respect to peanuts, the basic payment rate is the national price support rate determined for quota peanuts or additional peanuts, as applicable. For sugar beets and sugarcane, the basic payment rate will be set at a level which is fair and reasonable in relation to the level of price support established for the 1989 crops. With respect to kinds of tobacco for which price support loans are made available, the basic payment rate is the national average loan rate. For other kinds of tobacco, soybeans, sunflowers, and all other crops for which payments are authorized to be made by the 1989 Act, Commodity Credit Corporation (CCC) or the State Agricultural Stabilization and Conservation (ASC) committee, on behalf of CCC, shall establish the basic payment rate as the simple average price received by producers of the commodity during the marketing years for the immediately preceding five crops of the commodity, excluding the year in which the average price was the highest and the year in which the average price was the lowest.

The 1989 Act also provides that the Secretary shall consider as separate crops and develop separate payment rates, insofar as is practicable, for different varieties of the same commodity for which there is a

significant difference in economic value. Accordingly, 7 CFR part 1477 provides that basic payment rates will be established for separate varieties of the same commodity taking into account market factors to the extent reliable data is available.

For purposes of determining the total quantity of 1989 nonprogram crops that producers on a farm are able to harvest, the 1989 Act provides that the Secretary shall exclude as least 70 percent of: (1) Commodities that cannot be sold in normal commercial channels of trade and; (2) dockage, including husks and shells, if such dockage is excluded in determining the yields used to establish the eligibility of producers on a farm to receive a disaster payment. Accordingly, 7 CFR part 1477 provides that 70 percent of such quantities will be excluded from actual production when making loss of production determinations.

The disaster payment acreage for producers of 1989 target price crops who are participating in the 1989 acreage reduction programs is the sum of the acreage planted for harvest and the acreage prevented from being planted to such crop because of a natural disaster as determined by the Secretary but not to exceed the permitted acreage established for the farm for the commodity. With respect to producers of the target price commodities who are not participating in the 1989 acreage reduction programs, the disaster payment acreage is the sum of the acreage planted for harvest and the acreage that producers were prevented from planting to such crop because of a natural disaster as determined by the Secretary. Such prevented planting shall not exceed the greater of: (1) The 1988 planted and approved prevented planted acreage of the crop minus the 1989 actual planted acreage of the crop or (2) a quantity equal to the average of the 1986, 1987 and 1988 acreage planted and approved prevented planted acreage of the crop minus the 1989 actual planted acreage of the crop. The amount of payments made available, with respect to producers of target price commodities who are not participating in the 1989 acreage reduction programs, is reduced by a factor equivalent to the acreage reduction percentage which was established for the 1989 crop.

Disaster payment acreage provisions of the 1989 Act which are applicable to peanuts, sugar beets, sugarcane, tobacco, soybeans, sunflowers, and nonprogram crops are similar to the provisions used to establish such acreages for producers of the 1989 target price commodities who are not participating in the 1989 acreage reduction programs. Variations, however, exist with respect to peanuts and tobacco to take into account increased 1989 marketing quotas which were established for these crops in accordance with the Agricultural Adjustment Act of 1938, as amended. Deficiencies in production of peanuts on a farm which are classified as quota will be based on the relationship between farm poundage quota and the sum of the excepted production of quota and additional peanuts. Such deficiencies in production of quota peanuts shall also take into consideration the quantity of poundage quota transferred from the farm for the 1989 crop year. The amount of undermarkertings attributable to a farm for the 1989 crop of burley or flue-cured tobacco or quota peanuts shall be reduced by the quantity for which a disaster payment is made to producers on the farm. In the case of peanuts, this reduction may exceed the actual undermarketings which would result in "negative undermarketings. Any negative undermarketings would be deducted when determining the subsequent year's effective farm poundage quota.

For all crops, adjustments in disaster payment acreages are made in order to take into account crop rotation practices.

In determining whether the producers on a farm have suffered a loss, the 1989 farm program payment yield will be used for producers of the target price commodities. With respect to the determination of losses on a farm by producers of tobacco, sugarcane and sugar beets, the county average yield is to be used. For peanuts, the program yield is required to be used. For soybeans and sunflowers, the 1989 Act specifies that the yield to be used shall be the State, area, or county yield adjusted for adverse weather conditions during the previous three crops years, as determined by the Secretary.

Nonprogram crop yields are based upon proven yields established from data provided by the producer for the immediately preceding three crop years. For any year data is not provided the county average yield, as determined by CCC, shall be substituted. Accordingly, 7 CFR part 1477 provides that these yields, to the extent possible, will be based on statistics of the National Agricultural Statistics Service (NASS) or other sources which CCC determines to be appropriate.

The Secretary has determined not to exercise the discretionary authority to make additional disaster payments for reductions in quality of 1989 crops as a result of damaging weather or related condition in 1988 or 1989. Accordingly, 7 CFR part 1477 does not set forth regulations with respect to this provision.

The 1989 Act provides that the quantity on which participating producers of the target price commodities would otherwise have earned deficiency payments shall be reduced by the quantity on which a disaster payment has been received. The 1989 Act also provides that if the Secretary determines that any producer participating in a 1989 program must refund any portion of the advance deficiency payment, because of the total deficiency payment being less than the amount advanced, such refund shall not be required prior to July 31, 1990. Accordingly, 7 CFR part 1477 sets forth this provision.

Producers participating in the 1989 acreage reduction programs may devote all or a portion of the permitted acreage to conserving uses or receive disaster payments in lieu of the payment which they would have received if the producers were, in fact, prevented from planting such acreage or the acreage failed because of damaging weather or related condition in 1988 or 1989. Accordingly, 7 CFR part 1477 provides that producers must make such an election, in writing, by November 1, 1989.

The 1989 Act provides that producers who have obtained crop insurance for the 1989 crop of a commodity, under the Federal Crop Insurance Act, as amended, shall have their disaster payment reduced by the amount which the sum of the net crop insurance benefits (gross indemnity less premium paid) and the computed disaster payment exceeds the disaster payment acreage times the disaster yield times the basic payment rate for the commodity.

The 1989 Act also provides that producers who receive benefits under this Act must agree to obtain multiple peril crop insurance, under the Federal Crop Insurance Act, as amended, for the 1990 crop of the commodity for which a 1989 disaster payment is made except when:

(1) The producer's loss of production is less than 65 percent;

(2) Crop insurance for the commodity is not available;

(3) The amount of the producer's annual premium rate is greater than 125 percent of the average premium rate for insurance on that commodity in the county in which the producer is located;

(4) The amount of the producer's annual premium is greater than 25

percent of the amount of payment received under the 1989 Act; or

(5) The producer can establish, on appeal to the county ASC committee, that the purchase of crop insurance would impose an undue financial hardship.

Accordingly, 7 CFR part 1477 sets forth the regulation which implements these provisions.

The 1989 Act provides that for each "person" the sum of all 1989 disaster payments made with respect to target price crops, peanuts, sugar beets, sugar cane, tobacco, soybeans, sunflowers and nonprogram crops shall not exceed $100,000. Additionally, the sum of such payments and the benefits received in accordance with title VI of the 1949 Act which relate to 1989 livestock feed losses may not exceed $100,000. The 1989 Act also provides that no crop disaster payments are to be made to the extent that livestock emergency benefits have been made available for such loss of crop production. Accordingly, 7 CFR part 1477 sets forth these provisions.

Producers may elect whether to receive benefits, up to the $100,000 limit under the annual crop provisions of the 1989 Act or, in the form of livestock emergency benefits, up to the annual $50,000 limit in accordance with title VI of the 1949 Act. For the purpose of applying the maximum payment limitation provisions of the 1989 Act, "person" determinations are to be made to the extent possible in accordance with the maximum payment limitation provisions of the Food Security Act of 1985. For purposes of determining a "person" 7 CFR part 1477 provides that the provisions of 7 CFR part 1497 shall be used. However, in the same manner noted previously concerning the gross revenue determination which is made with respect to a "person" an individual or entity's interest in all entities will be taken into consideration whether or not such entities are engaged in farming.

The 1989 Act also provides that is producers on a farm receive disaster payments, the amount of the payment will be reduced by the value of any replacement crop which is produced on the acreage for which the disaster payment is made. The value of the replacement crop will be based on average market prices and the actual production of the replacement crop. Therefore, 25 percent of the production of the replacement crop will be deducted from the actual production of the replacement crop and the remaining quantity will be multiplied by the market value of the crop. This amount will be deducted from the disaster payment which otherwise would be made to the producer.

The 1989 Act also specifies that the historical cropping patterns of producers will be taken into consideration. Accordingly, 7 CFR part 1477 provides that producers who normally double-crop the first and second crop on the farm will not have the value of a crop which is normally the second crop planted on the farm deducted from any disaster payment which is made with respect to the crop normally planted as the first crop on the farm.

The 1989 Act also provides that the Secretary may permit eligible producers who have crop insurance on the 1989 crop or, in certain instances had crop insurance on the 1988 crop, to substitute the crop insurance yield for a commodity for the program yield established under the 1989 Act. Due to the differences between CCC programs and crop insurance programs with respect to: historical base periods for yield determinations; farm constitutions; the manner in which various croppig practices effect yield determinations and other related issues, it has been determined that this option will not be made available since it would unnecessarily complicate the disaster payment program without resulting in a substantial enhancement of the program and would substantially increase the cost of the program.

List of Subjects in 7 CFR Part 1477

Disaster payment 1989 crops.

Final Rule

Accordingly, 7 CFR Part 1477 is revised to read as follows:

PART 1477—DISASTER PAYMENT PROGRAM FOR 1989 CROPS

Sec.

1477.1 General statement.
1477.2 Administration.
1477.3 Definitions.
1477.4 Availability of disaster payments.
1477.5 Disaster benefits.
1477.6 Establishment of different payment rates and yields for the same nonprogram crop.
1477.7 Filing application for payment.
1477.8 Report of acreage, production disposition, and indemnity payments.
1477.9 Payment limitations.
1477.10 Special provisions for burley and flue-cured tobacco, and peanuts.
1477.11 Misrepresentation, scheme and device, and fraud.
1477.12 Refunds to CCC.
1477.13 Cumulative liability.
1477.14 Appeals.
1477.15 Liens.
1477.16 Other regulations.
1477.17 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: Title I of the Disaster Assistance Act of 1989 (Pub. L. 101–82); 15 U.S.C. 714b and 714c.

§ 1477.1 General statement.

This part sets forth the regulations for the Disaster Payment Program for the 1989 crop year as provided by the Disaster Assistance Act of 1989 (Public Law 101–82). The purpose of the program is to make disaster payments to eligible producers on a farm that has suffered a loss of production of 1989 crops due to damaging weather or related condition in 1988 or 1989.

§ 1477.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Agricultural Stabilization and Conservation (ASC) committees.

(b) State and county ASC committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

(c) The State ASC committee shall take any action required by this part which has not been taken by a county ASC committee. The State ASC committee shall also:

(1) Correct or require a county ASC committee to correct any action taken by such county ASC committee which is not in accordance with this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with this part.

(d) CCC shall determine all yields and prices under this Part and may utilize any agency of the Department of Agriculture in making such determinations. To the extent practicable, CCC will use data provided by the National Agricultural Statistical Service (NASS) and the Farmers Home Administration (FmHA). Any reference in this Part to NASS shall not restrict CCC from using data from other sources.

(e) No delegation herein to a State or county ASC committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county ASC committee.

§ 1477.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender

include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing the reconstitution of farms in part 719 of this title or in the regulations applicable to the production adjustment programs for feed grains, rice, upland and extra long staple cotton, wheat, and related programs set forth in part 1413 of this title.

(a) *Target Price Commodities* means a crop of wheat, feed grains (corn, grain sorghum, barley, and oats), upland and extra long staple (ELS) cotton, or rice.

(b) *Actual production* means the quantity of the crop actually harvested or which could have been harvested as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, State and County Operations (Deputy Administrator) Agricultural Stabilization and Conservation Service (ASCS).

(c) *Nonprogram crop* means a crop produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, which is not a crop of a 1989 target price commodity, quota or additional peanuts, sugarcane, sugar beets, tobacco subject to marketing quotas, soybeans or sunflowers.

(d) *Disaster payment yield* means:

(1) For 1989 target price commodities with respect to farms participating and not participating in the 1989 program, the 1989 farm program payment yield determined in accordance with part 1413 of this title;

(2) For peanuts, the 1989 farm yield determined in accordance with part 729 of this title;

(3) For sugarcane, sugar beets, and all kinds of tobacco the average of the county average yield for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest;

(4) For soybeans and sunflowers, the average of the county average yield for the years 1986 through 1988 as determined by NASS, adjusted for adverse weather conditions, in accordance with instructions issued by the Deputy Administrator;

(5) For honey, the average of the county average yield per hive for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest, in accordance with instruction issued by the Deputy Adminstrator; and

(6) For nonprogram crops (including honey), the average of actual yields for the years 1986 through 1988, in accordance with instructions issued by the Deputy Administrator, if eligible producers are able to provide production evidence of actual crop yields for any of the applicable years. For any year which a producer is not able to provide adequate production evidence, the county average yield for the crop shall be substituted in determining the payment yield. Such county average yield shall be the average of the county average yields for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest.

(e) *Expected production* means:

(1) For target price commodities on farms participating in the 1989 acreage reduction programs, the disaster payment yield times the smaller of:

(i) The 1989 permitted acreage for the crop; or

(ii) The sum of the 1989 actual planted acreage and the 1989 prevented planted acreage of the crop as approved by the county committee.

(2) For target price commodities on farms not participating in the 1989 acreage reduction programs and for peanuts, sugarcane, sugar beets, soybeans, sunflowers, tobacco other than burley tobacco, and nonprogram crops, except as provided in paragraphs (e) (3) through (5) of this section, the disaster payment yield times the sum of:

(i) The 1989 planted acreage of the crop, and

(ii) The 1989 prevented planted acreage credited for disaster payment purposes not to exceed the larger of:

(A) The 1988 planted and approved prevented planted acreage of the crop minus the 1989 planted acreage of the crop, or

(B) The average of the 1986, 1987 and 1988 planted and approved prevented planted acreage of the crop minus the 1989 planted acreage of the crop.

(3) For quota kinds of tobacco other than burley and flue-cured, the expected production as determined according to paragraph (e)(2) of this section shall not exceed the result of multiplying the 1989 effective farm acreage allotment times the disaster payment yield.

(4) For burley tobacco, the smaller of:

(i) The 1989 effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 725 of this title; or

(ii) The disaster payment yield times an acreage determined by dividing the amount in paragraph (e)(4)(i) of this section by the farm yield established for the farm according to 7 CFR part 726 of this title;

(iii) The disaster payment yield times the sum of the acreage of burley tobacco:

(A) That was planted on the farm in 1989, including any approved failed acreage;

(B) For which prevented planted acreage credit is approved by the county ASC committee with respect to the 1989 crop; and

(C) Determined by dividing the quantity of any un-marketed tobacco on hand from the 1988 crop by the disaster payment yield, or

(5) For flue-cured tobacco, the smaller of:

(i) The 1989 effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 725 of this title; or

(ii) The sum of:

(A) The quantity determined under the provisions of paragraph (e)(2) of this section,

(B) The quantity of any un-marketed tobacco on hand from the 1988 crop, and

(C) The amount by which the farm's 1989 basic quota exceeds the 1988 basic quota.

(6) With respect to crops planted in a rotation, the most recent corresponding years in the rotation shall be substituted for the 1986, 1987 and 1988 crop for purposes of determining the prevented planted acreage credit.

(f) *Eligible disaster* means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, or excessive wind, or any combination thereof; or related condition, including but not limited to insect infestation, plant disease, or other deterioration of a crop of a commodity, including aflatoxin, that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or during harvest which occurred in 1988 or 1989 as determined by CCC.

(g) *Eligible Producer* means, with respect to a crop for which an application for disaster payment has been made under this part, a person who as owner, landlord, tenant, or sharecropper is entitled to share in such crops, or the proceeds therefrom, available for marketing from the farm or would have been if such crop had been produced.

(h) *Person* shall be defined as in 7 CFR part 1497 of this title and all rules with respect to combining persons found in that part shall be applicable. However, the determinations made in accordance with § 1497.8 shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

(i) *Repeat crop* means a subsequent crop of the same commodity planted on the same acreage as the first crop.

(j) *Double-cropped* means a subsequent crop of a different commodity planted on the same acreage as the first crop. For a crop to be considered double cropped on a farm, there must have been a history of the second crop being planted following the first crop either in:

(1) The immediately preceding year, or

(2) In three or more of the immediately preceding five years.

(k) *Replacement crop* means a subsequent crop of a different commodity planted on the same acreage after the failure or prevented planting of first crop, except for repeat crops or double-cropped crops.

(l) *Qualifying gross revenues* means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

§ 1477.4 Availability of disaster payments.

(a) Disaster payments will be made available to eligible producers of 1989 target price commodities, peanuts, tobacco, sugarcane, sugar beets, soybeans, sunflowers, and nonprogram crops who suffered losses because of an eligible disaster in 1988 or 1989 in accordance with the Disaster Assistance Act of 1989.

(b) A person, as defined in § 1477.3, who has qualifying gross revenues in excess of 2.0 million dollars shall not be eligible to receive disaster benefits under this part.

(c) Eligible producers with losses of production in excess of 65 percent of expected production must agree to obtain crop insurance under the Federal Crop Insurance Act for the 1990 crop of the commodity, unless one of the following exists:

(1) Crop insurance is not available with respect to the commodity with respect to which a disaster payment is requested;

(2) The amount of the producer's annual premium rate is greater than 125 percent of the average premium rate for insurance on that commodity in the county in which the producer is located;

(3) The amount of the premium is greater than 25 percent of the amount of the disaster payment; or

(4) The county committee determines, based on an appeal by the producer, that the purchase of crop insurance would impose an undue financial hardship on the producer.

§ 1477.5 Disaster benefits.

(a) Disaster payments for prevented planting and low yield losses on 1989 crops are authorized to be made to producers who file a CCC-441, Application for 1989 Disaster Benefits, if:

(1) The farm operator submits an Application for Disaster Credit (Form ASCS-574), in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator submits a report of production and disposition (Form ASCS-658) in accordance with § 1477.8; and

(3) The county committee determines that because of an eligible disaster condition, producers on a farm were:

(i) Prevented from planting an eligible commodity, or

(ii) Able to harvest less than:

(A) With respect to target price commodities on farms enrolled in the 1989 Acreage Reduction Program for such crop, 60 percent of the expected production or in the case of producers with crop insurance on such a crop, 65 percent of the expected production;

(B) With respect to target price commodities on farms not enrolled in the 1989 Acreage Reduction Program for such crop, 50 percent of the expected production;

(C) With respect to peanuts, sugar beets, sugarcane, and tobacco, 60 percent of the expected production or in the case of producers with crop insurance on such a crop, 65 percent;

(D) With respect to soybeans and sunflowers, 55 percent of the expected production; and

(E) With respect to nonprogram crops, 50 percent of the expected production.

(b)(1) The loss of production that shall be used in making a disaster payment shall be that quantity of production in excess of the following percentages of expected production on a farm that producers were unable to harvest due to a reduced yield or were prevented from planting due to an eligible disaster condition.

(i) 40 percent or 35 percent for producers with crop insurance for target price commodities with respect to farms enrolled in the 1989 Acreage Reduction Programs;

(ii) 50 percent for target price commodities with respect to farms not enrolled in the 1989 Acreage Reduction Programs;

(iii) 40 percent or 35 percent for producers with crop insurance for peanuts, sugar beets, sugarcane, and tobacco;

(iv) 45 percent for soybeans and sunflowers; and

(v) 50 percent for nonprogram crops.

(2) The loss of production for peanuts shall be prorated between quota peanuts and additional peanuts. The loss of production of quota peanuts shall be determined by multiplying the total loss of production for peanuts times a factor determined by dividing the effective farm poundage quota, prior to any fall transfer, by the expected production for the farm. The loss of production for additional peanuts shall be determined by subtracting the loss of quota production from the total loss of production.

(3) If a peanut quota is transferred from a farm under the fall transfer provisions in part 729 of this title, the loss of production of quota peanuts determined in paragraph (b)(2) of this section shall be reduced to the extent of such quantity transferred. If the transferred quota exceeds the loss of production of quota peanuts, no further reductions are required after the loss of production of quota peanuts has been completely voided.

(4) For the purposes of determining the total quantity of nonprogram crops that producers on a farm are able to harvest, 70 percent of the following quantities shall be excluded:

(i) Commodities which the county committee determines cannot be sold in normal commercial channels of trade; and

(ii) Dockage, including husks and shells, if such dockage is excluded in determining yields in accordance with § 1477.3(d) (4)-(6), excluding soybean disaster payment yields.

(c) Disaster payment rates shall be 65 percent of:

(1) The established target price for the 1989 target price commodities for producers on farms participating in the 1989 acreage reduction programs;

(2) The basic county loan rate for the 1989 target price commodities for producers on farms not participating in the 1989 acreage reduction programs;

(3) The National price support level for quota and additional peanuts and quota kinds of tobacco;

(4) The applicable 1989 crop support price for sugar beets and sugarcane, determined by regions; and

(5) The simple average price received by producers for the marketing years for the immediately preceding five crops of the commodity, excluding the highest and lowest average prices in such period for all other eligible crops.

(d)(1) Disaster payments shall be made in an amount determined by multiplying the amount of eligible loss, as determined in paragraph (b) of this section, by the disaster payment rate, as determined in paragraph (c) of this section.

(2) With respect to eligible producers of target price commodities who are not participants in the 1989 acreage reduction programs, such computed disaster payment amount shall be reduced by an amount determined by multiplying the acreage reduction factor which was applicable for the 1989 crop of such commodities times the amount determined according to paragraph (d)(1) of this section.

(3) With respect to payments made to producers on a farm on which a replacement crop, as defined in § 1477.3, was planted after the planting and failure of a crop which would normally be harvested by such producers or the producers were prevented from planting and for which disaster benefits have been requested, the amount of the computed disaster payment shall be reduced by an amount determined by multiplying:

(i) The actual production of the second crop by;

(ii) 75 percent; by

(iii) The market value of the second crop, as determined by CCC.

(e) Producers of target price commodities participating in the 1989 acreage reduction programs shall not be required to refund advance deficiency payment made to such producers with respect to that portion of losses up to 40 percent of expected production or, in the case of producers who had crop insurance on the commodity, up to 35 percent of expected production.

(f) Effective only for the 1989 crops of wheat, feed grains, upland cotton, and rice, if CCC determines that any portion of the advance deficiency payment made to producers for the crop under part 1413 of this title must be refunded, refund shall not be required prior to July 31, 1990, for that portion of the crop for which a disaster payment is made under this part.

(g) Each eligible producer's share of a disaster payment shall be based on the eligible producer's share of the crop or the proceeds therefrom or, if no crop was produced, the share which the eligible producer would have otherwise received if the crop had been produced.

§ 1477.6 Establishment of different payment rates and yields for the same nonprogram crop.

Separate payment rates and yields for the same nonprogram crop shall be established, in accordance with instructions issued by the Deputy Administrator, when there is supporting NASS data or other sources approved by CCC available to justify establishing such rates and yields.

§ 1477.7 Filing application for payment.

(a) Applications for payment shall be filed by the applicant with the county ASCS office serving the county where the producer's farm is located for administrative purposes.

(b) An application for payment shall be filed as soon as practicable after the producer's eligibility has been established in accordance with § 1477.5(a). Applications for payment must be filed no later than April 2, 1990.

(c) Eligible producers who did not request an advance deficiency payment for the 1989 crops of wheat, feed grains, upland cotton, or rice may request such payments by making such a request in the county office by November 1, 1989.

(d) Any eligible producer who elected to devote all or a portion of a farm's permitted wheat, feed grain, upland cotton or rice acreage to conservation or other uses in accordance with part 1413 of this title may request that disaster payments be made available under this part with respect to such acreage in lieu of any payment made available under part 1413 of this title if a written request is received from the producer in the county ASCS office by November 1, 1989. Approval of prevented planting or failed acreage requests will remain the responsibility of the county ASC committee.

§ 1477.8 Report of acreage, production disposition, and indemnity payments.

(a)(1) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all commodities produced in 1989 on an acreage for which an application for a disaster payment is filed. Such production reports must be filed no later than April 27 1990.

(2) If there has been a disposition of crop production through commercial channels, the eligible producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include, but is not limited to, such items as the original or a copy of commercial receipts, peanut and tobacco marketing cards, gin records, CCC loan documents, settlement sheets, warehouse, ledger sheets, elevator receipts or load summaries.

(3) If there has been a disposition of crop production other than through commercial channels, the eligible producer must furnish such documentary evidence as the county ASC committee determines to be necessary in order to verify the information provided by the producer.

(b) Eligible producers who have purchased crop insurance with respect to a crop for which a disaster payment is made must present evidence of the net amount of indemnity payment received (gross indemnity less premium paid) or to be received for each such crop in accordance with instructions issued by the Deputy Administrator.

§ 1477.9 Payment limitations.

(a) Disaster payments made to eligible producers shall be reduced as provided in this section. For the purpose of making such payment reductions, the term "producer" shall be considered to mean the term "person" as defined in § 1477.3. Payments for each eligible producer for each eligible commodity shall be reduced by the amount by which the sum of the disaster payment and the net amount of crop insurance indemnity payments (gross indemnity less premium) exceeds 100 percent of the expected production times the applicable basic payment rate established according to § 1477.5.

(b) No person shall receive payments attributable to lost production under this part to the extent that such person receives benefits on such lost production under the livestock emergency provisions of title VI of the Agricultural Act of 1949.

(c) No person shall receive payments under this part, when combined with any benefits received under the livestock emergency provisions of title VI of the Agricultural Act of 1949, in excess of $100,000. Persons subject to the provisions of the preceding sentence may elect the provisions under which such payments or benefits shall be received by making application for benefits under this part at the county ASCS office by April 2, 1990.

(d) For the purpose of determining the payment limitation imposed by this section, disaster payments shall be attributed to each eligible producer in accordance with § 1477.5(f). The reduction of any eligible producer's disaster payment share shall not increase the disaster payment share of any other producer.

§ 1477.10 Special provisions for burley and flue-cured tobacco, and peanuts.

(a)(1) For burley and flue-cured tobacco, the undermarketings from the 1989 crop that may be considered when determining the 1990 effective farm marketing quota shall be the 1989 actual undermarketing less the quantity of the loss of production for which a 1989 disaster payment is made for the respective kind of tobacco.

(2) If quota is leased and transferred from the farm under natural disaster provisions of parts 725 or 726 of this title, any disaster payment that was determined before such lease and transfer was approved shall be re-computed according to § 1477.5 of this part. The farm marketing quota that is in effect after such lease and transfer shall be used when re-computing the disaster payment. The amount of any overpayment that results from the re-computation shall be refunded with interest as provided in § 1477.12(b).

(b)(1) For peanuts, the undermarketings from the 1989 crop that may be claimed when determining future poundage quotas shall be the 1989 actual undermarketings less the quantity of the loss of production for which a 1989 disaster payment is made on the basis of the national support level for quota peanuts. This reduction could exceed the actual undermarketings which would result in "negative undermarketings." Any negative undermarketings shall be taken into consideration when determining the subsequent year's effective farm poundage quota.

(2) If quota is transferred from the farm under the fall transfer provisions of part 729 of this title, any disaster payment that was determined before such transfer was approved shall be re-computed according to the provisions in § 1477.5 of this part. The amount of any overpayment that results from the re-computation shall be refunded with interest as provided in § 1477.12(b) of this part.

§ 1477.11 Misrepresentation, scheme and device, and fraud.

(a) If CCC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device which has the effect of defeating, or is designed to defeat the purpose of this part, such producer shall not be eligible for disaster payments under this part and all payments previously made to any such producer shall be refunded to CCC. The amount to be refunded to CCC shall include any interest and other amount determined in accordance with this part.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing CCC to make a payment which CCC under this part otherwise would not make, all amounts paid by CCC to any such producer shall be refunded to CCC together with interest and other amounts as determined in accordance with this part, and no further disaster payments shall be made to such producer by CCC.

(c) If the county ASC committee determines that any producer has adopted or participated in any practice which tends to defeat the purpose of the program established in accordance with this part, the county committee shall withhold or require to be refunded all or part of the payments which otherwise would be due the producer under this part.

§ 1477.12 Refunds to CCC.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, all such payments made to the producer shall be refunded to CCC, together with interest.

(b) Interest shall be charged with respect to any refund which is determined to be due CCC at the rate of interest which CCC is required to pay for its borrowings from the United States Treasury as of the date of the disbursement by CCC of the moneys to be refunded. Interest shall accrue from the date of such disbursement by CCC. Upon the sending of the notification of the debt by CCC to the producer, the account shall bear late payment charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, part 1403 of this title. If, for any reason, no late payment charges may be assessed with respect to such account under the provisions of part 1403 of this title, additional charges on the account will accrue at the rate equal to the current rate for CCC borrowings from the United States Treasury plus three percent per annum.

(c) Producers must refund to CCC any excess payments made by CCC.

(d) In the event that the loss of production was established as a result of erroneous information provided by any person to the county ASCS office or was erroneously computed by such office, the loss of production shall be re-computed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such re-computation shall be remitted to CCC.

§ 1477.13 Cumulative liability.

The liability of any producer for any payment or refund which is determined in accordance with this part to be due to CCC shall be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provisions of law including, but not limited to, 18 U.S.C. 286, 287 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1477.14 Appeals.

Reconsideration and review of all determinations made in accordance with this part with respect to a farm or an individual producer shall be made in accordance with part 780 of this title.

§ 1477.15 Liens.

Any payment which is due any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, and the proceeds thereof, which may be asserted by any creditor, except agencies of the United States Government.

§ 1477.16 Other regulations.

The following regulations and amendments thereto shall also be applicable to this part:

(a) 7 CFR part 12, Highly Erodible Land and Wetland Conservation.

(b) 7 CFR part 13, Setoffs and Withholdings.

(c) 7 CFR part 707 Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent.

(d) 7 CFR part 719, Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage.

(e) 7 CFR part 724, Fire-cured, dark air-cured, Virginia sun-cured, cigar-binder (types 51 and 52), cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco.

(f) 7 CFR part 725, Flue-cured tobacco.

(g) 7 CFR part 726, Burley tobacco.

(h) 7 CFR part 729, Peanuts.

(i) 7 CFR part 780, Appeal Regulations;

(j) 7 CFR part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(k) 7 CFR part 796, Denial of Program Eligibility for Controlled Substance Violation;

(l) 7 CFR part 1403, Interest on Delinquent Debts;

(m) 7 CFR part 1413, Feed grain, Rice, Upland and Extra Long Staple Cotton, and Wheat;

(n) 7 CFR part 1470, Commodity Certificates, In-Kind Payments, and Other Forms of Payments; and

(o) 7 CFR part 1497 Payment Limitation.

§ 1477.17 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

Signed at Washington, DC on September 26, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-23157 Filed 9-29-89; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 312

RIN 3064-AA99

Assessment of Fees Upon Entrance to or Exit From the Bank Insurance Fund or the Savings Association Insurance Fund

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule prescribes the entrance fee that must be paid by insured depository institutions that participate in "conversion transactions" (transfers or switches between the two deposit insurance funds). The interim rule implements provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 authorizing entrance fees for participants in conversion transactions. The entrance fee is being prescribed under an interim rule, with an immediate effective date, in order to permit institutions interested in participating in certain branch sales, thrift resolutions, and other permitted "conversion transactions" to begin evaluating the potential costs of those transactions (pending a joint decision on exit fees by the FDIC and the Secretary of the Treasury); however, the public is invited to comment on the fee structure set forth in the interim rule, and a final regulation will be issued following the expiration of the public comment period. Changes to the fee structure set forth in the interim rule may be made as a result of the comments received.

EFFECTIVE DATE: The interim rule is effective immediately upon publication in the **Federal Register**. Comments must be submitted by December 1, 1989.

Comments: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room 6097 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6097 between 8.30 a.m. and 5:00 p.m. on business days. (FAX number: (202) 347-2773 or 2775.)

FOR FURTHER INFORMATION CONTACT: (for information on legal issues) Alan J. Kaplan, Counsel, Legal Division, (202) 898-3734, or Valerie J. Best, Attorney, Legal Division, (202) 898-3812; (for information on supervisory issues) Garfield Gimber, Examination Specialist, Division of Bank Supervision, (202) 898-6913; (for information on economic issues) John O'Keefe, Financial Economist, Division of Research and Statistics, (202) 898-3945; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this interim rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the interim rule would not have a significant impact on a substantial number of small entities.

Reason for Interim Rule

The entrance fee is being prescribed by means of an interim rule in order to respond to an urgent situation. As stated in the first section of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, two of the principal purposes of that Act are "[t]o establish a new corporation, to be known as the Resolution Trust Corporation, to contain, manage, and resolve failed savings associations" and "[t]o provide funds from public and private sources to deal expeditiously with failed depository institutions." Thus, the expeditious resolution of failed savings associations (thrift institutions) is a fundamental objective of that Act. Funding has been made available for these resolutions and it is imperative that the FDIC, as manager of the Resolution Trust Corporation, the agency charged with managing and resolving thrift failures, proceed expeditiously to arrange and complete resolutions, some of which will necessarily involve conversion transactions and therefore require the payment of entrance fees. The longer these defaulting institutions go unresolved, the greater the cost to the American taxpayers. Therefore, it is in the public interest to expedite, not delay, these thrift resolutions. Similarly, although perhaps not as urgent a matter as resolving failed thrifts, numerous transactions are pending which involve the sale of savings association branches to banks. These transactions, many of which are awaiting or have already received regulatory approval, cannot be completed until any applicable fees called for by the new legislation have been set.

For these reasons, the FDIC Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the Board desires to have the benefit of public comment before adoption of a final rule on this subject, and so invites interested persons to submit comments during a 60-day comment period. In adopting a final regulation, the Board will make such revisions in the interim rule as may be appropriate based on the comments received.

Background and Discussion

Section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRRE Act" or "FIRREA") adds a new subsection 5(d) to the Federal Deposit Insurance Act ("FDIC Act") that, among other things, authorizes the FDIC to assess insurance fees in two situations. First, FIRREA provides that any institution that becomes insured by the FDIC, and any noninsured branch of a foreign bank that becomes insured by the FDIC, shall pay the FDIC "any fee which the [FDIC] may by regulation prescribe, *" This entrance fee is to be prescribed "after giving due consideration to the need to establish and maintain reserve ratios in the Bank Insurance Fund [("BIF")] and the Savings Association Insurance Fund [("SAIF")] as required by section 7 of the Federal Deposit Insurance Act. The entrance fee is to be paid into the appropriate fund (*i.e.*, into BIF if the depository institution becomes a "BIF member" and into SAIF if the depository

institution becomes a "SAIF member"). Generally speaking, any savings association (*e.g.*, a savings and loan) other than a Federal savings bank chartered under section 5(o) of the Home Owners Loan Act is a member of SAIF and any bank is a member of BIF Savings associations that were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") on August 8, 1989, the day before the date of enactment of FIRREA, and thereby became "automatically" insured by the FDIC by operation of law, do not have to pay an entrance fee as a result of their transfer from FSLIC to SAIF

Second, FIRREA requires the FDIC to prescribe, by regulation, procedures for assessing entrance and exit fees for insured depository institutions that participate in "conversion transactions. Generally speaking, a conversion transaction is defined to include a change of status (by charter conversion or otherwise) from a SAIF member to a BIF member or vice versa; the merger or consolidation of a SAIF member with a BIF member; the assumption of deposit liabilities of a SAIF member by a BIF member, or vice versa; and the transfer of assets in consideration of such a deposit assumption. Under FIRREA, there is a five-year moratorium on conversion transactions, with limited exceptions for (1) Conversion transactions that affect an insubstantial portion of the total deposits of each participating institution, and (2) certain conversions involving institutions in default or in danger of default. The FDIC must approve any such excepted conversion.

The first exception is intended to exempt from the moratorium, subject to FDIC approval, branch sales and other transfers of deposits between depository institutions that are members of different insurance funds (SAIF or BIF) and which are regarded as insubstantial when measured against the total deposits of each participating institution. For example, this exception would cover the sale of a branch or branches of an insured savings and loan association (a SAIF member), to an insured bank (a BIF member), where the volume of deposits being transferred meets the insubstantiality test prescribed in the statute.

The second exception covers conversions that occur as part of an acquisition of an insured depository institution in default or in danger of default, if the FDIC determines that the estimated financial benefits to the fund the institution is leaving (or the Resolution Trust Corporation ("RTC"), if the institution is a savings association) equal or exceed the FDIC's estimate of loss of assessment income to that fund during the years remaining in the moratorium period, and (in the case of a savings association) if the RTC concurs in the FDIC's determination. This exception is intended to permit conversion transactions to occur as a means of resolving savings association (thrift institution) and bank failures, notwithstanding the moratorium, if the requisite findings can be made.

Paragraph 5(d)(2)(E) of the FDI Act, as added by the FIRRE Act, requires, among other things, that each insured depository institution participating in a conversion transaction pay an entrance fee in an amount to be determined by the FDIC. The fee is to be in the "approximate amount which the [FDIC] calculates as necessary to prevent dilution" of the fund (BIF or SAIF) of which the resulting or acquiring depository institution is a member (in other words, the fund being entered), and is to be paid to that fund. Thus, for example, where a thrift failure is resolved by an insured bank (BIF member) acquiring assets from and assuming deposit liabilities of the failed savings association (SAIF member), the entrance fee would be set at the approximate amount which the FDIC calculates is necessary to prevent dilution of BIF Similarly, where an insured bank assumes deposit liabilities from an insured savings association through the sale of branches (and assuming the FDIC has approved this conversion transaction), the entrance fee would be the approximate amount necessary to offset the dilution of BIF that would result from the transfer of those deposits from SAIF insurance to BIF insurance.

The FDIC is also authorized to prescribe procedures for charging exit fees to insured depository institutions that participate in conversion transactions. For transactions in which the resulting or acquiring institution is a BIF member, any such exit fee is to be paid into SAIF (or to the Financing Corporation, if the Secretary of the Treasury so orders after determining that the Financing Corporation has exhausted all other sources of funding for interest payments on its obligations). For "SAIF-to-BIF" conversion transactions consummated before January 1, 1997 the FDIC and the Secretary of the Treasury jointly determine the amount of any exit fee; for those consummated after that date, the FDIC alone determines the amount.

FIRREA expressly provides that the conversion of a SAIF member savings association to a bank charter is not considered to be a "conversion transaction" if the bank elects to remain a SAIF member and thereby continues to pay assessments to SAIF In such situations, no entrance or exit fees would be required unless and until, following expiration of the moratorium, the bank switches from SAIF to BIF insurance.

Also the merger of a SAIF member savings association into a BIF member bank is permitted, notwithstanding the moratorium, if the bank is a subsidiary of a bank holding company that controls the savings association. The Board of Governors of the Federal Reserve System, as well as the appropriate Federal banking agency (as defined in the Federal Deposit Insurance Act), would have to approve the transaction. The resulting or acquiring bank would have to continue to pay assessments to SAIF on that portion of its deposits that are attributable to the former savings associations, under a formula prescribed in FIRREA which includes a seven percent adjustment for growth. The payment of assessments to SAIF could be discontinued if, after the five-year moratorium period expires, the FDIC approves an application by the bank to treat the merger transaction as a conversion transaction and the bank pays any entrance and exit fees prescribed by the FDIC.

By means of this interim rule, the FDIC is not attempting to prescribe all the fees authorized or called for by FIRREA. Rather, at this time the FDIC is only setting entrance fees for "SAIF-to-BIF" conversion transactions. Pending a decision on exit fees, this action will enable potential participants in thrift resolutions arranged by the RTC, branch sales, and other permitted conversion transactions to begin evaluating the costs of those transactions. As required by FIRREA, the amount of any exit fee must be jointly determined by the FDIC and the Secretary of the Treasury. The FDIC is working with the Treasury Department to determine the amount of any exit fee to be imposed for conversion transactions. A decision is expected soon and most likely will be the subject of another interim rule in the very near future. "BIF-to-SAIF" conversions are expected to be rare and therefore are not being addressed at this time; however, the FDIC expects to address fees for BIF-to-SAIF conversions expeditiously. In addition, entrance fees for "uninsured institutions" (*de novo* depository institutions or operating noninsured institutions seeking FDIC insurance) are not being addressed at this time, but

may be the subject of a rulemaking proceeding at a future date

For purposes of the interim rule, the FDIC has determined to set the entrance fee for SAIF-to-BIF conversions at the product of the "reserve ratio" of the fund being entered (*i.e.*, BIF) multiplied by the "deposit base" being transferred from SAIF to BIF insurance. The reserve ratio is defined as the ratio of the net worth of the fund to the value of the aggregate estimated insured deposits held in all members of that fund. In computing the entrance fee for a particular conversion transaction, the reserve ratio used would be the most recent publicly available reserve ratio (as of the date of transfer) computed by the FDIC on the basis of its most recent audited year-end financial statements. The most recent publicly available reserve ratio may be obtained by contacting the FDIC's Office of Corporate Communications. (As of this writing, the BIF reserve ratio for purposes of computing the entrance fee would be .80 percent, and is based on the FDIC's audited year-end 1988 financial statements. This ratio would be used for purposes of calculating the entrance fee until a new figure has been announced based on the FDIC's audited year-end 1989 financial statements.)

The deposit base against which the reserve ratio is to be applied would depend upon the type of transaction involved. For "non-resolution" conversion transactions, such as branch sales involving the assumption of deposit liabilities of a "healthy" operating thrift by an insured bank, the appropriate deposit base would be the total dollar amount of the deposits being transferred from SAIF to BIF insurance, measured as of the date of transfer. However, in "resolution" cases (*i.e.*, where the conversion transaction is one which is being arranged by the RTC to dispose of or otherwise deal with an insured savings association in default or in danger of default (including any insured savings association in conservatorship)); a certain amount of deposit "run-off" can be expected to occur following the transaction, and so the dilutive effect of the transaction on BIF may be prevented by charging an entrance fee only against those deposits likely to be retained by the acquiring bank. Thus, the interim rule permits the use of an estimated "retained deposit base" in determining the appropriate entrance fee for transactions arranged. The dollar amount of the retained deposit base would be estimated by the FDIC on a case-by-case basis at the time RTC prepares the "bid package" for the particular thrift resolution in question, and the intitial estimate would be announced to prospective bidders at the time proposals for acquistion are solicited; however, the FDIC may adjust its estimate of the retained deposit base as necessary over the course of the bidding process.

The rationale for using an estimated retained deposit base in computing the entrance fee for RTC-arranged conversion transactions is more fully explained as follows:

The assumption of all or a portion of a SAIF member's deposit liabilities by a BIF member results in greater potential liabilities for BIF The extent to which potential BIF liabilities increase is dependent upon the proportion of transferred deposits that remain in the BIF institution following the transaction. The proportion of transferred accounts remaining with the acquirer will be dependent upon such factors as the degree of change in customer service, convenience, and the rate of interest paid on accounts. For example, "brokered" deposits, which typically pay interest rates that are significantly higher than the prevailing rates available in a depository institution's normal market area, are not likely to remain with the acquirer if rates are reduced. Depositors not satisfied with the new institution for one reason or another may redeposit funds with other BIF members, SAIF members, or neither.

Taking these factors into consideration, entrance fees should be charged against the level of deposits expected to remain at the acquiring bank following the transaction. Therefore, the deposit base against which entrance fees should be charged should consist of those deposit accounts which the FDIC estimates to have a high probability of remaining with the acquirer following the transaction. This necessarily requires estimating the retained deposit base on a case-by-case basis for each failed institution, since each may have a different impact on customer relationships. The estimated retained deposit base would be specified by the FDIC in the solicitation and evaluation of bids for failed institutions.

On the other hand, in the case of branch sales involving the assumption of deposit liabilities of an operating thrift by an insured bank, the participating institutions can and do negotiate as to which deposits are to be transferred. As a result, there is an expectation that deposits contracted for are likely to remain in the acquiring bank or, if not, the purchase price can be adjusted to reflect the value of the deposits being acquired. Thus, using total deposits assumed (and not just estimated retained deposits) as the deposit base for purposes of computing the entrance fee makes sense for non-resolution conversion transactions.

Regardless of the kind of transaction involved, the transfer of deposits from SAIF to BIF necessarily increases potential BIF liabilities without a commensurate increase in insurance reserves (*ie.*, dilutes the entered insurance fund). As directed by FIRREA, the FDIC is to determine the approximate amount by which BIF reserves need to increase to prevent dilution of the insurance fund in conversion transactions. If, for example, the ratio of insurance reserves to insured deposits is .80 percent, dilution would be prevented by charging a fee equal to .80 percent of transferred deposits.

FIRREA requires that the entrance fee for any SAIF-to-BIF conversion transaction to be paid into BIF Under the interim rule, the resulting or acquiring institution would be liable for payment of the entrance fee; however, in a two-party transaction, the two institutions may agree to divide the payment and may arrange among themselves who is to pay what share. So long as the entire fee is paid, the FDIC will accept payment from either party; if, however, some or all of the fee is not paid, the FDIC will look to the resulting or acquiring institution for payment. In other words, the FDIC will seek to enforce the obligation of the resulting or acquiring institution to pay the entire amount of the entrance fee, leaving that institution to enforce any contractual or other arrangements it may have made with any other participating institution.

All fees are due and payable on the resulting or acquiring institution's first regular semiannual assessment date (*i.e.*, the date on which it is required under section 7(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(c), to pay its regular semiannual assessment to the FDIC) following the expiration of 30 days from the date the deposits are transferred from SAIF to BIF insurance. (Ordinarily, an institution's semiannual assessments are payable on or before January 31 and July 31 of each year.) However, the interim rule permits the resulting or acquiring institution, at its option, and with the consent of the FDIC, to pay the entrance fee in equal annual installments over a period of not more than five years, interest-free, with the first installment due on the date described in the preceding sentence.

Setting the entrance fee for conversion transactions at this time by means of an interim rule will provide a measure of

certainty for those banks that seek to acquire troubled savings associations from the RTC or those that seek to acquire branches of operating thrifts. Since potential acquirers and investors need to know with some degree of precision what the costs of acquisition will be, the FDIC has determined that if, following the public comment period, the final regulation prescribes an entrance fee that would be greater than the entrance fee prescribed in the interim rule, a bank that participated in a conversion transaction during the period the interim rule was in effect will not have to pay the higher amount; if the entrance fee prescribed in the final regulation is less than the fee prescribed in the interim rule, the difference will be refunded to the bank or, if the fee is being paid in installments, the amount of each installment will be adjusted accordingly. Thus, banks that participate in transactions in reliance on the interim rule will not suffer any subsequent increase in the entrance fee, nor will they miss out on any subsequent decrease, that results from consideration of public comment on this issue.

Request for Public Comment

The FDIC is issuing this interim rule in response to the urgent need to permit certain conversion transactions to go forward without delay. However, the FDIC desires, and is hereby requesting, comment on all aspects of the interim rule. In addition, the FDIC invites comment on the following specific issues:

1. Entrance fees are intended to prevent dilution of the insurance fund being entered. The measure of insurance fund adequacy used in this interim rule is the ratio of fund reserves to insured deposits. In practice, however, failing bank resolutions have often had the effect of protecting all depositors, including those with deposits beyond the insured deposit limits (presently $100,000). Some might argue, therefore, that because the FDIC can achieve 100 percent deposit insurance coverage, the appropriate fund adequacy measure should be the ratio of reserves to total deposits. Total deposits include all domestic and foreign deposits regardless of the amount held in the account. Therefore, should the appropriate entrance fee be based on the ratio of reserves to total deposits?

2. The interim rule uses the concept of an estimated "retained deposit base" against which entrance fees will be charged in connection with RTC-arranged conversion transactions. The retained deposit base would include only those transferred deposits that are thought likely to remain in the acquiring bank for some period beyond the date of transfer. Is this an appropriate way to measure the dilutive effect of the transaction on BIF? What other methods could be used to accomplish the same goal?

3. In estimating the retained deposit base, the FDIC is ultimately concerned with the potential increase in FDIC liabilities associated with a conversion transaction. What factors should the FDIC consider in evaluating the likelihood of transferred deposits remaining with the acquiring BIF member Bank? How might this regulation affect the types of bids submitted by potential acquirers of failed institutions?

4. The entrance fee is to be based on the most recent publicly available reserve-to-insured-deposit ratio computed by the FDIC on the basis of its most recent audited year-end financial statements. Thus, for purposes of the interim rule, the reserve ratio will be recomputed only once a year. Should the reserve ratio be computed more frequently for this purpose based on unaudited data or, given the potential fluctuations in the reserve ratio over time, would an annual average reserve ratio be more appropriate?

5. The interim rule permits institutions to pay the entrance fee over a five-year period, interest-free. Should immediate payment be required? If payment over time is permitted, how long should the payment period be? Should interest be charged? If so, at what rate?

List of Subjects in 12 CFR Part 312

Assessments, Bank deposit insurance, Banks, banking, Savings and loan associations, Savings associations.

For the reasons set out in the preamble, a new part 312 is added to title 12, chapter III, subchapter A of the Code of Federal Regulations as follows:

PART 312—ASSESSMENT OF FEES UPON ENTRANCE TO OR EXIT FROM THE BANK INSURANCE FUND OR THE SAVINGS ASSOCIATION INSURANCE FUND

Sec.
312.1 Definitions.
312.2 Bank Insurance Fund reserve ratio.
312.3 [Reserved]
312.4 Entrance fees assessed in connection with conversion transactions.

Authority: Pub. L. No. 101-73, sec. 206(a)(7), 103 Stat. 183, 196-201 (1989) (to be codified at 12 U.S.C. 1815(d)); 12 U.S.C. 1819.

§ 312.1 Definitions.

For purposes of this part:

(a) The term "Bank Insurance Fund" shall mean the fund established by section 11(a)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(a)(5). The term "Savings Association Insurance Fund" shall mean the fund established by section 11(a)(6) of the Federal Deposit Insurance Act, 12 U.S.C. 1121(a)(6).

(b) The terms "Bank Insurance Fund member" and "Savings Association Insurance Fund member" shall have the meanings given them in sections 7(*l*) (4) and (5) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(*l*) (4), (5), respectively.

(c) The term "Bank Insurance Fund reserve ratio" shall have the meaning given it is section 7(*l*)(6) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(*l*)(6).

(d) The term "conversion transaction" shall have the meaning given it in section 5(d)(2)(B) of the Federal Deposit Insurance Act, 12 U.S.C. 1815(d)(2)(B).

(e) The terms "default" and "in danger of default" shall have the meanings given them in section 3(x) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(x).

§ 312.2 Bank Insurance Fund reserve ratio.

The Bank Insurance Fund reserve ratio to be used in computing the entrance fee under this part with respect to any particular conversion transaction shall be the most recent Bank Insurance Fund reserve ratio calculated on the basis of the audited financial statements of the Federal Deposit Insurance Corporation and made publicly available prior to the date on which deposit liabilities are transferred from a Savings Association Insurance Fund member to a Bank Insurance Fund member in connection with that conversion transaction.[1]

§ 312.3 [Reserved]

§ 212.4 Entrance fees assessed in connection with conversion transactions.

(a) Each insured depository institution participating in a conversion transaction as a result of which insured deposits are transferred from a Savings Association Insurance Fund member to a Bank Insurance Fund member shall pay an entrance fee to the Bank Insurance Fund.

The Federal Deposit Insurance Corporation prepares statements of financial condition as of December 31st of each year. These financial statements are audited by the United States General Accounting Office. The Bank Insurance Fund reserve ratio is derived, in part, from these audited financial statements. The most recent reserve ratio may be obtained by contacting the Office of Corporate Communications, Federal Deposit Insurance Corporation, Washington, DC 20429.

(b) The entrance fee shall be the product derived by multiplying the dollar amount of total deposits transferred from the Savings Association Insurance Fund member to the Bank Insurance Fund member by the Bank Insurance Fund reserve ratio.

(c) Notwithstanding § 312.4(b), the entrance fee to be assessed against an insured depository institution participating in a conversion transaction (1) occurring in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, or (2) otherwise arranged by the Federal Deposit Insurance Corporation in its capacity as exclusive manager of the Resolution Trust Corporation, shall be the product derived by multiplying the dollar amount of the retained deposit base transferred from the Savings Association Insurance Fund member to the Bank Insurance Fund member by the Bank Insurance Fund reserve ratio. As used in this paragraph, the term "retained deposit base" generally refers to those deposits which the Federal Deposit Insurance Corporation, in its discretion, estimates to have a high probability of remaining with the acquiring depository institution for a reasonable period of time following the acquisition. The kinds of deposits that constitute the retained deposit base and the estimated dollar amount of the retained deposit base transferred shall be determined on a case-by-case basis by the Federal Deposit Insurance Corporation at the time offers to acquire an insured depository institution (or any part thereof) are solicited by the Resolution Trust Corporation. In making this estimate, the Federal Deposit Insurance Corporation will take into account such factors as the number and volume of deposit accounts exceeding the $100,000 insurance limit, whether interest rates paid on the deposits to be transferred significantly exceed the rates then prevailing in the relevant market area, the volume of brokered deposits and public deposits in the institution being acquired, and other relevant factors.

(d) The resulting or acquiring depository institution shall be liable for the payment of the entrance fee required by this § 312.4.

(e)(1) The entrance fee required by this section shall be paid on the same day that the resulting or acquiring depository institution is required (pursuant to section 7(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(c)) to pay its first semiannual assessment following the date the deposit liabilities are transferred. If, however, the resulting or acquiring depository institution's first semiannual assessment is due within 30 days from the date such deposit liabilities are transferred, then the entrance fee required by this section shall be paid on the same day that the second semiannual assessment following the date the deposit liabilities are transferred is required to be paid.

(2) Notwithstanding § 312.4(e)(1), a resulting or acquiring depository institution may, at its option, and with the consent of the Federal Deposit Insurance Corporation, pay the entrance fee in equal annual installments, interest-free, over a period of not more than five years. The first such installment shall be paid on the semiannual assessment date described in § 312.4(e)(1).

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of September, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-23118 Filed 9-29-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-63; Amdt. 39-6339]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, and 212 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment amends an airworthiness directive (AD) which established a mandatory fatigue retirement life limit on certain main rotor masts and trunnions used on Bell Model 204B, 205A, 205A-1, and 212 helicopters. This amendment is needed to correct the main rotor mast part numbers specified in the AD which inadvertently included a part not intended to be included.

DATES: *Effective Date:* October 31, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Building 3B, Room 158, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-6112, (54 FR 1338; January 13, 1989) AD 89-02-07 which established a mandatory fatigue retirement life on certain main rotor masts and trunnions used on Bell Model 204B, 205A, 205A-1, and 212 helicopters. After issuing Amendment 39-6112, the FAA determined that the main rotor mast part numbers specified in the AD incorrectly included the main rotor mast, part number (P/N) 204-011-450-001. This action inadvertently resulted in extending the fatigue retirement life of this main rotor mast from 6,000 hours' time in service to 15,000 hours' time in service. There was no fatigue substantiation to warrant this life extension. Therefore, the FAA is amending Amendment 39-6112, to correct the main rotor mast part numbers affected by the AD by adding dash number 007 and 105 to the mast part number, thereby excluding dash number 001 on Bell Model 204B, 205A, 205A-1, and 212 helicopters.

Since this amendment provides a correction only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

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

The FAA has determined that this regulation is clarifying in nature and imposes no further cost. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in

the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6112 (54 FR 1338; January 13, 1989), AD 89-02-07 by revising the paragraph after the compliance statement and paragraph (a) as follows:

Bell Helicopter Textron, Inc. (BHTI): Applies to Bell Model 204B, 205A, 205A-1, and 212 helicopters certificated in any category. [Airworthiness Docket No. 87-ASW-63]

To prevent possible fatigue failure of main rotor masts. P/N 204-011-450-007 -105 and main rotor trunnion, P/N 204-011-105-001, which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter, accomplish the following:

(a) Within 10 days after the effective date of this AD, create a historical service record for main rotor masts, P/N 204-011-450-007 and —105 and main rotor trunnion, P/N 204-011-105-001, and record the time in service accumulated on the main rotor mast and trunnion. If the time in service cannot be determined, enter 900 hours for each year from the date the mast and trunnion were installed.

This amendment becomes effective October 31, 1989.

This amendment amends Amendment 39-6112, (54 FR 1338; January 13, 1989), AD 89-02-07

Issued in Fort Worth, Texas, on September 19, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-23132 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-43; Amdt. 39-6341]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an airworthiness directive (AD) which requires repetitive inspections of main rotor blade retention strap (strap pack) laminates for cracks and failures; recording of the locations of the observed cracks, fractures, or corrosion on strap laminates; and removal of the hub assembly from service. This amendment is needed to clarify the strap pack rejection criteria and simplify the recording requirements.

EFFECTIVE DATE: October 27 1989.

Compliance: As indicated in the body of this amended AD.

ADDRESSES: The applicable service information notices may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797· telephone (602) 891-6484, or may be examined in the Office of the Assistant Chief Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5233.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-6051 (54 FR 105; January 4, 1989), AD 89-02-01, which currently requires repetitive inspections of main rotor blade retention strap (strap pack) laminates for cracks and failures; recording of the locations of the observed cracks, fractures, or corrosion on strap laminates; and removal of a hub assembly from service in accordance with more stringent rejection criteria on MDHC Model 369D, E, F and FF helicopters. After issuing Amendment 39-6051, the FAA received a report that there is confusion in meeting the recording requirements of paragraph (g). In addition, the strap pack rejection criteria, as referred to in both paragraphs (f) and (g), can be simplified. Therefore, the FAA is amending Amendment 39-6051 by revising paragraph (f) to state only the strap pack rejection criteria and by revising paragraph (g) to include only reecording directions.

Since this amendment provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

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

The FAA has determined that this regulation is clarifying in nature and imposes no further cost. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportaiton, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of part 39 of the Federal Aviation Regulations as follows:

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6051 (54 FR 105; January 4, 1989), AD 89-02-01, by revising paragraphs (f) and (g) to read as follows:

McDonnell Douglas Helicopter Company (Hughes Helicopter, Inc.): Applies to Model 369D, E, F and FF helicopters, certificated in any category, with main rotor hub retention straps having part number (P/N) 369D21210-BSC or -501 installed. (Docket No. 88-ASW-43)

Compliance is required as indicated, unless already accomplished.

(f) Replace the hub assembly, P/N 369D21200, with a serviceable assembly prior to further flight if, as a result of the inspection required by paragraph (a), (b), (c), (d), or (e) above, a strap pack, P/N 369D21210-BSC or -501, is rejected (using the rejection criteria in the applicable SIN under CAUTION following paragraph e of Part I—Inspection Procedures).

g. For strap packs which contain observed damage but are not rejected by the criteria of paragraph (f)—

(1) Record in the maintenance record (Ref. § 43.9) the locations of observed cracks, fractures, or corrosion in each strap laminate in a manner which includes—

(i) Blade color;

(ii) Strap part numbers and serial number;

(iii) Laminate number (top being number one);

(iv) Leg location (lead or lag); and

(v) Tongue location (The tongue location is not the same as the outboard end).

Note: Strap packs containing cracks in outboard end locations are rejected by the criteria of paragraph (f).

(2) Record for each strap pack—

(i) The number of laminate failures;

(ii) The number of laminates cracked in the same leg; and

(iii) The number of gaps.

This amendment becomes effective October 27 1989.

This amendment amends Amendment 39-6051 (54 FR 105; January 4, 1989). AD 89-02-01.

Issued in Fort Worth, Texas on September 19, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-23136 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0330]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amended the food additive regulations to provide for the safe use of 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1,3-dione grafted onto ethylene polymers, intended to contact food. This action is in response to a petition filed by Keller and Heckman.

DATES: Effective October 2, 1989; written objections and requests for a hearing by November 1, 1989.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 2, 1987 (52 FR 42043), FDA announced that a food additive petition (FAP 7B4043) had been filed by Keller and Heckman, 1150 17th St. NW., Washington, DC 20036, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1,3-dione for grafting onto ethylene polymers complying with 21 CFR 177.1520(c), item 2.2, intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe for food-contact use. Therefore, the agency is amending § 177.1520 by adding a new copolymer in paragraph (a)(5) and adding a new entry in the table in paragraph (c) to provide for the safe use of 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1, 3-dione grafted onto ethylene polymers intended to contact food. Under § 177.1520(a)(5), the ethylene polymers must comply with item 2.2 of § 177.1520(c).

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

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

Any person who will be adversely affected by this regulation may at any time on or before November 1, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to the presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1520 is amended by adding new paragraph (a)(5) and by adding a new entry 5 in the table in paragraph (c) to read as follows:

§ 177.1520 Olefin polymers.

(a)

(5) Polyethylene graft copolymers consist of polyethylene complying with item 2.2 of paragraph (c) of this section which subsequently has 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1,3-dione grafted

onto it at a level not to exceed 1.7 percent by weight of the finished copolymer.

(c) Specifications:

Olefin polymers	Density	Melting point (MP) or softening point (SP) (Degrees Centigrade)	Maximum extractable fraction (expressed as percent by weight of polymer) in N-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
5. Polyethylene copolymer described in paragraph (a)(5) of this section and having a melt index not to exceed 2, for use, either alone or in blends with other olefin polymers, subject to the limitation that when contacting foods of types III, IV-A, V, VI-C, VII-A, VIII, and IX identified in § 176.170(c) of this chapter, Table 1, the thickness of the film (in mils) containing the polyethylene graft copolymer times the concentration of the polyethylene graft copolymer shall not exceed a value of 2.	Not less than 0.94		0.45 pct at 15 °C	1.8 pct at 25 °C.

Dated: September 15, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-23138 Filed 9-29-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 455

[Docket No. 89N-0325]

Antibiotic Drugs; Aztreonam Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of aztreonam, aztreonam injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 1, 1989; written comments, notices of participation, and request for hearing by November 1, 1989; data, information, and analyses to justify a hearing by December 1, 1989.

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

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of aztreonam, aztreonam injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 455 (21 CFR part 455) by adding new § 455.4, redesignating § 455.204 as § 455.204a, and adding new §§ 455.204 and 455.204b to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective November 1, 1989. However, interested persons may, on or before November 1, 1989, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 1, 1989, a written notice of participation and request for hearing, and (2) on or before December 1, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment

against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 455 is amended as follows:

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. New § 455.4 is added to subpart A to read as follows:

§ 455.4 Aztreonam.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Aztreonam is a practically odorless, white to slightly off-white fine powder. It is sparingly soluble in water of pH 2, and is very soluble at pH values above 4. Its solubility is slight to very slight in polar organic solvents such as methanol and ethanol and it is insoluble in nonpolar solvents such as hexane and heptane. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms of aztreonam per milligram on an "as is" basis.

(ii) Its moisture content is not more than 2.0 percent.

(iii) Its residue on ignition is not more than 0.1 percent.

(iv) Its heavy metals content is not more than 30 parts per million.

(v) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requirements for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, moisture, residue on ignition, heavy metals, and identify.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research; 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 455.4a(b)(1).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Residue on ignition.* Proceed as directed in § 436.207(a) of this chapter.

(4) *Heavy metals.* Proceed as directed in § 436.208 of this chapter.

(5) *Identity.* Proceed as directed in § 436.211 of this chapter, using the 0.5 percent potassium bromide disc prepared as described in paragraph (b)(1) of that section, except prepare a solution containing 3 milligrams of aztreonam per milliliter of methanol and use 0.5 milliliter of the solution as the sample.

§ 455.204a [Redesignated from § 455.204]

3. Section 455.204 is redesignated as § 455.204a and new §§ 455.204 and 455.204b are added to subpart C to read as follows:

§ 455.204 Aztreonam injectable dosage forms.

§ 455.204b Aztreonam injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Aztreonam injection is a frozen aqueous iso-osmotic solution of aztreonam and arginine. Each milliliter contains aztreonam equivalent to either 10 milligrams, 20 milligrams, or 40 milligrams. Its aztreonam content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of aztreonam that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 4.5 and not more than 7.5. It passes the identity test. The aztreonam used conforms to the standards prescribed by § 455.4(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The aztreonam used in making the batch for potency, moisture, residue on ignition, heavy metals, and identity.

(B) The batch for aztreonam potency, sterility, pyrogens, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The aztreonam used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Potency.* Proceed as directed in § 436.361 of this chapter, except in addition to the column described in paragraph (a)(4) of that section, use a 5- to 50-centimeter saturator column having an inside diameter of 2 to 4.6 millimeters and packed with approximately 37 micrometer silica, and use the resolution test solution to determine resolution in lieu of the working standard solution. Perform the assay at ambient temperature, using an ultraviolet detection system operating a wavelength of 206 nanometers, and a column packed with Chromegabond Diol (dihydroxypropane chemically bonded to porous silica), 5 to 10 micrometers or equivalent. Mobile phase, working standard solution, sample solution, resolution test solution, system suitability requirements, and calculations as follows:

(i) *Mobile phase.* Acetonitrile: 0.01*M* pH 2.0 ammonium phosphate (75:25). Transfer 1.15 grams of ammonium phosphate monobasic to a 1-liter volumetric flask. Add about 800 milliliters of distilled water and sonicate to aid dissolution. Adjust the solution to pH 2.0 with *o*-phosphoric acid, 85 percent. Dilute the solution to volume with distilled water and mix well. Transfer about 250 milliliters of this solution and 750 milliliters of acetonitrile to a suitable-sized container and mix well. Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(ii) *Preparation of working standard, sample, and resolution test solutions*—(A) *Working standard solution.* Transfer approximately 25 milligrams each of the aztreonam working standard and the arginine working standard, accurately weighed, to a 25-milliliter volumetric flask. Dissolve and dilute to volume with mobile phase (primary working standard solution). Further dilute with

mobile phase to obtain a solution containing 0.2 milligram of aztreonam per milliliter.

(B) *Sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container and dilute with sufficient mobile phase to obtain a solution containing 0.2 milligram of aztreonam per milliliter (estimated).

(C) *Resolution test solution.* Dissolve 10 milligrams of open ring aztreonam, 2-[[(2-amino-4-thiazolyl)[(1-carboxy-1-methylethoxy)imino]acetyl]amino]-3-(sulfoamino)-butanoic acid, in 10.0 milliliters of primary standard solution. Further dilute 5 milliliters of this solution to 25.0 milliliters with mobile phase.

(iii) *System suitability requirements*—(A) *Tailing factor.* The tailing factor (T) of the aztreonam peak is satisfactory if it is not more than 2 at 5 percent of peak height.

(B) *Efficiency of the column.* The efficiency of the column (n) is satisfactory if it is greater than 1,000 theoretical plates.

(C) *Resolution.* The resolution (R) between the aztreonam peak and open ring aztreonam is satisfactory if it is not less than 2.0.

(D) *Coefficient of variation.* The coefficient of variation (S_R in percent) of 5 replicate injections is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.361(b) of this chapter. Alternative chromatographic conditions are acceptable, provided reproducibility and resolution are comparable to the system. However, the sample preparation described in paragraph (b)(1)(ii)(B) of this section should not be changed.

(iv) *Calculations:* Calculate the milligrams of aztreonam per milliliter of sample as follows:

$$\text{Milligrams of aztreonam per milliliter} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the aztreonam peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the aztreonam peak in the chromatogram of the working standard;

P_s = Aztreonam activity in the aztreonam working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, except inject a sufficient volume of the undiluted solution to deliver 50 milligrams of aztreonam per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(5) *Identity.* The high-performance liquid chromatogram of the sample is determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the aztreonam working standard.

Dated: September 19, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-23139 Filed 9-29-89; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Exchange-Visitor Program; Citizenship of Responsible Officers and Sponsors

AGENCY: United States Information Agency.

ACTION: Final rule; amendment.

SUMMARY: On August 11, 1989 at 54 FR 32964, (corrected at 54 FR 34503, August 21, 1989) the United States Information Agency adopted a final rule wherein the longstanding requirement of United States citizenship of sponsors and responsible officers of exchange-visitor programs is further defined.

The final rule became effective August 11, 1989, whereby the Agency required every designated organization to submit documentation that it is in compliance with this rule. Failure to come into compliance within 90 days of receipt of such request will result in withdrawal of the designation. Applications for new designations for organizations not meeting the requirements will not be approved.

Designated sponsors have asked for guidance regarding the documentation to be provided. This amendment sets forth such guidance.

EFFECTIVE DATES: October 2, 1989.

ADDRESS: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW Washington, DC 20547

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547 (202) 485-8829.

SUPPLEMENTARY INFORMATION: In response to the inquiries from designated sponsors of exchange visitor programs regarding required documentation, the Agency has determined that sponsors may certify that they comply with the regulation rather than submitting full documentation at this time. However, in making such certification the sponsor must agree to supply supporting documentation when and as requested. Further, the sponsor must agree that failure to substantiate the representation of citizenship made in the certification will result in the immediate withdrawal of its designation and will require that the organization account for and return all IAP-66 forms transferred to it. It should be noted that false certification may subject the certifying official to criminal penalties found in 18 U.S.C. 1001. The definitions are amended to include the required certifying language.

Findings and Conclusions

This decision does not significantly affect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a 'major rule' as that term is defined in section 1(b) of the Executive Order on Federal Regulations 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 of 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 the United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation § 502.6(a)(3) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) and have been assigned OMB Control Numbers.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—[AMENDED]

1. The authority citation for 22 CFR part 514 continues to read:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80–402, as amended (22 U.S.C. 1431–1442): Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256, 75 Stat. 527 634, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451–2460); Pub. L. 97–241, 96 Stat. 1 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101 (a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91–225, 84 Stat. 116, 117 (8 U.S.C. 1101, 1182); Pub. L. 97–116, 95 Stat. 1611, 1612, 1613, (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977· E.O. 12048 of March 27 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.1 is amended by revising the definitions of "Responsible Officer" and "Sponsor" to read as follows:

§ 514.1 Definitions.

Responsible Officer means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program (See § 514.14). The designation of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States Citizens. Responsible Officers must certify their citizenship to the Agency using the following language:

I hereby certify that I am the responsible (or alternate responsible officer, specify) for exchange visitor program number _____, and that I am a citizen of the United States. I understand that the United States Information Agency may request supporting documentation as to my citizenship at any time and that I must supply such documentation when and as requested. (Name of organization) agrees that my inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP–66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001 which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Signed in ink by

_____

(Name)

_____

(Title)

This ____ day of _____, 19 ____.

Subscribed and sworn to before me this ____ day of _____, 19 ____.

_____

Notary Public

Sponsor means any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Director for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not incorporated under United States law may not be designated as a sponsor. Sponsors must certify their citizenship to the Agency using the following language:

I hereby certify that I am an officer of (Name of Organization) with the title of _____, that I am authorized by the (Board of Directors, Trustees, etc.) to sign this certification and bind (Name of Organization); and that a true copy certified by (A Corporate Officer) of such authorization is attached. I further certify that (Name of Organization) is a citizen of the United States as that term is defined at 22 CFR 514.1 which states:

'Citizen of the United States' means: (a) An individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is a United States citizen, or (c) a corporation or association created or organized under the laws of the United States, of which the chief executive officer, president, chairman of the board of directors, and 75 per centum of the members of the board and its other managing officers are United States citizens and in which at least 75 per centum of the stock or voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

I understand that the United States Information Agency may request supporting documentation at any time and that (Name of Organization) must supply such documentation when and as requested. (Name of Organization) consents to a visit (or visits) by the United States Information Agency to examine such documents as it deems necessary to verify the representation made in this certification. (Name of Organization) agrees that inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP–66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001 which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Signed in ink by

_____

(Name)

_____

(Title)

This ____ day of _____, 19____.

Subscribed and sworn to before me this ____ day of _____, 19____.

_____

Notary Public

Dated: September 19, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89–23148 Filed 9–29–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 600

Institutional Eligibility Under the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Suspension of rule.

SUMMARY: In the Federal Register of April 5, 1988 (53 FR 11208–11222), the Secretary issued final regulations governing institutional eligibility under the Higher Education Act of 1965, as amended (HEA). These regulations were codified in 34 CFR part 600.

Section 600.3(d) of the regulations was scheduled to go into effect on July 1, 1988. However, in the Federal Register of July 7 1988, 53 FR 25489, the Secretary voluntarily suspended the effective date of § 600.3(d) until July 1, 1989, and on July 18, 1988, Public Law 100–369 also suspended the effective date of § 600.3(d) until July 1, 1989.

Under § 600.3(d) of the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended, an institution of higher education or a vocational school is legally authorized only to provide its educational programs in clock hours if it must measure those programs in clock hours in its application to receive a State license. In April of 1989, the Department of Education's Office of Postsecondary Education (OPE) notified all the recognized accrediting agencies that the Secretary was going to implement § 600.3(d) on July 1, 1989, and in May of 1989, OPE similarly notified State agencies of that date.

On July 28, 1989, OPE notified postsecondary educational institutions of: (1) The specific procedural steps that they must follow to comply with the requirements of § 600.3(d); and (2) the related student financial assistance rules that they must apply in the awarding of student financial assistance for the 1989–90 award year. So that institutions may put these procedures into effect before the implementation of § 600.3(d), the Secretary suspends paragraph (d) of § 600.3 of the Institutional Eligibility regulations until October 1, 1989.

Waiver of rulemaking. Section 600.3(d) is currently in effect. However, the Department of Education did not provide specific instructions to institutions concerning the requirements of § 600.3(d), with regard to institutional eligibility and the awarding of student financial assistance for the 1989–90 award year, until July 28, 1989. Thus, many institutions may not be in compliance with that provision. The Secretary wishes to suspend § 600.3(d) until October 1, 1989 to permit institutions sufficient time to comply with the July 28, 1989 instructions. Therefore, the Secretary finds, in accordance with 5 U.S.C. 553(b)(B), that solicitation of public comments on this change would be impracticable and contrary to the public interest.

EFFECTIVE DATE: This suspension of § 600.3(d) takes effect 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. Thus, when the suspension is effective, § 600.3(d) will apply as of October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Virginia G. Re, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW. (Regional Office Building 3, Room 3030), Washington, DC 20202. Telephone number (202) 732–4906.

Dated: September 27, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89–23225 Filed 9–28–89; 9:55 am]

BILLING CODE 4000-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AE09

Evaluation of Studies Relating to Health Effects of Dioxin and Radiation Exposure

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulation on scientific and medical study evaluations to establish criteria for determining when a significant statistical association exists between exposure to dioxin or ionizing radiation and specific diseases. This change is necessary because of a recent court decision. This change will require reassessment of the importance of particular scientific and medical studies on the health effects of exposure to dioxin or ionizing radiation.

EFFECTIVE DATE: This change is effective November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 30099–30101 of the Federal Register of July 18, 1989, VA published proposed amendments to 38 CFR 1.17 Interested persons were invited to submit comments, suggestions or objections by August 17 1989. Comments were received from nineteen individuals and organizations. Commenters included the senior Senator from New York, the junior Senator from South Dakota, the American Legion, the Veterans of Foreign Wars of the United States, the Disabled American Veterans, the National Veterans Legal Services Project, Inc., representing the Vietnam Veterans of America, the National Vietnam Veterans Coalition, the Oklahoma Agent Orange Foundation, the State of Minnesota Department of Veterans Affairs and ten members of the general public.

In addition, a special session of the Veterans' Advisory Committee on Environmental Hazards was convened on September 8, 1989. The Committee received an oral presentation by four individuals representing the views of the American Legion. (The Committee has received oral presentations from a number of individuals and organizations in the past and will continue to do so so long as adequate advance notice is provided for scheduling purposes.) The Committee also reviewed all of the comments received and offered their views on them. The Committee made a number of recommendations, some in response to the oral presentation made at this meeting by representatives of the American Legion and others in response to the written comments that were reviewed. The comments are summarized below together with VA's response and any indicated amendatory action.

Five commenters from Des Moines, Iowa, requested an extension of the time limit for submitting comments on the proposed changes asserting that the established 30-day period was insufficient. Thirty days is a typical length of time for a comment period in the rulemaking process, especially where rules governing veterans' benfits are concerned. In addition, a significant number of comments were received within the comment period. Further, VA desires to move as swiftly as possible to establish new study evaluation criteria, review the scientific literature and determine whether there currently exists sound scientific and medical evidence that demonstrates a significant statistical association between dioxin or radiation exposure and any diseases.

We decline, therefore, to extend the comment period.

Many commenters addressed issues that were clearly outside the scope of this rulemaking proceeding. Such issues included the composition, membership and alleged bias of the Veterans' Advisory Committee on Environmental Hazards, various comments concerning 38 CFR 1.17(b) and 3.311a for which no changes were proposed, the frequency of VA's publication of study evaluations, consideration of defoliants other than those containing dioxin, objection to the decision not to appeal the court ruling which prompted this rulemaking, assertion that all veterans exposed to Agent Orange should receive some payment from VA and comments concerning claims of specific individuals. Some of these comments could be addressed through administrative procedures while others would require legislative action, but all are outside the scope of the original proposal. Consequently, these will not be addressed in this rulemaking proceeding.

Three veterans' organizations and one individual suggested that the proposed criteria for defining the term "significant statistical association" were too strict or that VA should adopt the criteria already developed by the Environmental Protection Agency (EPA) or the International Agency for Research on Cancer (IARC) as indicative of such an association. The criteria set forth by the EPA (Guidelines for Carcinogen Risk Assessment, (51 FR 33992–34003 (1986)) and the IARC (IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, Supplement 4 (1982) and Supplement 7 (1987)) are designed to assess the carcinogenic potential of a particular agent. This process of risk assessment attempts to determine the likelihood that exposure to a specific agent will result in the future development of a certain adverse health effect. The identification of a possible adverse health consequence through the use of either or both human and animal models is the goal of the risk assessment matrix. Its purpose is to serve as the basis for the elimination or lessening of the possible adverse health effect. VA, on the other hand, is attempting to determine the likelihood that a presently existing disease is associated with a prior exposure to a specific agent. In doing so, it is concerned with more than a mere possibility that an effect is associated with a past exposure. Rather, it must determine whether it is at least as likely as not that a significant statistical association exists. Consequently, it would not be appropriate to rely upon an approach designed to identify merely possible risks; a different standard must be employed to accomplish VA's task. As described below, VA has looked to the models cited in its attempt to draft a scientifically valid and acceptable standard and utilized them where appropriate.

Further, certain of these commenters suggest VA should adopt the standard articulated by IARC that, in the absence of adequate human data, if studies show evidence of a particular agent's carcinogenicity in animal species, it is prudent to regard such agents "as if they presented a carcinogenic risk to humans. The Advisory Committee had previously considered the applicability of animal data to human experience and did so extensively at its September 8, 1989, meeting. The Committee has noted the widespread variations in observed effects in animals both within the same species and among different species. Other factors such as the dose of exposure and the methods and durations of exposure employed in animal models also play a role in judging the true applicability of animal results. For these reasons, VA does not believe it would be appropriate to adopt the IARC model, especially those portions which would apply "in the absence of adequate human data." As will be discussed later, however, the Committee has articulated what it considers to be a proper role for animal data to play in VA's attempt to determine the human's response to exposure.

The proposed criteria have been criticized as being too strict because their language is similar to that employed by IARC for determining a causal association.[1] VA's advisory committee commented, however, that the criteria set forth are those which are generally accepted by the scientific community in evaluating any study. That is, the Committee advised that there are certain minimal standards which must be met for any scientific study to be considered valid. These standards are the same whether a study purports to establish a causal association or a statistical association. Furthermore, VA notes that a complete reading of the cited IARC monograph page shows that much more is generally needed to infer causal association. The additional factors listed were the existence of several concordant studies which show an association, a showing of strong association, a dose-response relationship, and a reduction of cancer incidence with a reduction in exposure. None of these additional criteria are required for a finding of significant statistical association under VA's proposed rule. Additionally, it should be noted that the application of these criteria, when met, must result in the finding of a significant statistical association. Moreover, the benefit of the doubt rule will be applied by the Secretary to the evaluation of the weight of the scientific evidence. Thus, if there is an approximate balance of positive and negative evidence regarding the association between dioxin and an illness or condition, the benefit of the doubt will be given to the conclusion that the association exists. Studies that do not satisfy these threshold criteria may still contribute to the body of scientific and medical evidence which, in the Secretary's judgment (under proposed paragraph (e)), may warrant a finding of significant statistical association. When read together, VA does not believe that proposed paragraphs (d) and (e) constitute a standard which is too strict.

One commenter suggested that VA was introducing a "null hypothesis" whereby "it is assumed that the relationship does not exist unless there is enough scientific evidence to satisfy a rigorous standard that it does exist. To the extent that this comment suggests that a significant statistical association should be assumed to exist regardless of whether there are any studies which adequately support such a relationship, VA disagrees. First, and foremost, VA does not start with any presumption concerning a disease's association with exposure. Rather, it begins from a neutral position and then seeks to determine the existence of valid positive and valid negative studies. The relative weights of the valid positive and valid negative studies, with the application of the reasonable doubt doctrine, will determine the eventual conclusion. Thus, the regulation does not establish an overly rigorous standard but properly requires that a significant statistical association be established consistent with Public Law 98–542.

Two veterans' organizations asserted that VA should review the results of dioxin studies involving laboratory animals and not confine itself to reviewing studies on the adverse health effects of dioxin exposure in humans. The issue of the value of animal studies

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The IARC monograph states: "Three criteria must be met before a causal association can be inferred between exposure and cancer in humans:

1. Three is no identified bias which could explain the association.

2. The possibility of confounding has been considered and ruled out as explaining the association.

3. The association is unlikely to be due to chance.

was also raised by one of the organizations in support of an objection to the proposed change to paragraph (a). That commenter suggested that limiting the studies reviewed to those involving only herbicide exposure would be too restrictive and would be an additional basis for not reviewing studies on laboratory animals. At the same time, an individual commenter supported this change to paragraph (a) indicating that exposure to the herbicide, and not just one of its components or contaminants, was the key issue.

Valid epidemiologic studies constitute that most direct and convincing evidence regarding exposure to some agent and association with adverse human health effects. Animal and mechanistic studies provide less direct evidence in determining the likelihood that a presently existing disease is associated with past exposure to a specific agent, but may provide supportive and supplemental information in evaluation of the weight of evidence of association with adverse human health effects.

To assure that relevant scientific information on any specific issue is considered, we are adding a new paragraph (e) to the proposed rule setting forth the additional types of studies which may contain supportive or supplemental information and which may be considered in assessing the relative weight to be accorded the various valid studies being reviewed. The types of evidence to be considered under new paragraph (e) would include case series (reports of individual cases unrelated to a specific scientific study), correlational studies (studies showing that a temporal or other association between two events is present), studies with insufficient power, animal studies and mechanistic studies (studies of the cellular or molecular response to an exposure).

In response to the comments concerning the revision to paragraph (a), VA notes that the purpose of the proposal was simply to track more closely the statutory charge in Public Law 98-542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act. Section 5 of that law, which sets forth the requirement for and content of regulations, clearly speaks in terms of "guidelines governing the evaluation of the findings of scientific studies relating to the possible increased risk of adverse health effects of exposure to herbicides containing dioxin

Thus the language of the regulation is faithful to the language of the law. For purposes of grammatical accuracy, however, we are substituting the words "and/or exposure to" for the word "or" immediately following the parenthetical "(dioxin)" in paragraph (a). The change is not intended to restrict the scope of studies to be reviewed and evaluated concerning the issue of adverse health effects related to exposure to herbicides containing dioxin.

Two veterans' organizations and one legislator expressed support for proposed paragraph (e) (redesignated as (f)), but one suggested it could be strengthened by permitting consideration of animal studies. Because the formulation of that paragraph is such as to permit consideration of *any* relevant scientific and medical evidence, we perceive no benefit in referencing one particular type of evidence. Further, as noted above with respect to new paragraph (e), animal studies as well as other relevant studies may be considered in conjunction with valid scientific studies as defined in paragraph (d).

One veterans' organization and one legislator suggested with regard to proposed paragraph (d)(2)(ii) that study biases should not be assumed in the absence of specific evidence of their presence or that they should be permitted to exist if they are satisfactorily accounted for. Neither the presence nor the absence of a bias is assumed. Further, the proposed language only requires that a study be reasonably free of biases and that if biases are found to exist, the investigator acknowledge them and explain how they were taken into account in arriving at the study's conclusions. Reviewers should not be prohibited from suggesting that a particular study methodology may have introduced a bias not accounted for by the investigator. However, we agree that where bias is identified, it should not invalidate a study if it can be shown that the bias did not affect the study's conclusions. To accommodate this suggestion we have amended paragraph (d)(2)(ii), with the concurrence of the Advisory Committee, to read as follows: "Is reasonably free of biases, such as selection, observation and participation biases; however, if biases exist, the investigator has acknowledged them and so stated the study's conclusions that the biases do not intrude upon those conclusions; and"

Two veterans organizations sought clarification of the terms "positive" and "negative" with reference to the scientific studies being reviewed. One of those commenters suggested that studies which contain misleading statements or which depart from established scientific standards should be eliminated from consideration even before they are designated as "positive" or "negative The terms "positive" and "negative" with regard to studies are well-understood by scientific investigators and represent general characterizations of studies depending on their findings or lack of findings. A study is "positive" if it finds a correlation the study was designed to detect. A study is "negative" if it did not find a correlation the study was designed to detect. The screening factors suggested by the commenter could be considered in assessing the validity of a study, but not whether the study should be considered at all.

One State veterans' organization conceded that the study evaluation process was ultimately subjective in nature and did not lend itself to complete objectivity but suggested that the process might be more open if additional factors were considered during the study evaluation process and some terms were clarified. The commenter suggested four terms for clarification. Three of those terms (peer review, replicability and the veteran population of interest) are contained in paragraph (b) of the rule which is not a subject of this rulemaking proceeding. The fourth term (relative weights of studies) is a term which cannot be quantified but which relies heavily on the subjective consideration of experienced scientific investigators.

Several of the additional factors suggested for consideration during the process of evaluating epidemiological findings were already included in proposed paragraph (d), i.e., statistical significance, study design and bias. Other suggested factors such as dose-response relationships, the consistency and reproducibility of results, the strength and specificity of the association and its biological significance, that relate to the determination of causality in epidemiology, are not required or determinative for finding significant statistical association, but may be considered in evaluating the relative weights of studies.

One veterans' organization and one legislator addressed the requirement in proposed paragraph (d)(3) that positive studies be statistically significant at a probability level of .05 or less. They indicated that this requirement should not "pre-eliminate studies, should apply equally to negative studies and, in any event, should probably be raised to .10 or less. While this requirement could prevent a study from being considered as a valid positive study for purposes of paragraph (d), it would not preclude or

"pre-eliminate" it from consideration under paragraph (e) or (f) together with other scientific and medical evidence on the same subject. This requirement is not applicable to negative studies because it requires that there be a one-in-twenty chance or less that an apparent positive association is due to chance alone. It is not, therefore, calculated with respect to negative findings. Finally, our Advisory Committee has advised that .05 is the most accepted probability value with or without a prior hypothesis. For these reasons we find no basis for changing the proposal.

One individual commeter suggested that "significant statistical association" was a straightforward mathematical calculation. We believe the commenter was confusing that term with the term "statistical significance" which is a mathematical calculation and which is considered under paragraph (d)(3).

One veterans' organization suggested a mathematical formula for weighting positive and negative studies and suggested its inclusion in paragraph (d)(4). We agree that the statistical power of negative studies should be used in balancing them with positive studies, but use of the mathematical equation proposed is only applicable when two or more studies are identical, or nearly so, with at least one being positive and one being negative. Such an equation would be useful for evaluating laboratory studies, but epidemiological studies unfortunately lack such uniformity.

One veterans' organization suggested that proposed paragraph (c) be amended by adding the phrase "it is at least as likely as not that" before the phrase "a significant statistical association exists *" We cannot agree. The language suggested for addition is the key language used in applying the reasonable doubt doctrine. As reflected in proposed paragraph (c), that doctrine is applied in determining the existence of a significant statistical association under the provisions of proposed paragraph (d)(1), and that is where that reasonable doubt language should and does appear.

The same commenter suggested that some high risk subgroups might be unethically excluded from consideration in a study's conclusions because such things as the possibility of synergistic disease-provoking mechanisms or impairment of the immune system might be viewed as confounding factors for which the investigator had to "correct. We do not agree. The proposed rule does not require correction for possible confounders but rather a satisfactory accounting for known confounders. Under this more liberal construction a valid study is permitted to include confounding factors if they are noted and satisfactorily explained in relation to the study's conclusions.

The interest expressed by both individual and organizational commenters is appreciated. Except as noted herein, the amendments to 38 CFR 1.17 are adopted as proposed.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons.

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have 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.

(The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110)

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, claims.

Approved: September 27 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 1—[AMENDED]

38 CFR Part 1, GENERAL, is amended by revising § 1.17 to read as follows:

§ 1.17 Evaluation of studies relating to health effects of dioxin and radiation exposure.

(a) From time to time, the Secretary shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to a herbicide containing 2, 3, 7 8 tetrachlorodibenzo-p-dioxin (dioxin) and/or exposure to ionizing radiation in the "Notices" section of the **Federal Register.**

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable.

(2) Whether the study and its findings have withstood peer review.

(3) Whether the study methodology has been sufficiently described to permit replication of the study.

(4) Whether the study's findings are applicable to the veteran population of interest.

(5) The views of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards.

(c) When the Secretary determines, based on the evaluation of scientific or medical studies and after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards and applying the reasonable doubt doctrine as set forth in paragraph (d)(1) of this section, that a significant statistical association exists between any disease and exposure to a herbicide containing dioxin or exposure to ionizing radiation, §§ 3.311a or 3.311b of this title, as appropriate, shall be amended to provide guidelines for the establishment of service connection.

(d)(1) For purposes of paragraph (c) of this section a "significant statistical association" shall be deemed to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that the purported relationship between a particular type of exposure and a specific adverse health effect exists.

(2) For purposes of this paragraph a valid study is one which:

(i) Has adequately described the study design and methods of data collection, verification and analysis;

(ii) Is reasonably free of biases, such as selection, observation and participation biases; however, if biases exist, the investigator has acknowledged them and so stated the study s conclusions that the biases do not intrude upon those conclusions; and

(iii) Has satisfactorily accounted for known confounding factors.

(3) For purposes of this paragraph a valid positive study is one which satisfies the criteria in paragraph (d)(2) of this section and whose findings are statistically significant at a probability level of .05 or less with proper accounting for multiple comparisons and subgroups analyses.

(4) For purposes of this paragraph a valid negative study is one which satisfies the criteria in paragraph (d)(2) of this section and has sufficient statistical power to detect an

association between a particular type of exposure and a specific adverse health effect if such an association were to exist.

(e) For purposes of assessing the relative weights of valid positive and negative studies, other studies affecting epidemiological assessments including case series, correlational studies and studies with insufficient statistical power as well as key mechanistic and animal studies which are found to have particular relevance to an effect on human organ systems may also be considered.

(f) Notwithstanding the provisions of paragraph (d) of this section, a "significant statistical association" may be deemed to exist between a particular exposure and a specific disease if, in the Secretary's judgment, scientific and medical evidence on the whole supports such a decision.

(Authority: 38 U.S.C. 210(c); Pub. L. 98-542)

[FR Doc. 89-23175 Filed 9-29-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 89-1143]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This order amends § 1.115(d) to reflect when replies to an opposition to an application for review may be filed. Further the Order reorganized § 1.115(f) and also split that provision into two subsections in order to separate those requirements governing the initial filings relative to an application for review from those requirements governing briefs and reply briefs that may be requested after the Commission grants review of a Review Board final decision. This amendment provides better clarification and organization of existing rules.

EFFECTIVE DATE: October 2, 1989.

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

FOR FURTHER INFORMATION CONTACT: Joe McBride, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION: The Managing Director adopted on September 13, 1989, and released on September 22, 1989, an Order amending § 1.115 (d) and (f) of the Commission's rules. 47 CFR 1.115 (d) and (f). This amendment provides better clarification and organization of existing rules.

Order

Adopted: September 13, 1989.
Released: September 22, 1989.

By the Managing Director:

1. In *Ronald F Trinchitella,*[1] the Commission recently clarified that § 1.115(f)'s prohibition on the filing of replies in response to oppositions to applications for review except when requested by the Commission only applies to replies to oppositions to applications for review of final decisions of the Review Board. The Commission noted that the decision adopting the language in question expressly indicated that the prohibition only applied "to Review Board final decisions."[2] The Commission also noted that § 1.115(d) authorizes the filing of reply pleadings.[3] This *Order* amends § 1.115 (d) and (f) to reflect more clearly the Commission's intent when it promulgated those provisions.

2. Section 1.115(d) is being amended to reflect when replies may be filed. Section 1.115(f), as modified, will only contain the technical requirements for applications for review and related pleadings, such as page length, service of copies, and where to file them. Furthermore, § 1.115(f) is being slightly restructured to distinguish between the requirements governing the initial filings relative to an application for review and the subsequent requirements governing briefs and reply briefs that may be requested after the Commission grants review of a Review Board final decision.

3. Accordingly, *It is ordered,* That § 1.115 (d) and (f) of the Commission's rules are amended, as provided in the appendix, pursuant to the authority contained in § 0.231(d) of the Commission's rules.

4. A notice and comment proceeding is not required in this instance because § 1.115 (d) and (f) are rules of agency procedure and practice. See 5 U.S.C. 553(b)(A).

5. This amendment will be effective upon publication in the **Federal Register.** See 5 U.S.C. 553(d).

Alan R. McKie,
Acting Managing Director.

Rule change

47 CFR part 1 is amended as follows:

Ronald F. Trinchitella, FCC 89-270, released August 16, 1989 at n.4.

Id. (quoting *Amendments to parts 0 and 1 of the Commission's Rules with respect to Adjudicatory Re-Regulation Proposals,* 56 FCC 2d 865, 876 (1976)).

Id.

PART 1—[AMENDED]

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

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

2. 47 CFR 1.115 (d) and (f) are revised to read as follows.

§ 1.115 Application for review of action taken pursuant to delegated authority.

(d) Except as provided in paragraph (e) of this section, the application for review and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules. Oppositions to the application shall be filed within 15 days after the application for review is filed. When permitted, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition. Replies to oppositions to applications for review of final decisions of the Review Board may be filed only if the Commission requests a reply; except as provided in § 1.115(e)(3), replies to oppositions to all other applications for review are permissible.

(f)(1) Applications for review, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554. Except as provided below, applications for review and oppositions thereto shall not exceed 25 double-spaced typewritten pages. Applications for review of final decisions of the Review Board and oppositions thereto shall not exceed 10 double-spaced typewritten pages. Applications for review of interlocutory actions in hearing proceedings (including designation orders) and oppositions thereto shall not exceed 5 double-spaced typewritten pages. When permitted (see § 1.115(d)), reply pleadings shall not exceed 5 double-spaced typewritten pages. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and on parties to the proceeding. When permitted (see § 1.115(d)), replies to the opposition(s) to the application for review shall be served on the person(s) opposing the application for review and on parties to the proceeding.

(2) If the Commission grants review of a Review Board final decision and

requests that briefs be filed, the parties may file briefs and reply briefs, which shall not exceed 25 double-spaced typewritten pages. Briefs shall be filed within 30 days after release of the order granting review. Reply briefs shall be filed within 10 days after the last day for filing briefs.

[FR Doc. 89-23198 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-317; RM-6328]

Radio Broadcasting Services; Lenwood, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 297A to Lenwood, California, as that community's second local broadcast service, in response to a petition for rule making filed on behalf of Gary Albarez. See 53 FR 26612, July 14, 1988. Coordinates utilized for Channel 297A at Lenwood are 34-52-30 and 117-06-48. With this action, the proceeding is terminated.

DATES: Effective November 13, 1989; The window period for filing applications on Channel 297A at Lenwood, California, will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation proceeding. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-317 adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California, for Lenwood, by adding Channel 297A.

Federal Communications Commission

Karl A. Kensinger,

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

[FR Doc. 89-23199 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-602; RM-6502]

Radio Broadcasting Services; Buena Vista, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 281A to Buena Vista, Colorado, as that community's first local FM broadcast service, in response to a petition for rule making filed by Robert D. and Marjorie M. Zellmer. See 54 FR 4862, January 31, 1989. Coordinates used for Channel 281A at Buena Vista are 38-50-30 and 106-07-54. With this action, the proceeding is terminated.

DATES: Effective November 13, 1989; The window period for filing applications on Channel 281A at Buena Vista, Colorado, will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530, regarding the allotment proceeding. Questions related to the application filing window process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-602, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Colorado, by adding Buena Vista, Channel 281A.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-23200 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-77; RM-5213, RM-5946]

Radio Broadcasting Services; Baldwin and Watertown, FL, and St. Marys, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289A to Baldwin, Florida, Channel 271A to Watertown, Florida, and Channel 227C2 to St. Marys, Georgia. This document also modifies the license of FM Station WLKC, St. Marys, Georgia, to specify operation on Channel 227C2. Finally, this document dismisses a counterproposal filed by Marlene V Borman for Channel 227A at Orange Park, Florida. The reference coordinates for Channel 289A at Baldwin, Florida, are 30-19-18 and 82-00-54; for Channel 271A at Watertown, Florida, are 30-11-47 and 82-40-48; and for Channel 227C2 at St. Marys, Georgia, are 30-43-43 and 81-46-53. With this action, this proceeding is terminated.

DATES: Effective November 13, 1989; The window period for filing applications for the Channel 289A allotment at Baldwin, Florida, will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-77 adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The

complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Florida by adding Channel 289A at Baldwin.

3. Section 73.202(b), the Table of FM Allotments, is amended under Florida by removing Channel 289A and adding Channel 271A at Watertown.

4. Section 73.202(b), the Table of FM Allotments, is amended under Georgia by removing Channel 228A and adding Channel 227C2 at St. Marys.

Federal Communications Commission.

Bradley P Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23201 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) of Pacific cod in the Western Regulatory Area of the Gulf of Alaska (Western Regulatory Area) has been reached. The Secretary of Commerce (Secretary) is prohibiting fishing for and retention of Pacific cod by vessels fishing in this area from 12:00 noon, Alaska Daylight Time (ADT), on September 23, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, ADT, on September 23, 1989, until midnight, Alaska standard time, December 31, 1989. Public comments will be accepted through October 8, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION:

The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP appear in 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target sepecies and species groups are specified annually within the OY range and are apportioned among the regulatory areas and districts.

The 1989 TAC specified for Pacific cod in the Western Regulatory Area is 13,500 mt (54 FR 6524, February 13, 1989). The Regional Director reports that U.S. vessels have landed 13,591 mt of Pacific cod through September 9, 1989, in the Western Area. Therefore, pursuant to 50 CFR 672.20(c)(2)(i), the Secretary is prohibiting further fishing for and retention of Pacific cod effective 12:00 noon, ADT, September 23, 1989. Any Pacific cod caught in the Western Regulatory Area after that date must be treated as prohibited species and discarded at sea.

Overharvesting of Pacific cod will result unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice and may be submitted to the Regional Director at the address above until October 8, 1989. If written comments are received that oppose or protest this action, the Secretary will reconsider the necessity of this action, and as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of this notice, responding to comments received, or modifying or rescinding this notice.

Classification

This action is taken under 50 CFR 672.22 and 50 CFR 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 25, 1989.

David S. Crestin,

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

[FR Doc. 89-23115 Filed 9-27-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-27249; File No. S7-28-89]

RIN 3235-AD79

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission proposes to amend its net capital rule under the Securities Exchange Act. The proposal would raise the absolute minimum net capital required of certain registered broker-dealers. Broker-dealers that hold customer funds or securities would be required to maintain at least $250,000 in net capital. Those firms that clear customer transactions but do not hold customer funds or securities would need to maintain at least $100,000. Broker-dealers that introduce customer accounts would be required to maintain $50,000 or $100,000, depending on whether they occasionally or routinely receive customer funds and securities. In addition, market makers would be required to maintain greater net capital in proportion to the number of securities in which they make markets. The minimum net capital requirement of certain mutual fund brokers and dealers would also be increased to $25,000. A residual $5,000 minimum requirement would apply to those broker-dealers who do not receive customer funds or securities. This latter class also would include so-called direct participation firms. The raising of minimum capital levels for firms would be implemented over a period of four years. Additionally, deductions for equity securities positions ("haircuts") would be standardized under the proposal. Finally, some changes would be made to the computation of aggregate indebtedness.

DATE: Comments must be received on or before December 18, 1989.

ADDRESSES: Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. S7-28-89. Copies of the submission and of all written comments will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Michael P Jamroz, (202) 272-2372, or David I. A. Abramovitz (202) 272-2398, Division of Market Regulation, 450 Fifth Street, NW Washington, DC 20549.

SUPPLEMENTAL INFORMATION:

I. Introduction

The primary purpose of the net capital rule (Securities Exchange Act Rule 15c3-1; 17 CFR 240.15c3-1) is to protect customers and creditors of registered broker-dealers from monetary losses and delays that can occur when a registered broker-dealer fails. The rule requires registered broker-dealers to maintain sufficient liquid assets to enable firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding. In doing so, the rule enhances investor confidence in the financial integrity of securities firms. Similarly, the rule promotes transactions between broker-dealers, lenders, and creditors, on one hand, and the counterparty broker-dealers on the other, because those entities are more likely to consider a broker-dealer credit-worthy if it must comply with a liquidity-based capital adequacy standard. Presently, the net capital rule generally requires a registered broker-dealer's net capital to exceed the greater of $25,000 or 6⅔ percent of its aggregate indebtedness ("aggregate indebtedness method" or "basic method") if the broker-dealer does not elect the alternative method.[1] If it elects the alternative method under paragraph (f), the broker-dealer's net capital must exceed the greater of $100,000 or 2 percent of its aggregate debit items as computed in accordance with the Formula for Determination of Reserve Requirement for Brokers and Dealers contained in Securities Exchange Act Rule 15c3-3.[2]

If the broker-dealer does not carry customer accounts and limits its business to certain specified activities, it need maintain only $5,000, rather than the $25,000 which would otherwise be required under the aggregate indebtedness method.[3] If the broker-dealer makes markets in securities, it must maintain the greater of its requirement under the aggregate indebtedness method or $2,500 for each security priced over $5 in which it makes a market plus $500 for each security priced at $5 or less in which it makes a market.[4] Unless required to do so because of the level of its aggregate indebtedness, regardless of how many securities in which it makes a market, a market maker is not currently required to maintain net capital greater than $100,000 to support its market making activities.

If the broker-dealer elects the alternative method, as opposed to the basic method as noted above, its minimum net capital will be $100,000 rather than $25,000, but it will generally incur smaller haircuts on the market value of its equity securities positions than those broker-dealers that elect the aggregate indebtedness method.[5]

See Securities Exchange Act Rule 15c3-1(a); 17 CFR 240.15c3-1(a).

See Securities Exchange Act Rule 15c3-3a; 17 CFR 240.15c3-3a.

See Securities Exchange Act Rule 15c3-1(a)(2); 17 CFR 240.15c3-1(a)(2).

See Securities Exchange Act Rule 15c3-1(a)(4); 17 CFR 240.15c3-1(a)(4).

Securities Exchange Act Rule 15c3-1(c)(2)(vi)(J) sets forth the deduction for equity securities positions and other securities positions that are not otherwise specifically provided for in Rule 15c3-1. That deduction is "30 percent of the market value of the greater of the long or short positions and to the extent the market value of the lesser of the long or short positions exceeds 25 percent of the market value of the greater of the long or short positions, there shall be a percentage deduction on such excess equal to 15 percent of the market value of such excess. Securities Exchange Act Rule 15c3-1(f)(3)(ii) sets forth the deduction incurred by broker-dealers that elect the alternative method for securities that would otherwise incur a deduction under subparagraph (c)(2)(vi)(J). Subparagraph (f)(3)(ii) requires the electing broker-dealer to deduct 15 percent of the market value of long positions and 30 percent of the market value of short positions but only to the extent those short positions exceed 25 percent of the long positions.

II. Minimum Net Capital

While the idea of a net capital standard dates back to at least 1934, federal requirements as to a minimum amount of net capital were first introduced in 1965. In that year, principally in response to the Report of the Special Study of Securities Markets ("Special Study"),[6] the Commission's net capital rule was amended to require firms to maintain certain minimum capital amounts.[7]

The Special Study recommended minimum capital requirements as an essential qualification for broker-dealers entering the securities business. It based its recommendation on several factors: First, firms handling customer funds and securities should have sufficient capital so that they are not dependent upon customer assets to make up the principal working capital of the firm. Second, firms should have adequate capital, resources, and equipment so that the securities markets function smoothly and efficiently and market participants have the resulting confidence to carry out business responsibly. Finally, if the liability of a broker-dealer to its customers from violations of state and federal law is to be a deterrent to improper conduct, a firm should be required to maintain a reasonable financial stake in its business.

The Commission is mindful of the argument that increased minimum capital requirements restrict free entry to the broker-dealer business. However, while capital barriers were not initially imposed after the enactment of the Securities Exchange Act, both Congress and the Commission later recognized the need to restrict under-capitalized firms from entry into the securities business. In the 1971 Committee Staff Study for a Special Subcommittee of the House Committee on Interstate and Foreign Commerce, Congress suggested that attention be directed to the need to increase the minimum net capital requirements of broker-dealers, "particularly those just entering the securities industry. [8] In 1971, the Commission issued its Study of Unsafe and Unsound Practices ("Practices Study") [9] in response to the paperwork crisis of the late 1960's, in which many firms experienced debilitating back-office failures due to the then heavy volume of securities transactions. In the Practices Study, the Commission specifically addressed the issue of ease of entry. Appendix F to the Practices Study contained a description of actions taken by the Commission against certain broker-dealers. In that Appendix, the Commission noted that the principals of many of those firms, which were able to remain in business for periods ranging from only eight months to three years and eight months, had little or no background in the securities industry. The previous activities of some included such unlikely fields as advertising, insurance, automobile financing, personnel relations, engineering, and selling soft drinks.[10]

The Commission was concerned then, as it is today, that undercapitalized new entrants to the business would cause harm to customers and potentially be a financial drain on the insurance-type fund maintained by the Securities Investor Protection Corporation ("SIPC"). SIPC, through the Commission, may draw up to $1 billion on the U.S. Treasury.[11] The Practices Study concluded that:

> [t]o permit unprepared, irresponsible parties to enter the broker-dealer business without the restraining influence of adequate entry standards would be tantamount to the subsidization of incompetent and irresponsible individuals by SIPC and the United States Treasury.[12]

In response, the Commission adopted the current $25,000 net capital minimum requirement for broker-dealers transacting a general securities business.[13] The absolute minimum capital requirements of $5,000, $25,000 and $100,000 have remained since the Uniform Net Capital Rule was adopted over fourteen years ago.[14] Both the relative value of the dollar and the nature of the securities industry have changed markedly since that time.. Indeed, the dollar is now worth less than 50 percent of its 1976 value, making these minimum requirements less than half of what they were in absolute terms.[15] The complexity of markets and the activities that broker-dealers are engaged in also have dramatically increased in the last decade. Proprietary trading by both institutions and by the broker-dealers themselves has greatly expanded. The penny stock markets have become much more active.

Broker-dealers have also expanded the variety of their activities. The last fifteen years have seen firms engaging in not only a greater volume of transactions but in transactions involving more complex products, such as interest rate swaps, foreign currencies, mortgages, mortgage-backed securities, and over-the-counter ("OTC") options. The holdings of customer funds and securities also have increased greatly over the years; the Commission estimates that this figure has risen perhaps as much as ten-fold since the early 1970s. Finally, while the Commission notes that on a statistical basis price volatility has been relatively low in the last year, during the period from October 1988 through April 1989 there were 73 separate days in which the Standard and Poor's 500 Stock Index experienced intra-day price movements of more than two percent.

The business of buying and selling securities, moreover, is one in which success, both to the firms and to the investing public, is strongly dependent upon confidence, continuity, and commitment. The Commission is concerned over the potential effects of broker-dealer firm failures on their counterparties, clearing agencies, and

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See Report of Special Study of Securities Markets of the Securities and Exchange Commission, 88th Cong., 1st Sess., H.R. No. 95, April 3, 1963.

See note 14, *infra*.

Review of SEC Records of the Demise of Selected Broker-Dealers, Staff Study for the Special Subcommittee on Investigations of the Committee on Interstate and Foreign Commerce, House of Representatives, 92nd Cong., 1st Sess., pg. 33 (July 1971).

Study of Unsafe and Unsound Practices of Brokers and Dealers, Report and Recommendations of the Securities and Exchange Commission, H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971).

[10] *See* Practices Study at p. 164.

[11] Under the Securities Investor Protection Act of 1970 ("SIPA"), SIPC maintains a fund consisting primarily of assessments received from its member broker-dealers. From that fund SIPC makes advances to customers, as defined in SIPA, of failed broker-dealers. In the event the SIPC fund should prove inadequate, SIPC may, through the Commission, borrow up to $1 billion from the U.S. Government. *See* Securities Investor Protection Act of 1970, Sec. 4(h).

[12] *Id.*

[13] Securities Exchange Act Release No. 9633, June 14, 1972, (37 FR 11970, June 16, 1972).

[14] The absolute minimum of $25,000 under the basic method was adopted in 1972 (*See* footnote 12). The $100,000 absolute minimum under the alternative method was adopted in 1975 (Securities Exchange Act Release No. 11497 (June 26, 1975), 40 FR 29795, (July 26, 1975)). The $5,000 minimum currently applicable to most broker-dealers that do not hold customer funds and securities was adopted in 1965. At that time, the $5,000 minimum was applicable to all broker-dealers except those that limited their activities to transactions in shares of registered investment companies and federally insured savings and loan associations. (*See* Securities Exchange Act Release No. 7611, May 26, 1965, 30 FR 7276, June 2, 1965.)

[15] The Consumer Price Index (CPI) in February 1976 was an adjusted 55.8 (based on 1982–84 base year) and 121.6 in February 1989. This is an increase of 117.9 percent. *See* Department of Labor, Bureau of Labor Statistics, CPI. The Commission requests comment on whether the minimum net capital requirements should be regularly adjusted to take into account the effect of inflation. In this connection, should capital levels in the future automatically be adjusted or indexed to the rate of inflation? Commentators favoring indexing of minimum capital requirements should also indicate what measure they believe should be used by the Commission to index capital requirements and how often they believe adjustments based on the rate of inflation should be made.

the financial system in general. Given the increasingly large customer and proprietary positions maintained by even relatively small broker-dealers, the potential exists for a single firm failure to trigger substantial exposure to a number of broker-dealers and banks. The risks of such a chain reaction underline the importance of minimum capital requirements set at levels which may substantially reduce the likelihood of such failures.

Thus, increasing the minimum capital requirements would ensure that those who do wish to establish a broker-dealer entity do so with that amount of capital necessary to maintain adequately a solvent venture. The increased minimum capital requirement would encourage potential entrants to exhibit a serious commitment to a business whose customer and capital nature demands such a commitment. Most importantly, as discussed earlier, raising minimum capital requirements would protect the investing public and the SIPC fund by requiring a greater pool of liquid assets from which customer claims may be satisfied.

The Commission's most serious concern is with the current amount of capital required of clearing firms. As discussed more fully below, firms with capital of only $25,000 can clear for a number of other securities firms and can hold customer funds and securities amounting to millions of dollars. When such firms experience financial difficulty, there are significant costs imposed on customers and on regulators (which ultimately are borne by the securities industry or by taxpayers) even if the firms do not ultimately have to be liquidated under SIPA. Customers can be frozen in their positions for weeks or months and administrative costs to monitor troubled firms and/or to administer liquidations can be high. The Commission believes that the potential costs to investors, to the SIPC fund, and to the self-regulatory organizations, in the event firms self-liquidate with a very limited cash cushion are inappropriately high when weighed against the potential costs to broker-dealers of increased minimum net capital requirements.

Furthermore, the Commission's proposal to raise the minimum capital requirements of broker-dealers has drawn preliminary support from some of the self-regulatory organizations responsible for monitoring the activities of those firms and from one industry association. The National Association of Securities Dealers' ("NASD's") Capital and Margin Committee and the NASD's Advisory Council have expressed their belief that adopting higher minimum capital standards is a matter of some urgency.[16] Furthermore, both the Securities Industry Association ("SIA") [17] and the New York Stock Exchange ("NYSE") [18] had previously endorsed the reconsideration and the increasing of the minimum net capital requirements.

A. *Clearing Firms*—For purposes of Rule 15c3-1, a clearing firm is a broker-dealer that takes orders from customers, processes their trades and maintains custody of customer funds and securities. Clearing firms are frequently engaged in other lines of business such as securities lending, proprietary trading, and futures trading. A firm may also process trades and maintain custody of funds and securities of investors who give their orders to introducing firms. The clearing firm's duties, as outlined in the clearing agreement, include the proper disposition of the customer monies and securities after trade date, the holding of customer securities and funds as appropriate, and the handling of the paperwork associated with carrying customer accounts. These services involve such high fixed costs that, if they were incurred by the typical introducing firm, it would be prohibitively expensive for such a firm to enter the securities business. Such costs include the computer costs necessary to generate various customer statements and account records, as well as the personnel costs of maintaining back-office operations such as cashiering and margin departments. For its services, the clearing firm usually charges the introducing broker-dealer a fee based on a percentage of the retail securities commission revenue received by the introducing firm.

If a broker-dealer carrying customer funds and securities fails, there is potential for significant harm to be suffered by its customers. Furthermore, the risks that clearing firms, particularly those with small amounts of capital, pose to customer accounts can be greatly exacerbated by the fact that there are no limits on the amount of customer funds and securities that can be held.

SIPC's experience with liquidations demonstrates this latter point. In many cases, the SIPC trustee has had to use SIPC advances [19] at least in part to pay off customers' claims of securities and cash in amounts many times in excess of the firm's required net capital. For example, in one case, in which the firm's required net capital before it failed was only $119,000, the SIPC trustee paid out to customers from SIPC advances over $6,000,000 and from the debtor's estate over $25,000,000 in customer funds and securities. In another case, in which the firm's required net capital was less than $120,000, the SIPC trustee paid out to customers almost $14,000,000 in cash and securities; more than half this amount was paid out of SIPC advances.

These SIPC liquidations reflect common risk exposures of many operating clearing firms. At the request of the Commission staff, the NASD randomly sampled NASD clearing firms having capital of less than $130,000. Of the 84 firms in this sample, 21 were found to be holding more than $1 million in securities. The Commission believes that SIPC liquidation experience and the random sampling demonstrate that a significant percentage of broker-dealers that clear and carry funds and securities and that do not maintain significant excess net capital control substantial customer assets that are potentially at risk.

In order to evaluate the risks entailed in maintaining those low minimum capital requirements, the Commission also has evaluated instances of liquidations which did not require intervention by SIPC. While there were only eight SIPC liquidations in 1987 and 1988,[20] there were more than twice as many self-liquidations under the auspices of the NASD Washington headquarters staff. In 1987 and 1988, there were 18 such self-liquidations in which the NASD oversaw the distribution of over $250,000,000 in customer property involving relatively undercapitalized firms. These cases provide examples of potential exposure to the SIPC fund. Of the many cases of firm self-liquidation that the NASD has had to supervise because of lack of substantial net capital, two are

[16] *See* Letter from John E. Pinto, Executive Vice President, Compliance, NASD, to Michael Macchiaroli, Assistant Director, Division of Market Regulation, SEC, dated May 31, 1989.

[17] *See* Comment letter to John Wheeler, Secretary, SEC, from Michael Minikes, Chairman, Capital Committee, SIA, dated July 26, 1985, concerning Concept Release, File No. S7-3-85, p. 8.

[18] *See* Comment letter to John Wheeler, Secretary, SEC, dated July 31, 1985, from James Buck, Secretary, NYSE, concerning Concept Release, File No. S7-3-85, pp. 3-4.

[19] Under Section 9 of SIPA, SIPC makes advances to customers of a broker-dealer that is the subject of a SIPC proceeding. SIPC makes those advances from the SIPC fund. The SIPC fund had been established through assessment of SIPC member broker-dealers. (*See* Section 4 of SIPA).

[20] In this regard, the number of SIPC customer protection proceedings commenced in 1987 and 1988 is the lowest for any two-year period in SIPC's history. And the SIPC fund is at its highest level ever. *See* SIPC Annual Report 1988. P3.

particularly noteworthy. One firm held $70 million of customer securities, although it had only $61,000 of net capital. The other firm held $8 million of customer securities and only $42,000 of net capital. Fortunately, because the NASD was aware of the problems suffered by the above firms before they failed, the NASD was able to have the firms move customer accounts to other clearing firms and thereby avoid SIPC liquidations.

When the NASD monitors a firm self-liquidation, it commits from two to 25 of its staff personnel to the process of supervising the firm. In addition to the NASD personnel, employees of the firm being liquidated are retained in order to do the work associated with transferring the accounts. Those employees, along with the costs associated with maintaining the premises, and transferring and shipping securities, must be paid from whatever capital remains in the broker-dealer. Self-liquidations may take from three weeks to several months, depending on the condition of the records of the broker-dealer and whether the NASD is readily able to locate other broker-dealers willing to take the customer accounts.

Self-liquidation costs to the self-regulatory authorities are difficult to measure since most of the incremental expenses other than employees' compensation time is mainly for per diem expenses of employees on travel status and for telecommunication expenses. On average, however, the NASD has advised the Commission staff that even the smallest liquidation requires two to three NASD employees on premises for a minimum of two weeks. The largest recent liquidation required a staff of about 25 NASD employees for about 10 weeks on premises, with fewer people thereafter. The recorded average cost for the NASD including salaries is about $2,000 per week per employee.

Beyond administrative costs, customers are usually unable to access their accounts when their broker-dealer is placed in a SIPC liquidation or a self-liquidation. Although every attempt is made to transfer accounts to a solvent broker as rapidly as possible, that goal is not always achievable, either because of the type of accounts, the poor condition of the broker-dealer's records, or the lack of adequate margin in customer accounts.

While requiring additional amounts of net capital to be maintained will not prevent firms from failing or otherwise leaving the securities business, the additional capital provides a fund from which the expenses associated with the liquidation can be paid. If that fund is not adequate, either the NASD or SIPC must fund the administration of the liquidation. If the remaining capital in the firm is low and the NASD supervises the liquidation, the NASD will not have the means to pay the employees of the broker-dealer to perform the clerical tasks associated with the distribution of property to customers. Accordingly, the NASD would have to use its own employees to perform these tasks and would incur substantial additional expenses. If the amount of remaining capital is small and the amount of customer property to be distributed is very large, SIPC would likely have to administer the liquidation. The initiation of a SIPC proceeding would result in increased administrative expenses.

More importantly, customers are adversely impacted from a SIPC liquidation because their funds and securities remain frozen until their property can be transferred to another broker-dealer or returned to them. Finally, to the extent their claims exceed their pro rata share of customer property, customers must rely on SIPC advances. Section 4 of SIPA limits SIPC advances to satisfy the claims of each customer up to a maximum of $500,000 for cash and securities, with a limit of $100,000 for cash claims.

Failures of clearing firms also present risk to the system as a whole by putting a financial strain on clearing agencies. Clearing agencies or corporations act as the central location for matching security transactions of members. This facilitates determination of minimum quantities of particular securities to be received or delivered. Generally, the clearing corporation nets each broker-dealer's settling purchases and sales in each security to arrive at a daily net settlement obligation for each broker-dealer. Broker-dealers then settle those net obligations with the clearing corporation. The clearing corporation guarantees the settlement obligations of each broker-dealer's counter trading party.

Losses to clearing firms from market disruptions such as the October market break can have the serious effect of causing losses to the related clearing corporations. While a single clearing firm failure probably would not put the entire system at risk, a combination of such failures could conceivably bring down a clearing system. If a clearing agency itself were to fail, the risk of a precipitous disaster to other financial service entities would be enormous.

Based on these observations, the Commission preliminarily has concluded that broker-dealers who are responsible for customer funds and securities impose substantial actual and potential risks on customers, other broker-dealers and the financial system and therefore should have a required minimum net capital higher than other classes of broker-dealers covered under the Rule. The amount of capital these customer firms maintain demonstrates their level of commitment to the business. Accordingly, the Commission believes that the minimum level of net capital for this class of broker-dealers should be raised to $250,000.

Because of the increased assurance of stability which would be provided by the proposed minimum capital level, the Commission proposes that the haircut associated with positions in firm commitment underwritings, or the contractual commitment haircut, be relaxed for a portion of a firm's increased capital requirement.[21] The proposed amendment would not require a broker-dealer who meets the $250,000 minimum to apply the contractual commitment haircut charge in certain circumstances in which that haircut would be $150,000 or less.

In addition, because the Commission believes that capital requirements should be based largely on the risks created by firms in their securities activities, the Commission believes that it is appropriate to distinguish between those firms that hold funds and securities for other persons and those that do not hold funds or securities yet carry customer accounts. Because firms that do not hold funds and securities impose a lower level of risk, the Commission believes that lower minimum requirements for such firms are justified. The Commission therefore proposes for comment a minimum capital requirement of $100,000 for firms that are exempt from Rule 15c3-3 by virtue of paragraph (k)(2)(i). Firms that fall within the paragraph (k)(2)(i) exemption must effectuate all customer securities transactions through a Special Bank Account for the Exclusive Benefit of Customers. Such broker-dealers cannot carry margin accounts, must promptly forward all customer funds and deliver all securities received in connection with their activities as broker-dealers and cannot otherwise hold for, or owe money or securities to, customers.

[21] A contractual commitment haircut is percentage deduction from net worth which must be taken by broker-dealer that has open contractual commitments. Currently, the net capital rule requires that the appropriate haircut be applied to these positions reduced by any unrealized profits that the broker-dealer may have in these commitments. *See* Rule 15c3-1(c)(2)(viii) (17 CFR 240.15c3-1(c)(2)(viii)).

B. *Introducing Firms*—An introducing broker-dealer is one that has a contractual arrangement with another firm, the carrying or clearing firm, in which the carrying firm agrees to perform certain services for the introducing firm. Generally, the introducing firm submits its customer accounts and customer orders to the carrying firm, which executes the orders and carries the accounts. The carrying firm s duties include the proper disposition of the customer monies and securities after trade date, the holding of customer securities and funds and the recordkeeping associated with carrying customer accounts.

The Commission believes that introducing firms create risks for investors, clearing firms, and other firms with which they deal, and thus that there is ample justification for an increase in their minimum capital requirements. Even though the failure of an introducing firm does not normally result in a SIPC liquidation, it may result in substantial costs to the firms that carry the customer accounts for the introducing firm. In addition, customers may be unable to trade for some period of time until they can find another introducing or clearing firm to which they can transfer their accounts. Finally, because many introducing firms do in fact handle customer funds and securities for short periods of time, there is SIPC exposure from their activities. As a result, the Commission believes that increased minimums for introducing firms are risk-justified.

As the Market Break Report pointed out,[22] introducing broker-dealers pose risks to the investing public as well as to other broker-dealers. First, those broker-dealers do, in fact, receive customer funds and securities, although the funds and securities must be promptly forwarded to firms that carry the customer accounts.

There is an obvious risk for the customer if the introducing firm fails while in possession of customer funds and securities. There have been several recent cases where an introducing firm failed and, because the firm was declared to have "customers" under SIPA, there was exposure and payout for the SIPC fund. Such "customers" are created, as mentioned above, when the introducing firm does not promptly forward the customer funds to the clearing firm and the introducing firm fails.

Second, if an introducing firm fails, or even ceases doing business temporarily, its customers are often stranded. The carrying firms associated with introducing firms often will not accept orders from customers because the carrying firm may regard the customers as those of the introducing firm. As a result, customers may be unable to liquidate securities positions or open new positions with the proceeds of sales until their accounts are transferred to other broker-dealers.

Finally, introducing broker-dealers can cause significant losses to carrying firms, exposing the customers and creditors of those firms to loss. During periods of market decline, customer accounts may become unsecured due to a precipitous drop in the value of the securities in margin accounts or because of changes in value of customer short options positions. If the account has been introduced, the introducing firm generally is obligated to the carrying firm for deficits in the introduced customer accounts. If the introducing broker-dealer does not have adequate resources to reimburse the carrying firm, the carrying firm may suffer significant losses.[23]

Because of the loss exposure from introducing firms, many clearing firms will not clear for introducing firms without substantial capital or substantial deposits, which serve as collateral for unsecured customer debits.[24] At the request of the Commission staff, the NASD conducted an informal survey of the firms that clear introduced accounts. The NASD survey indicates that the practices varied greatly among the clearing firms that were contacted. For example, the following arrangements for introducing firms were included in the surveyed clearing arrangements: A requirement of $150,000 minimum net capital and a deposit if the firm has trading accounts; minimum deposit of $5,000, but could go as high as $300,000 for market makers; clearing deposits between $50,000 and $100,000 determined by credit committee; a requirement of 110 percent of the introducing firms' highest inventory position.

The Commission believes that, while the NASD survey is informal and includes only a small number of clearing firms, it demonstrates that many firms have imposed capital and deposit requirements to protect themselves from the risk of failure of undercapitalized introducing firms. At the same time, because the standards are not uniform, weaknesses in the system tend to develop. Assuming that clearing firms that are more risk conscious require their introducing firms to maintain the greatest amount of capital, clearing firms that are not as sensitive to risk will tend to have a higher concentration of introducing firms that are poorly capitalized and engaging in riskier activities.

Accordingly, the Commission proposes to raise the minimum capital requirement for introducing firms based upon the activities that they engage in and the commensurate risks created. Thus, three classes of introducing firms would be created under the proposed amendments. Some introducing broker-dealers now routinely receive customer funds and securities for transmittal to the clearing firm. Those firms are responsible for the funds and securities until received by the clearing firm. Under the proposal, this class of introducing firm would be required to maintain net capital of at least $100,000. Introducing firms that occasionally receive customers' funds and securities would be required to maintain at least $50,000. This covers instances of customers inappropriately sending funds or securities to the introducing firm.

While the Commission preliminarily believes that the net capital minimums

[22] *See* The October 1987 Market Break, Report by the Division of Market Regulation of the U.S. Securities and Exchange Commission, February 1988 ("The Market Break Report"). Approximately 55 firms that introduced customer transactions on fully disclosed basis to a clearing broker-dealer ceased operations because of violations of the net capital rule caused by losses directly related to the October 1987 market break. Most of the losses resulted from defaults by customers that failed to make payment to the clearing broker-dealers for which the introducing broker-dealers were contractually liable. At least eleven of the fifty-five introducing firms made markets in OTC securities.

The losses sustained by these firms were result of unsecured customer debits for which they were contractually liable and declines in the market value of proprietary inventory. Three of the 55 firms also suffered substantial trading losses related to their options market making business. *See* p. 5–9 of the Report.

Approximately forty percent of the introducing firms that ceased operations re-opened within week after they closed. A number of firms forced to close because of unsecured customer debits were able to increase their net capital and therefore re-open by entering into subordination agreements with their clearing brokers. The remaining firms were able to acquire additional capital sufficient to bring them into compliance with the Commission's rules.

[23] During the October 1987 market break, Haas Securities Corporation, a market maker in 11 securities and a member of the NYSE, ceased operations. Haas introduced customer transactions on fully disclosed basis to L.F. Rothschild. As result of unsecured customer accounts introduced by Haas, Rothschild incurred reduction in net capital of between $15 and $20 million. *See* Market Break Report pg. 5–11.

[24] Under the net capital rule, bona fide clearing deposit made by an introducing firm with clearing firm is treated as asset readily convertible into cash and therefore part of the net capital of the introducing firm. *See* Rule 15c3–1(c)(2)(iv)(E).

should be increased substantially to reflect the risks entailed in the operation of many introducing broker-dealers, it is also cognizant of the importance of providing relatively free access to the securities industry when firms do not pose risks to their customers or the SIPC fund. Accordingly, introducing firms that never receive customer funds or securities and do not handle margin accounts would be allowed to remain in the $5,000 minimum net capital category. In order to avoid classification as a $50,000 broker-dealer, introducing broker-dealers who wish to remain in the $5,000 category would need to take the utmost care in advising their customers not to send funds or securities to the introducing firm. In addition to the requirement imposed on such introducing firms under the basic method, they would be required to maintain additional net capital of ¼ percent of the customer debit balances that they introduce.

Finally, the Commission proposes to increase the ability of introducing firms to participate in firm commitment underwritings. Under the current rule, broker-dealers that compute under the minimum required of introducing broker-dealers are prohibited from engaging in firm commitment underwritings. In light of the proposed higher minimum levels, introducing broker-dealers would be allowed to participate in firm commitment underwritings as long as they are only the selling dealer and not the statutory underwriter.[25]

The Commission requests comment on its proposed classes of introducing firms and the minimum levels associated with each class. Furthermore, the Commission requests comment regarding practices of firms that clear introduced accounts for setting financial responsibility standards for introducing firms. Specifically, the Commission requests comment on the effectiveness of standard-setting by the industry and whether higher minimum capital requirements are necessary.

C. *Over-the-Counter Market Makers*—In its Market Break Report, the Division of Market Regulation expressed its belief that the minimum amount of capital necessary for a broker-dealer to qualify as a market maker should be reviewed.[26] The Commission is also concerned about the limited amount of net capital the rule presently requires of a market maker. The market maker who maintains only the minimum amount of net capital required frequently is unable to assume even the smallest number of positions in the stocks in which it reportedly makes a market. Moreover, to the extent its net capital falls below the minimum amount required, such a firm is compelled to withdraw as market maker in at least some of its market making securities, an action which could impair the market in those securities. This has been a particular problem in the penny stock market, in which the failure of market making firms has resulted in the virtual elimination of a public market for many of the securities for which they made public markets. A sound marketplace requires that OTC market makers have the wherewithal to take positions in those securities in which they make markets.

The NASD has recommended that the capital requirements of certain market makers be increased. The NASD has recently approved rule amendments to its Small Order Execution System ("SOES") which require not only mandatory participation in the SOES for all market makers in certain securities, but also different maximum SOES order-size limits based upon the market characteristics of the securities.[27] Under mandatory SOES participation, market makers will be required to accept small orders received through the SOES system. Accordingly, the NASD Quality of Markets Committee has recommended that the Commission require an increase in capital to at least the amount required to support mandatory SOES positions.[28]

In response to the concerns noted above, the Commission proposes for comment two separate amendments. The first would increase the present ceiling of $100,000 net capital required of market makers to $1,000,000. The second would raise the requirement for each security priced at $5.00 or less per share to $1,000 from $500. Thus, for example, a firm making markets in 100 securities priced in excess of $5 and 50 securities priced below $5 would have a minimum net capital requirement of $300,000.

D. *Broker-Dealers That Transact a Business in Mutual Fund Shares*—The proposed amendments would also alter the capital requirements for broker-dealers that limit their activities to transactions in shares of registered investment companies. Currently, the minimum net capital requirement for this type of broker-dealer is the greater of $2,500 or 6⅔ percent of their aggregate indebtedness. This minimum requirement seems inappropriately low, however, considering that these firms receive money from customers and may also transact business directly with issuers. The Commission thus proposes for comment that the basic minimum requirement for mutual fund broker-dealers be raised to $25,000. However, for those mutual fund firms which do not handle any customer funds or securities and are not direct wire order firms, the Commission proposes a $5,000 minimum net capital requirement.

E. *Broker-dealers Who Trade Solely for Their Own Accounts*—Firms that trade solely for their own accounts ("trading firms") are currently required to maintain net capital of the greater of 6⅔ percent of their aggregate indebtedness or $25,000 under the basic method, or $100,000 under the alternative method. The Commission believes these firms should not be permitted to continue to compute under the alternative method.

The theory underlying the alternative method of calculating net capital is that, for large firms, customer debits will provide an approximate proxy of the amount of business and exposure of the firm. Because proprietary firms have no customer accounts, the alternative method does not limit leverage for those firms. This means that a firm with the $100,000 minimum capital required under the alternative method could have very large aggregate indebtedness and therefore very substantial leverage in its business, thereby increasing its assets substantially in relation to its net worth, without restriction except for the haircuts on its positions.

Yet, proprietary trading activities obviously are risky, and leverage exacerbates that risk. As pointed out in the October Market Break Report, several risk arbitrage firms lost an average of 41 percent of their combined net worth during the market break.[29] Moreover, such firms often have positions concentrated in a few stocks and may suffer substantial losses from arbitrage positions in a hostile takeover battle. Furthermore, the trading firms' business involves substantial risk to the extent that it consists of investing in large risk arbitrage or speculative positions with less diversification than that usually undertaken by larger firms.

[25] In a firm commitment underwriting, the underwriters agree to buy the entire issue of a security from the issuing corporation at specified price. The current net capital rule allows introducing broker-dealers to participate in underwritings only on a "best efforts or "all or nothing basis. The Commission proposes that as long as the firm is only selling dealer, i.e., purchases the issue from the statutory underwriter and not the issuer in order to sell, it can participate in firm commitment underwritings.

[26] *See* Market Break Report at p. 5–15.

[27] *See* File No. SR–NASD–88–1, Securities Exchange Act Release No. 25791 (June 9, 1988).

[28] *See* Report of Special Committee of the Regulatory Review Task Force on the Quality of Markets, NASD publication, 1988.

[29] *See* Market Break Report at p. 5–7

While these firms do not deal directly with customers, they do expose other broker-dealers, clearing entities, and creditors to substantial risk.

The Commission believes that failure of a proprietary firm with the relatively small cushion provided by the alternative method could impose financial risk on those contra parties and, in turn, their customers. Accordingly, the Commission proposes for comment that trading firms no longer be permitted to elect the alternative method. The Commission further proposes for comment that the minimum net capital requirement for those firms be raised to $100,000. As a consequence of these proposed amendments, most of those firms would be required to increase their capital by the difference between their current $100,000 minimum and 6⅔ percent of their aggregate indebtedness.

F *All Other Broker-Dealers*—As noted above, the Commission has preliminarily determined to maintain a $5,000 category for introducing brokers and dealers who do not handle customer funds or securities. In addition, under the current rule, broker-dealers that participate in underwritings on a "best efforts" basis and who promptly forward all customer funds to the issuer or a designated independent escrow agent, are required to maintain minimum capital of only $5,000. This firm category should include primarily firms that sell direct participation programs ("DPP") in real estate syndications. Because of the limited business conducted by DPP firms, the Commission is making no specific proposal for change in the minimum capital requirements. However, the proposed amendments would provide that any firm that maintains only the $5,000 level of capital would be prohibited from receiving customer funds or securities. If they do so, they would immediately be required to maintain the next higher level. The Commission believes that this new requirement would help to protect investors from having their cash and securities exposed while being handled by a broker-dealer with very limited capital. The Commission requests comments as to whether it is appropriate to permit best efforts underwriting firms to remain in the $5,000 residual category.

Finally, some firms do not take customer orders, hold customer funds or securities, or execute customer trades, yet register with the Commission because of the nature of their activities. An example of such a broker-dealer is a firm that identifies and locates potential merger or acquisition opportunities on behalf of a client, and thereby earns a percentage fee. For these miscellaneous types of broker-dealers, the Commission also proposes a $5,000 minimum net capital requirement.

For most firms that would be included in this category, this will not represent an increase in the required minimum net capital.[30] Some mutual fund dealers that would fall into this category will go to a $5,000 requirement from a $2,500 requirement under the existing rule. Like the DPP firms, however, the Commission proposes that these firms be prohibited from having any contact with customer funds or securities. In addition, other firms, such as floor brokers, which may avail themselves presently of the $5,000 requirement, will continue to be able to comply with that requirement.

G. *Phase-In Schedule*—Because of the impact of the increased minimum capital requirements on some broker-dealers, the Commission proposes that the minimums be staggered over a period of four years from the effective date. Each year after the effective date, the minimum requirements for affected broker-dealers would increase by 25 percent of the increase. Thus, for example, if the increase was from $25,000 to $250,000, the minimum requirement one year after the effective date would be $81,250 (($225,000×.25)+$25,000). The proposed timing of the increases is summarized below:

i. *Firms That Hold Customer Funds or Securities (Aggregate Indebtedness Method)*
   a. Current rule: $25,000
   b. By 12/31/90: $81,250
   c. By 12/31/91: $137,500
   d. By 12/31/92: $193,750
   e. By 12/31/93: $250,000

ii. *Firms That Hold Customer Funds or Securities (Alternative Method)*
   a. Current Rule: $100,000
   b. By 12/31/90: $137,500
   c. By 12/31/91: $175,000
   d. By 12/31/92: $212,500
   e. By 12/31/93: $250,000

iii. *Clearing Firms That Do Not Hold Customer Funds or Securities*
   a. Current Rule: $25,000
   b. By 12/31/90: $43,750
   c. By 12/31/91: $62,500
   d. By 12/31/92: $81,250
   e. By 12/31/93: $100,000

iv. *Introducing Firms That Routinely Receive Customer Funds or Securities*
   a. Current rule: $25,000
   b. By 12/31/90: $43,750
   c. By 12/31/91: $62,500
   d. By 12/31/92: $81,250
   e. By 12/31/93: $100,000

v. *Introducing Firms That Do Not Routinely Receive Customer Funds or Securities*
   a. Current rule: $5,000
   b. By 12/31/90: $16,250
   c. By 12/31/91: $27,500
   d. By 12/31/92: $38,750
   e. By 12/31/93: $50,000

vi. *Mutual Fund Dealers That Routinely Receive Customer Funds*
   a. Current Rule: $2,500
   b. By 12/31/90: $8,125
   c. By 12/31/91: $13,750
   d. By 12/31/92: $19,375
   e. By 12/31/93: $25,000

The Commission specifically requests commentators to focus attention on the phase-in provisions and to indicate whether the proposed timing and method of phase-in are appropriate. In particular, the Commission is concerned that, given the significant level of risk present in the system, a four-year phase-in may be too long to achieve the maximum degree of customer and systemic protection contemplated by these proposals. On the other hand, given the size of some of the increases in minimums proposed, the Commission is interested in permitting, to the extent practicable, a smooth transition with minimal disruption for both firms and customers.

H. *Request for Comment*—The Commission requests comment on the minimum capital requirements set forth in the proposed amendments to the rule. In this connection, the Commission recognizes that the determination of the appropriate levels of minimum net capital necessarily requires consideration of the benefits of higher standards, as well as the impact of those standards on broker-dealers. In arriving at the proposed new minimum net capital requirements, the Commission, on the basis of available data and its regulatory experience, has attempted to balance the cost of raising additional capital (and the effect on those that will not be able to raise it) against the above described benefits of a prudent financial responsibility standard. The Commission, nevertheless, requests comment on alternative methods that might be used to establish minimum net capital requirements. More specifically, the Commission asks if a minimum absolute dollar amount requirement

[30] To qualify presently for a $5,000 minimum net capital requirement under paragraph (a)(2) of Rule 15c3-1, in addition to not carrying customer accounts, the broker-dealer must limit itself to certain specified activities in paragraph (a)(2). The Division has issued no-action positions that make the $5,000 minimum requirement available to certain firms that do not handle customer funds or securities, but engage in activities not specified in paragraph (a)(2).

could be based on quantifiable measures of risk.

As discussed, the Commission is concerned with the large dollar amounts of customer fully-paid securities in the possession of broker-dealers with minimum capital. Some broker-dealers have access to several million dollars of fully-paid customer securities, but are required to maintain only $25,000 in net capital. This financial commitment does not appear commensurate with the resulting risk to SIPC or the investment community. The Commission requests comment as to whether this concern is best addressed by a larger minimum dollar requirement for broker-dealers that carry customer accounts or by requiring broker-dealers that carry customer accounts to regularly determine the dollar amount of customer fully-paid securities they have in their possession and take a charge against these amounts when computing their net capital requirement. The Commission also seeks comment regarding whether some combination of the above would be appropriate. Finally, the Commission requests comment as to whether it would be appropriate to have a smaller minimum dollar requirement (for example $100,000) for carrying firms that take a capital charge against customer fully-paid securities in their possession, and a larger minimum dollar requirement (for example $250,000) for firms that chose not to.

The Commission also requests comment on the costs imposed by the proposed amendments. While a precise estimate of the costs of the proposals is difficult, a rough estimate can be made based on the relative cost of capital. Persons who enter the broker-dealer business generally do so through partnerships or through corporations. In either case, the individual or individuals who establish the firm can deposit into the entity assets they have or cash they have borrowed. These assets are deemed to be capital of the broker-dealer. Indeed, as has happened before, a person may borrow $5,000 on a credit card and deposit the money as capital into a broker-dealer corporation and thus be in compliance with the net capital rule requirements for a $5,000 broker-dealer. In addition, a broker-dealer may, under the net capital rule, count as net capital monies borrowed from another person if subordinated in conformity with the net capital rule requirements.[31]

Once in the broker-dealer corporation, the funds may be invested in high grade commercial paper, bank certificates of deposit or short-term government securities, all of which, as money market instruments, receive little or no haircut. The Commission estimates the difference between the lending rate and the rate the broker-dealer could earn on the above investments to be approximately three to four percent annually before taxes. Assuming a $45,000 borrowing for an introducing firm which only occasionally receives customer funds and securities (and thereby would qualify for the proposed $50,000 introducing level), the cost of the additional capital (assuming a net cost of 4%) would be only $1,800 per year.

From recent financial filings with the NASD [32] compiled as of March 31, 1989, it was determined that 173 clearing firms would need, on average, an additional $123,000 to comply with the new $250,000 minimum requirement. Using the above assumptions on the cost of capital (a four percent spread), in order to comply with the new minimum net capital requirement, it would cost each of the 173 clearing firms on average approximately $5,000 per year or a total of $850,000. Additionally, of the 763 market maker firms, 63 have required capital of between $100,000 and $1,000,000 and thus may be affected by the new higher ceiling on additional capital required of market makers.

As to introducing firms, NASD data as of the same period does not distinguish between introducing firms that routinely handle funds and securities and those that do not. Assuming that every introducing firm handles customer property on a routine basis, the data indicate that 1428 introducing firms would need, on average, $65,702 each to comply with the new $100,000 minimum capital requirement. The total cost of raising this capital based on a 4 percent cost of capital assumption is $3.8 million or $2,600 per firm. Assuming every introducing firm only occasionally handles customer funds and securities and thus would have a $50,000 minimum requirement, it was determined that 1,063 firms would need to raise an average of $28,555. Making the same cost assumption as discussed above, the cost of raising their capital requirements would be $1.2 million or $1,100 per firm per year.

The Commission acknowledges that broker-dealers may incur costs other than the estimated 4 percent referred to above in obtaining additional capital. For example, if the borrowing is done personally, the owner of the firm will likely be required to encumber personal assets. However, even if the estimated cost of obtaining additional capital were 8 percent, the average annual cost for a clearing firm would be only $10,000. At the 8 percent level, an introducing firm would incur annual costs of either $5,200 or $2,200 per year, depending on the method by which the firm elects to do business.

The Commission preliminarily does not believe that the costs described above will have the effect of barring entry or making unprofitable any group of entrepreneurs who have a serious commitment to developing a brokerage firm. The Commission requests comment, however, on the specific costs to broker-dealers of its proposal. In this connection, the Commission asks for comment as to the amount of net capital in excess of the early warning levels [33] that firms would normally maintain as a business matter. Additionally, commentators are requested to provide information regarding their likely sources for obtaining additional capital, the cost of those funds, and the return on the investment they would likely obtain from the use of those funds.

The Commission also asks if particular firms will change their operations so they can operate under one of the lower minimum net capital categories permitted under the proposals. Commentators are further encouraged to provide information regarding their lines of business and related revenues and the need for the Commission to determine if additional classes of firms should be created to accommodate the needs of smaller broker-dealers.

The Commission also requests comment from those small broker-dealers that elect to carry customer accounts rather than to take advantage of the lower capital requirements that are currently in the rule for introducing firms. The Commission is particularly interested in receiving input from smaller carrying firms regarding the reasons they have elected to remain as carrying firms and be subject to the higher minimum requirements and how their business would be affected if they were to switch to introducing their customers to another firm. The

[31] *See* Appendix D to the net capital rule, Rule 15c3-1d.

[32] Under Securities Exchange Act Rule 17a-5 (17 CFR 240.17a-5), registered broker-dealers are required to file reports containing certain financial and operational information with both their designated examining authority and the Commission. These reports are filed on the Uniform Financial and Operational Combined Uniform Single Report (commonly known as the FOCUS report).

[33] *See* 17 CFR 240.17a-11.

Commission is specifically interested in receiving input from firms regarding the potential impact on revenues and expenses in the event these broker-dealers decided to conform to the limitations imposed under the provisions of the lower capital requirements (such as not handling in any way customer funds and securities).

Finally, the Commission requests comment from those firms that may not be able to raise additional funds. The Commission requests input on whether the alternatives proposed by the Commission with respect to maintaining low levels of minimum net capital are flexible enough to permit those firms to continue to remain in business—even if that means they will have to forego handling funds and securities—or whether those firms will have to cease doing business as registered broker-dealers. For those firms that would cease doing business because of the increase in minimums, the Commission asks what factors would be important in making that decision.

III. Securities Haircuts

A. *Equity Securities*—The current rule requires different levels of deductions as to equity securities and different computations of those deductions depending on the broker-dealer's election of either the basic or alternative methods.[34] Although the nation's equity securities markets experienced an extraordinary surge of volume and price volatility during October 1987 in most circumstances the deductions incurred for those securities appear adequate. However, the distinctions in the haircuts between the alternative and basic methods, given the proposed raising of the minimum requirements, do not seem appropriate.

Haircuts generally are designed to provide a cushion of capital against adverse fluctuations in the prices of securities. The net capital rule haircut has varied over the years. Generally, equity haircuts were settled some 25 years ago at 30 percent of the greater of the long or short position. The lesser position was deemed by the rule to be hedged by the greater position but only to the extent that it did not exceed 25 percent of the greater position. The theory, of course, is since market movements are responsible for a substantial percentage of price movements for individual stocks, diversified long positions (or diversified short positions) will to some degree move in the same direction.

In 1975, the Commission adopted the present rule and a new, alternative method for determining haircuts. In order to facilitate market-making, the Commission determined to allow firms electing the alternative method to take a 15 percent haircut on the long positions. The haircut on the short position, to the extent it exceeded in value 25 percent of the long position, was taken at 30 percent of the market value. Firms electing the alternative, however, were required to have a minimum net capital of $100,000, rather than the $25,000 minimum otherwise required. This additional cushion of capital was deemed necessary in the event the haircuts proved inadequate.

Given the Commission's experience with the haircuts under the alternative method and because the Commission is revisiting its minimum net capital levels generally, the Commission preliminarily believes that the haircuts for equity positions under the aggregate indebtedness method should be lowered. However, haircuts may be appropriately reduced only if the minimum levels of net capital are raised because the value of a particular security could easily move more than the lower haircut. Moreover, generally, except for tender offer situations, a long would seem to be no less volatile or risky than a short position, and thus should not be subject to a different haircut.

Under the proposed amendments, the calculation of haircuts for those under the alternative method and those on the aggregate indebtedness method would be standardized.[35] The haircuts for both long and short positions would be 15 percent of the market value. An additional 15 percent would be assessed on the market value of the lesser position to the extent it exceeded 25 percent of the greater position. The 15 percent deduction for long positions would be available to those firms which have more than $100,000 in net capital. Under the proposed amendments, the alternative method for computing concentration charges would be adopted.

The Commission invites comment on particular methods for determining haircuts on equity securities positions. The Commission further requests comment on whether the use of historical price volatility data, such as the Commission has used in the past for developing haircuts for debt securities, is an appropriate method for determining haircuts on equity securities.

B. *Zero Coupon and Stripped Securities*—The Commission also proposes to amend its securities deductions to exclude instruments that include only principal or interest. Under the current rule, for example, any security that is "* issued or guaranteed as to principal or interest by the United States or any agency thereof *" incurs a haircut of zero to six percent, depending upon the maturity of the security. These percentages, however, were drafted to reflect the price volatilities of securities that include both principal and interest and thus do not contemplate the risk inherent in "stripped" securities. Under the proposal, these zero-coupon securities (other than those issued by the Treasury) would be subject to the 15 percent haircut proposed for equity securities.

The Commission recognizes that, while stripped securities have different price volatilities for differing maturities than corresponding coupon bonds, there is a distinct benefit in creating a uniform haircut across all maturities. Preliminarily, the Commission believes that, given the relatively lower level of activity in coupon instruments as compared to Treasury instruments that contain principal and interest, a uniform haircut is more practical because it minimizes the complexity of the rule. If the Commission does not adopt a uniform haircut for coupon instruments, it is likely that a separate series of maturity categories will have to be created for those securities. The Commission requests comment as to the appropriate haircut for zero-coupon Treasury as well as other stripped instruments.

IV Aggregate Indebtedness

The aggregate indebtedness test has been included in the net capital rule since its adoption in 1942. Generally, the term aggregate indebtedness includes all of the liabilities and/or obligations (contingent or otherwise) of the broker-dealer. By limiting the amount of indebtedness of registered broker-dealers to a percentage of net capital, the rule limits the leverage that broker-dealers that elect the basic method are able to attain. The rule however, specifically excludes from aggregate indebtedness certain prescribed liabilities. In the two classes of liabilities described below, the Commission believes the 6⅔ percent aggregate indebtedness charge may not be appropriate, particularly in light of

[34] *See* note 4, *supra*.

[35] Under the proposed amendments, the broker-dealer would notify only its designated examining authority, and not the Commission (as is currently the case), of its election to operate under the alternative method.

the proposed increases in the minimum requirements.

A. *Mutual Funds Payable Offset by Fails to Deliver*—The present rule requires a broker-dealer that owes money to a mutual fund in connection with a purchase of shares of that fund to include that amount in aggregate indebtedness even if offset by a receivable from another broker-dealer related to that transaction. This payable arises out of a purchase by the broker-dealer directly from the fund of shares of the fund for another broker-dealer (presumably for its customer). The first broker-dealer owes money to the fund secured by the investment company shares. The second broker-dealer owes money to the first broker-dealer. The debt on the first broker-dealer's books is offset by a receivable from the second broker-dealer, classified generally as a fail to deliver. That receivable is also secured by the mutual fund shares, since delivery of the shares will not occur until payment of the obligation by the second broker-dealer. Our experience indicates that, as a general rule, most of these fails to deliver are completed. The Commission believes that, to the extent that this class of fails to deliver is offset by a liability to the fund, a capital cushion of 6⅔ percent to cover the liability is unnecessary. Rather than the 6⅔ percent charge that results under the current rule, the Commission proposes that this requirement be lowered to one percent of the liability amount when an offset exists.

B. *Stock Loan and Stock Borrowed*—A stock loan payable is a liability arising from the receipt of cash collateral from a person who borrows securities from the broker-dealer. It is considered aggregate indebtedness even if the securities that were loaned were borrowed from another broker-dealer. When one broker-dealer lends securities to another broker-dealer, the lending broker-dealer generally receives cash collateral in excess of the value of the securities lent. That collateral is deemed to be a liability on the books of the lending broker-dealer, since that broker-dealer owes money to the borrowing broker-dealer.

Much of the stock lent by one broker-dealer to another broker-dealer has been borrowed from yet a third broker-dealer or other person. That borrowing, if collateralized by cash, results in a receivable from the lending person. The borrowing broker-dealer has turned over cash to the lending entity which in turn was received from the second borrower of securities. In that situation, the firm has a stock loan payable versus a stock loan receivaule analogous to a government securities repurchase book. Generally, excluding fraud, these are not riskv positions. The major risk in such positions (normally characterized as a finder's book) is the liquidity risk. If a perception arises that a broker-dealer is in financial distress, stock borrowers will return stock to the lending broker-dealer for cash which cannot be as readily obtained from the persons to whom the failing broker-dealer has given cash. This run on a broker-dealer would likely impair its ability to function as a clearing agent.

Given the matched nature of those related payables and receivables, the Commission does not believe that risk merits a charge of 6⅔ percent on the dollar amount of the liability. The Commission believes, however, that a lower cushion (one percent) against the liquidity risk of a large finder's book is appropriate. The one percent number has previously been used by the Commission in the net capital rule in order to curtail leverage.[36] The Commission thus proposes that liabilities related to a corresponding securities borrowing incur only a 1 percent charge against net capital.

V Technical Amendments

Because of the proposed amendments to the minimum net capital requirements and the equity securities haircuts, it became possible for the Commission to merge paragraph (f) with paragraph (a) of the rule. As a result, the proposed rule amendments include several technical changes to the rule. For example, all references to paragraph (f) would be deleted. Other examples include the proposed amendments to the concentration charges under paragraph (c)(2)(vi)(M) and the contractual commitment charge under paragraph (c)(2)(viii). The proposed amendments would also delete a provision from paragraph (c)(2)(ix) of Rule 15c3–1 that expired on January 1, 1983.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the objective of the proposed amendments is to further the purposes of the various financial responsibility rules which provide safeguards with respect to the financial responsibility and related practices of brokers and dealers. In sum, the Analysis states that the proposed amendments would subject smaller broker-dealers to higher capital requirements. A copy of the Analysis may be obtained by contacting David I.A. Abramovitz, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2398.

VII. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78o(c)(3), 78q and 78w, the Commission proposes to amend § 240.15c3–1, of Title 17 of the Code of Federal Regulations in the manner set forth below.

VIII. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

IX. Text of the Proposed Amendments

In accordance with the foregoing, 17 CFR part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w 240.15c3–1 is also issued under secs. 15(c)(3), 15 U.S.C. 78*o*(c)(3).

2. In § 240.15c3–1 by removing paragraph (f) and paragraphs (a)(8) and (a)(9), removing and reserving paragraph (c)(2)(vi)(I), adding paragraphs (c)(1)(xiv) and (c)(1)(xv) and revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (c)(1)(xiii), (c)(2)(i)(C)(*1*), (c)(2)(iv)(B), (c)(2)(iv)(F)(*3*)(*i*)(*B*), (c)(2)(iv)(F)(*3*)(*i*)(*C*), (c)(2)(vi), (c)(2)(vi)(A)(*1*), (c)(2)(vi)(A)(*5*), (c)(2)(vi)(B)(*2*), (c)(2)(vi)(F)(*1*), (c)(2)(vi)(J), (c)(2)(vi)(M), (c)(2)(viii), (c)(2)(ix), (c)(2)(x)(A) (*2*) through (*4*), (c)(2)(x)(A)(*5*), (c)(9), and (c)(10).

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) No broker or dealer shall maintain net capital less than the amounts required as to that broker or dealer under this paragraph.

Ratio Requirements

Aggregate Indebtedness Method

(1)(i) No broker or dealer other than one that elects the provisions of paragraph (a)(1)(ii) of this section shall permit his aggregate indebtedness to all other persons to exceed 1500 percent of his net capital (or 800 percent of his net capital for 12 months after commencing business as a broker or dealer).

[36] *See* Rule 15c3–1(f)(5)(iv).

Alternative Method

(ii) A broker or dealer who carries customer accounts and holds customer funds or securities may elect not to be subject to the limitations of paragraph (a)(1)(i) of this section. Such broker or dealer shall not permit his net capital to be less than 2 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3a). Such broker or dealer shall notify the Examining Authority for such broker or dealer. in writing, of his election to operate under this paragraph. Once a broker or dealer has notified its Examining Authority, he shall continue to operate under this paragraph unless a change is approved upon application to the Commission.

(A) In addition to the foregoing, a broker or dealer electing this alternative shall:

(*1*) make the computation required by 17 CFR 240.15c3–3(e) and set forth in Exhibit A, 17 CFR 240.15c3–3a, on a weekly basis and, in lieu of the 1 percent reduction of certain debit items required by Note E (3) in the computation of its Exhibit A requirement, reduce aggregate debit items in such computation by 3 percent;

(*2*) include in Items 7 and 8 of Exhibit A, 17 CFR 240.15c3–3a, the market value of specified items therein more than 7 business days old;

(*3*) exclude credit balances in accounts representing amounts payable for securities not yet received from the issuer or its agent which securities are specified in paragraphs (c)(2)(vi) (A) and (E) of this section and any related debit items from the Exhibit A requirement for 3 business days; and

(*4*) Deduct from net worth in computing net capital 1 percent of the contract value of all failed to deliver contracts or securities borrowed which were allocated to failed to receive contracts of the same issue and which thereby were excluded from Items 11 or 12 of Exhibit A, 17 CFR 240.15c3–3a.

Futures Commission Merchants

(iii) No broker or dealer registered as a futures commission merchant shall permit his net capital to be less than 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the customer's account).

Minimum Requirements

Brokers or Dealers That Carry Customer Accounts

(2)(i) A broker or dealer that carries customer or broker or dealer accounts and holds funds or securities for those persons shall maintain net capital of not less than $250,000 (see paragraphs (a) and (b) of appendix (E) (17 CFR 240.15c3–1e) for temporary minimum requirements).

Brokers or Dealers That Carry Customer Accounts, But Do Not Generally Hold Customer Funds or Securities

(ii) A broker or dealer who is exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(2)(i) shall maintain net capital of not less than $100,000 (see paragraph (c) of appendix (E) (17 CFR 240.15c3–1e) for temporary minimum requirements).

Dealers, Underwriters and Arbitragers

(iii) A dealer shall maintain net capital of not less than $100,000 (see paragraph (c) of appendix (E) (17 CFR § 240.15c3–1e) for temporary minimum requirements) if he does not receive, directly or indirectly, funds or securities from, or owe money or securities to, customers and does not carry accounts of, or for, customers. For purposes of this section, the term "dealer" includes underwriters and any broker or dealer who endorses or writes options otherwise than on a registered national securities exchange or a facility of a registered national securities association.

Brokers Who Introduce Customers' Accounts and Routinely Receive Funds or Securities

(iv) A broker or dealer shall maintain net capital of not less than $100,000 (see paragraph (d) of appendix (E) (17 CFR 240.15c3–1e) for temporary minimum requirements) plus ¼ percent of debit balances in introduced customers' cash and margin accounts if it is exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(2)(ii) of this section.

(v) Those introducing brokers or dealers that receive, but do not promptly forward, customer funds and securities shall maintain the minimum net capital requirement as set forth in paragraph (a)(2)(i) of this section.

Brokers Who Introduce Customer Accounts But Do Not Routinely Receive Funds or Securities

(vi) An introducing broker or dealer that is exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(2)(ii) of this section but does not routinely receive customer funds or securities and effects ten or fewer transactions per year in securities for his own investment account with or through another registered broker or dealer shall maintain net capital of not less than $50,000 (see paragraph (e) of appendix (E) for temporary minimum requirements) plus ¼ percent of debit balances in introduced customers' cash and margin accounts.

(A) A broker or dealer operating under paragraph (a)(2)(iv) of this section and under this paragraph (a)(2)(vi) of this section may participate as a selling dealer in a firm commitment underwriting but may not enter into a contractual commitment with the issuer for the purchase of shares related to that underwriting.

(B) A broker or dealer operating under this paragraph may engage in the activities allowed under paragraphs (a)(2)(vii) and (a)(2)(ix) of this section.

Brokers or Dealers Engaged Solely in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(vii) A broker or dealer may maintain net capital of not less than $25,000 (see paragraph (f) of appendix (E) (17 CFR 240.15c3–1e) for temporary minimum requirements) if he meets all of the following conditions:

(A) His dealer transactions are limited to the purchase, sale and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account directly from the issuer on other than on a subscription way basis, except that he may also effect ten or fewer transactions per year in other securities for his own investment account with or through another registered broker or dealer;

(B) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers; and

(C) His transactions as broker are limited to one or more of the following;

(*1*) The sale and redemption of redeemable shares of registered investment companies or of interests or participation in an insurance company separate account whether or not registered as an investment company·

(*2*) The solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States;

(3) The sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(4) The activities allowed under paragraph (a)(2)(ix) of this section.

Municipal Securities Brokers' Brokers

(viii) A municipal securities brokers' broker, as defined in subsection (A) of this paragraph (a)(2)(viii), may elect not to be subject to the limitations of paragraphs (c)(2)(ix) of this section, provided that such brokers' broker complies with the requirements set out in paragraphs (a)(2)(viii)(B), (C) and (D) of this section.

(A) The term municipal securities "brokers' broker" shall mean a municipal securities broker or dealer who acts exclusively as an undisclosed agent in the purchase or sale of municipal securities for a registered broker or dealer or registered municipal securities dealer, who has no "customers" as defined in paragraph (c)(6) of this section and who does not have or maintain any municipal securities in its proprietary or other accounts.

(B) In order to qualify to operate under this paragraph (a)(2)(viii), a brokers' broker shall at all times have and maintain net capital of not less than $150,000.

(C) For purposes of this paragraph (a)(2)(viii), a brokers' broker shall deduct from net worth 1 percent of the contract value of each municipal failed to deliver contract which is outstanding 21 business days or longer. Such deduction shall be increased by any excess of the contract price of the fail to deliver over the market value of the underlying security.

(D) For purposes of this paragraph (a)(2)(viii), a brokers' broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by municipal securities outstanding for not more than one business day and offset by municipal securities failed to deliver of the same issue and quantity. In no event may a brokers' broker exclude any overnight bank loan attributable to the same municipal securities failed to deliver contract for more than one business day. A brokers' broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receives as required by Rule 15c3-1(c)(2)(iv)(E).

Other Brokers or Dealers

(ix) A broker or dealer that does not receive, directly or indirectly, funds or securities from, or owe money or securities to, customers and does not carry accounts of, or for, customers and that engages in ten or fewer transactions in securities per year for his own account with or through another registered broker or dealer, shall maintain net capital of not less than $5,000. Those brokers or dealers that introduce cash accounts under this paragraph must maintain net capital of not less than the amounts required under this paragraph (a) plus ¼ percent of debit balances in introduced customers' cash and margin accounts.

Consolidated Minimum Requirements

(3) A broker or dealer shall maintain net capital of not less than its net capital requirement plus the sum of each broker's or dealer's subsidiary or affiliate minimum net capital requirements, which is consolidated pursuant to appendix (C), 17 CFR 240.15c3-1c.

Additional Capital Requirements for Market Makers

(4) A broker or dealer engaged in activities as a market maker as defined in paragraph (c)(8) of this section shall maintain net capital in an amount not less than $2,500 for each security in which he makes a market (unless a security in which he makes a market has a market value of $5 or less, in which event the amount of net capital shall be not less than $1,000 for each such security) based on the average number of such markets made by such broker or dealer during the 30 days immediately preceding the computation date. Under no circumstances shall he have net capital less than that otherwise required by the other provisions of paragraph (a) of this section, or be required to maintain net capital of more than $1,000,000 unless otherwise required by the other provisions of paragraph (a).

Additional Capital Requirements for Brokers or Dealers Engaging in Reverse Repurchase Agreements

(5) A broker or dealer shall maintain net capital in addition to the amounts otherwise required under paragraph (a) of this section in an amount greater than 10 percent of:

(i) The excess of the market value of United States Treasury Bills, Bonds and Notes subject to reverse repurchase agreements with any one party over 105 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party; and

(ii) The excess of the market value of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in Section 3(a)(41) of the Act subject to reverse repurchase agreements with any one party over 110 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party; and

(iii) The excess of the market value of other securities subject to reverse repurchase agreements with any one party over 120 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party.

(c)

Exclusions From Aggregate Indebtedness

(1)

(xiii) Deferred tax liabilities;

(xiv) Eighty-five percent of amounts payable to a registered investment company related to fail to deliver receivables arising out of purchases of shares of those registered investment companies; and

(xv) Eighty-five percent of amounts payable against securities loaned for which the broker or dealer has a receivable related to securities of the same class and issue that are securities borrowed by the broker or dealer.

(2)

(i)

(C)

(1) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with paragraph (c)(2)(vi) and Appendices (A) and (B), 17 CFR 240.15c3-1a and 240.15c3-1b, the appropriate Federal and State tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed.

Certain Unsecured and Partly Secured Receivables

(iv)(A)

(B) All unsecured advances and loans, deficits in customers' and non-customers' unsecured and partly secured notes; deficits in special omnibus accounts maintained in compliance with the requirements of 12 CFR 220.4(b) of Regulation T under the Securities Exchange Act of 1934, or similar accounts carried on behalf of another broker or dealer, after application of calls for margin, marks to the market or other required deposits

which are outstanding 5 business days or less; deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less, except deficits in cash accounts as defined in 12 CFR 220.4(c) of Regulation T under the Securities Exchange Act of 1934 for which not more than one extension respecting a specified securities transaction has been requested and granted, and deducting for securities carried in any of such accounts the percentages specified in paragraphs (c)(2)(vi) or appendix A (17 CFR 240.15c3–1a); the market value of stock loaned in excess of the value of any collateral received therefor; receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of $5,000 per shipment and all free shipments (other than mutual fund redemptions) outstanding more than 7 business days, and mutual fund redemptions outstanding more than 16 business days; any collateral deficiencies in secured demand notes as defined in Appendix D (17 CFR 240.15c3–1d);

(F)

(3)(i)(A)

(B) The excess of the aggregate repurchase agreement deficits with any one party over 25 percent of the broker or dealer's net capital before the application of paragraphs (c)(2)(vi) of this section (less any deduction taken with respect to repurchase agreements with that party under subparagraph (F)(3)(i)(A)) or, if greater:

(C) The excess of the aggregate repurchase agreement deficits over 300 percent of the broker's or dealer's net capital before the application of paragraph (c)(2)(vi) of this section.

Securities Haircuts

(vi) Deducting the percentages specified in paragraphs (C)(2)(vi)(A)–(M) of this section (or the deductions prescribed for securities positions set forth in Appendix (A), 17 CFR 240.15c3–1a) of the market value of all securities, money market instruments or options in the proprietary or other accounts of the broker or dealer.

Government Securities

(A)*(1)* In the case of a security consisting of principal and interest (except for stripped instruments issued by the United States Treasury) issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position in each of the categories specified below are:

(5) In the case of a Government securities dealer which reports to the Federal Reserve System, which transacts business directly with the Federal Reserve System, and which maintains at all times a minimum net capital of at least $50,000,000, before application of the deductions provided for in paragraph (c)(2)(vi) of this section, the deduction for a security issued or guaranteed as to principal or interest by the United States or any agency thereof shall be 75 percent of the deduction otherwise computed under paragraph (c)(2)(vi)(A) of this section.

Municipals

(B)

(1)

(2) In the case of any municipal security (other than those specified in paragraph (c)(2)(vi)(B)*(1)*) consisting of principal and interest which is not traded flat or in default as to principal or interest, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

Nonconvertible Debt Securities

(F)*(1)* In the case of nonconvertible debt securities consisting of principal and interest having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

*

(I) [Removed and reserved.]

All Other Securities

(J) In the case of all securities or evidences of indebtedness, except those described in Appendix (A), 17 CFR 240.15c3–1a which are not included in any of the percentage categories enumerated in paragraphs (c)(2)(vi) (A)–(H) of this section or (K)(ii) of this section, the deduction shall be 15 percent (30 percent if the broker's or dealer's net capital requirement as computed under paragraph (c)(2) of this section is less than $100,000) of the market value of the greater of the long or short positions and to the extent the market value of the lesser of the long or short positions exceeds 25 percent of the market value of the greater of the long or short positions, the percentage deduction on such excess shall be 15 percent of the market value of such excess. No deduction need be made in the case of *(1)* a security which is convertible into or exchangeable for another security within a period of 90 days, subject to no condition other than the payment of money, and the other securities into which such security is convertible or for which it is exchangeable are short in the accounts of such broker or dealer or *(2)* a security which has been called for redemption and which is redeemable within 90 days.

*

Undue Concentration

(M)*(1)* In the case of money market instruments or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an issuer (other than "exempt securities" and redeemable securities of an investment company registered pursuant to the Investment Company Act of 1940), which are long or short in the proprietary or other accounts of a broker or dealer, including securities which are collateral to secured demand notes defined in appendix (D), 17 CFR 240.15c3–1d, and which have a market value of more than 10 percent of the "net capital" of a broker or dealer before the application of paragraphs (c)(2)(vi)(B)–(H) and appendix (A), 17 CFR 240.15c3–1a, there shall be an additional deduction from net worth and/or the Collateral Value for securities collateralizing a secured demand note defined in appendix (D), 17 CFR 240.15c3–1d, equal to 50 percent of the percentage deduction otherwise provided by this paragraph (c)(2)(vi) (B–I) or appendix (A), 17 CFR 240.15c3–1a, on that portion of the securities position in excess of 10 percent of the "net capital" of the broker or dealer before the application of paragraph (c)(2)(vi) and appendix (A), § 240.15c3–1a.

(2) In the case of securities underwritten, the deduction required by this paragraph (c)(2)(vi)(M) shall be applied after 11 business days.

(3) In the case of securities described in paragraph (c)(2)(vi)(J), the additional deduction required by this paragraph (c)(2)(vi)(M) shall be 15 percent on that portion of the securities position and secured demand note collateral in excess of 10 percent of the net capital before the application of paragraph

(c)(2)(vi) and appendix A, 17 CFR 240.15c3–1a.

(4) This paragraph (c)(2)(vi)(M) shall be applied to an issue of equity securities only on the market value of such securities in excess of $10,000 or the market value of 500 shares, whichever is greater, or $25,000 in the case of a debt security.

(5) This paragraph (c)(2)(vi)(M) shall apply notwithstanding any long or short position exemption provided for in paragraph (c)(2)(vi)(J) of this section (except for long or short position exemptions arising out of the first proviso to paragraph (c)(2)(vi)(J)) and the deduction on any such exempted position shall be 15 percent of that portion of the securities position in excess of 10 percent of net capital before the application of paragraph (c)(2)(vi) and appendix (A), 17 CFR 240.15c3–1a.

(6) This paragraph (c)(2)(vi)(M) will be applied to an issue of municipal securities having the same security provisions, date of issue, interest rate, day, month and year of maturity only if such securities have a market value in excess of $500,000 in bonds ($5,000,000 in notes) or 10% of tentative net capital, whichever is greater, and are held in position longer than 20 business days from the date the securities are received by the syndicate manager from the issuer.

(7) Any specialist who is subject to a deduction required by this paragraph (c)(2)(vi)(M), respecting his specialty stock, who can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialist's specialty stock and that such deduction need not be applied in the public interest for the protection of investors, may upon a proper showing to such Examining Authority have such undue concentration deduction appropriately decreased, but in no case shall the deduction prescribed in paragraph (c)(2)(vi)(J) of this section be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this subdivision, which shall contain a summary of the justification for the granting of the application.

Open Contractual Commitments

(viii) Deducting, in the case of a broker or dealer who has open contractual commitments (other than those option positions subject to appendix (A), 17 CFR 240.15c3–1a), the respective deductions as specified in paragraph (c)(2)(vi) of this section or Appendix (B), 17 CFR 240.15c3–1b, from the market value (which shall be the market value whenever there is a market) on each net long and each net short position contemplated by any open contractual commitment in the proprietary or other accounts of the broker or dealer.

(A) The deduction for contractual commitments in those securities that are treated in paragraph (c)(2)(vi)(J) of this section shall be 30 percent unless the class and issue of the securities subject to the open contractual commitment deduction are listed for trading on a national securities exchange or are designated as NASDAQ National Market System Securities.

(B) A broker or dealer that maintains in excess of $250,000 of net capital need not deduct from net worth any amount computed under this paragraph that is less than $150,000.

(C) The deduction with respect to any single commitment shall be reduced by the unrealized profit in such commitment, in an amount not greater than the deduction provided for by this paragraph (or increased by the unrealized loss), in such commitment, and in no event shall an unrealized profit on any closed transactions operate to increase net capital.

(ix) Deducting from the contract value of each failed to deliver contract which is outstanding five business days or longer (21 business days or longer in the case of municipal securities) the percentages of the market value of the underlying security which would be required by application of the deduction required by paragraph (c)(2)(vi). Such deduction, however, shall be increased by any excess of the contract price over the market value of the underlying security or reduced by any excess of the market value of the underlying security over the contract value of the fail, but not to exceed the amount of such deduction. The designated examining authority for the broker or dealer may, application of the broker or dealer, extend for a period up to 5 business days, any period herein specified when it is satisfied that the extension is warranted. The designated examining authority upon expiration of the extension may extend for one additional period up to 5 business days, any period herein specified when it satisfied that the extension is warranted.

(x)(A)

(2) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x) involving a long position in a security, other than an option, and a short position in a call option, the deduction shall be 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of this section) of the market value of the long position reduced by any excess of the market value of the long position over the exercise value of the short option position. In no event shall such reduction operate to increase net capital.

(3) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x) involving a short position in a security, other than an option, and a long position in a call option, the deduction shall be the lesser of 15 percent of the market value of the short position or the amount by which the exercise value of the long option position exceeds the market value of the short position; however, if the exercise value of the long option position does not exceed the market value of the short position, no deduction shall be applied.

(4) In the case of a bona fide position as defined in this paragraph (c)(2)(x) involving a short position in a security other than an option, and a short position in a put option, the deduction shall be 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of this section) of the market value of the short security position reduced by any excess of the exercise value of the short option position over the market value of the short security position. No such reduction shall operate to increase net capital.

(5) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x) involving a long position in a security, other than an option, and a long position in a put option, the deduction shall be the lesser of 15 percent of the market value of such long security position or the amount by which the market value of such long security position exceeds the exercise value of the long option position. If the market value of the long security position does not exceed the exercise value of the long option position, no deduction shall be applied.

Promptly Transmit and Deliver

(9) A broker or dealer is deemed to "promptly transmit" all funds and to "promptly deliver" all securities within the meaning of paragraph (a)(2)(vii) of this section where such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities; provided, however, that such prompt transmission or delivery shall not be required to be

effected prior to the settlement date for such transaction.

Forward and Promptly Forward

(10) A broker or dealer is deemed to "forward" or "promptly forward" funds or securities within the meaning of paragraph (a)(2)(v) only when such forwarding occurs no later than noon of the next business day following receipt of such funds or securities.

3. By amending § 240.15c3-1a by revising paragraphs (c)(1)-(c)(5), (c)(7), (c)(9) and (c)(10) as follows:

§ 240.15c3-1a Options (Appendix A to 17 CFR 240.15c3-1).

(c)

Uncovered Calls

(1) Where a broker or dealer is short a call, deducting, after the adjustment provided for in paragraph (b) of this appendix (A), 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)-(K) of 17 CFR 240.15c3-1) of the current market value of the security underlying such option reduced by an excess of the exercise value of the call over the current market value of the underlying security. In no event shall the deduction provided by this subparagraph be less than $250 for each option contract for 100 shares.

Uncovered Puts

(2) Where a broker or dealer is short a put, deducting, after the adjustment provided for in paragraph (b) of this appendix (A), 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)-(K) of 17 CFR 240.15c3-1) of the current market value of the security underlying the option reduced by any excess of the market value of the underlying security over the exercise value of the put. In no event shall the deduction provided by this subparagraph be less than $250 for each option contract for 100 shares.

Covered Calls

(3) Where a broker or dealer is short a call and long equivalent units of the underlying security, deducting, after the adjustments provided for in paragraph (b) of this appendix (A), 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)-(K) of 17 CFR 240.1c3-1) of the current market value of the underlying security reduced by any excess of the current market value of the underlying security over the exercise value of the call. No reduction under this subparagraph shall have the effect of increasing net capital.

Covered Puts

(4) Where a broker or dealer is short a put and short equivalent units of the underlying security, deducting, after the adjustment provided for in paragraph (b) of this appendix (A) 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)-(K) of 17 CFR 240.15c3-1) of the current market value of the underlying security reduced by any excess of the exercise value of the put over the market value of the underlying security. No such reduction shall have the effect of increasing net capital.

Conversion Accounts

(5) Where a broker or dealer is long equivalent units of the underlying security, long an unlisted put written or endorsed by a broker or dealer and short an unlisted call in his proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A)-(K) of 17 CFR 240.15c3-1) of the current market value of the long security.

Long Over-the-Counter Options

(7) Where a broker or dealer is long an unlisted put or call endorsed or written by a broker or dealer, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)-(K) of 17 CFR 240.15c3-1) of the market value of the underlying security, not to exceed any value attributed to such option in paragraph (c)(2)(i) of 17 CFR 240.15c3-1.

Certain Security Positions With Offsetting Options

(9) Where a broker or dealer is long a security for which he is also long a listed put (such broker or dealer may in addition be short a call), deducting, after the adjustments provided in paragraph (b) of this appendix (A), 15 percent of the market value of the long security position not to exceed the amount by which the market value of equivalent units of the long security position exceeds the exercise value of the put. If the exercise value of the put is equal to or exceeds the market value of equivalent units of the long security position, no percentage deduction shall be applied.

(10) Where a broker or dealer is short a security for which he is also long a listed call (such broker or dealer may in addition be short a put deducting), after the adjustments provided in paragraph (b) of the appendix (A) 15 percent of the market value of the short security position not to exceed the amount by which the exercise value of the long call exceeds the market value of equivalent units of the short security position. If the exercise value of the call is less than or equal to the market value of equivalent units of the short security position no percentage deduction shall be applied.

4. By amending § 240.15c3-1c by revising paragraph (b)(1), as follows:

§ 240.15c3-1c Consolidated computations of net Capital and aggregate indebtedness for certain subsidiaries and affiliates (Appendix C to 17 CFR 240.15c3-1).

Required Counsel Opinions

(b)(1) If the consolidation, provided for in paragraph (a) of this section of any such subsidiary or affiliate results in the increase of the broker's or dealer's net capital or the decrease of the broker's or dealer's minimum net capital requirement under paragraph (a) of 17 CFR 240.15c3-1, and an opinion of counsel described in paragraph (b)(2) has not been obtained, such benefits shall not be recognized in the broker's or dealer's computation required by this section.

5. By amending § 240.15c3-1d by revising paragraphs (b)(6)(iii), (b)(7), (b)(8), (b)(10)(ii)(b), (c)(2), (c)(5)(i), and (c)(5)(ii)(A) as follows:

§ 240.15c3-1d Satisfactory subordination agreements (Appendix D to 17 CFR 240.15c3-1).

(b)(6)

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction: the aggregate indebtedness of the broker or dealer may not exceed 1000 percent of its net capital, or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3-1, net capital may not be less than the greater of 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of

funds in the option customer's account). No single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1.

Permissive Prepayments

(7) A broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this appendix D. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such or on or prior to the date on which the Payment Obligation in respect of such or on prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either:

(i) aggregate indebtedness of the broker or dealer would exceed 1000 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3-1, its net capital would be less than the greater of 5% of its aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), or

(ii) its net capital would be less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of 17 CFR § 240.15c3-1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

Suspended Repayment

(8) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Prepayment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either:

(i) the aggregate indebtedness of the broker or dealer would exceed 1200% of its net capital, or in the case of a broker or dealer operating pursuant to paragraph (a)(1(ii)) of 17 CFR 240.15c3-1, its net capital would be less than the greater of 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), or

(ii) its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 including paragraph (a)(1)(ii) if applicable. The subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3-1 and § 240.15c3-1d.

(10)(ii)

(B) The aggregate indebtedness of the broker or dealer exceeding 1500 percent of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (a)(1)(ii) of 17 CFR 240.15c3-1, its net capital computed in accordance therewith is less than the greater of 2 percent of its aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 4 percent of the funds required to be seqregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, or the Examining Authority of the Commission first determines and notifies the broker or dealer of such fact;

(c)

Notice of Maturity or Accelerated Maturity

(2) Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer:

(i) either the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1, or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3-1, its net capital would be less than the greater of 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), or

(ii) less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of 17 CFR 240.15c3-1.

Temporary and Revolving Subordination Agreements

(5)(i) For the purpose of enabling a broker of dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3-1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a-11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions, or if immediately prior to entering into such subordination agreement either:

(A) the aggregate indebtedness of the broker or dealer exceeds 1000 percent of its net capital or its net capital is less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1, or

(B) in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3-1, its net capital is less than 5 percent of aggregate debits computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, its net capital is less than 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), or is less than 120 percent of the minimum dollar amount required by paragraph (a) of this section, or

(C) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3-1. Such temporary subordination agreement shall be subject to all other provisions of this appendix D.

(ii)

(A) After giving effect thereto (and to all Payment Obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due with six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either

(*1*) aggregate indebtedness of the broker or dealer would exceed 900 percent of its net capital or its net capital would be less than 200 percent of the minimum dollar amount required by 17 CFR 240.15c3-1, or in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3-1, its net capital is less than the greater of 6 percent of aggregate debits computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 10 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account); or

(*2*) less than 200 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of this section or

6. By adding § 240.15c3-1e as follows:

§ 240.15c3-1e Temporary minimum requirements (Appendix E to 17 CFR 240.15c3-1e).

Brokers or Dealers That Carry Customer Accounts Aggregate Indebtedness Method

(a) A broker or dealer that falls within the provisions of paragraph (a)(2)(i), of Rule 15c3-1 and computes his required net capital under Rule 15c3-1(a)(1)(i) shall maintain net capital not less than the greater of the amount computed under that paragraph (a)(1)(i) or:

(1) $25,000 until December 31, 1990;
(2) $81,250 after January 1, 1991 but until December 31, 1991;
(3) $137,500 after January 1, 1992 but until December 31, 1992;
(4) $193,750 after January 1, 1993, but until December 31, 1993; and
(5) $250,000 after January 1, 1994.

Brokers or Dealers That Carry Customer Accounts

Alternative Method

(b) A broker or dealer that elects the provisions of Rule 15c3-1(a)(1)(ii) shall maintain net capital of not less than the greater of the amount computed under that paragraph (a)(1)(ii) or:

(1) $100,000 until December 31, 1990;
(2) $137,500 after January 1, 1991 but until December 31, 1991;
(3) $175,000 after January 1, 1992 but until December 31, 1992;
(4) $212,500 after January 1, 1993 but until December 31, 1993; and
(5) $250,000 after January 1, 1994.

Broker-Dealers That Carry Customer Accounts, But Do Not Generally Hold Customer Funds or Securities and Dealers, Underwriting and Arbitragers

(c) A broker or dealer that falls within the provisions of Rule 15c3-1(a)(2) (ii) or (iii) shall maintain net capital not less than the greater of the amount computed under Rule 15c3-1(a)(1)(i) or:

(1) $25,000 until December 31, 1990;
(2) $43,750 after January 1, 1991 but until December 31, 1991;
(3) $62,500 after January 1, 1992 but until December 31, 1992;
(4) $81,250 after January 1, 1993 but until December 31, 1993; and
(5) $100,000 after January 1, 1994.

Introducing Brokers That Routinely Receive Customer Funds or Securities

(d) An introducing broker that falls within the provisions of Rule 15c3-1(a)(2)(iv) shall maintain net capital of not less than the greater of the amount computed under Rule 15c3-1(a)(1)(i) or ¼ percent of debit balances in introduced customers' cash and margin accounts plus:

(1) $25,000 until December 31, 1990;
(2) $43,750 after January 1, 1992 but until December 31, 1991;
(3) $62,500 after January 1, 1992 but until December 31, 1992;
(4) $81,250 after January 1, 1993 but until December 31, 1993; and
(5) $100,000 after January 1, 1994.

Introducing Brokers That Do Not Routinely Receive Customer Funds or Securities

(e) An introducing broker that falls within the provisions of Rule 15c3-1(a)(2)(vi) shall maintain net capital of not less than the greater of the amount computed under Rule 15c3-1(a)(1)(i) or ¼ percent of debit balances in introducing customers' cash and margin accounts plus:

(1) $5,000 until December 31, 1990;
(2) $16,250 after January 1, 1991 but until December 31, 1991;
(3) $27,500 after January 2, 1992 but until December 31, 1992;
(4) $38,750 after January 1, 1993 but until December 31, 1993; and
(5) $50,000 after January 1, 1994.

Brokers or Dealers Engaged Solely in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(f) A broker or dealer that falls within the provisions of Rule 15c3-1(a)(2)(vii) shall maintain net capital of not less than the greater of the amount computed under Rule 15c3-1(a)(1)(i) or:

(1) $2,500 until December 31, 1990;
(2) $8,125 after January 1, 1991 but until December 31, 1991;
(3) $13,750 after January 2, 1992 but until December 31, 1992;
(4) $19,375 after January 1, 1993 but until December 31, 1993;
(5) $25,000 after January 1, 1994.

By the Commission.
Dated: September 15, 1989.
Jonathan G. Katz,
Secretary.

[FR Doc. 89-23022 Filed 9-29-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 89N-0411]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) antitussive drug products to use only the term "lozenge" to describe a solid dosage form intended for dissolution in the mouth and to clarify that an oral antitussive drug product can be marketed in a lozenge dosage form. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by December 1, 1989; written comments on the agency's economic impact determination by January 30, 1990.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Panel referred to solid topical dosage forms intended for dissolution in the mouth as either a troche or a lozenge. (See 41 FR 38312 at 38343 to 38353.)

In the **Federal Register** of October 19, 1983 (48 FDR 48576), FDA issued a notice of proposed rulemaking (tentative final monograph) for OTC antitussive drug products. One ingredient (menthol) was proposed as Category I in a lozenge dosage form. (See § 341.74(d)(2)(iii).) In response to a comment's request, the agency also included a "compressed tablet" dosage form for products containing menthol to be dissolved in the mouth. (See comment 20 at 48 FR 485786 at 48588 and proposed § 341.3(k) and § 341.74(d)(2)(iii) at 48 FR 48576, 48593 and 48594.)

In the **Federal Register** of August 12, 1987 (52 FR 30042), FDA issued a final monograph for OTC antitussive drug products (21 CFR part 341) that established conditions under which these products are generally recognized as safe and effective and not misbranded. The monograph provided for menthol to be used in a lozenge or compressed tablet dosage form. (See § 341.3(c) and § 341.74(d)(2)(iii) at 52 FR 30042, 30555 and 30056.)

Since the publication of the antitussive final monograph, the United States Pharmacopeial Convention, Inc., in a proposed revision of the United States Pharmacopeia (U.S.P.) (ref. 1), and in the recently published U.S.P XXII (ref. 2), included a definition for lozenges as follows:

> Lozenges are solid preparations containing one or more medicaments, usually in a flavored, sweetened base which are intended to dissolve or disintegrate slowly in the mouth. They can be prepared by molding (gelatin and/or fused sucrose or sorbitol base) or by compression of sugar based tablets. Molded lozenges are sometimes referred to as pastilles while compressed lozenges are often referred to as troches. They are usually intended for treatment of local irritation or infections of the mouth or throat but may contain active ingredients intended for systemic absorption after swallowing.

Based on the new U.S.P definition, the agency has reconsidered its position stated in comment 20 of the notice of proposed rulemaking for OTC antitussive drug products (see above) and intends to adopt the new U.S.P definition. Accordingly, the agency is proposing (1) to amend the final monograph for OTC antitussive drug products to use only the term lozenge to describe a solid dosage form to be dissolved in the mouth for a local effect, and (2) to delete the term "compressed tablet" from the final monograph in § 341.3(c) and § 341.74(d)(2)(iii). In addition, the definition in § 341.3(b) for an "oral antitussive drug" is being revised slightly to clarify that such drugs may also be formulated as lozenges. This revision is being made because the U.S.P definition of lozenges provides for this dosage form to be dissolved in the mouth and to contain ingredients intended to have a systemic effect and because the agency is aware that antitussive drug products intended for systemic use are currently being marketed as lozenges (ref. 3). Thus, the revised definition in § 341.3(b) will be consistent with the new U.S.P definition of lozenges.

The agency does not intend to finalize this amendment until the U.S.P XXII becomes official in January 1990. In addition, the agency intends to use the term "lozenge" for solid dosage forms to be dissolved in the mouth in applicable rulemakings for other OTC drug categories, in future issues of the **Federal Register.** While the various types of lozenges such as compressed tablets, troches, or pastilles will not be described in final monographs, these terms may continue to be used in labeling. Accordingly, this proposed amendment, when finalized will not require any labeling revisions.

References

(1) "Pharmacopeial Forum, In-Process Revision, The United States Pharmacopeial Convention, Inc., 14:4390, 1988.
(2) "The United States Pharmacopeia XXII—The National Formulary XVII, The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1692, 1989.
(3) "Physicians' Desk Reference—For Nonprescription Drugs, 9th Ed., Medical Economics Co., Inc., Oradell, NJ, pp. 512. 515, 651, and 652, 1988.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major

rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entitites. However, this particular rulemaking for OTC drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antitussive drug products. Comments regarding the impact of this rulemaking on OTC antitussive drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 1, 1989, submit written comments to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before January 30, 1990. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Antitussive drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended in part 341 as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 341.3 is amended by revising paragraphs (b) and (c) to read as follows:

§ 341.3 Definitions.

(b) *Oral antitussive drug.* A drug that either is taken by mouth or is dissolved in the mouth in the form of a lozenge and acts systemically to relieve cough.

(c) *Topical antitussive drug.* A drug that relieves cough when inhaled after being applied topically to the throat or chest in the form of an ointment or from a steam vaporizer, or when dissolved in the mouth in the form of a lozenge for a local effect.

3. Section 341.74 is amended by revising paragraph (d)(2)(iii) to read as follows:

§ 341.74 Labeling of antitussive drug products.

(d)

(2)

(iii) *For products containing menthol identified in § 341.14(b)(2) in a lozenge.* The product contains 5 to 10 milligrams menthol. Adults and children 2 to under 12 years of age: Allow lozenge to dissolve slowly in the mouth. May be repeated every hour as needed or as directed by a doctor. Children under 2 years of age: consult a doctor.

Dated: September 12, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–23137 Filed 9–29–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Minor Field Revisions

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns new permit revision procedures that will allow minor field revisions to be processed in the Department for Surface Mining Reclamation and Enforcement's (DSMRE) Regional Offices rather than in the central Office in Frankfort. The proposal contains a list of permit revisions defined as minor field revisions.

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

DATES: Written comments must be received on or before 4:00 p.m. on November 1, 1989. If requested, a public hearing on the proposed amendment will be held at 10:00 a.m. on October 27 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on October 17 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: Roger Calhoun, Acting Director, Lexington Field Office Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field

Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327

Office of Surface Mining Reclamation and Enforcement, 1100 "L Street, NW Room 5131, Washington, DC 20240 Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Roger Calhoun, Acting Director, Lexington Field Office, Telephone (606) 233-7327

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17

II. Discussion of Amendment

By letter dated August 15, 1989, (Administrative Record No. KY-911), Kentucky submitted proposed regulations to revise Kentucky Administrative Regulations (KAR) at 405 KAR 8:010. The proposed amendment defines and establishes a new procedure for permit revisions that are minor field revisions by amending 405 KAR 8:010 section 20. The proposed amendment gives the Regional Offices of DSMRE the authority to process 27 types of minor field revisions as defined in the proposed amendment. The proposed regulations provide conditions for processing the various types of minor field revisions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on October 17 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

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

Public Meeting

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

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

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

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507

List of Subjects in 30 CFR Part 917

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

Dated: September 12, 1989.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 89-23144 Filed 9-29-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 925

Misssouri Permanent Regulatory Program

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

ACTION: Withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Missouri Permanent Regulation Program. The proposed amendment pertains to revegetation, permitting, and phase III liability release. Missouri is withdrawing this amendment because it intends to revise it and submit it as another formal amendment at a future date.

DATE: This withdrawal is effective October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION: On March 23, 1989, (Administrative Record No. MO-422) and April 13, 1989, (Administrative Record No. MO-426) Missouri submitted a proposed amendment to its program pursuant to the Surface Mining Control and Reclamation Act of 1977 The proposed amendment revised regulations on revegetation requirements and permit application requirements, and established guidelines for phase III liability releases.

On May 9, 1989, (Administrative Record No. MO-435) OSM announced receipt and solicited public comment on the program amendment (54 FR 19923). On August 16, 1989, (Administrative Record No. MO-456) OSM notified Missouri of deficiencies in the proposed program amendment. On September 13, 1989, (Administrative Record No. MO-471) Missouri notified OSM of its desire to withdraw the proposed program amendment. Therefore, the proposed amendment announced in the May 9, 1989 **Federal Register** is withdrawn, and part 925 title 30 of the Code of Federal Regulations is not amended.

List of Subjects 30 CFR Part 925

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

Dated: September 20, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-23145 Filed 9-29-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3642-4]

Ocean Dumping; Proposed Designation of a Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate until midnight December 31, 1991 a woodburning site located approximately 21 nautical miles offshore of Seaside Park, New Jersey for the burning of driftwood, timbers, wooden hulls, and similar wooden debris generated in New York Harbor and its environs. This action is necessary to provide an acceptable ocean disposal site for the current and future disposal of this material. The proposed site is not the Interim site which has been used historically, but an alternative site in the vicinity of the Interim site. The Interim site was not proposed for designation because of its location within popular commercial and sport fishing areas. The alternative site proposed for designation was determined to be the most environmentally preferable location. The proposed site designation is until midnight December 31, 1991, and is subject to a seasonal restriction and continuing monitoring to ensure that unacceptable adverse environmental impacts do not occur.

Three public hearings regarding the proposed site designation have been scheduled.

DATE: Public Hearings will be held on October 10, 1989 in Seaside Park, New Jersey, October 11, 1989 in Mineola, New York, and October 12, 1989 Long Branch, New Jersey.

Hearing sessions will be held at each of the above locations starting at 7:00 PM and ending with the taking of the last consecutive statement.

Comments must be received on or before November 2, 1989.

ADDRESS: Public Hearing Locations:

Borough Hall, Borough of Seaside Park, 6th and Central Avenues, Seaside Park, New Jersey

Nassau County Executive Building, Board of Supervisors' Meeting Room, Fifth Floor, 1 West Street, Mineola, New York

Long Branch Municipal Building, Council Chamber, Second Floor, 344 Broadway, Long Branch, New Jersey

Send comments to: Mario P Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA Region II, 26 Federal Plaza, New York, New York 10278.

The file supporting this proposed rulemaking is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (Rear), 401 M Street Southwest, Washington, DC 20460

EPA Region II Library, 26 Federal Plaza, New York, New York 10278-0090

Environmental Services Division, Woodbridge Avenue, Raritan Depot, Building 10, Edison, New Jersey 08837

FOR FURTHER INFORMATION CONTACT: Mario P Del Vicario, (212) 264-5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("The Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated the authority to designate dredged material and woodburning sites to the Regional Administrator of the region in which the site is located. This site designation action is being proposed pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H § 228.4) state that ocean dumping sites will be designated by publication in part 228. This site designation is being published as proposed rulemaking in accordance with section 228 of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites. Interested persons may participate in this proposed rulemaking by submitting written comments by November 2, 1989.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this.

EPA has prepared a draft EIS entitled Draft Environmental Impact Statement for the Designation of an Ocean Woodburning Site for the New York Bight. The notice of availability of this draft EIS for public review and comment is being published concurrently in the **Federal Register**. The public comment period on this draft EIS is the same as for this proposed rule. Anyone desiring a copy of the draft EIS may obtain one from the addresses given above.

The action discussed in the draft EIS is the designation of an ocean site for woodburning at-sea. The purpose of the designation is to provide an environmentally acceptable location for ocean burning of wood. Appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

New information concerning practicable land-based alternatives has become available since the printing of the draft EIS. Therefore, although the draft EIS suggested a 5 year site designation, the period of designation is being limited to midnight December 31, 1991 under this proposed rule.

In order to ensure that the December 31, 1991 expiration date is attained a phase out schedule would be added to the U.S. Army Corps of Engineers (COE) permit which will require them to develop and to implement land based alternatives and gradually reduce the volume of material burned at-sea until all the wooden material is disposed of via land-based alternatives by December 31, 1991. Any other potential permittees will be subject to the same requirements.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land-based disposal alternatives including land-based incineration; reuse/recycling alternatives such as horticultural mulch, lumber, and mass incineration with heat recovery or use as fuel; landfilling via burial along shorelines or via disposal at existing landfills; and use as fuel for gasification facilities are also examined. Generally, all of these land-based disposal methods presented various technical, economic and institutional constraints, and are not currently viable disposal alternatives for the large scale disposal of wooden debris from New York Harbor. Implementable disposal alternatives to burning at-sea are currently not available. However, in light of recent advances, particularly woodchipping and gasification facilities, EPA believes that implementable disposal alternatives can be available by December 31, 1991. For this reason, while the need for a woodburning site currently exists, land-based alternatives can be implemented that obviate the need for a permanent site designation beyond December 31, 1991. Certain land-based disposal methods may also be both technically and economically feasible for current projects, therefore EPA will determine the need for ocean burning on a permit-by-permit and case-by-case basis. In an effort to ensure the adequate investigation of land-based alternatives, EPA will include specific conditions in any future permits requiring the permittee to pilot woodchipping operations and associated land-based disposal. Designation of an ocean woodburning site does not imply that the site will be available for all permit applicants. Conversely, each permit applicant must demonstrate a need in order for the permit to be issued; and each project encompassed by the permit will be assessed individually before being allowed to use the site. Ocean woodburning site options evaluated included the continued use of the Interim woodburning site, the evaluation of alternative sites located within the New York Bight, and the consideration of an off-continental shelf site. An alternative woodburning site within the New York Bight was determined to be the most environmentally acceptable site.

The EIS presents the information needed to evaluate the suitability of ocean woodburning areas for final designation and is based upon a site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Designation

The proposed site is a rectangle approximately 2.5 by 5.0 nautical miles located approximately 21 nautical miles off the coast of Seaside Park, New Jersey. The site occupies an area of approximately 12.5 square nautical miles, and water depths average 30 meters. The coordinates of the site are as follows:

Latitude: 39° 52′ 40″ to 39° 57′ 00″ N
Longitude: 73° 35′ 20″ to 73° 38′ 10″ W

All of the wooden debris burned at the designated site will be from New York Harbor and its environs. No woodburning activities may occur from midnight May 26 to midnight September 7 each year, the peak periods of recreational activity. The total amount of wooden debris burned at the Interim site between 1973 and 1988 has been approximately 405,345 tons. If at any time woodburning operations at the site cause significant adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. (1) Sites are selected so as to minimize interference with other marine activities, (2) to keep any temporary perturbations from the woodburning from causing impacts outside the site, and (3) to permit effective monitoring to detect any adverse impacts at an early stage. (4) Where feasible, locations off the Continental Shelf are chosen. (5) If at anytime woodburning at an Interim site causes significant adverse impacts, the use of that site will be terminated as soon as suitable alternate woodburning sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed woodburning site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria except for the preference of sites located off the Continental Shelf. EPA has determined, based upon the information presented in the draft EIS, that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of the site proposed in this action. Technical constraints associated with the selection of a site off the Continental Shelf include a structural and stability review of each vessel by the Coast Guard and the potential structural retrofitting, and weather constraints on the time required to complete a round trip. From a safety standpoint, the selection of a site off the Continental Shelf would increase the transit time to the woodburning site from approximately 8–12 hours to about three days. Because weather conditions often fluctuate quite rapidly, EPA believes that the safety of the workers could be jeopardized if they were off the Continental Shelf and a storm arose. Danger is most inherent during a severe storm which may force the tug operator to release the barge, resulting in its uncontrolled passage which may endanger other vessels through its presence and/or the release of wood debris. The environmental benefits associated with relocating the burn site to a site off the Continental Site would not sufficiently outweigh the safety problems that would result from increasing the distance of the woodburning site from New York Harbor.

The location of the woodburning site has been chosen to minimize the interference of woodburning activities with other activities in the marine environment. The site is not located in major shipping lanes. Temporary impacts on water quality from burning at-sea can be expected to return to ambient levels before reaching any beach, shoreline, or known geographical limit of a fishery or shellfishery. Based upon woodburning site evaluation studies presented in the EIS, the site proposed for designation satisfies the criteria for site selection. The woodburning site has been limited in size in order to localize, for

identification and control, any immediate adverse impacts and to facilitate the implementation of an effective monitoring and surveillance program to prevent adverse long range impacts.

EPA established the eleven specific factors (§ 228.6) to constitute an environmental assessment of the impact of woodburning at the site. The criteria are used to make comparisons between the alternative sites and are the basis for final site selection. The characteristics of the proposed site are reviewed below in terms of these eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The rectangular site is approximately 12.5 square nautical miles in size and is located approximately twenty one nautical miles off the coast of Seaside Park, New Jersey. The coordinates of the site are given above in Section C of this proposed rule. Water depths average 30 meters at the site. The bottom topography of the proposed site would not be altered by the woodburning activities as neither the wooden debris nor residual ashes are dumped into the water, hence, the impact on bottom topography will be virtually none.

2. Location in Relation to Breeding, Spawning, Nursery Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The proposed site does not encompass any known unique breeding, spawning, nursery, or passage area for nekton, finfish, shellfish, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, sea scallops, and lobsters can be found throughout the Bight. The Bight also supports a large commercial and recreational fisheries of species including fluke, Atlantic mackerel, scup, whiting, red hake, black sea bass, Atlantic bonito, bluefin tuna, tautog, and bluefish. The proposed woodburning site was selected because of its location outside of predominant commercial and recreational fishing areas, and does not constitute a unique site within the Bight for any of these species.

3. Location in Relation to Beaches and Other Amenity Areas. (40 CFR 228.6(a)(3))

For shoreline areas in both New York and New Jersey, recreation and tourism represent a major component of the economy. The recreationally developed land along these shoreline areas is a mixture of Federal and State parks and beaches operated by local communities. Recreational facilities under Federal jurisdiction include the Gateway National Recreational Area, Jamaica Bay National Seashore, and Fire Island National Seashore. Barnegat Lighthouse State Park and Island Beach State Park are operated by the New Jersey State Division of Parks and Forestry. Beaches under local jurisdiction include Point Lookout, Lido Beach Atlantic Beach, Nassau Beach Park, and Long Beach in New York and seventy miles of beaches in New Jersey. As neither wooden debris nor ashes are discharged into the water during a woodburning operation, site designation will not impact the use of these beaches.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, If Any (40 CFR 228.6(a)(4))

Only wooden debris generated within New York Harbor and its environs may be burned at the currently used Interim site, as well as at the proposed site. Between 1973 and 1988, the volume of wooden debris burned at the Interim site has totaled 405,345 tons and has consisted primarily of pilings, timbers, driftwood, wooden hulls, and similar wooden materials. The annual tonnage burned varies significantly from year to year, and in 1988 a total of 32,167 tons was burned at the Interim site.

A waste characterization must be performed prior to burning in order to ascertain that the material is suitable for burning at-sea. Data on the chemical characteristics of the wood will be reviewed by EPA prior to allowing any wood to be burned.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Surveillance of woodburning operations at the proposed site could be achieved by helicopter, a shiprider aboard the tugboat transporting the burn barge, or an independent vessel. Periodic monitoring and surveillance by EPA, the Coast Guard, and the permittees will continue for as long as the site is used. Additional monitoring will be required if the volume or characteristics of the material to be burned changes significantly in order to ensure that adverse impacts do not develop. If evidence of significant adverse environmental effects is found, EPA will take the appropriate steps to limit or terminate burning at the site. Periodic reports of the monitoring operations will be made available to interested persons upon request.

6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, If Any (40 CFR 228.6(a)(6))

Because neither the wooden debris nor the resultant ashes are disposed overboard, the quantity of dissolved or particulate matter entering the water column as a result of the burning operations will be minimal. The only particulate matter which may enter the water column are ashes which are blown off the burn barge, and material which may wash into the water column when the barge is wetdown. Debris from these sources will not result in a significant increase in the level of suspended solids or turbidity. A permit condition will mandate that all permittees completely wetdown at the burnsite until there is no longer any steam emanating from the burn barge. A separate wetdown site will not be designated, and no barge may leave the burnsite until a wetdown has been performed.

Hydrographic conditions and related vertical mixing characteristics vary greatly from season to season in the New York Bight. The amount of vertical mixing will determine the degree to which materials released into the surface waters will remain at high concentrations or be dispersed. During the summer months, the high degree of stratification created by the strong temperature gradient and relatively moderate winds will result in a greater tendency for the dissolved and particulate materials to remain at shallow depths and be mixed horizontally by the surface currents. Dissolved and particulate materials added to the surface waters during the fall, winter, and spring would be more likely to disperse throughout the water column. Surface currents generally flow southward.

7 Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The woodburning site is located near the navigation lanes serving the ports of New York and New Jersey, but woodburning activities should not interfere with shipping activities. Smoke resulting from woodburning activities could reduce visibility. However, any such problems would be restricted to the immediate area of the woodburning site since the burn barges are confined to

that specific area. The woodburning site is clearly marked on National Oceanographic and Atmospheric Administration navigational maps, and the need for caution in this area is indicated.

Floating or partially submerged waste wood from the burn barge could become a navigational hazard or damage fishing nets and other gear. Specific procedures for barge loading and retrieving wood that might fall overboard are included in the permit conditions for use at the site to minimize the potential for wood wastes being dislodged during transport.

The smoke plume from the woodburning operation will not affect air traffic in the area. Although there is a great deal of air traffic in the New York Harbor area, this traffic is generally at altitudes above the height of the smoke plume. There is a possibility that a low-flying aircraft may pass through a smoke plume, but the passage would be so momentary that it would be extremely unlikely to affect aircraft. Previous monitoring reports have indicated that woodburning at-sea would have no significant environmental effect on either commercial or recreational fisheries in the New York Bight. The woodburning site does not infringe upon either commercial or sport fishing locations, and the closest sport fishing takes place approximately one nautical mile east of the site. Wind dispersion of the particulates followed by rapid dilution via diffusion in the water column prevents any significant increase in pollution loads above ambient sea water concentrations.

No significant physical or aesthetic impacts on beaches or other type of recreational resources would result from the woodburning operations. There are no known economically recoverable mineral resources on the sea floor below the woodburning site. Therefore, mineral extraction is not a concern. Similarly, fish and shellfish are not cultured in the vicinity of the woodburning site, and the water is not used for desalination. The woodburning site is not an area of special scientific importance.

A special permit condition prohibits woodburning activities from midnight May 26 to midnight September 7 during periods of peak recreational activity. This moratorium adds further protection against any adverse physical or aesthetic impacts on recreational resources from woodburning operations.

8. *The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys* (40 CFR 228.6(a)(9))

Water column species known to frequent the New York Bight include various finfish, shellfish, and marine mammals. Commercially and recreationally important species of finfish include fluke, flounder, Atlantic bonito, bluefin tuna, bluefish, and tautog. Shellfish resources within the Bight include surf clams, quahogs, sea scallops, and lobsters. Marine mammals such as whales, dolphins, and sea turtles frequent the Bight on a seasonal basis or during migration. The woodburning site is not a critical environment for any of these species.

Water quality characteristics at the site including temperature, salinity, density, and organic and inorganic loading rates are typical of the general Bight environment. The Bight Apex is a heavily used and environmentally stressed coastal area. Municipal and industrial wastewater effluents, along with runoff, atmospheric fallout, and the metals disposed of at the different dump sites, contribute large quantities of heavy metals, nutrients, organic matter, and chlorinated hydrocarbons to the waters there. The distribution of these materials is generally a function of the distance from the source and composition of the solids that are either suspended in the water column or accumulated on the bottom. Toward the outer edges and outside of the Apex, nutrient and dissolved oxygen levels are quite predictable and are a function of the water's temperature-salinity structure and the degree of weather-induced mixing. Woodburning activities will not adversely impact the water quality of the Bight.

9. *Existence At or In Close Proximity to the Site of Any Significant or Cultural Features of Historical Importance* (40 CFR 228.6(a)(11))

Cultural or historical activities at or near the woodburning site are not known to exist. There are no known shipwrecks of historical significance in the vicinity of the woodburning site. Certain historical re-enactments such as the parade of tall ships and similar regattas may occur in the vicinity of the woodburning site, but the impact of the disposal operation on such events would occur primarily during the summer months when there is a woodburning moratorium.

10. *Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects)* (40 CFR 228.6(a)(7))

A variety of disposal activities are currently practiced in the New York Bight. Sewage sludge, dredged material, cellar dirt, and acid wastes have all been discharged into the New York Bight. Several environmental impact statements have been prepared by EPA to address ocean waste disposal in the New York Bight.

Data suggest that previous dumping has created only minor modifications at the sight. Available information indicates that no significant increase of oil, grease, petroleum hydrocarbons, or trace metals will occur in the seawater concentrations as a result of fallout from the woodburning operations. Woodburning activities will not impact marine mammals other than to cause them to avoid the burn barge when in operation.

11. *Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site* (40 CFR 228.6(a)(10))

Prior to burning, the wooden debris may contain undesirable organisms or nuisance species such as rodents; however, the burning process would exterminate them. There are no components in the wooden debris that would attract or recruit nuisance species at the disposal site. Therefore, the use of an ocean woodburning site is unlikely to result in the development or recruitment of nuisance species.

E. Proposed Action

The draft EIS recommends that the proposed site be designated for five years. However, because new information concerning practicable land-based alternatives has become available since the printing of the draft EIS, EPA is proposing that the period of designation of a woodburning at-sea site be limited until midnight December 31, 1991. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the woodburning site as an EPA approved ocean burning site is being published as proposed rulemaking. Management of this site has been delegated to the Regional Administrator of Region II.

It should be emphasized that designation of an ocean woodburning site does not constitute or imply EPA's approval of the actual burning of materials at-sea. Before burning any material at the site may commence, EPA must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual burning if it determines that environmental concerns under the Act have not been satisfied.

F Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is requested to perform a regulatory flexibility analysis for all rules which

may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for wooden debris. Consequently, this rule does not necessitate preparation of a regulatory flexibility analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory flexibility analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any other effects which would result in its being classified by the executive order as a "major" rule. Consequently, this rule does not necessitate preparation of a regulatory impact analysis.

This proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 21, 1989.

William J. Muszynski, P.E.,

Acting Regional Administrator for Region II.

In consideration of the foregoing, subchapter H or chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(82) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(b)

(82) New York Harbor Woodburning Disposal Site—Region II.

Location: Latitude 39°52'40" to 39°57'00" N, Longitude: 73°35'20" to 73°38'10" W
Size: 12.5 square nautical miles
Depth: 30 meters average
Primary Use: Woodburning
Period of Use: Until December 31, 1991
Restrictions: Disposal shall be limited to wooden debris generated in New York Harbor and its environs.

[FR Doc. 89-21164 Filed 9-29-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-410, RM-6828]

Radio Broadcasting Services; Ferriday, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Tom D. Gay, d/b/a The Radio Group, licensee of Station KFNV-FM, Channel 296A, Ferriday, Louisiana, proposing the substitution of Channel 296C3 for Channel 296A at Ferriday and the modification of the station's license to specify operation on the higher class co-channel. The proposal could provide the community's first wide coverage area FM service. A site restriction of 12.4 kilometers (7.7 miles) east of the city is required. The coordinates are 31-40-00 and 91-26-00.

DATES: Comments must be filed on or before November 17 1989, and reply comments on or before December 4, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James J. Popham, Esquire, 700 Camp Street, New Orleans, LA 70130 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-410, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibilty Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.120(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-23202 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-412, RM-6735]

Radio Broadcasting Services; Rayville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Ken Diebel, Delta Communications, Ltd., licensee of Station KTJC (FM), Rayville, Louisiana, proposing the substitution of Channel 222C2 for Channel 222A and modification of its license accordingly. The coordinates for Channel 222C2 are 32-14-15 and 91-33-50.

DATES: Comments must be filed on or before November 17 1989 and reply comments on or before December 4, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ken Diebel, Delta Communications, Ltd., 12071/2 Louisa St., Rayville, Louisiana 71269.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-412, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037 Provisions of the

Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-23203 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-411, RM-6944]

Radio Broadcasting Services; Hazlehurst, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Copiah County Broadcasting Co. proposing the substitution of Channel 265C3 for Channel 265A at Hazlehurst, Mississippi. Petitioner also request modification of its license for Station WMDC(FM) to specify operation on Channel 265C3. The coordinates for Channel 265C3 are 31-50-00 and 90-11-00.

DATES: Comments must be filed on or before November 17 1989 and reply comments on or before December 4, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Albert Mack Smith, Copiah County Broadcasting Co., P.O. Box 680, Hazlehurst, Mississippi 39083.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposing Rule Making, MM Docket No. 89-411, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-23204 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

Acquisition Regulation (NRCAR)

RIN 3150-AC01

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to establish the Nuclear Regulatory Commission Acquisition Regulation (NRCAR). The NRCAR is necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the particular needs of the agency. The NRCAR is intended to implement and supplement the government-wide Federal Acquisition Regulation (FAR).

DATES: The comment period expires December 1, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to: The Secretary of the Commission; U.S. Nuclear Regulatory Commission; Attention: Docketing and Service Branch; Washington, DC 20555. Copies of comments received may be examined or obtained for a fee at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, DC (telephone (202) 634-3273).

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-4347

SUPPLEMENTARY INFORMATION:

Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result was a system of procurement policies that varied from agency to agency, causing confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation known as the Federal Acquisition Regulation (FAR).

The FAR has been promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The FAR, which was issued by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration, superseded the Defense Acquisition Regulation (DAR), the Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR) on April 1, 1984. The FAR was published in the **Federal Register** on September 19, 1983 (48 FR 42102) with an effective date of April 1, 1984. The FAR is codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement FAR policies

and procedures within the agency and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulations being published today represent the NRC's necessary implementation and supplementing of the FAR.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq.) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83-2 states that an agency must provide an opportunity for public comment before adopting procurement regulation if the regulation is "significant. "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The NRC has determined that this rule is not significant within the meaning of OFPP Policy Letter No. 83-2. This regulation is issued principally to create one body of guidance incorporating previously cleared procedures, to exercise delegations established by the FAR and to adopt other procedures that will not have a cost or administrative impact on contractors.

While not required to do so under the terms of OFPP Policy Letter 83-2, the NRC is issuing the NRC Acquisition Regulation (NRCAR) as a proposed rule. The NRC is accepting comments on this regulation for 60 days after the date of publication. The NRC will review all comments and will consider changes to the rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c)(5). Therefore, neither an environmental impact statement nor an environmental assessment is required for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule includes information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Accordingly, this rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150-), Office of Management and Budget, Washington, DC 20503.

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 on a substantial number of small entities. The proposed rule would establish the procedures and requirements necessary to implement and supplement the Federal Acquisition Regulation (FAR) which will govern the acquisition of goods and services by the NRC. To the extent that the proposed rule would affect a small entity, it sets out provisions applicable to small business and to small, disadvantaged business concerns.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule, because this proposed regulation does not involve any provision which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 48 CFR Chapter 20

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to add Chapter 20 to Title 48 of the Code of Federal Regulations.

1. Chapter 20 is added to Title 48 to read as follows:

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

SUBCHAPTER A—GENERAL

Part 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

Subpart 2001.1—Purpose, Authority, Issuance

Sec.
2001.101 Purpose.
2001.102 Authority.
2001.103 Applicability.
2001.104 Issuance.
2001.104-1 Publication and code arrangement.
2001.104-2 Arrangement of the regulations.
2001.104-3 Copies.
2001.105 Information collection requirements: OMB approval.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.
2001.303 Public participation.

Subpart 2001.4—Deviations from the FAR and the NRCAR

2001.402 Policy.
2001.403 Individual deviations.
2001.404 Class deviations.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600-70 Scope of subpart.
2001.601 General.
2001.602-3 Ratification of unauthorized commitments.
2001.603 Selection, appointment, and termination of appointment.

Authority: Sec. 161, 68 Stat 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes Chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

2001.102 Authority.

The NRCAR and amendments to it are issued by the Director, Office of Administration, under a delegation from the Executive Director for Operations in accordance with the authority of the Atomic Energy Act of 1954, as amended (42. U.S.C. 2011 et. seq.), the Energy

Reorganization Act of 1974 (42 U.S.C. 5811 et. seq.), the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252), as amended, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from non-appropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104-1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the Federal Register; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

2001.104-2 Arrangement of the regulations.

(a) *General.* Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering.* The numbering system and part, subpart and section titles used in this Chapter 20 conform with those used in the FAR as follows:

(1) Where Chapter 20 implements the FAR or supplements a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104-1 is shown as 2001.104-1 and the NRC's implementation of FAR 24.1 is shown as 2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954 as amended requires a more comprehensive organizational conflicts of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR, as written, is applicable to the NRCAR and requires no further implementation.

(c) *Citation.* The NRCAR will be cited in accordance with Federal Register Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as 2001.104-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104-2(c). Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104-2." In the NRCAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1-104.

2001.104-3 Copies.

Copies of the NRCAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(b) The information collection requirements contained in this part appear in 2015.607, 2019.705-4, 2027.305-3, 2042.803, 2052.204-70, 2052.204-71, 2052.209-71, 2052.209-73, 2052.209-74, 2052.210-71, 2052.212-70, 2052.212-71, 2052.212-72, 2052.214-71, 2052.214-72, 2052.214-74, 2052.215.71, 2052.215-72, 2052.215-73, 2052.215-74, 2052.215-77 2052.215-81, 2052.216-74, 2052.235-70, 2052.235-72.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be issued through internal NRC issuances such as Manual Chapters, directives, or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations from the FAR and the NRCAR

2001.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitted to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request (including the result of that request);

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the

Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600-70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and the Regional Offices. All of the above delegations are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602-3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications must be approved by the Director, Division of Contracts and Property Management, except that ratifications of procurement actions taken in emergency circumstances and valued at $1,000 or less may be approved by the appropriate Regional Administrator or at a level above the appropriate Headquarters Contracting Officer. For any such action approved by the Regional Administrator, all other terms of Subpart 2001.6 are applicable, and a copy of all documentation must be submitted within two working days to the Director, Division of Contracts and Property Management.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The requestor shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A statement as to why the contracting office was not used;

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work to be performed or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A statement of whether the contractor has commenced performance; and

(viii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review and forward the written statement of facts for a determination of approval to the Director, Division of Contracts and Property Management, with any comments or information which should be considered in evaluating the request for ratification

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority must include a clear statement of the delegated authority, including responsibilities and limitations.

PART 2002—DEFINITIONS

Subpart 2002.1—Definitions

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat, 1242, as amended (42 U.S C 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et. seq.).

Subpart 2002.1—Definitions

2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or "Head of the Agency" means the NRC Executive Director for Operations, for the purposes specified in this regulation and the Federal Acquisition Regulation. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974, (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Pub. L. 98-369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Day means calendar day unless otherwise specified. If the last day of the designated period of time is a Saturday, Sunday, or legal holiday under Federal law, the period shall include the next business day.

Head of the Contracting Activity (HCA) means the Director, Division of Contracts and Property Management.

Procurement Executive means the individual appointed as such by the

Agency Head pursuant to Executive Order 12352. The Director, Office of Administration, has been appointed the NRC Procurement Executive.

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1—Safeguards

Sec.
2003.101 Standards of conduct.
2003.101-3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting of suspected violation of the gratuities clause.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2003.1—Safeguards

2003.101 Standards of conduct.

2003.101-3 Agency regulations.

NRC standards of conduct for its employees are published in 10 CFR Part 0. The standards of conduct include requirements for financial disclosure (§ 0.735-28).

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector General (telephone number (202) 492-7170 or 492-7000). A report must include all facts and circumstances related to the case. Refer to 10 CFR 0.735-42, Gifts, Entertainment and Favors, for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2004.4—Safeguarding Classified Information Within Industry

2004.404 Contract clauses.

The security clauses used in NRC contracts are found at 2052.204. They are:

(a) Security, § 2052.204-70. This clause will be used in all contracts during performance of which the contractor may have access to, or contact with restricted data, formerly restricted data, and other classified data.

(b) Site Access Badge Requirements, § 2052.204-71. This clause will be used in all contracts under which the contractor will require access to Government facilities.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2005—PUBLICIZING CONTRACT ACTIONS

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2005.5—Paid Advertisements

2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, for regional procurements.

PART 2009—CONTRACTOR QUALIFICATIONS

Subpart 2009.1—Responsible Prospective Contractors

Sec.
2009.100 NRC policy.
2009.105-70 Contract provisions.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.
2009.404 Lists of parties excluded from Federal procurement or non-procurement programs.
2009.405 Effect of listing.
2009.405-1 Continuation of current contracts.
2009.405-2 Restrictions on subcontracting.
2009.406 Debarment.
2009.406-3 Procedures.
2009.407 Suspension.
2009.407-3 Procedures.
2009-470 Appeals.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.
2009.570 NRC organizational conflicts of interest.
2009.570-1 Scope of policy.
2009.570-2 Definitions.
2009.570-3 Criteria for recognizing contractor organizational conflicts of interest.
2009.570-4 Representation.
2009.570-5 Contract clauses.
2009.570-6 Evaluation, findings, and contract award.
2009.570-7 Conflicts identified after award.
2009.570-8 Subcontracts.
2009.570-9 Waiver.
2009.570-10 Remedies.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et. seq.).

Subpart 2009.1—Responsible Prospective Contractors

2009.100 NRC policy.

(a) It is NRC policy that contracts will not normally be placed on a noncompetitive basis with an individual who was employed by the NRC within two years of the date of the request for procurement action or with any firm in which a former NRC employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by former NRC employees, unless it is determined by the agency Procurement Executive to be in the best interest of the Government to do so. This restriction also applies to former NRC employees acting as a principal under a task type contract arrangement or as a principal under a contract awarded under the Small Business Administration's 8(a) Program. This policy shall also be applied when reviewing subcontracts for the purpose of granting consent under NRC prime contracts.

(b) Justifications explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraph (a) above on a noncompetitive basis may be approved by the Procurement Executive after consulting with the Executive Director for Operations or his designee. This is in addition to the justification and any approvals required by the Federal Acquisition Regulation for use of other than full and open competition.

(c) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207 Disqualification of Former Officers and Employees.

2009.105-70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) 2052.209-70, Qualifications of Contract Employees.

(b) 2052.209-71, Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in 2009.4:

Debarring official means the Procurement Executive.

Initiating official means the contracting officer; or the Head of the Contracting Activity (HCA), or the Procurement Executive, or the Inspector General.

Suspending official means the Procurement Executive.

2009.404 Lists of parties excluded from Federal procurement or non-procurement programs.

The cognizant contracting officer shall perform the actions required by FAR 9.404(c)(1)-(3).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted through the HCA to the Procurement Executive.

2009.405-1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405-1.

2009.405-2 Restrictions on subcontracting.

(a) The contracting officer shall insert the certification found at 2052.209-72, Certification Regarding Debarment Status, in all solicitations.

(b) The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405-2.

2009.406 Debarment.

2009.406-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred through the HCA to the debarring official immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decisionmaking process.* If, after reviewing the recommendations and consulting with the Office of the Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the HCA of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the debarring official may notify the contractor in accordance with FAR 9.406-3(d), that the contractor is debarred.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred through the HCA to the suspending official immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) *Decisionmaking process.* If, after reviewing the recommendations and consulting with the Office of the Inspector General and Office of the General Counsel, as appropriate, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407-3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406-3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the suspending official may notify the contractor in accordance with FAR 9.407-3(d), that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official from whose decision the appeal is taken.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with Sec. 8, Pub. L. 95-601, adding Sec. 170A to Pub. L. 83-703, 68 Stat. 919, as amended (42 U.S.C. Ch. 14), NRC acquisitions are processed in accordance with 2009.570, which supplements FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance shall be followed.

2009.570 NRC organizational conflicts of interest.

2009.570-1 Scope of policy.

(a) It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to avoid, eliminate or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made

automatically or routinely; the application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise. However, examples are provided in these regulations to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other government agencies, international organizations, or state, local, or foreign governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570-2 Definitions.

As used in § 2009.570:

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in § 2009.570-1(b).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or prospective contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest including their chief executives, directors, key personnel, proposed consultants or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflict of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests (indicates) that an actual conflict of interest may arise from award of a proposed contract. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to contract award in order to ascertain whether award would give rise to an actual conflict or which must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier which performs work under a contract with the NRC except subcontracts for supplies and subcontracts in the amount of $25,000 or less.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to information which has not been made available to the public, or to proprietary information. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570-3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.* (1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) The ultimate determination by the NRC as to whether organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships which might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements which call for the rendering of advice, consultation or evaluation activities, or similar activities that lay direct groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information concerning relationships which may give rise to organizational conflicts of interest under the following circumstances:

(i) Where the offeror or contractor provides advice and recommendation to the NRC in a technical area in which it is also providing consulting assistance in the same area to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter in which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or the products or services of another entity where the offeror or contractor has been substantially involved in their development or marketing.

(iv) Where the award of a contract would otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in 2009.570-5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications which are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive

procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs which could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because it would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP proposes to perform certain analyses of a reactor component which is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work during the performance of the NRC contract with the private sector which could create a conflict. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* As a result of operating problems in a certain type of commercial nuclear facility, it is imperative that the NRC secure specific data on various operational aspects of that type of plant so as to assure adequate safety protection of the public. Only one manufacturer has extensive experience with that type of plant. Consequently, that company is the only one with whom the NRC can contract which can develop and conduct the testing programs required to obtain the data within reasonable time. That company has a definite interest in any NRC decisions that might result from the data produced because those decisions affect the reactor's design and thus the company's costs.

(ii) *Guidance.* This situation would place the manufacturer in a role in which its judgment could be biased in relationship to its work for the NRC. Because the nature of the work required is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy in accordance with 2009.570–9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Co. submits a proposal for a new system for evaluating a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Co. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Co. provided that the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Information which is reported to the NRC by contractors will normally be disseminated by the NRC to others so as to preclude an unfair competitive advantage that might otherwise accrue. When the NRC furnishes information to the contractor for the performance of contractor work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information developed under the contract is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570–3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the Eastern United States but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. The work for others clause of 2052.209–74(c) would preclude ABC Corp. from accepting work during the term of the NRC contract which could create a conflict of interest.

(d) *Other considerations.* (1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570–4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor.

(b) The organizational conflict of interest representation provision at 2052.209–73 must be included in all solicitations and unsolicited proposals for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort

under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in an RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570-5 Contract clauses.

(a) *General contract clause.* All contracts and small purchases of the types set forth in 2009.570-4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in 2052.209-74.

(b) *Addition to general clause for use when award of a follow-on contract would constitute an organization conflict of interest.* The contracting officer shall add the additional paragraphs found at 2052.209-75 to the clause found at 2052.209-74 when it is determined that award of a follow-on contract would constitute an organizational conflict of interest.

(c) *Addition to general clause for contractors having access to NRC-regulated activities.* In contracts for on-site work where the contractor may have access to a utility site or other facility subject to NRC's regulatory authority or in any contract for technical support of NRC's regulatory activities, the contracting officer shall change paragraph (c), "Work for others," to (c)(1) and add new paragraphs (c)(2) and (c)(3) found at 2052.209-76.

(d) *Additions to general clause for task order contracts.* In all contracts for task order contracts, add a new sentence to paragraph (b), "Scope," and a new paragraph (d)(3) to paragraph (d), "Disclosure after award," as found at 2052.209.77

(e) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570-9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570-6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror under the representation requirements of 2009.570-4(b) and other relevant information. After evaluating this information against the criteria of 2009.570-3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, then the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures, or

(c) Award the contract under the waiver provision of 2009.570-9.

2009.570-7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do, in fact, exist and that it would not be in the best interest of the government to terminate the contract as provided in the clauses required by 2009.570-5, the contracting officer shall take every reasonable action to avoid, eliminate or, after obtaining a waiver in accordance with 2009.570-9, neutralize the effects of the identified conflict.

§ 2009.570-8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from subcontractors and consultants in accordance with 2009.570-4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570-5 in consultant agreements or subcontracts involving performance of work under a prime contract covered by this section.

§ 2009.570-9 Waiver.

(a) Determination with respect to the need to seek a waiver for specific contract awards is made by the contracting officer with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the contracting officer, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program;

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest; and

(3) Contractual and/or technical review and supervision methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room, 2120 L Street NW Lower Level, Washington, DC.

2009.570-10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2010—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
2010.004 Brand name products or equal.
2010.011 Solicitation provisions and contract clauses.

Authority: Sec. 161, 68 Stat. 948, as amended (U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2010.004 Brand name products or equal.

(a) Acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances this type

of approach may be used as described below.

(b) Brand name or equal purchase descriptions must cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference to that brand name must be deleted from any subsequent purchase description.

(1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. A characteristic (e.g., a specific dimension) of a brand name product may not be specified unless it is essential to the Government's need. The contracting officer shall be able to justify the requirement.

(c) The clause found at 2052.210-70 must be inserted in all solicitations citing a brand name or equal, except when samples are requested.

(d) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

(e) In small purchases within the open market limitations, brand name policies and procedures are applicable to the extent practicable.

2010.011 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 2052.210-71, Drawings, Designs, Specifications, and Data in all contracts in which drawings, designs, specifications, or other data will be developed.

PART 2012—CONTRACT DELIVERY OR PERFORMANCE

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2012.104—Contract clauses

2012.104-70 NRC clauses.

(a) The contracting officer shall insert the clause at 2052.212-70, Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.212-71, Technical Progress Report, in all solicitations and contracts except (1) firm fixed price, and (2) indefinite-delivery contracts to be awarded on a time and materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.212-72, Financial Status Report, in all solicitations and contracts when detailed assessment of costs is warranted.

(d) The contracting officer may alter these clauses prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes only may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2013.5—Purchase Orders

2013.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

NRC Form 103, Purchase Order, is prescribed for use by the NRC in lieu of Optional Forms 347 and 348.

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.
2014.201 Preparation of invitation for bids.
2014.201-670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.
2014.406-3 Other mistakes disclosed before award.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2014.2—Solicitation of Bids

2014.201 Preparation of invitation for bids.

2014.201-670 Solicitation provisions.

(a) The contracting officer shall insert the provision at 2052.214-70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit circumstances.

(b) The cognizant contracting officer shall insert in all invitations for bids the provisions at:

(1) Section 2052.214-71, Bidder Qualifications and Past Experiences.

(2) Section 2052.214-72, Bid Evaluation (paragraph g. is optional).

(3) Section 2052.215-73, Timely Receipt of Bids.

(4) Section 2052.214-74, Disposition of Bids.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406-3 Other mistakes disclosed before award.

(a) The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

(b) The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.406-4.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

Sec.
2015.407-70 Solicitation provisions and contract clauses.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.
2015.506-1 Receipt and initial review.
2015.506-2 Evaluation.
2015.507 Contracting methods.

Subpart 2015.6—Source Selection

2015.602 Applicability.

2015.604 Responsibilities.
2015.605 Evaluation factors.
2015.607 Disclosure of mistakes before award.
2015.608 Proposal evaluation.
2015.610 Written or oral discussions.
2015.611 Best and final offers.
2015.612 Source Evaluation Panel (SEP) structure.
2015.670 Contract provisions.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648; Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

2015.407-70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in Requests for Proposals (RFPs) the provisions at:

(1) Section 2052.215-73, Data Universal Numbering System (DUNS) Number;

(2) Section 2052.215-74, Key Personnel;

(3) Section 2052.215-77, Project Officer Authority (for solicitations for cost reimbursement, cost plus fixed fee, cost plus award fee, cost sharing labor hour or time and materials, including task order contracts);

(4) Section 2052.215-78, Project Officer Authority—Alternate 1 (for solicitations for issuance of delivery orders for specific products/services);

(5) Section 2052.215-78, Project Officer Authority—Alternate 1 with paragraph (b)(1) deleted and the remainder of the clause renumbered (for solicitations for firm fixed price contracts);

(6) Section 2052.215-79, Timely Receipt of Proposals;

(7) Section 2052.215-80, Award Notification and Commitment of Public Funds; and

(8) Section 2052.215-81, Disposition of Proposals.

(b) The contracting officer shall insert in all solicitations for negotiated procurements for cost type contracts that do not provide for task orders or delivery orders, the provision at 2052.215-71, Proposal Presentation and Format except that

(1) For all solicitations for negotiated task order contracts, paragraphs (d)(4) (xi) and (xii) shall be deleted (and the remainder renumbered), and the paragraph found at 2052.215-72 shall be substituted for paragraph (d)(2).

(2) For all negotiated procurements for a fixed price, labor hour, or time and materials contract, paragraph (d)(2) shall be deleted from the provision 2052.215-71. The provision must be tailored to assure that all sections, but in particular paragraph (e), Technical and Management Proposal, reflect the evaluation criteria.

(c) The contracting officer shall insert the provision at 2052.215-70, Preproposal Conference, in RFPs where there will be a preproposal conference. This provision may be altered to fit circumstances.

(d) The contracting officer shall insert the clauses at 2052.215-75, Travel Reimbursement, and 2052-215-76, Travel Approvals, in RFPs where there will be travel.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.

(a) The Division of Contracts and Property Management, Operations Support Staff, is the point of contact for the receipt, acknowledgement, and handling of unsolicited proposals.

(b) Unsolicited proposals in original and two copies, and requests for additional information regarding their preparation must be submitted to: Chief, Operations Support Staff, Division of Contracts and Property Management, Mail Stop P-1118, U.S. Nuclear Regulatory Commission, Washington, DC 20555. This will ensure that the proposal is logged into the unsolicited proposal tracking system.

2015.506-1 Receipt and initial review.

(a) The NRC, Division of Contracts and Property Management, Operations Support Staff (OSS) shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) for evaluation.

(b) OSS shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgment letter will be sent to the proposer by the OSS, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.503 and 15.505.

2015.506-2 Evaluation.

Directors of NRC offices shall conduct comprehensive technical evaluations of proposals submitted to them by the OSS, in accordance with the criteria discussed in FAR 15.506-2(a).

2015.507 Contracting methods.

If a noncompetitive contract is recommended, the Director of the recommending NRC office shall submit to the Division of Contracts and Property Management a written evaluation, Request for Procurement Action (RFPA) and Justification for Other Than Full and Open Competition in accordance with FAR 15.507(b)(5).

Subpart 2015.6—Source Selection

2015.602 Applicability.

This subpart does not apply to contracts awarded to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.604 Responsibilities.

(a) All persons participating in the evaluation process may not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation proceeding, and then only to the extent that the information is required in connection with the proceeding. Divulging information during evaluation, selection, and negotiation phases of the acquisition to offerors or to other persons not having a need to know could jeopardize the resultant award. Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may release source selection information to others during the selection process. The contracting officer (or authorized representative) shall instruct all participants in the evaluations to observe these restrictions to ensure that they understand that unauthorized disclosure of information contained in or concerning proposals could compromise the acquisition process and is prohibited. A written acknowledgment of understanding must be obtained from each participant before he/she receives any proposal or participates in any discussion of proposals.

(b) All persons participating in the evaluation process shall declare any financial or other relationships which may create conflict of interest problems with their evaluation duties. A form for this purpose must be signed prior to receipt of any proposals or participation in discussion of proposals.

(c) Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may conduct discussions with offerors relative to any aspect of the acquisition. The contracting officer may include other personnel in discussions, as necessary.

2015.605 Evaluation factors.

The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated, and are the basis for the development of proposal preparation instructions, in accordance with 2015.407-70(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors is accomplished by the assignment of a numerical weight to each. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and business evaluations, and "go/no go" evaluation factors.

2015.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that the offeror's clarification(s) provided in accordance with FAR 15.607 be in writing.

(b) A correction of a mistake in a proposal may be made only after a written determination to permit it has been made by the contracting officer.

2015.608 Proposal evaluation.

(a) A Source Evaluation Panel (SEP) shall evaluate proposals in accordance with the solicitation technical evaluation criteria, cost, and other terms of the solicitation. The SEP prepares the Competitive Range Recommendation Report for the review and approval of the Designating Offical. The contracting officer uses this technical evaluation in determining the competitive range.

(b) The Designating Official (appointed by the requesting office) is responsible for appointing the SEP and is responsible for conducting an independent review and evaluation of the SEP's two primary products after proposal evaluation: the Competitive Range Recommendation Report and the Final Evaluation Recommendation Report. Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

2015.610 Written or oral discussions.

The contracting officer shall point out to each offeror within the competitive range any ambiguities or uncertainties in its proposal. The discussions are intended to assist the SEP in fully understanding the proposals and their strengths and weaknesses. Discussions also assure that the meanings and points of emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government.

2015.611 Best and final offers.

The SEP evaluates the best and final offers. Proposals will be rescored and reranked by the SEP as appropriate, and a Final Evaluation Recommendation Report will be prepared and forwarded to the Designating Official for review and approval prior to submission to the contracting officer for final approval. The report will include a summary of the technical analysis of costs as a part of the analysis of proposals. The SEP's individual evaluation worksheets and summary score sheet must accompany the Final Evaluation Recommendation Report and will become part of the official file.

2015.612 Source Evaluation Panel (SEP) structure.

(a) For all proposed contracts with total estimated values in excess of $25,000 and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through the establishment of a Source Evaluation Panel (SEP).

(b) The SEP includes (1) at least three technical members (one of whom serves as the chairperson) who participate in the scoring of proposals using weighted evaluation criteria and evaluating proposals using other unweighted factors, and (2) a contract negotiator who ensures that procurement rules and regulations are followed, ensures that the integrity of the process is maintained, and negotiates the contract on behalf of the NRC. Except in unusual cases, the SEP should not exceed five members including the Chairperson. The technical members are usually employees of the NRC program office initiating the request or other NRC employees with expertise in areas related to the solicitation Statement of Work. Appointment of a technical member from other than the office initiating the request is encouraged. Employees of other agencies with expertise in a specific area may also serve as SEP technical members notwithstanding the fact that they are not employees of the NRC. Evaluators need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases and the solicitation should notify offerors of the NRC's intent to use non-Federal evaluators. For proposed procurements with a total estimated cost of less than $500,000 over a performance period of three years or less, a single technical member may be appointed to evaluate proposals with the contracting officer's approval. Designation of SEP members is accomplished by memorandum initiated by the director of the program office or the director's designee. This official is referred to as the Designating Official (DO).

(c) The SEP chairperson may obtain the services of advisors (e.g., legal, financial, etc.) to assist the SEP Advisors who serve on technical evaluation committees are appointed in writing by the DO. Advisors are not SEP members, and therefore do not score proposals. Advisors need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases, and the solicitation should notify offerors of the NRC's intent to use non-Federal advisors.

(d) The contracting officer shall establish the competitive range on all acquisitions. This is accomplished by approval of the SEP's written recommendation transmitted by the DO.

(e) The source selection official is the contracting officer. Selection is made based on review of the SEP's recommendations as endorsed by the DO, together with all supporting data to assure that award is in accordance with sound procurement principles and directly related to the evaluation criteria as set forth in the solicitation. Any proposed selection not endorsed by the DO will be concurred in by the Head of the Contracting Activity.

2015.670 Contract provisions.

(a) The contracting officer shall include the provision found at 2052.215-82, Contract Award and Evaluation of Proposals, in all solicitations except that:

(1) The contracting officer shall substitute the paragraph found at 2052.215-83 for paragraph (b) in all solicitations for negotiated competitive procurements where cost is more important than technical merit.

(2) The contracting officer shall substitute the paragraph found at 2052.215-84 for paragraph (b) in all solicitations for negotiated competitive procurements where cost and technical merit are of equal significance

(b) The contracting officer may make appropriate changes to the provision to accurately reflect other evaluation

procedures, such as evaluation of proposals against mandatory criteria and benchmarking criteria for ADP procurements.

Part 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.
2016.307-70 Contract provisions and clauses.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506-70 Contract provisions and clauses.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub L. 96-83, 93 Stat 648, Pub. L 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2016.3—Cost Reimbursement Contracts

2016.307-70 Contract provisions and clauses.

(a) The contracting officer shall insert the clause at § 2052.216-70, Level of Effort, in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost plus award fee, cost plus fixed fee, time and materials, or labor hour basis.

(b) The contracting officer shall insert the following provisions and clauses in all cost reimbursement contracts:

(1) Section 2052.216-71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216-72, Indirect Cost Rates—Alternate 1 (where predetermined rates apply).

(3) Section 2052.216-73, Indirect Cost Rates—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts.

2016.506-70 Contract provisions and clauses.

The contracting officer shall insert the following provisions in all solicitations and contracts that contain task order procedures:

(a) Section 2052.216-74, Task Order Procedures;

(b) Section 2052.216-75, Accelerated Task Order Procedures.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2019—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2019.7—Subcontracting with small business and small disadvantaged business concerns

Sec.
2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2019.705-2 Determining the need for a subcontracting plan.
2019.705-4 Reviewing the subcontracting plan.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2019.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

2019-705 Responsibilities of the contracting officer under the subcontracting assistance program

2019.705-2 Determining the need for a subcontracting plan.

In determining whether the acquisition meets the dollar threshold established in FAR 19.702 for requiring a subcontracting plan, the total value of the acquisition must be considered, including the value of all proposed option quantities and funding actions.

2019.705-4 Reviewing the subcontracting plan.

(a) During the source selection process, subcontracting plans may be requested from all concerns determined to be in the competitive range, for negotiation with the apparent successful offeror.

(b) The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, if:

(1) The master plan contains all of the elements required by FAR 19.704;

(2) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory threshold;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification; and

(4) The contracting officer has copies of the entire plan.

PART 2020—LABOR SURPLUS AREA CONCERNS

Subpart 2020.1—General

Sec.
2020.102 General policy.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2020.1—General

2020.102 General policy.

Acquisitions that are in excess of $25,000 must be reviewed for potential labor surplus area set-aside consideration in accordance with FAR 20.104 using publications and other information identifying labor surplus areas obtained from: U.S. Department of Labor, Employment and Training Administration, U.S. Employment Service, Office of Labor Market Information, 200 Constitution Avenue NW Room N4456, Washington, DC 20510, Telephone Number: (202) 535-0157

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1—Basic Labor Policies

Sec.
2022.103-4 Approvals.

Subpart 2022.9—Nondiscrimination Because of Age

Sec.
2022.901-70 Contract provisions.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2022.1—Basic Labor Policies

2022.103-4 Approvals.

The agency approving official for approval of contractor overtime shall be the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901-70 Contract provisions.

The contracting officer shall insert the provision found at 2052.222-70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

Sec.
2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR part 9, subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR part 9, subpart A, Freedom of Information Act Regulations are applicable to the availability of NRC records to the public.

PART 2025—FOREIGN ACQUISITION

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2025.1—Buy American Act—Supplies

2025.102 Policy.

Contracting officers may make the determination required by FAR 25.102(a)(4), provided the determination is factually supported in writing. For contracts exceeding $1 million, the Head of the Contracting Activity shall approve the determination.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contracts

Sec.
2027.305 Administration of patent rights clauses.
2027.305-3 Follow-up by Government.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1241, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305 Administration of patent rights clauses.

The contracting officer shall assure that each contractor report is in writing on whether any patent rights are being claimed, prior to final payment and closeout of the contract.

2027.305-3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report on any patents, copyrights, or royalties attained using any portion of the contract funds. The contractor shall, if no activity is to be reported, certify that in connection with the performance of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or are there any to be paid directly to others.

(b) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patent, copyright, or royalty activity, and shall document the official file with the resolution to protect the Government's rights prior to making any final payment and closing out the contract.

PART 2030—COST ACCOUNTING STANDARDS

Subpart 2030.2—CAS Program Requirements

Sec.
2030.201-5 Waiver.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1241, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2030.2—CAS Program Requirements

2030.201-5 Waiver.

In accordance with the FAR 30.201-5(c), the Head of the Contracting Activity may waive CAS requirements.

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Publ. L. 96-83, 93 stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2031.1—Applicability

2031.109-70 Contract clauses.

The contracting officer shall insert the clause at 2052.231-70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor prior to the effective date of the contract. Approval for use of this clause shall be obtained at one level above the contracting officer.

PART 2032—CONTRACT FINANCING

Subpart 2032.4—Advance Payments

Sec.
2032.402 General.
2032.406 Letters of credit.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2032.4—Advance Payments

2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements except for subscriptions to publications, the approving official shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

2032.406 Letters of credit.

Prior to authorizing a letter of credit arrangement, the contracting officer shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

PART 2033—PROTESTS, DISPUTES AND APPEALS

Subpart 2033.1—Protests

Sec.
2033.103 Protests to the agency.
2033.203 Applicability.
2033.211 Contracting officer's decision.
2033.214 Contract clause.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2033.1—Protests

2033.103 Protests to the agency.

(a) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of proposals must be filed prior to bid opening date or the closing date for receipt of initial proposals. In acquisitions where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than prior to the next closing date for receipt of proposals following the incorporation.

(b) In cases other than those covered in paragraph (a) of this section, protests must be filed not later than ten working days after the basis of protest is known or should have been known, whichever is earlier.

(c) The agency may not process, or shall cease processing, agency level protests that are protested outside the agency.

2033.203 Applicability.

(a) Pursuant to an interagency agreement between the NRC and the Department of Energy Board of Contract of Appeals (EBCA), the EBCA will hear appeals from final decisions of NRC contracting officers issued pursuant to the Contract Disputes Act. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contracting officer's decision.

(a) Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(iv) to identify the Energy Board of Contract Appeals and include its address: Webb Building, Room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203, when preparing a written decision.

2033.214 Contract clause.

(a) The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I where continued performance is vital to National security, the public health and safety, critical and major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2035.70 Contract clauses.

The contracting officer shall insert the following clauses in all RFPs for Research and Development or in Requests for Proposals (RFPs) for other technical services as appropriate:

Section 2052.235-70, Dissemination of Contract Information.

Section 2052.235-71, Private Use of Contract Information and Data.

Section 2052.235-72, Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) The Competition in Contracting Act provides the Broad Agency Announcement (BAA) as an alternative method to the full competitive process for funding research. This acquisition method refers to the competitive selection of basic or applied research proposals resulting from a BAA published in the Commerce Business Daily (CBD). The publication of the BAA in the CBD satisfies the FAR requirement for full and open competition. A primary benefit of the BAA is the ability to make multiple awards on the basis of one announcement which reduces the procurement lead-time and the staff effort involved in initiating several competitive projects. It also provides flexibility in source selection, based on the merits of the individual proposal(s).

(b) The BAA is an efficient means of soliciting competitive basic or applied research "ideas. BAAs may be used to fulfill requirements for scientific study and experimentation directed toward advancing the state-of-the-art, or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. The BAA technique may only be used when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated.

(1) The BAA consists of the following:

(i) A description of the agency's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;

(ii) A description of the criteria for selecting the proposals, their relative importance and the method of evaluation;

(iii) A specification of the period of time during which proposals submitted in response to the BAA will be accepted; and

(iv) Instructions for the preparation and submission of proposals.

(2) Proposals received as a result of the BAA must be evaluated in accordance with evalution criteria specified in the announcement by a peer or scientific review group established by the Designating Official. The BAA evaluation criteria should include "scientific merit" and should describe the method that will be used for evaluating proposals. Written evaluation reports on individual proposals are necessary, but proposals will not be evaluated against each other since they are not submitted in accordance with a common work statement. Criteria for selecting contractors will include such factors as:

(i) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Overall scientific, technical, or socio-economic merits of the proposal.

(iii) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iv) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(v) Potential contribution of the effort to NRC's mission.

(vi) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art.

(3) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the

selection or nonselection of each proposal received.

PART 2039—ACQUISITION OF INFORMATION RESOURCES

Sec.
2039.001 Policy.
2039.002 Delegations of procurement authority.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2039.001 Policy.

In accordance with the Federal Information Resources Management Regulation (41 CFR Ch. 201), and appropriate NRC Manual issuances, the Office of Information Resources Management will be responsible for development and approval of information resources studies, including analyses of alternatives, software conversion studies, and other requirements analyses for information resources management procurements in excess of $25,000 (automated data processing, telecommunications, and records), when required. These documents must be submitted to the Division of Contracts and Property Management with the Request for Procurement Action (RFPA) for which these documents are required.

2039.002 Delegations of procurement authority.

The NRC official authorized to sign Agency Procurement Requests and Agency Telecommunications Requests for Delegations of Procurement Authority is the Director, Office of Information Resources Management.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer as to why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs.

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall—

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision including any disallowance of questioned costs, and inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR 33.2, and provide a copy of the final decision to the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the government by one or more of the following methods:

(A) Requesting that the contractor provide a credit adjustment (offset) against amounts billed the government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deducting the disallowed costs from the next invoice submitted under the contract;

(C) Deducting the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advising the contractor that a refund is immediately payable to the government (in situations where there are insufficient payments owed by the government to effect recovery from the contract).

PART 2045—GOVERNMENT PROPERTY

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing government property (in general).

(a) A contractor may be provided Government property or allowed to purchase the property at Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

(b) If the program office is aware prior to the submission of the request for procurement action (RFPA) that it will be necessary to provide prospective contractors with Government property, a written justification must accompany the RFPA to the Division of Contracts and Property Management.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.
2052.200 Authority.
2052.204-70 Security.
2052.204-71 Site access badge requirements.
2052.209-70 Qualifications of contract employees.
2052.209-71 Current/former agency employee involvement.
2052.209-72 Certification regarding debarment status.
2052.209-73 Contractor organizational conflicts of interest (representation).
2052.209-74 Contractor organizational conflicts of interest.
2052.209-75 Contractor organizational conflicts of interest—language for follow-on contracts.
2052.209-76 Contractor organizational conflicts of interest—language for work for others.
2052.209-77 Contractor organizational conflicts of interest—language for task order contracts.
2052.210-70 Brand name products or equal.
2052.210-71 Drawings, designs, specifications, and other data.
2052.212-70 Preparation of technical reports.
2052.212-71 Technical progress report.
2052.212-72 Financial status report.
2052.214-70 Prebid conference.
2052.214-71 Bidder qualifications and past experiences.
2052.214-72 Bid evaluation.
2052.214-73 Timely receipt of bids.
2052.214-74 Disposition of bids.
2052.215-70 Preproposal conference.
2052.215-71 Proposal presentation and format.
2052.215-72 Proposal presentation and format—language for negotiated task order contracts.
2052.215-73 Data universal numbering system (DUNS) number.
2052.215-74 Key personnel.
2052.215-75 Travel reimbursement.
2052.215-76 Travel approvals.
2052.215-77 Project officer authority.
2052.215-78 Project officer authority—Alternate 1.
2052.215-79 Timely receipt of proposals.
2052.215-80 Award notification and commitment of public funds.
2052.215-81 Disposition of proposals.
2052.215-82 Contract award and evaluation of proposals.
2052.215-83 Contract award and evaluation of proposals—cost more important than technical merit.
2052.215-84 Contract award and evaluation of proposals—cost and technical merit of equal value.
2052.216-70 Level of effort.
2052.216-71 Indirect cost rates.
2052.216-72 Indirect cost rates—Alternate 1.
2052.216-73 Indirect cost rates—Alternate 2.
2052.216-74 Task order procedures.
Sec.
2052.216-75 Accelerated task order procedures.
2052.222-70 Nondiscrimination because of age.
2052.231-70 Preaward costs.
2052.235-70 Dissemination of contract information.
2052.235-71 Private use of contract information and data.
2052.235-72 Safety, health, and fire protection.

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204-70 Security.

As prescribed at 2004.404(a), insert the following clause in applicable solicitations and contracts:

Security

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See Section J for List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors or others (e.g., bidders) who have or may have an NRC contractual relationship which requires access to classified information or matter, access on a continuing basis (in excess of 30 days) to NRC Headquarters controlled buildings or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard Restricted Data, Formerly Restricted Data, and other classified information. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding Restricted Data, Formerly Restricted Data, and other classified information and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (P.L. 93-579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this contract. Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission.

(e) Definition of Restricted Data. The term "Restricted Data, as used in this clause, means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(f) Definition of Formerly Restricted Data. The term "Formerly Restricted Data, as used in this clause, means all data removed from the Restricted Data category under Section 142-d of the Atomic Energy Act of 1954, as amended.

(g) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required.

(h) Criminal liabilities. It is understood that disclosure of Restricted Data, Formerly Restricted Data, or other classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C.

2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(i) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(j) In performing the contract work, the contractor shall assign classifications to all documents, material, and equipment originated or generated by the contractor in accordance with classification guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment shall provide that the subcontractor or supplier assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished by the contractor.

(End of Clause)

2052.204-71 Site access badge requirements.

As prescribed at 2004.404(b), insert the following clause in applicable solicitations and contracts:

Site Access Badge Requirements

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with. Adherence to special requirements for Foreign Nationals, in accordance with NRC Manual Chapter 2101, Part VII.C is the responsibility of the contractor.

(End of Clause)

2052.209-70 Qualifications of contract employees.

As prescribed at 2009.105-70(a), insert the following provision in applicable solicitations:

Qualifications of Contract Employees

The offeror hereby certifies by submission of this offer that all representations made regarding its employees, proposed subcontractor personnel and consultants are accurate.

(End of Provision)

2052.209-71 Current/former agency employee involvement.

As prescribed at 2009.105-70(b), insert the following provision in applicable solicitations:

Current/Former Agency Employee Involvement

(a) The following representation is required by the NRC Acquisition Regulation 2009.105-70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts, and as set forth in the above cited provision, the use of such employees can adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) The offeror hereby certifies that there ( ) are ( ) are not current/former NRC employees who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering or performing any contract, consultant agreement or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

2052.209-72 Certification regarding debarment status.

As prescribed at 2009.405-2(a), insert the following provision in applicable solicitations:

Certification Regarding Debarment Status

The offeror hereby certifies by submission of this offer that it and any subcontractor(s) that will be performing under this contract is not a debarred person or firm.

(End of Provision)

2052.209-73 Contractor organizational conflicts of interest (representation).

As prescribed in 2009.570-4(b), insert the following provision in applicable solicitations:

Contractor Organizational Conflicts of Interest Representation

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 2009.570-3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 2009.570-3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts,

(2) Disqualify the offeror, or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 2009-570-9.

(b) The refusal to provide the representation required by 2009.570-4(b), or upon request of the contracting officer, the facts required by 2009.570-3(b), must result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for awards; or if nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. The offeror may also be disqualified from subsequent related NRC contracts and be subject to such other remedial actions provided by law or the resulting contract.

(End of Provision)

2052.209-74 Contractor organizational conflicts of interest.

As prescribed at 2009.570-5(a), insert the following clause in all applicable solicitations and contracts:

Contractor Organizational Conflicts of Interest

(a) *Purpose.* The primary purpose of this clause is to aid in ensuring that the contractor: (1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described apply to performance or participation by the contractor as defined in 48 CFR 2009.570-2 in the activities covered by this clause.

(c) *Work for others.* Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer prior to execution of such contractual arrangement.

(d) *Disclosure after award.* (1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570-2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in

writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the Government.

(e) *Access to and use of information.* (1) If the contractor in the performance of this contract obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released to the public, the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public, or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) The contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) *Subcontracts.* Except as provided in 48 CFR 2009.570-2(g), the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms "contract, "contractor, and "contracting officer, must be appropriately modified to preserve the Government's rights.

(g) *Remedies.* For breach of any of the above restrictions, or for intentional nondisclosure of misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) *Waiver.* A request for waiver under this clause must be directed in writing through the contracting officer to the Executive Director for Operations (EDO) in accordance with the procedures outlined in 48 CFR 2009.570-9.

(End of Clause)

2052.209-75 Contractor organizational conflicts of interest—language for follow-on contracts.

As prescribed by 2009.570(b), add the following to the general clause found at 2052.209-74:

(a) *Follow-on effort.* The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes in contractor for offering or selling its standard commercial items of the Government.

2052.209-76 Contractor organizational conflicts of interest—language for work for others.

As prescribed at 2009.570-5(c), add the following to the general clause found at 2052.209-74(c):

(2) The contractor may not perform any services for any NRC licensee or applicant that are the same as, or substantially similar to, the services contemplated under the scope of work for this contract without prior written approval of the NRC contracting officer.

(3) The contractor may not represent, assist, or otherwise support and NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract, except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity with NRC questions.

2052.209-77 Contractor organizational conflicts of interests—language for task order contracts.

As prescribed at 2009-570-5(d), the following two additions shall be made to the general clause found at 2052-209-784:

(a) Add to paragraph (b), "Scope," the following sentence:

Except where a lesser limitation is stated, these provisions apply to the entire subject matter set forth in the scope of work for the entire period of contract performance, including any extensions, and are therefore not limited to the scope or duration of a particular task order.

(b) Add to paragraph (d), "Disclosure after award, a new paragraph (d)(3) as follows:

Recognizing that the scope of work of this task order type contract necessarily encompasses a broad spectrum of activities, the contractor agrees that it will disclose all proposed new work of any type involving NRC licensees or applicants. Such disclosure must be made prior to the submission of a bid or proposal to the utility or other regulated entity whenever possible, and must be received by the NRC at least 15 days prior to the proposed award date in any event. The disclosure must include the statement of work and any other documents that are needed to fully described the proposed work for the regulated utility or other regulated entity.

2052.210-70 Brand name products or equal.

As prescribed at 2010.004, insert the following clause in applicable solicitations and contracts:

Brand Name Products or Equal

Offerors (proposers) offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered.

2051.210-71 Drawings, designs, specifications, and other data.

As prescribed at 2010.011, the following clause shall be submitted in applicable solicitations and contracts:

Drawings, Designs, Specifications, and Other Data

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use. These data must be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

2052.212-70 Preparation of technical reports.

As prescribed at 2012.104-70(a), insert the clause in applicable solicitations and contracts:

Preparation of Technical Reports

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached NRC Manual Chapter 3202, "Publication of Technical Reports Prepared by NRC Contractors, Including Reports Prepared Under or Pursuant to Interagency Agreements." NRC Manual Chapter 3202 is not applicable to any Contractor Spending Plan and any Financial Status Report that may be included in this contract. (See Section J for List of Attachments).

(End of Clause)

2052.212-71 Technical progress report.

As prescribed at 2012.104-70(b), insert the following clause in applicable solicitations and contracts:

Technical Progress Report

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, FIN number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period; milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution; (if the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact).

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of Clause)

2052.212-72 Financial status report.

As prescribed at 2012.104-70(c), insert the following clause in applicable solicitations and contracts:

Financial Status Report

The contractor shall provide a monthly Financial Status Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, FIN number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

(1) Total estimated contract amount.

(2) Total funds obligated to date.

(3) Total costs incurred this reporting period.

(4) Total costs incurred to date.

(5) Balance of obligations remaining.

(6) Balance of funds required to complete contract.

(b) Details of all direct and indirect costs incurred during the reporting period for each task.

(c) Update the approved Contractor Spending Plan (CSP) if required under this contract. If there have been no changes to the projections, a certification to that effect may be provided with the Financial Status Report in lieu of the CSP

(End of Clause)

2052.214-70 Prebid conference.

As prescribed in 2014.201-670(a), insert the following provision in applicable solicitations:

Prebid Conference

(a) A prebid conference is scheduled for:
Date:
Location:
Time:

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notifty by letter or telephone , no later than close of business Notification of your intention to attend is essential in the event the conference is rescheduled or cancelled.

(c) Written questions must be submitted to:

U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: Mail Stop Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. /Prebid Conference.

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

To be incorporated into the solicitation.

(End of Provision)

2052.214-71 Bidder qualifications and past experiences.

As prescribed in § 2014.201-670(b)(1), insert the following provision in applicable solicitations:

Bidder Qualifications and Past Experiences

(a) The bidder shall list previous/current contracts for the same or similar products/services. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts for same or similar products/services or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(1) Contract No.:_____
Name and address of Government agency or commercial entity:_____
Point of Contact and Telephone Number:_____

(2) Contract No._____
Name and address of Government agency or commercial entity:_____
Point of Contact and Telephone Number:_____

(3) Contract No._____
Name and address of Government agency or commercial entity:_____
Point of Contact and Telephone Number:_____

(b) The bidder shall also provide the name, title and full telephone number for its technical representative and contracts/business representative:

(1) Technical Respresentative
Name_____
Title_____
Telephone No.( ) _____

(2) Contracts/Business Representative
Name_____
Title _____
Telephone No. ( ) _____

* To be incorporated into the solicitation.

(End of Provision)

2052.214-72 Bid evaluation.

As prescribed at 2014.201-670(b)(2), insert the following provision in applicable solicitations;

Bid Evaluation

(a) Bids in response to this IFB must set forth full, accurate, and complete information as required herein. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(b) Award will be made to that responsive, responsible bidder within the meaning of Federal Acquisition Regulation 9-1 whose total bid amount, as set forth by the bidder in Section B of this IFB constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award bv first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount.

(c) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(d) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC are significantly less than

cost for some work and/or prices that may be significantly overstated for other work.

(e) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(f) A preaward onsite survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1 and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within hours after such request: (1) concerning their ability to meet any of the minimum standards set forth in FAR 9.104, (2) samples of work, and (3) names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(g) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity will cause the bid to be rejected as nonresponsive.

To be inserted into solicitation.

(End of Provision)

2052.214-73 Timely receipt of bids.

As prescribed at 2014.670(b)(3), insert the following provision in applicable solicitations:

Timely Receipt of Bids

Because the NRC is a secure facility with perimeter access control, bidders shall allow additional time for hand delivery (including express mail and delivery services) of bids to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

2052.214-74 Disposition of bids.

As prescribed at 2014.670(b)(4), insert the following provision in applicable solicitations:

Disposition of Bids

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property Management. Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

2052.215-70 Preproposal conference.

As prescribed at 2015.407-70(c), insert the following provision in applicable solicitations:

(a) A preproposal conference is scheduled for:

Date:

Location:

Time:

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than one working day prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify by letter or telephone, no later than close of business. Notification of your intention to attend is essential in the event the conference is rescheduled or cancelled.

(c) Written questions must be submitted to:

U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: Mail Stop Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. /Preproposal Conference.

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

To be incorporated into the solicitation.

(End of Provision)

2052.215-71 Proposal presentation and format.

As prescribed at 2015.407-70(b), insert the following provision in applicable solicitations:

Proposal Presentation and Format

(a) Proposals must be typed, printed or reproduced on letter-size paper and each copy must be legible.

(b) Proposals in response to this Request for Proposal must be submitted in the following three (3) separate and distinct parts:

(1) Two (2) original signed copies of this solicitation package. All applicable sections must be completed by the offeror.

(2) One (1) original and copies of the "Cost Proposal" must be submitted.

(3) One (1) original and copies of the "Technical and Management Proposal" must be submitted.

(c) Correctness of the Proposal.

Caution—offerors are hereby notified that all information provided in its proposals, including all resumés, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all such representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education and employment history of its employees, subcontractor personnel and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(d) Cost Proposal.

(1) The offeror shall use Standard Form 1411, Contracting Pricing Proposal Cover Sheet, in submitting the Cost Proposal. A copy of the form and instructions are attached to this solicitation. The information must include pertinent details sufficient to show the elements of cost upon which the total cost is predicted. The Cost Proposal must be submitted separately from the Technical and Management Proposal.

(2) When the offeror's estimated cost for the proposed work exceeds $100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(e) Technical and Management Proposal.

(1) The Technical and Management Proposal may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the Technical and Management Proposal so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit with the Technical and Management Proposal full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(4) The Technical and Management Proposal must set forth as a minimum, the manner and sequence outlined below:

(i) Discussion of the statement of work to substantiate the offeror's understanding of the work requirements.

(ii) Discussion of the proposed method of approach to meet the contract objectives.

(iii) Discussion of potential problem areas and the approach to be taken to resolve these areas.

(iv) Statements of any interpretations, requirements, or assumptions made by the offeror.

(v) Discussion of support personnel and facilities available to assist the professional personnel.

(vi) Identification of "Key Personnel, and for the person(s) so identified, specify the percentage of time that will be committed to other projects over the course of the proposed contract period of performance.

(vii) Resumés for all professional personnel, including subcontractors and consultants, to be utilized in the performance of any resulting contract. Include educational background, specific pertinent work

experience and a list of any pertinent publications authored by the individual.

(viii) Description of the source of personnel required for performance of each task including those not presently employed by the offeror. If any of the personnel are under commitment, describe the terms of the commitment(s). Note specifically the personnel that will be employed at time of contract award.

(ix) If the offeror plans to obtain consultant services, explanation of the need for such services. List the proposed consultants by name, describe the work they will perform under this contract, and include related past experience. Individuals who are employees of the contractor or of the U.S. Government are prohibited from being paid as a consultant under this contract.

(x) If the offeror plans to subcontract any of the work to be performed, list of proposed subcontractors, if known, by name. Provide a detailed description of the work to be performed by the subcontractor, and supporting documentation on the selection process, i.e., competitive vs. noncompetitive, technical and cost evaluations.

(xi) A detailed schedule for work to be performed and identification of significant milestones and completion dates for each subpart or task.

(xii) Projected scheduling and contingency planning demonstrating a logical progression and integration of the tasks to ensure completion within the performance period and without program slippage.

(xiii) Description of the management organizational structure delineating areas of responsibility and authority under the proposed contract. Describe the relationship of the project organization to corporate management and to subcontractors, if any. Discuss the functions and authorities of the project manager.

(xiv) Procedures to periodically review in-house organizational functions, program reviews and controls and subsequent coordination with the NRC.

(xv) Management controls expected to be utilized to preclude a contract cost growth.

(xvi) List of any commitments with other organizations, Government and/or commercial, for the same or similar effort.

(xvii) List of previous contracts for the same or similar services, with the name, title, and full telephone number of a contact for each.

(xviii) List of the name, title and full telephone number for the proposer's technical representative and contracts/ business representative.

(xix) ____**____**____**____**____

* To be incorporated into the solicitation.

(End of Provision)

§ 2052.215-72 Proposal presentation and format—language for negotiated task order contracts.

As prescribed at 2015.407-70(b)(1), insert the following language in provision 2052.215-71.

(d) Cost Proposal.

(1) The offeror shall provide a cost proposal based on the Estimated Level of Effort. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

§ 2052.215-73 Data universal numbering system (DUNS) number.

As prescribed at 2015.407-70(a)(1), insert the following provision in applicable solicitations:

Data Universal Numbering Systems (DUNS) Number

All offerors shall provide their DUNS number code in the box marked "code" in item 15A of Standard Form 33. In the event the code is unknown, enter "NA.

(End of Provision)

§ 2052.215-74 Key personnel.

As prescribed at 2015.407-70(a)(2), insert the following clause in applicable solicitations and contracts:

Key Personnel

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resumé for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer or his/her authorized representative shall evaluate the request and promptly notify the contractor of his or her approval or disapproval in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated or have otherwise become unavailable for the contract work, is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss or damage.

(End of Clause)

To be incorporated into any resultant contract.

2052.215-75 Travel reimbursement.

As prescribed at 2015.407-70.(d), insert the clauses in appropriate solicitations and contracts:

Travel Reimbursement

(a) Total expenditure for domestic travel may not exceed ____ without the prior approval of the contracting officer.

(b) The contractor is encouraged to use Government contract airlines, AMTRAK rail services, and discount hotel/motel properties in order to reduce the cost of travel under this contract. The contracting officer shall, upon request, provide each traveler with a letter of identification which is required in order to praticipate in this program. The Federal Travel Directory (FTD) identifies carriers, contract fares, schedules, payment conditions, and hotel/motel properties which offer their services and rates to Government contractor personnel traveling on official business under this contract. The FTD, which is issued monthly, may be purchased from the U.S. Government Printing Office, Washington, DC 20402.

(c) The contractor will be reimbursed for reasonable domestic travel costs incurred directly and specifically in the performance of this contract. The cost limitations for travel costs are determined by the Federal Travel Regulations that are in effect on the date of the trip. These regulations specify the daily maximum per diem rates for specific localities within the Conterminous United States (CONUS), the standard CONUS rate, the allowance for meals and incidental expenses (M&IE), the cost of travel by privately owned automobile, and the items which require receipts. A copy of the regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(d) When the Government changes the Federal Travel Regulations, it is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract if the contractor will be unable to make all of the approved trips and remain within the cost and fee limitations of this contract due to the changes.

(e) The rates for foreign travel are established by the U.S. Department of State and are listed in a publication entitled "Maximum Travel Per Diem Allowances for Foreign Areas. Copies of this publication may be obtained from the U.S. Government Printing Office, Washington, DC 20402.

To be incorporated into any resultant contract.

(End of Clause)

2052.215-76 Travel approvals.

As prescribed in 2015.407-70(d), insert the following clause in applicable solicitations and contracts:

Travel Approvals

(a) All domestic travel requires the prior approval of the project officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445 and must be in compliance with FAR 52.247-63 Preference for U.S. Flag Air Carriers. Foreign travel approval must be communicated in writing through the contracting officer.

(End of Clause)

2052.215-77 Project officer authority.

As prescribed in 2015.407(a)(3), insert the following clause in applicable solicitations and contracts:

Project Officer Authority

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name:

Address:

Telephone Number:

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term "technical direction" is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, fills in details or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical directions which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way causes an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the Changes Clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto is subject to FAR 52.233-1—Disputes.

(i) In addition to providing technical direction as defined above, the project officer shall—

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

To be incorporated into any resultant contract.

(End of Clause)

2052.215-78 Project officer authority—Alternate 1.

As prescribed at 2015.407-70(1)(4), insert the following clause in applicable solicitations and contracts:

Project Officer Authority—Alternate 1

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name:

Address:

Telephone Number:

(b) The project officer shall—

(1) Place delivery orders for items required under this contract.

(2) Monitor contractor performance and recommend to the contracting officer changes in requirements.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

To be incorporated into any resultant contract.

(End of Clause)

2052-215-79 Timely receipt of proposals.

As prescribed in 2015.407-70(a)(6), insert the following provision in applicable solicitations:

Timely Receipt of Proposals

Because NRC is a secure facility with perimeter access control, offerors shall allow additional time for hand delivery (including express mail and delivery services) of proposals to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

§ 2052.215-80 Award notification and commitment of public funds.

As prescribed at 2015.407-70(a)(7), insert the following clause in applicable solicitations and contracts:

Award Notification and Commitment of Public Funds

(a) All offerors will be notified of their selection or nonselection as soon as possible. Formal notification of nonselection for unrestricted awards may not be made until a contract has been awarded. Pursuant to requirements of FAR 15.1001(b)(2), preliminary notification will be provided prior to award for small business set-aside procurements on negotiated procurements.

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include—

(1) Encouraging a potential contractor to incur costs prior to receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

§ 2052.215-81 Disposition of proposals.

As prescribed in 2015.407-70(a)(8), insert the following provisions in applicable solicitations:

Disposition of Proposals

After award of the contract, one copy of each unsuccessful proposal is retained by the

NRC's Division of Contracts and Property Management. Unless return of the additional copies of the proposals is requested by the offeror upon submission of proposal, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

§ 2052.215.82 Contract award and evaluation of proposals.

As prescribed in 2015.670(a), insert the following provision in applicable solicitations:

Contract Award and Evaluation Proposals

(a) By use of numerical and narrative scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph below. These factors are listed in their relative order of importance. Award is made to the offeror (1) whose proposal is technically acceptable, (2) whose technical/cost relationship is most advantageous to the Government, and (3) who is considered to be responsible within the meaning of Federal Acquisition Regulation Part 9.1.

(b) Although cost is a factor in the evaluation of proposals, technical merit in the evaluation criteria set forth below is a more significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

(c) The Government may—

(1) Reject any or all offers if the action is in the public interest;

(2) Accept other than the lowest offer; and

(3) Waive informalities and minor irregularities in offers received.

(d) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoints.

(e) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan (CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonablness, and as a measure of effective manangement of the effort.

(f) In making the above determination, an analysis is performed by the Government that takes into consideration the results of the technical evaluation and cost analysis.

To be incorporated into the solicitation.

(End of Provision)

2052.215-83 Contract award and evaluation of proposals—cost more important than technical merit.

As prescribed at 2015.670(1), substitute the following paragraph for paragraph (b) in the clause at 2052.215.83:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, cost is more a significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

2052.215-84 Contract award and evaluation of proposals—cost and technical merit of equal value.

As prescribed at 2015.670(2), substitute the following paragraph for paragraph (b) in the clause at 2052.215.83:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

2052.216-70 Level of effort.

Level of Effort

As prescribed at 2016.307-70(a), insert the following provision in applicable solicitations:

The NRC's estimate of the total of professional and clerical effort for this project is approximately staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

To be incorporated into any resultant contract.

(End of Provision)

2052.216-71 Indirect cost rates.

As prescribed at 2016.307-70(b)(1), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232-20, Limitation of Cost, or FAR 52.232-22, Limitation of Funds, as applicable, if these changes effect performance of work within the established cost or funding limitations.

To be incorporated into my resultant contract.

(End of Clause)

2052.216-72 Indirect cost rates—Alternate 1.

As prescribed at 2016.307-70(b)(2), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates—Alternate 1

The contractor is reimbursed for allowable indirect costs in accordance with the following predetemined (fixed) rates:

To be incorporated into any resultant contract.

(End of Clause)

2052.216-73 Indirect cost rates—Alternate 2.

As prescribed at 2016.307-70(b)(3), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates—Alternate 2.

(a) For this contract, the final amount reimbursable for indirect costs is as follows:

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates, the rates established by the cognizant audits must apply. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

To be incorporated into any resultant contract.

(End of Clause)

52.216-74 Task order procedures.

As prescribed at § 2016.506-70(a), insert the following clause in applicable solicitations and contracts:

Task Order Procedures

(a) Task Order Request for Proposal.

When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORP) which include the following, as appropriate—

(1) Scope of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance—place of performance;

(4) Applicable special provisions;

(5) Technical skills required; and

(6) Estimated level of effort.

(b) Task Order Proposal.

By the date specified in the TORP the contractor shall deliver to the contracting officer a written proposal that provides the following technical and cost information, as appropriate—

(1) Technical Proposal Content:

(i) A discussion of the scope of work requirements to substantiate the contractor's understanding of the requirements of the task order and the contractor's proposed method of approach to meet the objective of the order.

(ii) Resumes for professional personnel proposed to be utilized in the performance of any resulting task order. Include educational background, specific pertinent work experience and a list of any pertinent publications authorized by the individual.

(iii) Identification of administrative support personnel and/or facilities that are needed to assist the professional personnel in completing work on the task order.

(iv) Identification of "Key Personnel" and the number of staff hours that will be committed to completion of work on the task order.

(2) Cost Proposal.

The contractor's cost proposal for each task order must be prepared using Standard

Form 1411, Contract Pricing Proposal cover sheet. A copy of the form and instructions are attached to this contract. Each task order cost proposal must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds $100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(c) Task Order Award.

The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following—

(1) Statement of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance;

(4) Key personnel;

(5) Applicable special provisions; and

(6) Total task order amount including any fixed fee.

§ 2052.216-75 Accelerated task order procedures.

As prescribed at 2016.506-70(b), insert the following clause in applicable solicitations and contracts:

Accelerated Task Order Procedures

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and part 31 of the FAR, subject to contractor appeal as provided in 52.233-1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

2052.222-70 Nondiscrimination because of age.

As prescribed at 2022.901-70, insert the following clause in applicable solicitations and contracts:

Nondiscrimination Because of Age

It is the policy of the Executive Branch of the Government that (a) contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirements, and (b) that contractors and subcontractors, or person acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

2052.231-70 Preaward costs.

As prescribed in 2031.109-70, insert the following clause in applicable solicitations and contracts:

Preaward Costs

Allowable costs under this contract must include such costs, incurred by the contractor in connection with the work covered by this contract during the period from* and including* to the effective date of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed* which is included in the estimated cost of this contract.

*To be incorporated into any resultant contracts.

(End of Clause)

2052.235-70 Dissemination of contract information.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Dissemination of Contract Information

The contractor shall comply with the requirements of the attached NRC Manual Chapters 3202, "Publication of Technical Reports Prepared by NRC Contractors, Including Reports Prepared Under or Pursuant to Interagency Agreements, and 3206, "NRC Contractor Unclassified Papers, Journal Articles and Press or Other Media Releases on Regulatory and Technical Subjects, (see Section J for List of Attachments) regarding publications or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause constitutes grounds for termination of this contract.

(End of Clause)

2052.235-71 Private use of contract information and data.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Private Use of Contract Information and Data

Except as specifically authorized by this contract, or as otherwise approved by the contracting officer, information and other data developed or acquired by or furnished to the contractor in the performance of this contract may be used only in connection with the work under this contract.

(End of Clause)

2052.235-72 Safety, health, and fire protection.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Safety, Health, and Fire Protection

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

PART 2053—FORMS [RESERVED]

Dated at Bethesda, Maryland this 22nd day of September, 1989.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 89-23025 Filed 9-29-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant, Wilkesia hobdyi (Dwarf Iliau)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a plant, *Wilkesia hobdyi* (dwarf iliau), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This species grows on two adjacent, nearly vertical rock outcrops on the Na Pali Coast of western Kaua'i, Hawaiian Islands. The greatest immediate threat to the survival of this species is a rapidly increasing goat population in its habitat. The goats browse on the plant and their activity

accelerates erosion of the habitat. A determination that *Wilkesia hobdyi* is endangered would implement the Federal protection and recovery provisions provided by the Act. Critical habitat is not proposed. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Pacific Islands Administrator, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307 P.O. Box 50167 Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest F Kosaka, Field Supervisor, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Wilkesia hobdyi was discovered by Robert W. Hobdy on Polihale Ridge, Kaua'i, in 1968. He sent a specimen of the plant to Dr. Harold St. John of the Bishop Museum who described it as a new species, naming it in Hobdy's honor (St. John 1971). The plant was later found on the adjacent Ka'aweiki ridge and today only those two populations, comprising a total of about 350 individuals, are known. Both populations occur on State-owned land within the Pu'u ka Pele Forest Reserve, growing on the north-facing, nearly vertical rock outcrops near the summits of Polihale and Ka'aweiki ridges, island and county of Kaua'i.

Wilkesia is a shrub about 2 feet (60 cm) tall, which branches from the base. The tip of each branch bears a tuft of narrow leaves, which are about ½ inch (1.3 cm) wide and about 3 to 6 inches (7.5 to 15 cm) long. The leaves are produced in whorls, which are joined together into a short sheathing section where they are attached to the stem. The flower heads are in clusters of about 10 to 18 inches (25 to 45 cm) long. Each head is cream-colored and about ¾ inch (2 cm) in diameter (Carr 1982).

The greatest immediate threat to the survival of this species is a rapidly increasing goat population in its habitat. The goats browse on the plant and their activity in the area accelerates erosion. Although the low number of individuals and their restricted habitat could be considered a potential threat to the survival of the species, the plant appears to have vigorous reproduction and should survive indefinitely if goats were eliminated from its habitat. A cooperative effort between Federal and State agencies is needed to protect the remaining plants and to provide for the conservation of the species.

The Secretary of the Smithsonian Institution, as directed by Section 12 of the Endangered Species Act of 1973, prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein, including *Wilkesia hobdyi*. As a result of this review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Wilkesia hobdyi* to be endangered pursuant to Section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *Wilkesia hobdyi* as a Category 1 candidate, meaning that the Service had substantial information indicating that listing was appropriate.

Section 4(b)(3)(B) of the Act, as amended, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *Wilkesia hobdyi* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987 and 1988. Publication of the present proposal constitutes the final 1-year finding.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Wilkesia hobdyi* St. John (dwarf iliau) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Wilkesia hobdyi* is subject to disturbance by feral goats. The high, steep ocean cliffs on which the plant grows have always been subject to erosion by wind and water. However, the activity of the goats on the narrow cliff ledges, destroying the vegetation, dislodging stones, and loosening the soil, has accelerated the rate of erosion and degraded the plant's habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a factor.

C. *Disease or predation.* Browsing by feral goats probably is the greatest present threat to this species. Large herds of feral goats inhabit the cliffs upon which the plants grow and are responsible for much damage both through their predation on the plant and the concomitant habitat disturbance that favors the introduction and spread of exotic vegetation, and an increase in erosion. The large goat herds result from specific game management practices aimed at maintaining high goat population levels for hunting.

D. *The inadequacy of existing regulatory mechanisms. Wilkesia hobdyi* grows within the boundaries of the State-owned Pu'u ka Pele Forest Reserve. State regulations prohibit the removal, destruction, or damage of plants found on State forest land. However, these regulations are difficult to enforce due to limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D-4(a)) states that Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the

conservation, management, enhancement, or protection of endangered species (Sect. 195D–5(c)). Funds for these activities could be made available under Section 6 of the Act (State Cooperative agreements). Therefore, listing this species would reinforce and supplement the protection available to it under State law. Also the Act would offer additional protection to the species, as it is now a violation of the Act to remove, cut, dig up, damage, or destroy any listed plant in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small population (350 individuals) remaining makes *Wilkesia hobdyi* vulnerable to any catastrophe, natural or man-caused, that may impact the area. Reduction of the gene pool and genetic variability, resulting from a small population size, potentially could have detrimental effects on the continued existence of the species although the plant appears at present to be adequately reproducing itself.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Wilkesia hobdyi* as endangered. Only 350 individuals remain in the wild, and these face threats from feral goats and habitat degradation. Given these circumstances, the determination of endangered status is warranted. Critical habitat is not being proposed for the reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Such a determination would result in no known benefit to the species. All populations are on State land, and, due to the cliff terrain on which it grows, all but a few individual plants are inaccessible to man. Protection of this species habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, the Service finds that designation of critical habitat is not prudent for *Wilkesia hobdyi* at the present time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Since *Wilkesia hobdyi* is known only to occur on State land, cooperation between Federal and State agencies is necessary to provide for its conservation. The protection required of Federal agencies and the prohibitions against trade and collecting are discussed, in part, below:

Section 7 (a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known or anticipated that would affect *Wilkesia hobdyi* as all known sites for this plant are on State-owned land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Wilkesia hobdyi* all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction of listed plants on Federal lands, and the removal, cutting, digging up, or damaging or destroying of these plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507 Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments, particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Wilkesia hobdyi*;

(2) The location of any additional populations of *Wilkesia hobdyi* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Wilkesia hobdyi*.

The final decision on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if

requested. Requests must be filed within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing to the Service's Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G. D. 1982. Unpublished status survey of *Wilkesia hobdyi* St. John (Hobdy's iliau). U.S. Fish and Wildlife Service. 24 pp.

St. John, H. 1971. The status of the genus *Wilkesia* (Compositae), and discovery of a second Hawaiian species. Occas. Pap. B. P Bishop Museum 24(8):127–138.

Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307 P.O. Box 50167 Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407· 16 U.S.C. 1531–1543: 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Wilkesia hobdyi	Dwarf iliau	U.S.A. (HI)	E		NA	NA

Dated: September 19, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–23054 Filed 9–29–89; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Hawaiian Plants of the Genus Remya

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the three species of the genus Remva to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). The three species of this genus are endemic to the islands of Kauai and Maui, Hawaiian Islands. The greatest immediate threat to their survival is the degradation of their habitat by grazing and browsing feral and domesticated animals. The quality of the Hawaiian environment has undergone a steady degradation since man's arrival in the islands due to the introduction of alien species. Feral and domesticated browsing and grazing animals and competing naturalized plants have impacted the Remva species and their habitat. A determination that the three species of the genus *Remya* are endangered would implement the Federal protection and recovery provisions provided by the Act. Critical habitat is not proposed Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Pacific Islands Administrator, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307 P 0 Box 50167 Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest F Kosaka, Field Supervisor, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Remya is a genus of small perennial shrubs in the aster family (Asteraceae, also known as Compositae). The genus comprises three species and is endemic to the Hawaiian Islands Until 1985, there were two known species, *R. kauaiensis* and *R. mauiensis*, both described in 1888 (Hillebrand 1888). Apparently neither species has been common during historical times, and they rarely have been collected.

Remya kauaiensis was first collected prior to 1871 by Valdemar Knudsen at "Waimea" on Kauai. Knudsen sent the specimen to William Hillebrand, a Honolulu physician, who described it as a new species. It was next collected more than 80 years later by Otto Degener in 1952 in Kokee State Park, Kauai. The species was considered extinct until 1983 when it was rediscovered by Galen Kawakami, a forester on Kauai who discovered two small populations, both on State land in the Kokee area. Three additional small populations were discovered in the same general area in 1985 and 1986 by Timothy Flynn of the Pacific Tropical Botanical Garden.

Remya mauiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L. E. Bishop, W Gagne, and S. Montgomery in Manawainui Gulch, West Maui. More recently, a small population has been found in an adjacent gulch.

Remya montgomeryi was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai, and presently is known only from that population (Wagner and Herbst 1987).

The genus *Remya* was published in 1876 by George Bentham in Bentham and Hooker's *Genera plantarum*. It was named in honor of Ezechiel Jules Remy, a French naturalist and ethnobotanist who visited Hawaii twice during an extended trip around the world in 1851 to 1863.

The members of this genus are small shrubs, about 3 feet tall, with many slender, sprawling or scandent to weakly erect branches. The branches are glabrous in *R. montgomeryi*, but covered with a fine tan fuzz near their tips in the other two species. The leaves are narrow, up to about 6 inches long, and are bunched at the ends of the branches. The leaves are coarsely toothed along the edges, and are green on the upper surface. The lower surface is green in *R. montgomeryi*, while in the other two species it is covered with a dense mat of fine white hairs. The flowers are small, about 3/10 inch in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* in press).

Because of the sprawling habit of the plant, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however estimates have been made. *Remya kauaiensis* is known from five small populations in the Kokee area of Kauai. The populations are of two to eight plants each with a total of about two dozen individuals. *Remya mauiensis* is known from two small populations on adjacent ridges on West Maui; there appears to be 20 to 25 plants in one population and 1 to 2 in the other. *Remya montgomeryi* is known from a single population on the rim of Kalalau Valley, Kauai; its size is unknown, but it consists of only a few plants.

The extremely small size of the populations is a serious potential threat to these species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the main threat to the members of this genus probably is the degradation of their habitat due to the introduction of alien plants and animals.

Federal government action on members of this genus began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. In this and subsequent notices, *R. kauaiensis* was included as extinct or probably extinct, and *R. mauiensis* was included as endangered. As a result of this review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered pursuant to Section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal, Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *R. mauiensis* as a Category 1 candidate, meaning that the Service had substantial information indicating that listing was appropriate; *R. kauaiensis* was included as a Category 1* candidate, meaning that it possibly was extinct Section 4(b)(3)(B) of the Act, as amended, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *R. mauiensis* and *R. kauaiensis* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to Section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987 and 1988. Publication of the present proposal constitutes the final 1-year finding. *Remya montgomeryi* was not included in any of the notices as it was not discovered until 1985 and was not described as a new species until 1987

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the three species of Remya are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The quality of the Hawaiian environment has undergone a steady degradation since man's arrival in the islands due to the introduction of alien species. Browsing and grazing feral and domesticated animals and competing naturalized plants have impacted the *Remya* species and their habitat through erosion and invasion of habitat by more aggressive species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a factor, but unrestricted scientific collecting or excessive visits could seriously affect the species because of their limited numbers and the potential for erosion resulting from soil disturbance.

C. *Disease or predation.* Due to the extreme rarity of the three species, little is known about the species or their predators. It can definitely be stated, however, that much potential habitat for the plant has been destroyed by cattle, goats, pigs, and deer, and that most of the presently existing plants are found growing in areas relatively inaccessible to these animals. The destruction of native vegetation in Hawaii by feral animals is well documented, and it can safely be predicted that they are a very real threat to the survival of these species.

D. *The inadequacy of existing regulatory mechanisms.* Most of the plants are found within a State park, forest reserve, or plant sanctuary. State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, these

regulations are difficult to enforce due to limited personnel. Hawaii's Endangered Species Act (HRS, Sect 195D–4(a)) states that Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter

*" Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Sect. 195D–5(c)). Funds for these activities could be made available under Section 6 of the Act (State Cooperative Agreements). Therefore, listing of this genus would reinforce and supplement the protection available to these species under State law. Also, the Act would offer additional protection to these species, as it is now a violation of the Act to remove, cut, dig up, damage, or destroy any listed plant in knowing violation of a State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small size of each of the extant populations is in itself a considerable threat to these species. The limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy a significant percentage of the known extant individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the three genus *Remya* species as endangered. Only 8 populations with a total of about 60 individuals remain in the wild, and these face threats of browsing and grazing by feral and domestic animals, and general habitat degradation. Because the three species (entire genus) are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose any habitat of a species that is considered to be critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species at this time. Such a determination would result in no known benefit to the species. All populations are on State land; Federal and State agencies can be alerted to their presence without the publication of critical habitat descriptions and maps. Publication of such descriptions and maps would increase the degree of threat from taking or vandalism because live specimens of *Remya* could be of interest to curiosity seekers or collectors of rare plants. Also, as the plants grow mostly on steep slopes, visits to the area could result in severe erosion problems, an additional threat to the species. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Since the *Remya* species are known to occur on State land, cooperation between Federal and State agencies is necessary to provide for their conservation. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below:

Section 7 (a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known or anticipated that would affect *Remya* species as all known sites for these plants are on State-owned land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the three species of *Remya* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction of listed plants on Federal lands, and the removal, cutting, digging up, or damaging or destroying of these plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species are not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507 Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the three species of *Remya*;

(2) The location of any additional populations of any of the three *Remya* species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and the possible impacts on the three species of *Remya*.

The final decision on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing to the Service's Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Herbst, D. R. 1988. Unpublished status survey of the genus *Remya*. U.S. Fish and Wildlife Service. 41 pp.

Hillebrand, Wm. Flora of the Hawaiian Islands. Facsimile ed., 1965, Hafner Publ. Co., N.Y. 673 pp.

Wagner, W. L. and D. R. Herbst. 1987 A new species of *Remya* (Asteraceae: Astereae) on Kaua'i and a review of the genus. Systematic Botany 12(4):601–608.

Wagner, W. L., D. R. Herbst, and S. H. Sohmer. In Press. Manual of the flowering plants of Hawai'i. University of Hawaii Press and Bishop Museum Press.

Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167 Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

*

(h)

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Remya kauaiensis	None	U.S.A. (HI)	E		NA	NA
Remya mauiensis	Maui remya	U.S.A. (HI)	E		NA	NA
Remya montgomeryi	None	U.S.A. (HI)	E		NA	NA

Dated: September 19, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

FR Doc. 89–23056 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN: 1018–AB31

Endangered and Threatened Wildlife and Plants; Proposal To List the Fanshell as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to lis a freshwater mussel, the fanshell (*Cyprogenia stegaria* (=*C. irrorata*)), as an endangered species under the Endangered Species Act of 1973, as amended (Act). This freshwater mussel historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, Alabama, and Virginia. Presently, the fanshell is believed to be reproducing in only three rivers—the Green and Licking Rivers in Kentucky, and the Clinch River in Tennessee and Virginia. Additionally, small, apparently nonreproducing populations (based on the collection of a few old specimens in the 1980s) may still persist in the Muskingum River, Ohio; the Kanawha River, West Virginia; the Wabash River system in Illinois and Indiana; Tygarts Creek, Kentucky; and the Tennessee and Cumberland Rivers in Tennessee. The distribution and reproductive capacity of this species has been seriously impacted by the construction of impoundments and navigation facilities, dredging for channel maintenance, sand and gravel mining, and water pollution. Comments and information are sought from the public concerning this proposal.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The fanshell (*Cyprogenia stegaria* (=*C. irrorata*)) was described by Rafinesque (1820). This freshwater mussel is characterized as a medium to large river species (Bates and Dennis 1985). The mussel has a medium-size shell (seldom exceeding 3.2 inches (80 millimeters) in length) that is subcircular in outline (Johnson 1980). The shell exterior has green rays on a light green or yellow surface ornamented with green mottling. The inside surface of the shell (nacre) is usually silvery white. Like other freshwater mussels, this animal feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae likely parasitize fish. The mussel's life span, parasitic host, and most aspects of its life history are unknown.

Since the turn of the century, the fanshell has undergone a substantial reduction in its range. It was historically widely distributed in the Ohio, Wabash, Cumberland, and Tennessee Rivers and their larger tributaries in Pennsylvania, Ohio, West Virginia, Illinois, Indiana, Kentucky, Tennessee, Alabama, and Virginia (Johnson 1980, Kentucky Nature Preserves Commission 1980, Ahlstedt 1986, Bates and Dennis 1985, Lauritsen 1987 Cummings *et al.* 1987 and 1988. Starnes and Bogan 1988). The loss of many historic populations was likely due to the impacts of impoundments, navigation projects, pollution, and habitat alterations such as gravel and sand dredging, that directly affected the species and reduced or eliminated its fish host.

Based on a review of current literature on the species (see above) and on the following personal communications and letters involving knowledgeable individuals and State and Federal agency personnel, it is believed that reproducing populations are now present in only three rivers—the Clinch River, Hancock County, Tennessee, and Scott County, Virginia; the Green River, Hart and Edmonson Counties, Kentucky; and the Licking River, Kenton, Campbell, and Pendleton Counties, Kentucky (Steven Ahlstedt and John Jenkinson, Tennessee Valley Authority, personal communication, 1988; Robert Anderson and Mark Gordon, Tennessee Cooperative Fishery Research Unit, personal communication, 1988; Carl Becker, Illinois Department of Conservation, *in litt.*, 1988; Charles Bier, Western Pennsylvania Conservancy, *in litt.*, 1989; Richard Connor and William Sinozich, U.S. Army Corps of Engineers, *in litt.*, 1989; Kevin Cummings, Illinois Natural History Survey, *in litt.*, 1989; Ronald Cicerello and Richard Hannan, Kentucky Nature Preserves Commission, *in litt.*, 1988; Wendal Haag, Ohio State University Museum of Zoology, *in litt.*, 1988; Edward Hansen, Indiana Division of Fish and Wildlife, *in litt.*, 1989; Patricia Jones, Ohio Department of Natural Resources, *in litt.*, 1988; Richard Neves, Virginia Cooperative Fish and Wildlife Research Unit, *in litt.*, 1988; Brian McDonald and Michael Zeto, West Virginia Department of Natural Resources, *in litt.*, 1988 and 1989; James Sickle, Murray State University, personal communication, 1989; Clarke Shiffer, Pennsylvania Fish and Game Commission, personal communication, 1989; William Tolin, U.S. Fish and Wildlife Service, personal communication, 1988; and Paul Yokley, University of North Alabama, personal communication, 1988). Additionally, small remnant, apparently nonreproducing populations (based on collections of a few old individuals in the 1980s) may still persist in the Muskingum River in Morgan and Washington Counties, Ohio; the Wabash River in White and Wabash Counties, Illinois, and Posey County, Indiana; the East Fork White River, Martin County, Indiana; the Tippecanoe River, Tippecanoe County, Indiana; the Kanawha River, Fayette County, West Virginia; Tygarts Creek, Greenup and Carter Counties, Kentucky; the Cumberland River, Smith County, Tennessee; and the Tennessee River, Rhea, Meigs, and Hardin County, Tennessee.

The population in the Green River is likely the best of the three remaining reproducing populations. Fresh dead fanshells of various age classes from juvenile to adults have been recently (1987 and 1988) found in muskrat middens along the Green River (Ronald Cicerello, personal communication, 1988). However, the Green River, which lies partially within the Mammoth Cave National Park, is not free from threats. The river's mussel fauna have been seriously depleted. Cicerello (personal communication, 1988), based on his 1987 and 1988 surveys of the Green River within and above the Mammoth Cave National Park, believes that about forty mussel species still survive in the area. Ortmann (1926) reported finding 66 species of mussels in the Green River. The Green River has been degraded by runoff from oil and gas exploration and production sites and by alteration of stream flows by an upstream reservoir.

The Clinch River fanshell population extends over about 86 river miles (Ahlstedt 1986). However, a Tennessee Valley Authority (1988) survey reported that the fanshell comprised less than 1 percent of the mussels collected at 11 Clinch River quantitative sampling sites in 1979 and 1988. The Tennessee Valley Authority (1988) also reported that overall mussel abundance in the Clinch River has decreased from an average of 11.64 mussels per square meter in 1979 to 6.00 per square meter in 1988. The Clinch River also has environmental problems. Charles Sledd (Virginia Commission of Game and Inland Fisheries, personal communication, 1988) stated that land use practices along the Clinch River have contributed to a decline in water quality and mussel populations. The Clinch River has experienced some adverse impacts from coal mining, and the river has been subjected to two mussel kills resulting from toxic substance spills from a riverside coal-fired power plant.

The Licking River also supports a reproducing fanshell population (Ronald Cicerello, personal communication, 1989). Live and fresh-dead individuals of several year classes have been collected. However, despite collections made throughout the drainage by Kentucky Nature Preserve Commission biologists, the species is only known from the lower portion of the Licking River. This population could potentially be threatened by some of the water supply development alternatives presently under preliminary review for the Licking River watershed.

The fanshell was recognized by the Service in the May 22, 1984, **Federal Register** (49 FR 21664) and January 6, 1989, **Federal Register** (54 FR 554) as a category 2 species. (A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants.) On December 6, 1988, the Service notified by mail (150 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review was being conducted specifically to determine if the fanshell should be protected under the Act. A total of 22 written responses was received as a result of the December 6, 1988, notification. No objections to the potential listing of the fanshell were received, and much information on the species' status and its former and present distribution was provided.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531, *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing

provisions of the Act set forth procedures for adding species to the Federal list. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the fanshell (*Cyprogenia stegaria* (=*C. irrorata*)) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The fanshell was apparently once widespread in the Ohio River and its larger tributaries in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Tennessee, Alabama, and Virginia (Johnson 1980). Johnson (1980) reported that the species was formerly known from at least 26 rivers. Many of these historically known populations were evidently lost when riverine habitat in the Ohio River system was converted to a series of large reservoirs. These reservoirs and other habitat altering factors (e.g. navigation projects and gravel and sand dredging) have diminished the species' preferred riverine gravel/sand habitat and eliminated or reduced the availability of the mussel's fish host. As a result, this species' distribution has been substantially reduced.

The following is a review by State of the species' status (see "Background" section for additional information on the species' status).

Pennsylvania: No definitive study of Pennsylvania's mussel fauna has been conducted in more than 50 years. However, based on the mussel survey data that are available and the documented history of habitat degradation that has occurred in the Pennsylvania rivers where the species was found early in this century, it is presumed that the species has been extirpated from the State (Clarke Shiffer, personal communication, 1989; and Charles Bier, *in litt.*, 1989).

West Virginia: In 1982 one old fresh-dead fanshell was collected below Kanawha Falls on the Kanawha River (William Tolin, personal communication, 1988). This is the only recent record of the species in West Virginia, and the species is believed to be very rare in the State (Brian McDonald and Michael Zeto, *in litt.*, 1988 and 1989).

Ohio: Based on letters from Wendal Haag (1988) and Patricia Jones (1989), the only recent (1980s) records for Ohio rivers are from the Muskingum River, and these were all large old individuals. Clayton Lakes (Ohio Department of Natural Resources, *in litt.*, 1988) stated: "We believe *Cyprogenia stegaria* should be protected under the 1973 Federal Endangered Species Act."

Indiana: The species was found at a few sites in the Wabash River system during 1987 and 1988 (Kevin Cummings, *in litt.*, 1989); Jim Engel, U.S. Fish and Wildlife Service, *in litt.*, 1989). However, these collections were represented by only a few live or fresh-dead old individuals. Edward Hansen (*in litt.*, 1989) stated that the fanshell was historically common in the Wabash River system but that recent surveys (1987 and 1988) document a dramatic decline in the species. The State of Indiana has classified the species as endangered, and the Indiana Division of Fish and Wildlife supports protection of the species under the Endangered Species Act.

Illinois: The fanshell (based on the collection of a few old specimens) is presently known in Illinois only from the Wabash River (Kevin Cummings, *in litt.*, 1989). The species was added to the Illinois list of endangered species in March 1989 (Carl Becker, pers. comm., 1987). Becker further stated: "The Wabash River experienced heavy commercial musseling pressure from the mid-1950s to the mid-1960s. Since that time, none of the river's mussel populations seem to have recovered very well.

Kentucky: The Kentucky Nature Preserve Commission, which classifies the species as threatened (Warren *et al.* 1986), reported that the fanshell was historically taken from 10 reaches of Kentucky rivers (Richard Hannan, *in litt.*, 1988). Presently, the species is known to survive in only three Kentucky rivers and to reproduce in only two.

Tennessee: In Tennessee, a few old specimens apparently still survive in the Cumberland and Tennessee Rivers (Bob Anderson, Stephen Ahlstedt, Mark Gordon, and Paul Yokley, personal communication, 1989); however, there is no indication that the species is reproducing in either of these rivers. The only known Tennessee population that is believed to still be reproducing is in the Clinch River above Norris Reservoir (Stephen Ahlstedt, personal communication, 1989). The Tennessee Wildlife Resources Agency (Robert Hatcher, *in litt.*, 1989) stated: " we support any appropriate means of protecting this species and its habitats."

Alabama: Johnson (1980) reported that the species historically was taken in Alabama from the Tennessee River and its tributary, the Flint River. Based on literature records and personal communication with species experts (see "Background" section of this rule) the species is believed to be extirpated from the State of Alabama.

Virginia: The only historic record of the fanshell for Virginia is from the Clinch River (Johnson 1980). Although rare, the species still survives as a reproducing population in the Clinch River (Tennessee Valley Authority 1988). The Virginia Commission of Game and Inland Fisheries supports consideration of the species for protection under the Act (Charles Sledd, *in litt.*, 1988).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not commercially valuable, it does exist in small numbers within some harvested mussel beds, and the species can therefore sometimes be taken by mussel fishermen. Also, the species is rare and prized by private and institutional collectors. Thus, take does pose some threat to the species. Federal protection could help to minimize the take of individuals.

C. *Disease or predation.* Although the fanshell is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (Richard Neves, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* States within the species' range prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species is generally not protected from other threats. Federal listing will provide additional protection for the species under the Endangered Species Act from mussel collectors by requiring Federal permits to take the species, and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Only 3 of the 12 remaining populations are believed to be reproducing. Therefore, unless methods can be developed to maintain the nonreproducing populations, about 75 percent of the known populations will be lost in the foreseeable future due to their inability to reproduce.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the fanshell

(*Cyprogenia stegaria* (=*C. irrorata*)) as an endangered species. Historical records reveal that the species was once much more widely disturbed in many of the large rivers of the Ohio River system. Presently only three isolated, reproducing populations are known to survive. Due to the species' history of population losses and the vulnerability of the three remaining reproducing populations, endangered status appears to be the most appropriate classification for this species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for the fanshell.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the fanshell at this time, owing to the lack of benefits from such designation. The U.S. Army Corps of Engineers and the Tennessee Valley Authority are the two Federal agencies most involved, and they, along with the State natural resources agencies within the species' range, are already aware of the location of the remaining populations that would be affected by any activities in these river reaches. Both Federal agencies have conducted numerous studies in these river basins and are knowledgeable of the fauna and of their projects' potential impacts. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes and private collection could be a threat. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species have consequently been described only in general terms in this proposed rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies through the Service office described in the "**ADDRESSES**" section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this intragency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs affecting the species. No specific proposed Federal actions were identified. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facility development, and road and bridge construction. It has been the experience of the Service, however, that nearly all Section 7 consultations can be resolved so that the species is protected and the project objectives met. In fact, many of the areas inhabited by the fanshell are also inhabited by other mussels that have been federally listed since 1976, and the Service has a history in many of these areas of successful Section 7 conflict resolutions.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate of foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwide noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Clams:							
Mussel, fanshell	*Cyprogenia stegaria* (=*irrorata*).	U.S.A. (AL, IL, IN, KY, OH, PA, TN, VA, and WV).	NA	E		NA	NA

Dated: September 19, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-23055 Filed 9-29-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Endangered Status Proposed for Mimulus glabratus var. michiganensis (Michigan monkey-flower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Mimulus glabratus* var. *michiganensis* (Michigan monkey-flower) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This semi-aquatic perennial plant is known from only twelve sites in Michigan, eight of which contain less than 10 individual plants. The plant is endangered by habitat loss due to recreational and residential development. This proposed rule, if made final, will extend Federal protection provided by the Act to *Mimulus glabratus* var. *michiganensis*. Critical habitat is not proposed for this plant. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Endangered Species Program, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see ADDRESSES section) at 612/725–3276 or FTS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

Mimulus glabratus var. *michiganensis* (Michigan monkey-flower) was first recognized as a separate taxon by Pennell (1935) in his monograph of the Scrophulariaceae. He identified it as a subspecies, while Fassett (1939) assigned it varietal status. Some researchers have noted considerable morphological overlap with other taxa. However, recent studies (Bliss 1983, Minc 1989) of floral characters of closely related taxa showed distinct morphometric differences between *M. glabratus* var. *michiganensis, M. glabratus* var. *fremontii* and *M. guttatus*. Statistical analyses of measurements of corolla length, corolla width, pistil length, style length, and ovary length demonstrated that *M. glabratus* var. *michiganensis* is consistently and distinctively intermediate between the other two taxa: smaller than *M. guttatus*, but larger than *M. glabratus* var. *fremontii*. As Minc (1989) reports, the two *M. glabratus* varieties are readily distinguished by differences in flower size, while some size overlap occurs between *M. glabratus* var. *michiganensis* and *M. guttatus*. However, the latter two taxa differ in the shape of the floral characters. These studies confirmed the validity of recognizing this taxon at least as a distinct variety and perhaps as a separate species.

Mimulus glabratus var. *michiganensis* is an aquatic or semi-aquatic glabrous, perennial herb with lax stems averaging 36 centimeters (14 inches) in length. It roots at the lower stem nodes to produce clones of up to several hundred stems. The rotund, coarsely-toothed leaves are opposite and evenly distributed along the stem. The plant blooms from about mid-June to mid-July and occasionally to mid-August. However, pollen viability is low, suggesting that var. *michiganensis* is primarily dependent on vegetative reproduction. The yellow tubular flowers range from 16 to 27 millimeters (.63 to 1.1 inches) long (Bliss 1983, Minc 1989) and emerge from upper leaf axils on slender stalks. The flowers have two-lobed upper lips and three-lobed lower lips, with the lower lip and tube irregularly red spotted. The ranges of var. *michiganensis* and var. *fremontii* overlap, though these plants have not been found to co-occur at any site. *Mimulus glabratus* var. *michiganensis* can be distinguished from var. *fremontii* by flower size. The smaller var. *fremontii* flowers are 8 to 18 millimeters (.32 to .71 inches) long. Pistil length is 11 to 21 millimeters (.43 to .83 inches) for var. *michiganensis, and 5 to 10 millimeters (.2 to .39 inches) for var. fremontii*. Although their ranges are not presently known to overlap, *Mimulus glabratus* var. *michiganensis* is generally smaller than *M. guttatus* and can be distinguished from this taxon by the larger opening in the corolla throat and the shape of the calyx lobes

Crispin and Penskar (1989) report that var. *michiganensis* is narrowly restricted to cold, saturated soils of seepages on forest edges and in small openings located along streams and lakeshores. Nearly all known populations are associated with the current, or what were the ancient, shorelines of the Great Lakes. Northern white cedar (*Thuja occidentalis*) is usually dominant in the overstory. The Michigan monkey-flower grows in muck or mucky sand that is saturated or inundated by cold, flowing spring water. Typical associates include *Impatiens biflora* (touch-me-not), *Myosotis scorpioides* (forget-me-not), *Nasturtium officinale* (watercress), *Mentha arvensis (spearmint), and Conocephalum conicum* (liverwort). Other species frequently present are *Caltha palustris* (buttercup), *Mitella nuda* (miterwort), *Cystopteris bulbifera* (bulblet fern), *Eupatorium maculatum* (joe-pye-weed), *Equisetum arvensis* (scouring-rush), and *Thuidium delicatulum* (feather moss).

Many of the earliest herbarium specimens of *Mimulus glabratus* var. *michiganensis* were not initially identified beyond the species level. They were subsequently identified as var. *jamesii*, var. *fremontii*, and finally var. *michiganensis*. The first reported collection of var. *michiganensis* was by Charles F. Wheeler in Harbor Springs, Emmet County, Michigan in July 1890. However. the specimen was not identified as var. *michiganensis* until 1980. The type specimen was collected in July 1925 by J. H. Ehlers along the banks of Niger Creek near Topinabee, Cheboygan County, Michigan Whereas the *Mimulus glabratus* complex ranges from Canada to southern Chile, historical records and recent surveys have shown that var. *michiganensis* has a very narrow range, restricted to the Mackinac Straits and Grand Traverse regions of Michigan, specifically in Benzie, Cheboygan, Emmet, Leelanau and Mackinac Counties. The plant is no longer extant at four of the 16 known historical locations (including the type locality and the site of first collection). Two existing sites contain only one or two plants. Almost two-thirds of the extant occurrences are on privately-owned lands. The var. *michiganensis* also occurs at Sleeping Bear Dunes National Lakeshore, the University of Michigan Biological Station, a county park, a township park, and on land owned by the Michigan Nature Association, a private state-wide conservation organization.

Federal Government action on this plant began as a result of Section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report (Ayensu and DeFillipps 1978), designated as House Document No. 94–51, was presented to Congress on January 9, 1975. *Mimulus glabratus* var. *michiganensis* was listed as "threatened" in that document. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Act (now section 4(b)(3)) and of its intention to review the status of plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No 94–51 and the July 1, 1975, **Federal Register** publication.

Mimulus glabratus var. *michiganensis* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976 proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments to the Act. On December 15, 1980 (45 FR 82479), November 28, 1983 (48 FR 53640), and September 27 1985 (50 FR 39525), the Service published revised notices of review for native plants in the **Federal Register**.

Mimulus glabratus var. *michiganensis* was included as a category 1 species in the 1980 notice. Category 1 species are those for which biological information in tha Service's possession warrants their listing as endangered or threatened. In the 1983 and 1985 notices. var. *michiganensis* was dropped to category 2 when it became evident that further biological research and surveys were needed to determine its status and

taxonomic validity. Since that time, additional research (Minc 1989) and an updated status survey (Crispin and Penskar 1989) were completed, which clarified the taxonomic distinctness of the plant and demonstrated more clearly the biological threat and the need for protection under the Act.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Mimulus glabratus* var. *michiganensis*, was October 13, 1983. On October 13, 1983, and again in 1984, 1985, 1986, 1987 and 1988, the petition finding was that listing of *Mimulus glabratus* var. *michiganensis* was warranted pending finding of further information but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The present proposal constitutes the final finding that the listing is warranted. The Service proposes to implement the petitioned action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Mimulus glabratus* var. *michiganensis* (Pennell) Fassett (Michigan monkey-flower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Mimulus glabratus* var. *michiganensis* is restricted to the current and what was the historical Great Lakes shorelines in the Mackinac Straits and Grand Traverse regions in Michigan. These areas are rapidly being developed for recreational and residential purposes. The major threat to var. *michiganensis* is the destruction and adverse modification of its habitat. Since most populations lie along lakeshores and streams, the plant is particularly vulnerable to increasing vacation home development in its range (Crispin and Penskar 1989). Of the 16 extant and historical populations, three have been extirpated and at least two additional sites have been severely impacted by residential and other developments. The plant has been extirpated at an additional site (the type locality) due to unknown causes.

Mimulus glabratus var. *michiganensis* appears to be highly dependent on continuous supplies of cold spring water. Two of the smaller populations have survived artificial disturbances, such as overstory thinning, and cutting and pulling in spring-fed rivulets that have been maintained adjacent to lakeside residences. Therefore, the plant may be impacted by both direct destruction of its habitat as well as by disturbance to its water supply. Upstream water supply may be impacted by roads and other activities which divert water from the small drainages which support the plant. Excessive pumping of groundwater upgradient of the sites may reduce stream baseflows. The plant may therefore be inadvertently impacted by offsite activities. One recent extirpation of a population appears to have been due to such a disturbance to its water supply.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites. Some incidental commercial use has occurred. One population was discovered after a botanist was served a sprig of *Mimulus glabratus* var. *michiganensis* as a garnish on his restaurant dinner plate.

C. *Disease or predation.* None known that affects this taxon

D. *The inadequacy of existing regulatory mechanisms. Mimulus glabratus* var *michiganensis* is listed as threatened by the State of Michigan. It is illegal to take, possess, transport, import, export, process, sell, buy, collect, pick, cut, dig up, or destroy in any manner any listed plants or plant parts, without a permit Although the State Endangered Species Act does not provide protection for habitat, State and Federal wetland laws regulate many activities within the streamside/wetland habitat of *Mimulus glabratus* var. *michiganensis*. However, there is no guarantee for preservation of this habitat nor the plant's water supply without the protection of the Act and subsequent recovery actions including development of specific management plans. The Endangered Species Act offers possibility for additional protection of this taxon through section 6 cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements.

E. *Other natural or manmade factors affecting its continued existence.* Periodic high water levels of the Great Lakes impact the shoreline habitat of *Mimulus glabratus* var. *michiganensis*. Recent record high water levels and strong winter storms reshaped many shoreline areas, redirecting seepage streams which supported the plants and opening the overstory by felling cedars. At least one site occurrence listed as extant has not been resurveyed since these storms. Therefore, its present status is unknown. Other shoreline colonies appear to have survived the recent high water levels.

Mimulus glabratus var. *michiganensis* is particularly vulnerable because of the low numbers of individuals occurring at most sites and its limited capability for sexual reproduction. Since the plant roots at the lower stem nodes to produce new stems, it is impossible to distinguish the number of genetic individuals in each colony. However, if one assumes that each "clump" of stems is one individual plant, only four of 12 extant sites contain more than 10 plants. In addition, if, as Crispin and Penskar (1989) surmise, the largely clonal colonies have low genetic diversity, *Mimulus glabratus* var. *michiganensis* may have limited ability to survive or adapt to environmental change. With the limited number of colonies and individuals in existence, and the limited gene pool, the loss of any individuals would appreciably reduce the chances of survival and recovery.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Mimulus glabratus* var. *michiganensis* as endangered. Endangered status appears to be appropriate due to the restricted range of this taxon, the limited number of populations and individuals, its limited capability for sexual reproduction and hence its limited gene pool, and the severity of threats facing the species. Critical habitat is not being proposed for reasons listed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. The limited number of populations and individuals of *Mimulus glabratus* var.

michiganensis make this plant particularly vulnerable to taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Mimulus glabratus* var. *michiganensis* more vulnerable and increase enforcement problems. The principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Mimulus glabratus* var. *michiganensis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The National Park Service has jurisdiction over one *Mimulus glabratus* var. *michiganensis* site in Leelanau County, Michigan. Currently, no activities to be permitted, funded, or carried out by any Federal agency, are known to exist which would affect this taxon.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands, and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because *Mimulus glabratus* var. *michiganensis* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service. P.O. Box 3507 Arlington, VA 22203 (703/358-2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, R.E., and R.A. DeFillipps. 1978. Endangered and threatened plants of the United States, Smithsonian Institution and World Wildlife Fund, 403 pp.

Bliss, M. 1983. A comparative study of the two varieties of *Mimulus glabratus* (Scrophulariaceae) in Michigan. M.S. thesis. University of Michigan, Ann Arbor. 58 pp.

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Pennell, F.W. 1935. The Scrophulariaceae of eastern temperate North America. Monograph I, Academy of Natural Sciences, Philadelphia. 650 pp.

Author

The primary author of this proposed rule is Margaret T. Kolar, U.S. Fish and Wildlife Service, 1405 S. Harrison Road, East Lansing, Michigan 48823 (517/337-6650 or FTS 374-6650).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Scrophulariaceae—Snapdragon family:						
Mimulus glabratus var. *michiganensis*	Michigan Monkey-flower	U.S.A. (MI)	E		NA	NA

Dated: September 14, 1989.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-23057 Filed 9-29-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Proposal To Determine Threatened Status for the Puritan Tiger Beetle and Endangered Status for the Northeastern Beach Tiger Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for the Puritan tiger beetle (*Cicindela puritana*) and endangered status for the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), two shore-dwelling beetles of the family Cicindelidae. The former was known historically from the Connecticut River in New Hampshire, Massachusetts and Connecticut, and from along the Chesapeake Bay in Maryland; it is now restricted to Maryland and one site in Massachusetts. The latter once occurred commonly along coastal beaches from Cape Cod Massachusetts, to central New Jersey and along the Chesapeake Bay, from Calvert County, Maryland, south; it is now evidently extirpated north of Maryland. Both tiger beetles are threatened by rapid human population increase and development in the areas they occupy. Population and range reductions undergone by both make them more prone to chance extinctions; more vulnerable to the effects of winter storms, predators, and parasites; and less able to recolonize areas previously occupied. This proposal, if made final, will implement protection provided by the Endangered Species Act of 1973, as amended, for these beetles. Critical habitat is not proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401. Comments and materials will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs at the above address or by telephone (301/269-5448).

SUPPLEMENTARY INFORMATION:

Background

Tiger beetles (genus: *Cicindela*) are day-active, predatory insects that capture small arthropods in a "tiger-like" manner, grasping prey with their mandibles (mouthparts). Tiger beetle larvae, which live in permanent burrows in the ground, are also voracious predators, fastening themselves by means of abdominal hooks near the tops of the burrows and rapidly extending from their burrows to seize passing invertebrate prey. Over 100 species and many additional subspecies of tiger beetles occur in the United States (Boyd 1982). Because of their interesting behavior and variety of forms and habitats, tiger beetles have received much study; a journal devoted exclusively to these beetles, "Cicindela, has been published since 1969. The Puritan tiger beetle (*Cicindela puritana*) and the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), both associated with beach habitats, have until recently received little ecological study.

The Puritan tiger beetle is brownish-bronze above with a metallic blue underside and measures under 11.5 mm (½-inch) in total length. Each eleytron (wing cover) is marked with narrow marginal and transverse white bands. It is distinguished from more common, similarly marked tiger beetles by the uneven or minutely broken edges of the middle band (Glaser 1984). Originally described by G. Horn (1876), *C. puritana* was later considered a subspecies of *Cicindela cuprascens* (Leng 1902, Horn 1930) and a subspecies of *Cicindela macra* (Vaurie 1951). Most recently, Willis (1967) established separate species status for these three taxa. The range of *C. puritana* is separated by several hundred miles from the overlapping ranges of *C. macra* and *C. cuprascens*.

Historically, the Puritan tiger beetle occurred in scattered localities along the Connecticut River in Connecticut, New

Hampshire, and Massachusetts, and along the Chesapeake Bay in Calvert and Kent Counties, Maryland. The reasons for this disjunct distribution are unknown. However, its habitat in both areas is similar, characterized by the presence of narrow sandy beaches with adjacent, well-developed bluffs of sand and clay (Glaser 1984, Knisley 1987). The Puritan tiger beetle has a full one-year life cycle. In Maryland, adults are first seen in mid-June. Their numbers peak in early July and begin to wane by late July. Collection records from New England indicate a pattern similar but shifted about two weeks later (Knisley 1987). The newly emerged beetles feed and mate along the beach area. After mating, females move up onto the cliffs to deposit their eggs. Emerging larvae construct burrows in the cliffs. Knisley found larval burrows in moist areas of sandy clay cliffs adjacent to the beaches where the adults were found and along the back areas of these beaches. Statistical analysis of habitat features indicated that the presence of well-developed, sparsely vegetated cliffs as oviposition (egg-laying) sites is more important for this beetle than is the quality of adjacent beaches (Knisley 1987).

Most New England collection records for the Puritan tiger beetle were from the period 1900 to 1920, with the most recent collection in 1939 (Knisley 1987). Subsequent vigorous collection attempts were unsuccessful, leading to the belief that the Puritan tiger beetle was likely extirpated in New England. In July of 1986, however, a population of the Puritan tiger beetle was discovered in Hampshire County, Massachusetts, on a small island in the Connecticut River and on a sandy beach several hundred meters to the south. No other Connecticut River populations have since been discovered, despite intensive search (Knisley 1987 Nothnagel 1987). The decline of this species in New England is most likely due to habitat destruction, particularly of larval habitat. This is further discussed under Factor A below.

South of New England, the Puritan tiger beetle is restricted to a 26-mile stretch of the Chesapeake Bay in Calvert County and a recently discovered population in Kent County, Maryland. Status survey work in Calvert County during the breeding season, when adults are active, conducted in 1985 and 1986 by B. Knisley (1987), revealed five large populations (600+ individuals) and four small populations (100 or fewer individuals). However, great fluctuations in numbers may occur from year to year. Tiger beetle populations in Calvert County are potentially threatened by human encroachment into their habitat, as detailed below.

The northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), described as *C. dorsalis* by Say (1817), has white to light tan elytra, often with fine dark lines, and a bronze-green head and thorax. It is somewhat larger than the Puritan tiger beetle, measuring 13 to 15.5mm (½ to ⅝ inch) in total length.

Cazier (1954) considered *C. dorsalis* and three other previously described species as subspecies of the single species *C. dorsalis*. Boyd and Rust (1982) determined that these four taxa are clearly distinguishable. Recent morphological analyses and breeding experiments indicate that *C. dorsalis* is most likely a full species (B. Knisley, Randolf Macon College, pers. comm. June, 1987). Until this information is published, however, it is most appropriate to continue to refer to this taxon as a subspecies.

Historically, the northeastern beach tiger beetle occurred on sandy beaches from Cape Cod, Massachusetts south to central New Jersey and along the Chesapeake Bay of Maryland and Virginia. Early records indicate the abundance of this beetle on the northeast coast. Leng (1902) states that it occurred "in great swarms in July" from Martha's Vineyard south to New Jersey. Boyd (1978) cites many references, mostly from the 19th century, indicating the species' abundance in New Jersey. It was also common along the beaches of Rhode Island and Long Island, New York (Knisley 1987).

Between 1920 and 1950, the number of collections of the northeastern beach tiger beetle dropped precipitously (Knisley *et al.* 1987). Stamatov (1972) noted that northeastern beach tiger beetles were declining, and had possibly disappeared from New York and New Jersey. He suggested that this decline might be associated with increasing vehicular traffic along the beaches. He did report the existence of a breeding population at Block Island, Rhode Island. This is the most recent record of a northeastern beach tiger beetle population north of Maryland. Extensive surveys and information collected by Knisley (1987) indicate that the northeastern beach tiger beetle is now extirpated north of Maryland. Furthermore, only 19 extent populations are known to exist within the Chesapeake Bay area of Maryland and Virginia, and eight of these are considered "marginal" due to low population numbers (Knisley, pers. comm., April, 1989).

Unlike the larvae of the Puritan tiger beetle, northeastern beach tiger beetle larvae occupy burrows directly on the beach, in and above the high-tide zone. Rearing experiments (Stamatov 1972) and field observations by Knisley indicate these beetles have a full two-year life cycle, over-wintering twice as larvae, pupating at the bottoms of their burrows and emerging as winged adults during their third summer. Adults emerge from early June through August, with peak abundance in mid-July. Adults forage mostly in the damp sand of the intertidal zone and apparently scavenge on dead fish and invertebrates for much of their diet (Knisley 1987). Habitat characteristics significantly correlated with the presence of northeastern beach tiger beetles include large beach size (length and width), high degree of exposure (dynamic beaches), fine sand particle size and low human and vehicle activity (Knisley 1987).

The northeastern beach and Puritan tiger beetles were first recognized by the Service in the **Federal Register** Notice of Review published on May 22, 1984. That notice, which covered invertebrate wildlife being considered for classification as endangered or threatened, included these two beetles in Category 2. Category 2 comprises those taxa for which listing is possibly appropriate, but for which existing information is insufficient to support a proposed rule. In response to the publication of this notice, the Service received comments from the American Entomological Society expressing their view that the northeastern beach tiger beetle clearly qualified for endangered status, and that the status of the Puritan tiger beetle was questionable. The lack of available biological data on these taxa was also noted. Accordingly, in 1985, the Service contracted with Dr. Barry Knisley to conduct status survey work on these two beetles. Dr. Knisley's final report to the Service (Knisley 1987) provides much of the biological basis for this proposed listing action. The **Federal Register** Notice of Review published on January 6, 1989, included these two beetles in Category 1, indicating that the Service now possesses sufficient information to support the appropriateness of proposing to list them.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 153 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal Lists.

Species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Puritan tiger beetle (*Cicindela puritana*) and northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* Although it was once abundant in New England, the northeastern beach tiger beetle is now extirpated from all of its former range north of Maryland. This dramatic range contraction has been attributed primarily to the impacts of human and vehicle activities on beaches (Stamatov 1972, Boyd 1978, Knisley 1987). Northeastern beach tiger beetle larvae are particularly vulnerable to direct crushing or repeated compaction of their burrows by vehicles and heavy human use for two reasons. First, they occur in the intertidal zone (as opposed to Puritan tiger beetle larvae which burrow on cliffs or back beaches) and are therefore unavoidably in the path of beach users and their vehicles. Secondly, due to their prolonged life cycle, these beetles must pass through two summers in their vulnerable larval stage.

The significant impact of vehicles on this beetle is illustrated by a study of the related *Cicindela dorsalis media*, which Dr. Knisley conducted on Assateague Island in 1985. Adults (and larvae) were found only on the northern 2-mile section of the island where vehicles were restricted and human activity light. No beetles were found on the remaining 10–12 miles of beach, including the State Park portion and the southern portion in Maryland where off-road vehicle activity is heavy. But, just below the state line in Virginia, where vehicles are prohibited, adult beetles could again be found. A study of the northeastern beach tiger beetle presently underway in Maryland is yielding similar results; the abundance of larval tiger beetles is inversely correlated with the amount of human traffic that an area receives (Knisley, pers. comm., 1989). Southern Maryland and coastal Virginia are developing rapidly. Visible signs of development in Calvert County, Maryland are the widening of Routes 2–4 in the southern part of the county, development of a state park at Flag Ponds and creation and expansion of numerous housing developments. A private campground now occurs at one of Virginia's largest beetle population beaches, and several "planned community" developments have been proposed near other large populations on the Eastern Shore. Development of the Virginia's eastern shore threatens to be so rapid and haphazard that a citizens' group has been formed to try to bring some order to potential development. Such development results in increased human activity on the beaches, as well as construction of marinas and increased use of bulkheads and other structures that may eliminate or alter beaches.

Pollution and alteration of the intertidal beach areas are also potential threats to these beetles. Spills of oil or other pollutants that reach the shore could be lethal to the tiger beetle larvae directly, or indirectly, by interfering with their feeding behavior or diminishing their prey base. Dredge spoil material placed on beaches could also destroy larvae directly.

In contrast to northeastern beach tiger beetles, Puritan tiger beetle larvae burrow on beachside cliffs and back beaches, where they are less susceptible to direct impacts of human and vehicular traffic or other perturbations of intertidal habitat. However, this species has not escaped the effects of habitat degradation, particularly where it occurred along the Connecticut River. A total of 17 dams have been built along the Connecticut above Hartford, very likely inundating some Puritan tiger beetle populations and decreasing water flow necessary for habitat maintenance at others. The Connecticut has also been seriously polluted by effluent from pulp and paper mills and other factories and by inputs of raw sewage (McCarry 1972). Efforts over the past several decades to clean up this river have been largely successful, and may permit reestablishment of tiger beetle populations in some areas of previous extirpation (Tanner 1988). Cliff stabilization is another form of habitat alteration affecting the Puritan tiger beetle today. Continual erosion and breakdown of the cliffs, from wave action and rainfall, is necessary to create the newly exposed areas needed for oviposition and larval development. Construction of bulkheads and growth of kudzu or other introduced vegetation on cliffs curtails this erosive process and renders the cliffs unsuitable for the larvae. In Massachusetts, bank stabilization and urbanization along the Connecticut River have eliminated much potential tiger beetle habitat (Nothnagel 1987).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* It is no exaggeration to state that tiger beetles (genus *Cicindela*) are the most highly sought-after by amateur collectors of all bettle genera. Additionally, tiger beetles are frequently used as model organisms in physiological and ecological studies. In fact the genus *Cicindela* may be the subject of more intense collecting and study than any other single insect genus. This interest in tiger beetles is reflected in the publication since 1969 of a journal devoted exclusively to this genus.

At present, collecting pressure on adult beetles is not believed to be contributing to the decline of these species; threats to larval survival appear to outweigh any threats to adults. However, the proposed listings of these beetles as endangered and threatened could increase their desirability and perceived value to collectors.

C. *Disease or predation.* These tiger beetles are not known to be susceptible to any diseases that would threaten their survival; however, two insects known to be natural enemies have been commonly observed in their habitat. Adults of the wingless wasp, *Methocha*, were found at several population sites. Female *Methocha* attack and paralyze tiger beetle larvae, then lay a single egg on the beetle larva, so that their own larva may use the beetle for a food source as it develops. This parasitoid may account for significant tiger beetle mortality. Robber flies (family Asilidae) were also seen commonly at most sites visited by Knisley (1987). These predatory flies perch and wait for adult tiger beetles or other flying prey and capture them out of the air. Ten unsuccessful attacks of robber flies on northeastern beach tiger beetles were observed during status survey work (Knisley 1987). Normally, these predators and parasitoids, which evolved in conjunction with the tiger beetles, would not pose a severe threat to the survival of their host (or prey) species, since this would, in the long run, threaten their own survival. However, this natural balance has been altered by habitat degradation, as mentioned in factor A, and now these natural enemies may in some cases pose significant threats to the beetles' survival.

D. *The inadequacy of existing regulatory mechanisms.* The Puritan and northeastern beach tiger beetles are both classified as endangered under Maryland state law, and their take is prohibited, except as permitted for scientific research. While this lends some protection to individual beetles, it does not adequately protect the larval beetles' habitat. These beetles are not presently protected under Virginia s Endangered Plant and Insect Protection Act, but if they are Federally listed, they will be automatically added to the state

list. This law also provides protection from taking, but does not regulate habitat alteration. While both tiger beetles are on the state "Endangered" list in Massachusetts, the state Endangered Species Act has not yet been approved by the legislature. However, the beetles and their habitat are protected in Massachusetts under the Wetlands Protection Act, which requires permit applicants to consider the requirements of listed species in their project plans.

E. *Other natural or man-made factors affecting their continued existence.* Severe flooding may have contributed to the near extinction of the Puritan tiger beetle from the Connecticut River system. New England's worst floods occurred in 1927 and 1936, at about same the time collection records for this species became non-existent (Knisley 1987). These intensive floods likely inundated the adult beetles' beach habitat and/or stripped off portions of riverside cliffs where the larvae occurred.

Populations of both tiger beetle species normally experience very high larval mortality and dramatic year-to-year variations in abundance and local extinctions, due to factors such as flood tides, hurricanes, winter storms and other natural phenomena. A series of nearby or contiguous populations is probably necessary to reestablish populations that have been locally depleted or extirpated. Both decrease in habitat size and number of populations make it difficult for beetles to recover from population declines caused by. natural or human-related factors. Small habitat size supports a smaller population with a greater probability of extinction. Gradual elimination or disruption of adjacent habitats eliminates the source of beetles for recolonization of extirpated population sites. This problem has apparently been more severe from New Jersey to Massachusetts, where climatic conditions for the beetles are less favorable and human pressures on habitats greater.

The Service has carefully assessed the best scientific and commercial information regarding past, present and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) as endangered and the Puritan tiger beetle (*Cicindela puritana*) as threatened. The northeastern beach tiger beetle has been extirpated from a significant portion of its range along the northeast coast of the U.S., its prolonged larval stage and the location of larvae in the intertidal sands, in the path of human and vehicular traffic, render this beetle very vulnerable to local extinction through habitat destruction. Threatened status would not accurately reflect the status of this beetle, whose remaining habitat is undergoing rapid development. This same area is also the stronghold of remaining Puritan tiger beetle habitat. However, the Puritan tiger beetle appears somewhat less vulnerable to direct habitat disruption because its larval burrows are located in less accessible areas. Furthermore, certain areas along the Connecticut River where this beetle has been extirpated may be suitable for recolonization. Therefore, threatened status seems most appropriate for this species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. As mentioned in Factor B above, tiger beetle specimens are considered very valuable to collectors. Publication of maps detailing the specific locations of these beetles would increase the probability of their being over-collected, especially at sites containing smaller populations. Protection for these species and their habitats will be addressed through application of the jeopardy standard and through the recovery process. On balance, the threat of over-collection as a result of designation of critical habitat would outweigh any benefit of such designation. Therefore, it is not prudent to determine critical habitat for these beetles at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likey to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Private developers who are working without any Federal permits other such authorizations or monies, will be unaffected under this rule with respect to Section 7(a), but would be subject to restrictions against take, as specified in Section 9 of the Act and implementing regulations.

The U.S. Army Corps of Engineers (Corps) has jurisdiction over much of the area inhabited by these tiger beetles. Projects possibly affecting the beetles would include dredge spoil disposal, beach erosion control, marina construction, and other developments affecting beach areas. Other Federal agencies that could possibly be affected if these beetles are listed would include the U.S. Coast Guard, National Marine Fisheries Service, Soil Conservation Service and other agencies conducting or overseeing projects in coastal areas or along the Connecticut River.

At present, the only Federal projects or permitting actions known to the Service that could affect these beetles include several minor spoil disposal operations, a Corps beach stabilization project at Long Beach, Maryland and a proposed campground facility on Virginia's lower eastern shore. The Corps is aware of this proposed listing and is working with the Service to avoid any adverse impacts to the beetles associated with these projects.

The listing of these beetles would also bring Sections 5 and 6 of the Endangered Species Act into full effect in their behalf. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to Section 6, the Service would be able to grant funds to affected states for management actions

aiding the protection and recovery of the beetles.

Listing these tiger beetles as threatened and endangered would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the beetles. The plan(s) would establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate the cost of various tasks necessary to accomplish them. They would assign appropriate functions to each agency and a time frame within which to complete them. They would also identify specific areas that need to be monitored and possibly managed for the beetles.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species and 17.21 and 17.31 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions can apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened animal species under certain circumstances. Regulations governing permits are at 17.22, 17.23, and 17.32. Such permits are available for scientific purposes to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species there are also permits for zoological exhibition, educational purposes or other purposes consistent with the purposes of the Act. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Office of Management Authority, Permits Branch, P.O. Box 3507 Arlington, VA 22203-3507 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal be as accurate and effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commerical or other relevant data concerning any threat (or the lack thereof) to these tiger beetles;

(2) The location of any additional populations of Puritan tiger beetles or northeastern beach tiger beetles and the reasons that any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these beetles; and

(4) Current or planned activities in the subject areas that may impact these beetles;

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301) 269-5448.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Part 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend Section 17.11(h) by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 **Endangered and threatened wildlife.**

(h)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects:							
Beetle, northeastern beach tiger.	*Cicindela dorsalis, dorsalis*	U.S.A. (CT, MA, MD, NJ, NY, PA, RI, VA).	NA	E		NA	NA
Beetle, Puritan tiger	*Cicindela puritana*	U.S.A (CT, MA, MD, NH, VT).	NA	T		NA	NA

Dated: September 13, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-23058 Filed 9-29-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 90524-9228]

RIN 0648-AC44

Atlantic Sea Scallop Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule for comment on Amendment 3 (Amendment) to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). The Amendment proposes that: (1) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.2 L) of sea scallops in the shell must offload all fish (as defined in 50 CFR 620.2, which includes sea scallops) within a specified 12-hour offloading period; and (2) all other vessels landing more than 40 pounds (18.1 kg) of shucked scallops must offload all sea scallops within a specified offloading period. The proposed 12-hour offloading periods are as follows:

State of offloading	Period
ME, NH, NC, SC, GA, and FL.	7 a.m. to 7 p.m.
MA, RI, and CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD, VA, PA	6 a.m. to 6 p.m.

A mechanism for modifying offloading periods is also proposed. The Amendment is intended to improve compliance with the meat count/shall height standards of the FMP and to enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery.

DATE: Comments on the proposed rule must be received on or before November 16, 1989.

ADDRESSES: Comments on the proposed rule should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Scallop Regulations."

Copies of the amendment, the environmental assessment, and the regulatory impact review (RIR) are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, Plan Administration Branch, NMFS Northeast Regional Office, 508-281-9331.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the New England Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, 16 U.S.C. 1801 *et seq.*, it was approved by the Secretary of Commerce (Secretary) and implemented by final regulations effective August 13, 1982 (47 FR 35990). The FMP has been amended three times—twice by the Council and once by the Secretary. Amendment 1 became effective November 6, 1985 (50 FR 46069); a Secretarial Amendment superseding Amendment 1 became effective January 14, 1987 (52 FR 1462); and Amendment 2 became effective June 23, 1988 (53 FR 23634). Amendment 3 and proposed regulations for its implementation were initially submitted by the Council to the Secretary for review on April 7, 1989. Upon review of the Council's proposed regulations by NOAA General Counsel and NMFS Enforcement Northeast Region, it was determined that strict enforcement measures would be necessary for effective implementation of Amendment 3. Under authority of section 304(a)(1)(D)(i) of the Magnuson Act, as amended, 16 U.S.C. 1854(a)(1)(D)(i), the proposed regulations submitted by the Council were changed to explain more fully the scope of Amendment 3 and the enforcement measures necessary for its implementation; a proposed rule was published on May 19, 1989 (54 FR 21640). Because the changes made in the first submission of Amendment 3 broadly applied offloading restrictions to all sea scallop permit holders, the Council voted on May 24, 1989 to withdraw the Amendment from further Secretarial review. A notice of withdrawal of Amendment 3 was published on June 30, 1989 (54 FR 27656). After further development of the implementing regulations and consultation with NMFS, the Council resubmitted Amendment 3 for Secretarial Review on August 18, 1989.

The principal objective of the FMP is to maximize over time the joint social and economic benefits from the sea scallop resource. Sub-objectives to achieve this goal are: (1) Restoration of adult stock abundance and age distribution in order to reduce the year-to-year fluctuations in stock abundance caused by variation in recruitment; and (2) enhancement of yield per recruit for each stock.

The primary management measure used to achieve these objectives is the requirement that scallops harvested must, on average, meet a 30 meats per pound standard (30 meat count standard) for shucked sea scallops, with a corresponding 3½-inch (8.9 cm) shell height standard for sea scallops landed

in the shell. This standard provides long-term benefits in terms of yield per recruit, stock abundance and stability of the Atlantic sea scallop resource.

Over the past 12 months, documentation from Council meetings, testimony at public hearings, and information received during meetings with scallop fishermen and industry organizations have indicated the occurrence of extensive landings of undersized scallops. Such landings take place at night, often in secluded places that are not quickly accessible to NMFS enforcement agents. This practice seriously jeopardizes achievement of the biological and conservation objectives of the FMP

Landing of undersized scallops also undermines the conservation efforts and economic well-being of those in the industry who struggle to comply with the 30 meat count standard. Scallopers who comply are harvesting reduced quantities of scallops relative to those who do not comply. This in turn limits the revenue that scallopers in compliance receive from the sale of their catch. Conversely, violators harvest significantly greater quantities of scallops, which yield greater revenues. This disparity in earning ability has led to an increase in the level of non-compliance throughout the scallop harvesting industry.

Proposed Action

In light of the above mentioned circumstances, the Council believes that it is necessary to take steps to improve the level of compliance with the meat count/shell height standards in order to achieve the biological and conservation objectives of the FMP The Amendment, if implemented, would improve compliance by etablishing offloading periods during which scallop vessels and sea scallops could legaly be offloaded, and would enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery. The proposed offloading periods cover different 12-hour periods in different states where Atlantic sea scallops are landed in order to accommodate customary industry practices in the states affected.

Specifically, the Amendment proposes that: (1) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.2 1) of sea scallops in the shell must offload all fish within a 12-hour offloading period specified for the state of offloading; and (2) all other vessels landing more than 40 pounds (18.1 kg) of shucked sea scallops must offload all sea scallops within the applicable specified offloading period. The proposed 12-hour offloading periods are as follows;

State of offloading	Period
ME, NH, NC, SC, GA, and FL.	7 a.m. to 7 p.m.
MA, RI, and CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD, and VA, PA.	6 a.m. to 6 p.m.

The Amendment also proposes a mechanism for changing the daily timing of the 12-hour offloading periods when it is determined to be necessary and appropriate, and after public comment.

The offloading periods would reduce by half the amount of time each day during which catch subject to the offloading periods could lawfully be offloaded. Offloading outside an applicable offloading period would constitute a separate violation of the regulations, regardless of the meat count/shell height measurements of the scallops being offloaded.

For those vessels to which offloading periods apply, offloading would have to be commenced and completed within the applicable offloading period. It is the responsibility of vessel owners and/or their representatives to provide for sufficient time to complete any intended offloading within the offloading period. Catch subject to the proposed offloading periods and not offloaded during the applicable offloading period would have to remain on the vessel until the following offloading period. There would be a presumption of unlawful offloading for any catch subject to the proposed offloading periods observed or identified on a vessel by an authorized officer at the close of the previous offloading period, if such catch is not found on that vessel at the beginning of the following offloading period.

Effective enforcement of the Amendment would require applying the 12-hour offloading period to all fish on board a vessel in the directed fishery for Atlantic sea scallops. Vessels considered to be in the directed fishery for Atlantic sea scallops are those vessels rigged with scallop dredges, and all vessels that land more than 5 bushels (176.2 1) of scallops in the shell. NMFS weighout data indicate that, in 1988, scallop dredge vessels accounted for 92.8 percent of all sea scallops landed. Vessels landing sea scallops in the shell accounted for approximately 6.6 percent of all sea scallops landed. Together, these two types of vessels accounted for approximately 99 percent of all sea scallops landed. Requiring these vessels to offload all fish during an offloading period is necessary for effective enforcement of the Amendment because it would discourage, through 100 percent seizure of catch and civil penalty, the practice of covering up, or mixing, non-conforming scallops with other species of fish and offloading the catch outside of an offloading period.

Sea scallops dredge vessels, and vessels landing more than 5 bushels (176.2 1) of sea scallops in the shell, detected offloading fish outside of the applicable offloading period, would be subject to seizure of all fish in possession (regardless of the meat count or shell size of sea scallops), in addition to the assessment of a civil penalty. Also, persons detected receiving offloaded scallops or fish from a vessel subject to these proposed regulations at a time other than during the applicable offloading period would be subject to seizure of all fish in possession and a civil penalty.

Vessels that land more than 40 pounds (18.1 kg) of shucked sea scallops as bycatch of fisheries directed at other species would be required to offload only the sea scallops within the applicable offloading period. Vessels of this type detected offloading sea scallops outside of the applicable offloading period would be subject to seizure of all fish in possession, in addition to the assessment of a civil penalty.

The offloading periods, coupled with complete catch seizure for unlawful offloading, would increase the chances of detecting violations and would encourage voluntary compliance. The Amendment would allow enforcement resources to be used more efficiently because the time consuming task of sampling/weighing of scallops would only be used to sample scallops offloaded during the offloading periods. Offloading of vessels subject to the proposed offloading periods at any other time would constitute a *prima facie* violation of the offloading period prohibition, which would not require any sampling. With these measures in place, as discussed above, NMFS enforcement agents would be able to apply their resources more efficiently and effectively.

Amendment 3, if implemented, should have two immediate and directly beneficial biological results. First, the number of sea scallops surviving to sexual maturity is expected to increase as the number of illegal scallops landed decreases, thus augmenting the spawning stock biomass. Second, because the number of small scallops harvested should decrease, the average yield per recruit (i.e., the average size of scallops harvested) should increase, to the benefit of the fishermen.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, 16 U.S.C. 1854(a)(1)(D)(ii), requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time the Secretary has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address given above.

The Undersecretary for Oceans and Atmosphere, NOAA, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action would result in no change in legal landings, prices, costs, or revenues. It is expected to have an annual effect on the economy of less than $100 million, would not lead to cost or price increases and would not have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign based enterprises. The Council prepared a regulatory impact review that concludes that this rule would have the following economic effects.

Administrative, enforcement, and paperwork and recordkeeping requirements would remain unchanged. Thus, there would be no impacts on federal, state, or local government agencies. The proposed action (offloading period) is the preferred alternative for the following reasons.

(1) The proposed action would help to achieve the objectives of the FMP by improving compliance with the 30 meat count standard of the FMP and by enhancing the effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery. Compliance would be improved by limiting the number of hours during any day within which scallops could lawfully be offloaded from a vessel subject to the offloading periods. Offloading scallops at any other time than the specified 12-hour offloading periods would subject all fish on such a vessel to seizure, as well as to the assessment of a civil penalty. Enforcement would be enhanced because the time consuming task of sampling/weighing of scallops would have to be carried out only for inspections conducted during the off-loading periods. Detections of offloading at any other time would constitute a separate violation of the rgulations, not requiring any sampling/weighing, and would trigger seizure of all fish on board a vessel.

(2) Neither the government nor the industry would need to purchase any special equipment to implement the offloading period program.

(3) Legal landings and revenues would not be affected.

(4) The proposed action would result in greater compliance, which would result in small scallops being conserved and allowed to spawn and grow. Better compliance with the regulations, hence expected benefits, would be more readily achieved with the offloading period, and net benefits to society would be maximized.

(5) It is expected that the industry can adjust its practices to mitigate any burden resulting from this rule, if implemented.

(6) The proposed action is expected to have no impact on vessel safety in the Atlantic sea scallop fishery consistent with the intent of section 303(a)(6) of the Magnuson Act, as amended, 16 U.S.C. 1853(a)(6), because it would not require vessels to change their fishing practices, nor to remain at sea during inclement weather.

Employment impacts may occur in shucking houses, as evidenced in a letter from the North Carolina Fisheries Association, because scallops are usually processed along with crabs and shrimp as they are landed. The proposed action would have no effect on competition, investment, productivity or innovation in the fishery. The import market for Canadian-landed sea scallops, many of which are sold seasonally in the United States, should not be affected in any way. A copy of this review may be obtained from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule within 15 days of its receipt. The proposed rule is being reported to the Director, Office of Management and Budget with an explanation of why it is not necessary to follow procedures of that order.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. About 480 vessels landed sea scallops in 1988 (267 of them were scallop dredges, which accounted for 92.8 percent of all scallops landed) and all are considered small entities. No differential effects should occur relative to competitive position, cash flow and liquidity, or ability to remain in the market. A copy of the Council's assessment that Amendment 3 would have no significant impact may be obtained from the Council (see **ADDRESSES**). As a result, a regulatory flexibility analysis was not prepared.

This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: September 26, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is proposed to be amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for 50 CFR part 650 continues to read as follows:

Authority: 16 U.S.C. 1081 *et seq.*

2. In § 650.2, the definition of *"Non-conforming Atlantic sea scallops"* is revised and definitions of *"Offload"* and *"Sea scallop dredge vessel"* are added in alphabetical order to read as follows.

§ 650.2 Definitions.

Non-conforming Atlantic sea scallops means scallops that do not meet the standards specified in § 650.20 of these regulations, unless such scallops have been certified (through a procedure specified by the Regional Director) to have been taken under a management system that the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations, and also means any scallops that are offloaded or received from a vessel by any person at any time other than during the offloading periods as specified in § 650.21 (c) and (d) of these regulations.

Offload means to enter port and remove (i.e., to pass over the rail or otherwise take away) fish from any vessel.

Sea scallop dredge vessel means any fishing vessel that is equipped for fishing using gear in the Atlantic sea scallop fishery. For the purposes of this rule, dredge gear is that gear that consists of a mouth frame attached to a holding bag constructed of steel rings, or any other modification to this design that can be used in the harvest of Atlantic sea scallops.

3. In § 650.7 paragraphs (b) through (f) are redesignated (d) through (h), and new paragraphs (b) and (c) are added to read as follows:

§ 650.7 Prohibitions.

(b) Offload any fish from a sea scallop dredge vessel, or from a vessel landing more than 5 bushels (176.1) of Atlantic sea scallops in the shell, at any time other than during the applicable time specified in § 650.21(c).

(c) Offload Atlantic sea scallops from any vessel landing more than 40 pounds (18.1 kg) of shucked Atlantic sea scallops at any time other than the times specified in § 650.21(c).

4. In § 650.21, the section heading is revised and new paragraphs (c), (d) and (e) are added to read as follows:

§ 650.21 Compliance and sampling.

(c) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.21) of Atlantic sea scallops in the shell must offload all fish each day within the applicable 12-hour offloading period as specified below:

State of offloading	Period.
ME, NH, NC, SC, GA, and FL.	7 a.m. to 7 p.m.
MA, RI, and CT	5 a.m. to 5 p.m.
NY, JN, DE, MD, VA, PA	6 a.m. to 6 p.m.

(d) All other vessels not covered by paragraph (c) of this section, landing more than 40 pounds (18.1 kg) of shucked Atlantic sea scallops must offload the scallops within the applicable offloading period specified in paragraph (c) of this section.

(e) *Presumption.* Fish not offloaded from vessels subject to the provisions of paragraph (c), and shucked Atlantic sea scallops not offloaded from vessels subject to the provisions of paragraph (d), of this section during the offloading period must remain on the vessel until the following offloading period. There shall be a presumption of unlawful offloading for any such catch that is observed or identified on such a vessel by an authorized officer at the close of the previous offloading period, if such catch is not found on that vessel at the beginning of the following offloading period.

5. A new § 650.25 is added to read as follows:

§ 650.25 Modification of offloading period.

(a) The daily timing of the 12-hour offloading period in any state(s) may be adjusted by the Regional Director, if the Regional Director determines, and recommends to the Council, that such an adjustment is necessary and appropriate after reviewing any changes in the resource, fishery, or industry in accordance with § 650.22(a). The Council may, at any time, request that a change in an offloading period be evaluated by the Regional Director within 60 days.

The Regional Director will solicit and consider any recommendation of the Council regarding adjustment of the timing of an offloading period, and, with the Council, will provide for public notice and comment, and hold a public hearing on any recommended change in conjunction with the Council meeting at which the recommended change is discussed. The Regional Director will publish a notice of the public hearing and the recommended change in the **Federal Register.**

(c) After consideration of the full record; including comments at the public hearing, written comments, and comments from the Council; the Regional Director may accept, modify, or reject the recommended adjustment for the daily timing of the 12-hour offloading period. Notice of the Regional Director's decision, and the date such decision will take effect, will:

(1) Be published in the **Federal Register**; and

(2) Be mailed to each holder of a permit issued under § 650.4 of this chapter.

[FR Doc. 89-23116 Filed 9-27-89; 11:24 am]

BILLING CODE 3510-22-M

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50 CFR Part 651

[Docket No. 90927-9227]

RIN 0648-AC79

Northeast Multispecies Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This proposed Amendment 3 (Amendment) will enable the New England Fishery Management Council (Council), its Multispecies Committee, NMFS, and other management agencies to respond in a timely manner to protect large concentrations of juvenile, sublegal, and spawning fish through a Flexible Area Action System. The intended effect is to: (1) Enhance age-at-entry controls; (2) eliminate the need for emergency actions; and (3) enable management agencies to respond to requests from the fishing industry for timely action.

DATE: Comments on the proposed rule must be received on or before November 16, 1989.

ADDRESSES: Send comments on the proposed rule and Amendment to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Multispecies Amendment 3"

Copies of the Amendment, Environmental Assessment (EA), Regulatory Impact Review (RIR), and other supporting documents are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, (Resource Policy Analyst) 508-281-9252.

SUPPLEMENTARY INFORMATION: This amendment was prepared by the Council under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended (16 U.S.C. 1801 *et seq*). This

amendment proposes measures for managing the multispecies finfish fisheries in the Northwest Atlantic.

The FMP was conditionally approved by the Secretary on July 17 1986. Regulations implementing the FMP were effective on September 19, 1986 (published August 20, 1986, 51 FR 29642), and became effective on September 15, 1986. Amendment 1 to the FMP, which was implemented on October 1, 1987 (published September 17 1987 52 FR 35093), responded to deficiencies that were identified by the Regional Director in the conditional approval of the plan. Amendment 2, promulgated on January 27 1989 (published January 31, 1989, 54 FR 4798), improved the effectiveness of several of the existing measures in relation to two major factors (1) the promotion of regulatory compliance, and (2) the long-term achievement of management objectives.

Amendment 3 would implement a Flexible Area Action System (FAAS) whereby protection could be provided for large concentrations of juvenile, sublegal, or spawning fish. The Chairman of the Multispecies Committee (Committee) of the Council would initiate a 26 day administrative process if warranted by reports from harvesters, or other sources, of juvenile, sublegal, or spawning multispecies finfish. Upon request by the Chairman, the Regional Director will immediately notify the public that a specific problem in the fishery has been identified, and that various management measures to deal with the problem will be evaluated, in accordance with Amendment 3,III. B., and possibly implemented within 26 days. At the same time that public notice is given, the Regional Director will review the information received by the Council and verify, by other methods, the occurrence of juvenile, sublegal, or spawning fin.

The Regional Director's results will be summarized in a formal report made available to the public. The report will also include a statement concerning NMFS's capabilities for administering, monitoring, and enforcing any of the proposed management measures.

An opportunity for public review and comment on the proposed actions will be provided through a public notice and hearing. After the public hearing and review of the Regional Director's report, the Committee would recommend management measures to the Regional Director. After concurrence by the Regional Director, NMFS would implement the measures for a time period of between three weeks and six months. The process from initiation to implementation is expected to take no more than 26 days. Through this system the Council will be able to: (1) Enhance age-at-entry controls to enable the FMP to achieve its objectives; (2) eliminate the need for the type of emergency actions which were most recently implemented in the Northeast Multispecies fishery; and (3) respond to requests from the fishing industry for timely action in a way that improves the climate for cooperation and progress between the Council and the fishing industry.

Minimum size regulations do not protect concentrations of small or spawning fish under certain conditions. If a sufficient number of marketable fish are present in the same area as small fish, fishermen might continue to fish in that area, sometimes very intensely. Even if the mesh size is regulated, large quantities of small fish can block the mesh openings and a large amount of small fish can be caught and discarded. This scenario occurred most recently in the Nantucket Shoals area where large concentrations of small codfish were intermingled with some legal size cod in the winter of 1987–88 and December 1988. The earlier occurrence prompted the Council to request the Secretary to take emergency action to designate the area as a regulated mesh area. The Council included a measure in Amendment 2 which made this area a permanent seasonal regulated mesh area and its approval provided some protection during the second occurrence.

If small fish concentrate in an area where mesh size is unregulated, an even greater amount of small fish could be wasted. Such was the case in Southern New England in January through March, 1989, when large amounts of small yellowtail flounder were originally taken along with butterfish and later in a directed fishery for yellowtail. Members of the Southern New England industry requested that emergency action be taken to close the area. The Council concurred and forwarded the request to the Secretary who implemented an emergency closure of the area.

There are several reasons why the Council believes it is imperative to eliminate the need for emergency actions in response to problems associated with large concentrations of small or spawning fish. First, emergency actions require time to initiate and implement; tremendous quantities of small fish can be discarded. In terms of the volume of small fish that can be killed, it takes a significant amount of time to discuss the problem at a scheduled Council or Committee meeting. Second, emergency actions allow for less public input than would the proposed measure because emergency actions to not require a formal public review and comment period. There is usually considerable pressure for any action to be initiated as quickly as possible because of the urgency and the possible short duration of concentrations of small or spawning fish. Third, these types of problems should be anticipated and managed to the extent possible by the FMP Those areas with a likelihood of large concentrations during a particular period of time have been addressed in the FMP Additional areas have been addressed by amendments to the FMP and appropriate regulatory measures implemented. One-time occurrences cannot be satisfied by specified measures without a system such as is proposed. Finally, emergency actions require considerable time and resources from the Council and NMFS. Taking the two previous emergency actions delayed the Council's consideration of more fundamental management issues concerning the multispecies fishery.

The FAAS is designed to enable the Council and NMFS to respond to similar situations more quickly. The Council initiated both the emergency actions for cod on Nantucket Shoals and yellowtail flounder in Southern New England in response to fishing industry concerns, yet these measures were not as effective as they could have been because they took too long to implement. Most fishermen are not acquainted with the regulatory process and cannot understand why fisheries managers cannot quickly correct what seem to be simple but important problems, especially in comparison to the relatively short amount of time in which some of the states can resolve similar problems.

The FAAS will provide greater flexibility in defining the area and time period for changes in fishing regulations, provide a mechanism for areas to be reopened if the action is no longer appropriate, and save substantial management resources by eliminating the need for the type of emergency actions recently taken by the Council. The short lived nature of concentrations is an important consideration. If these situations are managed through inflexible regulations, there will be a proliferation of special case regulations with constraints placed on harvesters which serve no purpose after a relatively short period of time. The flexibility to end the action, if no longer warranted, is important to minimize costs imposed by the industry.

Additional Changes

NOAA proposes procedural provisions, specifically § 651.26 (b) and (j), to the FAAS. These provisions are intended to assure the smooth operational process of the Council's Amendment. NMFS requests comments and views from the Council on these additions.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment for the Amendment that discusses the impact on the environment as a result of this rule. You may obtain a copy of the assessment from the Council (see **ADDRESSES**).

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft regulatory impact review (RIR), which demonstrates positive long-term economic benefits to the fishery under the proposed management measures. The proposed rule is not expected to have an annual impact of $100 million or more; nor to lead to an increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises in domestic or export markets. A copy of the draft RIR may be obtained from the Council (see **ADDRESSES**).

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Public Law 99-659, require the Secretary to publish this proposed rule 15 days after its receipt. It is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of that order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. The proposed rule establishes an administrative procedure for prescribing management measures to protect concentrations of juvenile, sublegal, and spawning multispecies finfish and does not initially impose specific management measures. Any management measure subsequently adopted under this procedure will be analyzed for its impact on small entities.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: September 26, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for 50 CFR part 651 continues to read as follows:

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

2. Section 651.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 651.2 Definitions.

Chairman means the Chairman of the Multispecies Finfish Committee of the Council.

Committee means the Multispecies Finfish Committee of the Council.

Council means the New England Fishery Management Council.

3. 50 CFR part 651 is proposed to be amended by adding a new § 651.26 to read as follows:

§ 651.26 Flexible area action system.

(a) The Chairman of the Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chairman will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he determines it is necessary, the Chairman will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chairman will request the Regional Director to publish a notice in the **Federal Register**. The request must include a complete draft of the notice. The Secretary must file the notice within one business day following receipt of the complete request. Day 1 is designated when the notice is published in the **Federal Register**. The notice will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The day (Day 15) the Regional Director's verification report will be available for public review;

(4) The day (Day 21) on which a Committee meeting/public hearing will be held and the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates and/or LORAN coordinates);

(6) The species affected;

(7) The types of gear used;

(8) Other fisheries potentially impacted;

(9) Predominant ports to be impacted;

(10) The expected duration of action;

(11) The types of action which may be taken, limited to the various management measures currently authorized by the FMP·

(12) The Council's initiation of analysis of the impacts;

(13) The day (Day 15) the Council's impact analysis will be available for public review; and

(14) A request for written comments.

(c) From Day 1 through Day 14 the following activities will take place:

(1) The Regional Director will prepare a fact finding report which will examine available information from the following sources (in order of priority):

(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from State agency sources;

(ii) Port sampling from the NMFS Statistics Investigation; or

(iii) Any other source of information.

After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he will provide technical analyses describing the nature of the impacts on the stock managed under the FMP The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this Section. The report shall also include a statement of NMFS's capabilities for administering, monitoring, and enforcing any of the proposed options.

(2) The Council will prepare an economic impact analysis of the potential management options under consideration.

(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council (see **ADDRESSES**).

(e) On Day 21, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:

(1) Mesh size restrictions, catch limits, closure of an area to all or certain types of gear or vessels; or other measures less restrictive than the closure but already contained within and implemented by the FMP.

(2) Between three weeks and six months in duration; and

(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities.

If the Committee recommends that action is not warranted, and the RD concurs, notice will be published in the **Federal Register** stating that no action will be taken and specifying the rationale behind the decision.

(f) By Day 23 the Regional Director shall: (a) Accept, without modification, the Committee's recommended management action; or (b) reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notice in the **Federal Register** to be filed by Day 26. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact finding report, impact analysis, and comments received at the public hearing.

(g) By Day 26, notice will be sent to all vessel owners holding Federal Fisheries Permits for Northeast Multispecies finfish. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report and the public comments, are no longer in existence, he will terminate the action by notice in the **Federal Register** and through other appropriate media.

(i) Actions taken under this section will ordinarily become effective upon the date of filing with the **Federal Register.** The Regional Director may determine that facts warrant a delayed effective date.

(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day which is not a Saturday, Sunday or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee; provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraph (d) of this section have been made available for public review.

[FR Doc. 89-23117 Filed 9-27-89; 11:24 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review, Committee on Regulation, Special Committee on Financial Services; Public Meetings

SUMMARY: Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463) of meetings of three committees of the Administrative Conference of the United States. Further information and copies of reports and draft recommendations may be obtained from the contact persons identified below.

Committee on Judicial Review

DATES: Thursday, October 19, 1989, 3:30 p.m., Thursday, November 2, 1989, 2:00 p.m.

SUBJECTS: At the October 19 meeting, the committee will discuss a report by Professor Harold Bruff of the University of Texas School of Law concerning approaches to restructuring judicial review in administrative law. At the November 2 meeting, the committee will discuss a report by Professors Peter Schuck and Donald Elliot of Yale Law School on the effect of judicial review on agency decisionmaking and may also continue discussion of Professor Bruff's report.

CONTACT PERSON: Mary Candace Fowler, Administrative Conference of the U.S., 2120 L Street, NW., Suite 500, Washington, DC 20037 202-254-7020.

Committee on Regulation

DATES: Tuesday, October 10, 2:30 p.m., Thursday, October 19, 1:00 p.m.

SUBJECTS: At the October 10 meeting, the committee will discuss a study of regulation of biotechnology, conducted by Professor Sidney Shapiro of the University of Kansas School of Law, and draft recommendations based on the study. At the October 19 meeting the committee will address both Professor Shapiro's study and a study of risk communication in regulatory programs, conducted by Professor Michael Baram of the Boston University School of Law.

CONTACT PERSON: David M. Pritzker, Administrative Conference of the U.S., 2120 L Street, NW Suite 500, Washington, DC 20037 202-254-7020.

Special Committee on Financial Services

DATE: Friday, October 6, 1989, 10:00 a.m.

SUBJECT. The committee has scheduled this meeting to develop proposed recommendations dealing with bank failures, risk monitoring, and the market for corporate control, based upon a report by Professors Jonathan R. Macey of Cornell University Law School and Geoffrey Miller of the University of Chicago Law School.

CONTACT PERSON: Brian C. Murphy, Administrative Conference of the U.S., 2120 L Street, NW Suite 500, Washington, DC 20037 202-254-7020.

LOCATION: All meetings will take place in the Library of the Administrative Conference, 2120 L Street, NW Suite 500, Washington, DC, except the October 19 meeting of the Committee on Judicial Review, which will take place at the offices of Wilmer, Cutler & Pickering, Conference Room 6E2, 2445 M Street, NW Washington, DC 20037

PUBLIC PARTICIPATION: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: September 27 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89-23245 Filed 9-29-89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to the 1990 Program for Extra Long Stapel Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Proposed Determinations.

SUMMARY: The Secretary of Agriculture proposed to make the following determinations with respect to the 1990 crop of extra long staple (ELS) cotton: (a) Whether an acreage reduction program should be implemented and, if so, the percentage reduction under such acreage reduction program; (b) redesignate for marketing year 1990 all counties designated as suitable for growing ELS cotton during marketing year 1989 and designate additional counties, as deemed appropriate by the Commodity Credit Corporation (CCC), prior to the final date for enrolling in the 1990 ELS cotton program; and (c) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (the "1949 Act").

DATE: Comments must be received on or before November 16, 1989 in order to be assured of consideration.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, Rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles. V Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations is available on request from the aforementioned individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "non major" since the proposed provisions are not likely to result in: (1) An annual effect

on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

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).

It is necessary that the determinations for the 1990 crop of ELS cotton be made in sufficient time to permit ELS cotton producers to make plans for the production of their crop. Therefore, comments with respect to the following proposed determinations must be received by November 16, 1989 in order to allow the Secretary an adequate period to consider the comments before making the program decisions.

Proposed Determinations

a. *Acreage Reduction Program.* Section 103(h)(8)(A) of the 1949 Act provides that, with respect to the 1990 crop of ELS cotton, if the Secretary determines that the total supply of ELS cotton, in the absence of an acreage reduction program (ARP), will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency, the Secretary may provide for an ARP Such reduction shall be achieved by applying a uniform percentage reduction of the acreage base for each ELS-cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted ELS cotton acreage shall be ineligible for ELS cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of an ARP shall be the average acreage planted on the farm to ELS cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to ELS cotton for harvest shall include any acreage which producers were prevented from planting to ELS cotton or other nonconserving crops in lieu of ELS cotton because of drought, flood, or other natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines necessary to establish a fair and equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton times the number of acres actually planted to ELS cotton, by (b) the number of acres authorized to be planted to ELS cotton in accordance with the acreage reduction established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an ARP is in effect for the 1990 crop of ELS cotton, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(h) of the 1949 Act will not be applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to ELS cotton for harvest within the permitted ELS cotton acreage established for the farm under the ARP

The need for an ARP for the 1990 crop of ELS cotton will depend upon the projected level of ending stocks for the 1989–90 marketing year and the likely demand for ELS cotton in 1990–91. Based on estimates as of July 1989, ELS cotton production in 1989–90 will reach a record level. Despite anticipated increases in usage, both foreign and domestic, 1989–90 ending stocks are projected at 100,000 bales. Therefore, in order to return stocks to a desirable level while assuring an adequate supply to meet expected demand, some reduction in production may be needed.

Options under consideration at this time include a 10-percent ARP a 15-percent ARP and a 20-percent ARP However, future developments in weather conditions, market trends and projections of supply and use could affect the suitability of various production adjustment programs. Options considered at the final determination stage may vary depending upon conditions in existence and information available at that time.

Interested persons are encouraged to comment on whether an ARP should be implemented for the 1990 crop of ELS cotton, and, if so, the appropriate percentage level of such reduction.

b. *Counties Designated as Suitable for Growing ELS Cotton.* Section 103(h)(1) of the 1949 Act defines extra long staple cotton for program purposes as "cotton which is produced from pure strain varieties of the Barbadense species or any hybrid thereof, or other similar types of extra long staple cotton, designated by the Secretary, having characteristics needed for various end uses for which American upland cotton is not suitable and grown in irrigated cotton-growing regions of the United States designated by the Secretary or other areas designated by the Secretary as suitable for the production of such varieties or types and which is ginned on a roller-type gin, or, if authorized by the Secretary, ginned on another type gin for experimental purposes.

It is proposed that counties designated as suitable for growing ELS cotton during marketing year 1989 be redesignated for marketing year 1990 and that additional counties, as deemed appropriate by CCC, may be designated prior to the final date for enrolling in the 1990 ELS cotton program. Counties designated during marketing year 1989 were as follows:

Arizona: Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma.

California: Fresno, Imperial, Kern, Kings, and Riverside.

Florida: Alachua, Hamilton, Jefferson, Madison, Marion, Suwanee, and Union.

Georgia: Berrien and Cook.

Mississippi: Bolivar, Coahoma, Panola, Quitman, and Tunica.

New Mexico: Chaves, Dona Ana, Eddy, Hildalgo, Luna, Otero, and Sierra.

Texas: Andrews, Bee, Bexar, Brewster, Culberson, Dimmit, El Paso, Frio, Gaines, Hudspeth, Jeff Davis, Kinney, La Salle, Loving, Medina, Pecos, Presidio, Reeves, Refugio, Uvalde, Ward, and Zavala.

Interested persons are encouraged to comment on the proposed procedure for designating counties as suitable for growing ELS cotton during marketing year 1990.

c. *Other Related Provisions.* A number of other determinations must be made in order to carry out the ELS cotton loan program such as: (1) Commodity eligibility; (2) micronaire discounts; (3) loan levels for the individual qualities of 1990-crop ELS cotton; and (4) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendation that may be received relating to the above items.

Authority: 7 U.S.C. 1444(h), 15 U.S.C. 714b and 714c.

Signed at Washington, DC on September 26, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

FR Doc. 89-23160 Filed 9-29-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of the Census

Title: School Project Evaluation—Administrator Questionnaire

Form Number: D-1402, D-1402(L)

Agency Approval Number: None

Type of Request: New collection

Burden: 82 hours

Number of Respondents: 700

AVG Hours Per Response: 7 minutes

Needs and Uses: This telephone survey will collect data from a sample of primary and secondary school administrators on the effectiveness of the 1990 Census Education Project. The data will be used by the Census Bureau to evaluate and improve the Census Education Project and associated materials that are targeted for school children.

Affected Public: Individuals or households and Nonprofit institutions

Frequency: One time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposal 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 collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

September 26, 1989.

Edward Michals,

Departmental Clearance Officer Office of Management and Organization.

[FR Doc. 89-23099 Filed 9-29-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of the Census

Title: 1990 Outreach Evaluation Survey

Form Number: D-1400, D-1400(L)

Agency Approval Number: None

Type of Request: New collection

Burden: 1,250 hours

Number of Respondents: 5,000

Avg Hours Per Response: 15 minutes

Needs and Uses: This survey will collect data from a national sample of 5,000 households to measure and examine the relationship between decennial outreach and promotion efforts and respondent awareness of, attitudes toward, and participation in the census. The survey will be conducted by personal visit. CSMR will use data to assess the cumulative effectiveness of the 1990 census outreach and promotion campaign. Census will use this information to further develop census-related outreach and promotion activities for the next census.

Affected Public: Individuals or households

Frequency: One time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposal 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 collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 26, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-23100 Filed 9-29-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of the Census

Title: State Government Ratio Study Survey

Form Number: GP-37

Agency Approval Number: None

Type of Request: New collection

Burden: 51 hours

Number of Respondents: 51

Avg Hours Per Response: 1 hour

Needs and Uses: This survey collects data from each state and the District of Columbia concerning methodology, procedures, and findings of assessment-sales state ratio studies and other related topics. Census will use this information to explore the possibility of obtaining automated data from state governments for use in a nationwide assessment-sales price ratio study that will be conducted as part of the 1992 Census of Governments.

Affected Public: State or local governments

Frequency: One time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposal 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 collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 26, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization

[FR Doc. 23101 Filed 9-29-89; 8:45 am]

BILLING CODE 3510-07-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile Agreements

Announcement of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

September 27 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

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).

The Governments of the United States and the Republic of Turkey agreed to amend their current bilateral textile agreement to establish a specific limit for Categories 336/636 for three consecutive periods—September 30, 1988 through June 30, 1989, July 1, 1989 through June 30, 1990 and July 1, 1990 through June 30, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937 published on November 7 1988). Also see 54 FR 27666, published on June 30, 1989.

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.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 27, 1989

Commissioner of Customs,

Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 23, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1989 and extends through June 30, 1990.

Effective on October 4, 1989, the directive of June 23, 1989 is amended to include a limit of 247,000 dozen for cotton and man-made fiber textile products in Categories 336/636, produced or manufactured in Turkey and exported during the period July 1, 1989 through June 30, 1990.

Textile products in Categories 336/636 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Imports charged to the limit for Categories 336/636 for the period September 30, 1988 through June 30, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

You are directed to charge the following amounts to the limit established in this directive for Categories 336/636. These charges are for goods imported during the period July 1 through 31, 1989.

Category	Amount to be charged
336	2,520 dozen.
636	0

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillio,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-23146 Filed 9-29-89; 8:45 am]

BILLING CODE 3510-DR-M

The limit has not been adjusted to account for any imports exported after June 30, 1989.

COPYRIGHT ROYALTY TRIBUNAL

[CFT Docket No. 90-1-88JD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1988 Jukebox Royalty Fees

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

DATE: Comments are due November 1, 1989.

ADDRESS: An original and five copies shall be sent to: Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202) 653-5175.

SUMMARY: In accordance with 17 U.S.C. 116(c)(3), the Copyright Royalty Tribunal directs that all claimants to the royalty fees paid by jukebox operators for calendar year 1988 shall submit not later than November 1, 1989 any comments concerning whether a controversy exists with regard to the distribution of the 1988 jukebox royalty fees. All claimants intending to participate in the 1988 proceeding shall include with their comments a notice of intent to participate.

Dated: September 26, 1989.

Edward W. Ray,

Chairman.

[FR Doc. 89-23122 Filed 9-29-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Reimbursement Rates for Fiscal Year 1990

Notice is hereby given that the Comptroller of the Department of Defense in a September 14, 1989, memorandum to the Assistant Secretary of Defense (Health Affairs), Assistant Secretaries of the Army and Navy (Financial Management) and Assistant Secretary of the Air Force (Financial Management and Comptroller) established reimbursement rates for inpatient and outpatient medical and dental care provided during fiscal year 1990 as follows:

	IMET	Inter-agency	Other
Per inpatient day:			
Burn unit	$1155	$1,929	$2,042

	IMET [1]	Inter-agency [2]	Other
General medical and dental care	218	519	554
Per outpatient visit	24	[3] 63	67
Per FAA air traffic: Controller examination	N/A	88	N/A

[1] International Military Education and Training students.
[2] Other Federal Agency-sponsored patients and Government civilian employees and their dependents outside of the United States.
[3] DoD Civilian employees located in overseas areas shall be provided a bill when the services are performed. Payment is due 60 days from the date of the bill.

The per diem rate (supplies and subsistence) charged to dependents of military personnel in Federal medical facilities shall become $8.35 per day beginning January 1, 1990.

Dated: September 26, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23108 Filed 9-29-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Management

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Management will meet in closed session on October 16-17 October 30-31, November 14-15, November 28-29, and December 12-13, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will develop an action plan to implement the Secretary's Report to the President on Defense Management.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: September 26, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23106 Filed 9-29-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DoD.

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming conference of the DACOWITS. The purpose of the DACOWITS is to assist the Secretary of Defense on matters relating to women in the Services. The committee meets semiannually

DATE: October 29-November 1, 1989 (Detailed agenda follows).

ADDRESS: Holiday Inn Executive Center, Norfolk, Virginia, unless otherwise noted in detailed agenda.

AGENDA: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following:

Sunday, October 29, 1989

8:00 a.m.—12:00 noon Registration.
9:30 a.m.—10:30 a.m. Briefing: Update on DoD Task Force on Women in the Military.
11:00 a.m.—12:30 p.m. Get Acquainted Luncheon (Current DACOWITS members, Military Representatives, Legal Advisors, and Liaison Officers only).
12:30 p.m.—1:15 p.m. Briefing: Update on Navy Study Group, Recommendations.
1:15 p.m.—2:00 p.m. Briefing: Navy Family Support Conference.
2:00 p.m.—6:00 p.m. Subcommittee Sessions (Evaluation and Disposition of Service Responses). Subcommittee 1. Subcommittee 2.—Briefing: Joint Duty—Army and Air Force. Subcommittee 3.
6:30 p.m.—7:30 p.m. Social (cocktails and hors d'oevres).

Monday, October 30, 1989

8:00 a.m.—8:30 a.m. Official Opening.
8:30 a.m.—11:30 a.m. Subcommittee Sessions (Evaluation of Briefings and Sunday Resolutions).
12:00 noon—1:30 p.m. OSD Luncheon (BY INVITATION ONLY)
1:45 p.m.—6:00 p.m. Subcommittee Sessions.
7:00 p.m.—10:00 p.m. OSD Reception and Dinner (BY INVITATION ONLY).

Tuesday, October 31, 1989

6:30 a.m.—4:00 p.m. Field trip hosted by the U.S. Navy; visit aboard a combat logistics force ship. Space limited.
4:00 p.m.—8:00 p.m. Executive Committee Mark-up.

Wednesday, November 1, 1989

9:30 a.m.—10:30 a.m. Presentations by Members of the Public.
10:30 a.m.—11:15 a.m. Briefing: Update on Navy Study "Lost Time of Men and Women"
11:30 a.m.—1:30 p.m. New Chair Luncheon.
1:30 p.m.—3:00 p.m. Individual Review of Resolutions.
3:15 p.m.—4:00 p.m. General Business Session.
4:00 p.m. Adjourn.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary C. Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference.

a. Members of the public will not be permitted to attend the official Department of Defense luncheon or reception and dinner.

b. All business sessions, to include the Executive Committee meetings, will be open to the public.

c. Interested persons may submit a written statement for consideration by the committee and/or make an oral presentation of such during the conference.

d. Persons desiring to make an oral presentation or submit a written statement to the committee must notify the point of contact listed above no later than September 29, 1989.

e. Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

f. Oral presentation by members of the public will be permitted only from 9:30 a.m. to 10:30 a.m. on Wednesday, November 1, 1989, before the full committee.

g. Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation by October 6, 1989. Each person giving an oral presentation must provide 100 copies for distribution on November 1, 1989.

h. Persons submitting a written statement only for inclusion in the minutes of the conference must submit 1 copy either before or during the conference or within 5 days after the close of the conference.

i. Other new items from members of the public may be presented in writing to any DACOWITS member for

transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters, to consider.

j. Members of the public will not be permitted to enter into oral discussion conducted by the committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the committee.

k. Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

l. Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee meetings, or the Business Session on Wednesday, November 1, 1989.

Dated: September 26, 1989

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23107 Filed 9-29-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before November 30, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 26, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Application for the School Dropout Demonstration Assistance Act
Frequency: One-time
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden:
Responses: 1000
Burden Hours: 20,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by local education agencies, consortia of local education agencies, educational partnerships and community-based organizations. The Department will use this information to make grant awards and to insure that statutory and regulatory requirements are met.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for the Lectures Program of the Fund for the Improvement of Postsecondary Education
Frequency: Annually
Affected Public: State or local governments; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 6
Burden Hours: 480
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by postsecondary education institutions, and public and private educational institutions and agencies to apply for funding under the Lectures Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension
Title: Performance Report for the Law School Clinical Experience Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 100
Burden Hours: 300
Recordkeeping Burden:
Recordkeepers: 100
Burden Hours: 300
Abstract: Grantees that have participated in the Law School Clinical Experience Program submit this report to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective management.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Application for Grants Under the Strengthening Research Library Resources Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 100
Burden Hours: 1,600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application will be used by research libraries to apply for funding under the Strengthening Research Library Resources Program. The Department uses the information to make grant awards

[FR Doc. 89-23105 Filed 9-29-89; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs (NABIEP). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATES: October 18th—Orientation session for new members, October 19–20—Board business meetings.

LOCATION: The Quality Inn Capitol Hill Hotel, (Conference room will be posted), 415 New Jersey Avenue, NW Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Harry M. Gardner, Executive Director, National Advisory Board on International Education Programs, U.S. Department of Education, 7th & D Streets, SW Room 4907 Washington, DC 20202-5100, Telephone: 202-732-1862.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under Section 621 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (Pub. L. 99-498; 20 U.S.C. 1131). The Board's mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

Beginning on Wednesday, October 18th at 1:30 p.m. through Friday, October 20th, 12 noon, the agenda includes: (1) Orientation session for new members; (2) oath of office ceremonies; (3) an update of CAFLIS programs and activities; (4) a briefing of the budget outlook for Fiscal Year 1990; (5) a report on the Center for International Education programs; (6) a presentation on several current legislative initiatives in support of foreign languages and review/marks regarding several key NFLC "Occasional Papers" on international education; and (7) general board business for Fiscal Year 1990.

On Friday, October 20th at 1:30 p.m., the Board will conduct an on-site visit to the Center for International Studies at Johns Hopkins University.

Records are kept on the Board's proceedings and are available for public inspection at the Office of Postsecondary Education, from 8 a.m. to 4 p.m., ROB-3, 7th & D Streets, SW Room 4907 Washington, DC.

Signed in Washington, DC on September 27 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-23227 Filed 9-29-89; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Technical Methodology Standing Committee of the National Assessment Governing Board. This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 25, 1989.

TIME: 9:00 a.m. until adjournment.

LOCATION: Hilton Hotel, Room 2023, O'Hare International Airport, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Mary E. Switzer Building, 330 C Street, SW Suite 4060, Washington, DC 20202-7583, Telephone: (202) 732-1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); (20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Technical Methodology Standing Committee of the National Assessment Governing Board will meet on Wednesday, October 25, 1989 from 9:00 a.m. until the completion of business. The proposed agenda includes consideration of policies and procedures for the following: (1) Cognitive item review; (2) opportunity to learn measures; and (3) guidelines for trial state assessment. Discussion of these matters will result in the formulation of recommendations from the standing committee to the Board.

Records are kept of all Board proceedings, and are available for public inspection at the U.S. Department of Education, Mary E. Switzer Building, Suite 4060, 330 C Street, SE., Washington, DC from 8:30 to 5:00 p.m., Monday through Friday.

Dated: September 20, 1989.

Bruno V Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-23121 Filed 9-28-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-JA-406, for the sale of 1 gram of uranium depleted in the isotope uranium-235, and 6.006 grams of low enriched uranium (an average of 3.755 percent enriched in uranium-235) to the Laser Atomic Separation Engineering Research Association of Japan, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 27 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-23178 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

San Francisco Operations Office; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of restriction of eligibility for award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the Material Research Society in the amount of $30,000 for the "Thirteenth Symposium on the Scientific Basis for Nuclear Waste Management" Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i), DOE/SAN has determined that eligibility for this grant award shall be limited to the Material Research Society under criterion (A), continuation, or renewal of, an existing DOE grant.

GRANT NO. DE-FG03-89SF18428.

SCOPE OF PROJECT. The scope of the project is the overall planning of the conference associated with preparing the Proceedings, and distributing the Proceedings to the Department.

The Materials Research Society, with financial assistance from the U.S. Department of Energy and the U.S. Nuclear Regulatory Commission, has held symposia on the Scientific Basis for Nuclear Waste Management since the fall of 1978. This symposium is recognized as the leading forum for scientific papers dealing with nuclear waste management. The papers, all of which undergo a thorough review process before acceptance, are published as volumes of the MRS Symposia Proceedings series. Twelve volumes have been published since 1978.

Copies of the proceedings will be transmitted to the Department of Energy as deliverables.

The criterion of § 600.7(b)(2)(i) is being relied upon to justify the action. The activity to be funded is a continuation of research currently being funded by DOE. Competition for support would have a significant adverse impact on the continuity of the Materials Research Society Symposiums because the Materials Research Society is an integral part of the program. The basis for this financial assistance action is criterion (A) which states that an activity may be funded if it is necessary for the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE.

FOR FURTHER INFORMATION CONTACT: Bill O'Neal, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, September 13, 1989.

Kathleen M. Day,

Director, Contracts Management Division.

[FR Doc. 89-23179 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to Modell Development Corporation

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award based on an unsolicited application under Grant No. DE-FG05-89CE40914 to Modell Development Corporation.

PROJECT SCOPE: The proposed work will provide insight into the applicability of a new Supercritical Water Oxidation (SCWO) technology in efficiently converting waste industrial sludge to useful energy, and at the same time, effectively destroying any potential hazardous waste components. A study will be performed to determine if SCWO can effectively oxidize pulp mill sludges, including hazardous dioxin constituents.

ELIGIBILITY: Based on receipt of an unsolicited application eligibility of this award is being limited to Modell Development Corporation. This project represents a unique idea for which a competitive solicitation would be inappropriate.

The term of this grant is for four months from date of award. The total estimated DOE cost is $50,000.

FOR FURTHER INFORMATION, CONTACT: Stan F Sobczynski, Program Manager, CE-142, Washington, DC 20585, (202) 586-1878.

Issued in Oak Ridge, Tennessee, on September 19, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-23180 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Chicago Operations Office; Award Based on Acceptance of an Unsolicited Application; Solar Energy Industries Association

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office through its SERI Area Office (SAO), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.14 (e)(1)(ii), it intends to award a grant to the Solar Energy Industries Association (SEIA) for support to the Committee on Renewable Energy Commerce and Trade (CORECT). The objective of the work to be supported by this grant is the development of a potential North Africa strategy to market solar thermal technologies to produce electricity, steam, and hot water for the industrial process and utility markets. SEIA will develop an industry survey to ascertain industry experience in North Africa as well as problems and potential niche markets. Following collection of the energy data and development of data on the region, SEIA will conduct a seminar in Washington, DC, for commercial and technical staff members in embassies of North African countries. A second seminar will be held in Morocco, Tunisia or Egypt.

FOR FURTHER INFORMATION CONTACT: Patricia Russo Schassburger, U.S. Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden, CO 80401, (303) 231-1495.

SUPPLEMENTARY INFORMATION: CORECT undertakes activities in support of the U.S. renewable energy industry's export efforts. In order to carry out these activities, CORECT needs a close liaison with the U.S. renewable energy industry. The Solar Energy Industries Association, the national trade association of the photovoltaic and solar thermal manufacturers and component suppliers, is the only organization that represents the export interests of this segment of the U.S. renewable energy industries. Therefore, the unsolicited grant application is being accepted by DOE because it knows of no other organization which is conducting or planning to conduct these types of export assistance activities.

The Project period for the grant is a one year period, expected to begin in September 1989. DOE plans to provide funding in the amount of $45,658 for this project period.

Issued in Chicago, Illinois on September 19, 1989.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 89-23181 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Chicago Operations Office Cooperative Agreement Award: Urban Consortium Energy Task Force

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance for cooperative agreement award.

SUMMARY: The Department of Energy (DOE) Chicago Operations Office announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.7 (b)(2), it is pursuing a noncompetitive financial assistance award of a cooperative agreement with the Urban Consortium Energy Task Force. Under the terms of the agreement, the assistance would support applied research and development and technology transfer of innovative technologies and management practices that address urban energy problems. Specific proposal tasks include 21 projects in four general topic areas: electricity management; alternative vehicle fuels; waste management; and the broad relationships among energy, the environment and economic development. In addition to these individual projects a core program supports management coordination and technical assistance to each of the projects both collectively and individually. The program also provides for formal components for technology transfer and experience exchange.

FOR FURTHER INFORMATION CONTACT: Linda J. de la Croix, CE-133, U.S. Department of Energy, Federal and Community Programs, 1000 Independence Avenue SW Washington, DC (202) 586-1851.

SUPPLEMENTARY INFORMATION: The Urban Consortium Energy Task Force (UCETF) is a coalition of 45 of the nation's largest cities and countries that were formed in 1979. The organization was created to develop, apply and transfer practical technologies and advanced management techniques, that aid effective energy management in America's largest cities and urban countries. The members develop work programs for applied research and development and technology transfer based on annual needs assessments of the priority energy concerns facing urban jurisdictions.

The UCETF has proposed to contract with its associate members to conduct research in the four general topic areas of electricity management, alternative vehicle fuels, waste management, and the broad relationships among energy, environment, and economic development.

Eligibility for the cooperative agreement award is being restricted to the UCETF because of its past experience with DOE and its unique ties and expertise developed in conducting and completing 180 similar projects since its inception in 1979. The estimated total cost of the 18-month cooperative agreement with UCETF is $1,960,000.00. The proposed award date is September 30, 1989.

Issued in Chicago, Illinois on September 19, 1989.

Timothy S. Crawford,

Assistant, Manager for Administration.

[FR Doc. 89-23182 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Wednesday, October 11, 1989, 1:30 p.m. to 10 p.m., Thursday, October 12, 1989, 8 a.m. to 5 p.m.

Place: Solar Energy Research Institute, Denver West Office Park, 1617 Cole Boulevard, Building 17, 4th Floor Conference Room A, Golden, Colorado 80401

Contact: Wallace R. Kornack, Executive Director, ACNFS, S-2, 1000 Independence Avenue SW Washington, DC 20585, Telephone: (202) 586-1770

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

October 11, 1989

1:30 p.m. Chairman John F Ahearne Opens Meeting
Review of Issues at Rocky Flats
5:30 p.m. Meeting Adjourned until 8 p.m.
8 p.m.-10 p.m. Public Comment Session

October 12, 1989

8 a.m. Chairman John F Ahearne Opens Meeting
Discussion of Waste Isolation Pilot Plant Report
Subcommittee Reports
Committee Business
11 a.m. Review of Issues at Rocky Flats
Noon. Lunch
1 p.m. Review of Issues at Rocky Flats
Review of Selected Technical Issues
5 p.m. Meeting Ends.

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace R. Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 27 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-23184 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-655-000, et al.]

Pacific Gas and 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. Pacific Gas and Electric Company

[Docket No. ER89-655-000]

September 19, 1989.

Take notice that on September 18, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes to certain rates, terms, and conditions concerning those services rendered by PG&E under settlement agreements between PG&E and Port of Oakland (Port) Rate Schedule FERC No. 95, and Lassen Municipal Utility District (Lassen) Rate Schedule FERC No. 117

The settlement agreement with each customer embodies the agreement between PG&E and the customer regarding the procedure and mechanism designed to recover amounts due PG&E from the customer, and amounts due the customer from PG&E, as a result of rate changes based on certain California Public Utilities Commission (CPUC) decisions and resolutions.

Copies of this filing were served upon Port, Lassen and the CPUC.

Comment date: October 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa-Illinois Gas and Electric Co.

[Docket No. ER89-663-000]

September 25, 1989.

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois), on September 19, 1989, tendered for filing pursuant to section 35.13 of the Regulations under the Federal Power Act two alternative proposed rate schedule changes to its Rate Schedule Wholesale Electric Service-Municipal Partial Requirements and a Second Electric Service Agreement (Agreement) dated August 29, 1989, between Iowa-Illinois and the City of Eldridge, Iowa (Eldridge) provided for under the aforementioned Rate Schedule. Eldridge is the only customer service under this Rate Schedule.

Iowa-Illinois states that the preferred Rate Schedule change would cap the billing demand charges in the Rate Schedule at the current levels while allowing customers to negotiate charges below the cap. Iowa-Illinois states the alternative proposal would instead reduce the billing demand charges by a fixed percentage from October 1, 1989 through December 31, 1982. Either proposed alternative Rate Schedule change would reduce the current level of annual billing demand charges for Eldridge from October 1, 1989 through December 31, 1992.

Iowa-Illinois proposed the Rate Schedule change and the Agreement be effective on October 1, 1989 and requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Eldridge, the Iowa State Utilities Board and the Illinios Commerce Commission.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. William N. Hubbard, Jr.

[Docket No. ID-2421-000]

September 25, 1989.

Take notice that on August 23, 1989, William N. Hubbard, Jr. (Applicant) tendered for filing an application under section 305(b) of the Fedeal Power Act to hold the following positions:

Director: Consumers Power Company
Director: Johnson Controls, Inc.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. William T. McCormick, Jr.

[Docket No. ID-2423-000]

September 25, 1989.

Take notice that on August 23, 1989, William T. McCormick, Jr. (Applicant), tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board, Director: Consumers Power Company
Director: Rockwell International Corporation

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Don T. McKone

[Docket No. ID-2422-000]

September 25, 1989.

Take notice that on August 23, 1989, Don T. McKone, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Consumers Power Company
Director: TRINOVA Corporation

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ER83-726-004]

September 25, 1989.

Take notice that on September 15, 1989, Boston Edison Company (Boston) tendered for filing its compliance refund report pursuant to the Commission's order issued on August 2, 1989.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Co.

[Docket No. ER89-662-000]

September 25, 1989.

Take notice that on September 19, 1989, Washington Water Power Company (Water Power) tendered for filing copies of an Agreement for Exchange of Capacity and Energy between Washington and Public Utility District No. 1 of Pend Oreille County (Pend Oreille). Washington states the purpose of the agreement is to provide Pend Oreille with additional energy storage capability.

Water Power respectfully requests that the Commission grant a waiver of the notice requirements and that the effective date schedule be July 1, 1989, stating that there would be no effect upon purchasers under other rate schedules.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas Power and Light Co.

[Docket No. ER89-659-000]

September 25, 1989.

Take notice that on September 19, 1989, Kansas Power and Light Company (KP&L) tendered for filing a newly executed contract dated September 6, 1989, with the City of Lindsborg, Kansas, (City) for wholesale electric service to that community. KP&L states that the rate schedule change is the replacement of the prior contract for wholesale sales service to the City with a new contract which provides for the continuation of sales service and the addition of transmission service.

The new contract has been negotiated to KP&L and the City in order to provide for the transmission of the power and energy associated with an allocation of power available to the City from the Western Area Power Administration through the Kansas Municipal Energy Agency. Copies of this filing have been mailed to the City of Lindsborg and the State Corporation Commission of Kansas.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Co.

[Docket No. ER89-658-000]

September 25, 1989.

Take notice that New England Power Company (NEP), on September 19, 1989, tendered for filing a Transmission Facilities Support Agreement between NEP and Boston Edison Company (BECO) that provides for an additional interconnection between their systems for the purpose of strengthening each of the systems, and also provides the basis for the sharing of costs between the parties.

NEP requests an effective date of June 14, 1988, the initial date of service under the Agreement, and waiver of the Commission's notice provision pursuant to § 35.11.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Cincinnati Gas & Electric

[Docket No. ER89-661-000]

September 25, 1989.

Take notice that the Cincinnati Gas & Electric Company (Cincinnati) tendered for filing on September 19, 1989 an Interconnection Agreement between Cincinnati and the Ohio Valley Electric Corporation.

The Interconnection Agreement adopts Rate Schedules for Emergency Energy, Interchange Power, Short Term Power and Limited Term Power. The

Rate schedules establish the applicable charges. There is no estimate of increased revenued from the charges since transactions will occur only as load and capacity conditions dictate. A September 1, 1989 effective date has been requested.

Cincinnati states that the rates and services were negotiated by the parties. Ohio Valley Electric Corporation concurs in the filing of the Interconnection Agreement.

A copy of the filing was served upon Ohio Valley Electric Corporation and the Public Utilities Commission of Ohio.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service

[Docket No. ER89-656-000]

September 25, 1989.

Take notice that on September 15, 1989, Wisconsin Public Service Corporation (the "Company" or "WPSC") filed six copies of revisions to its W-3 FERC Electric Tariff. The filing includes the following Service Schedules to supplement Service Schedule A (Firm and Interruptible) and Service Schedule B (General Purpose 2) of the company's W-3 tariff for load pattern partial requirements service:

Service schedule	Service
C	Emergency
D	Economy
E	Short Term
F	Maintenance
G	General Purpose

These Service Schedules are identical to W-2 Service Schedules for these services as agreed to in the Settlement Agreement among the Company, Consolidated and the Algoma Group in Docket No. ER88-63-000 as approved by the Commission on September 29, 1988.

The filing includes, in addition to the Service Schedules to be added to the W-3 tariff, a change to the existing General Purpose 2 Service Schedules in both the W-2 and W-3 tariff. The change is to paragraph 5, which now makes those Service Schedules applicable to all energy not taken under Service Schedule A of each tariff. In order to recognize that a customer may take energy under Service Schedules other than Service Schedule A, Paragraph 5 is changed to make the General Purpose 2 Service Schedule apply to all energy not taken under all other rate schedules in the tariff.

WPSC states that copies of the filing have been served on its W-2 and W-3 customers and the Public Service Commission of Wisconsin.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. GEO East Mesa Limited Partnership

September 26, 1989.

[Docket Nos. QF82-18-001, QF88-202-002 and QF88-203-002]

GEO East Mesa Limited Partnership, 18872 MacArthur Boulevard, Suite 400, Irvine, California 92715, on behalf of itself and its wholly-owned subsidiary, GEO East Meas facilities as qualifying small power production facilities pursuant to Section 292.207 of the Commission's regulations on the following dates:

September 7 1989 McCabe Facility, Docket No. QF82-18-001

September 21, 1989 GEM 1 Facility, Docket No. QF88-202-002

September 21, 1989 GEM 2 Facility, Docket No. QF88-203-002

The three geothermal facilities are located within one mile of each other in the East Mesa Known Geothermal Resource Area of Imperial County, California. The McCabe Plant will have a maximum net power production capacity of approximately 10.4 megawatts, and the GEM 1 and GEM 2 facilities will have a combined maximum net power production capacity of approximately 40 megawatts. Power generated by the facilities will be sold to Southern California Edison Company. The primary energy source of the facilities will be natural geothermal water, steam, or brine.

Comment date: Thirty days form 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 protests 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,

Secretary

[FR Doc. 89-23112 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-2126-000, et al.]

ANR Pipeline Co., et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP89-2126-000]

September 25, 1989.

Take notice that on September 19, 1989, (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2126-000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Xebec Gas Company (Xebec), under the blanket certificate issued in Docket No. CP89-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that pursuant to a Transportation Agreement dated May 8, 1989, it proposes to transport, on an interruptible basis, up to maximum of 7,463 MMBtu of natural gas for Xebec. ANR states that it would receive gas at existing points of receipt located in Kansas, Louisiana, Michigan, Oklahomas, Texas, and Offshore Texas and Louisiana gathering areas and redeliver the gas for the account of Xebec at existing interconnections located in Michigan and Louisiana.

ANR also states that it will transport approximately 7,463 MMBtu on an annual basis.

ANR further states it commenced this service August 1, 1989, as reported in Docket No. ST89-4620-000.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Co.

[Docket No. CP89-2130-000]

September 25, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2130-000 an application pursuant to Sections 157.205 and 284.223 18 CFR 157.205 and 284.233 of the Commission's Regulations under the Natural Gas Act for

authorization to provide interruptible transportation service for Transco Energy Marketing Co., (Transco), a marketer of gas, pursuant to ANR's blanket transportation certificate issued July 25, 1988, in Docket No. CP88-532-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states it will receive the gas at various supply sources in the offshore area of Texas and deliver the gas for the account of Transco at existing points of interconnection also located in offshore Texas.

ANR proposes to transport up to 650,000 dt of gas on a peak and average day and approximately 237,000,000 dt of gas annually. ANR states the transportation commenced on August 3, 1989, pursuant to the 120-day automatic authorization under section 284.223 of the Commission s Regulations under the terms of a transportation agreement dated June 1, 1989. ANR notified the Commission of the transportation service in Docket No. ST89-4619-000.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP89-2105-000]

September 25, 1989.

Take notice that on September 15, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-2105-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place approximately 0.2 mile of 16-inch pipeline and appurtenant facilities south of the abandoned Kansas River crossing in Douglas County, Kansas, and to abandon the transportation of gas through said facilities under its blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the Kansas Power & Light Company (KPL Gas Service) domestic customer served by this pipeline has requested service by Kansas Public Service (KPS). Both KPL Gas Service and KPS have agreed to the transfer of service which will allow WNG to abandon this section of pipeline. The reclaim cost is estimated to be $2,970.00, with a salvage value of $1,901.00.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Tarpon Transmission Co.

[Docket No. CP89-2140-000]

September 25, 1989.

Take notice that on September 20, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2140-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for Seagull Marketing Services, Inc. (Seagull), a marketer of natural gas, under Tarpon s blanket certificate issued by the Commission s Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP88-29-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tarpon proposes to transport on an interruptible basis up to 15,330 MMBtu of natural gas on a peak day, 7,842 MMBtu on an average day and 2,862,330 MMBtu on an annual basis for Seagull. Tarpon indicates that it would receive the gas at a point in the Eugene Island Block 381, offshore Louisiana, and deliver the gas at a point in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana. Tarpon indicates that it would transport the gas for Seagull pursuant to Tarpon s Rate Schedule ITS for a primary term of one year and on a monthly basis thereafter.

It is explained that the service commenced June 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4773. Tarpon indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tarpon Transmission Co.

[Docket No. CP89-2141-000]

September 25, 1989.

Take notice that on September 20, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2141-000 a request pursuant to § 157.205 of the Commission s Regulations for authorization to transport natural gas for Anadarko Marketing Company (Anadarko), a marketer of natural gas, under Tarpon s blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP88-29-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tarpon proposes to transport on an interruptible basis up to 51,100 MMBtu of natural gas on a peak day, 7,040 MMBtu on an average day and 2,569,600 MMBtu on an annual basis for Anadarko. Tarpon indicates that it would receive the gas at five points in the Eugene Island Area, offshore Louisiana, and deliver the gas at a point in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana. Tarpon indicates that it would transport the gas for Anadarko pursuant to Tarpon s Rate Schedule ITS for a primary term of two years and on a monthly basis thereafter.

It is explained that the service commenced June 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission s Regulations, as reported in Docket No. ST89-4772. Tarpon indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Co.

[Docket No. CP89-2081-000]

September 25, 1989.

Take notice that on September 12, 1989, Natural Gas Pipeline Company of America (NGPA), filed, in Docket No. CP89-2081-000, an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing the construction and operation of facilities to increase seasonal withdrawal capabilities at three of NGPA's existing storage fields, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGPA proposes to add eight new injection/withdrawal wells, convert a compressor engine and lay 0.75 mile of 10-inch diameter pipeline in the Herscher (Galesville) Storage Field; to recomplete eight wells previously used to remove water from below the reservoir and install two miles of 8-inch diameter pipeline in the Loudon (Devonian) Storage Field; and to drill five new wells, recomplete four observation wells and install 1.75 miles of 8-inch pipeline in the North Lansing (Rodessa Young) Storage Field systems, respectively. NGPA states that the increased seasonal withdrawal

capability, (estimated to be 7.7 Bcf), is desirable to meet expected future demands.

The estimated cost is $11,403,000 to be achieved initially with funds on hand, issuance of commercial paper, use of existing bank lines of credit or interim financing arrangements as may be negotiated. Permanent financing subsequently will be undertaken as part of NGPA's overall long term financing program.

Comment date: October 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

7 Natural Gas Pipeline Co. of America

[Docket No. CP89-1281-001]

September 25, 1989.

Take notice that on September 19, 1989, Natural Gas Pipeline Company of America (Natural) filed on behalf of itself and the Customer Group a Stipulation and Agreement on Interim Gas Inventory Charge (IGIC) pursuant to Rule 602, 18 CFR 385.602. Natural states that the Customer Group jointly sponsoring this settlement consists of Northern Illinois Gas Company, the Peoples Gas Light and Coke Company, Northern Indiana Public Service Company, North Shore Gas Company, Iowa-Illinois Gas and Electric Company, Illinois Power Company, Iowa Electric Light and Power Company, Interstate Power Company, Iowa Southern Utilities Company, and Wisconsin Southern Gas Company.

The settlement provides that Natural's firm sales customers shall submit nominations on or before November 1, 1989, for the period from November 1, 1989 to November 30, 1990. If a customer nominates sales service less than its current daily contract quantity, the balance will be converted to firm transportation service. Commission approval of the settlement shall constitute permanent abandonment authority for the converted sales service. The settlement also provides for an interim gas inventory charge of $.40 per MMBtu to be applied on the basis of purchase deficiencies and for a reconciliation mechanism whereby any overcollections under the IGIC and purchased gas account (PGA) are to reduce Natural's current balance in its Account No. 191.

Comment date: October 10, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Southern Natural Gas.

[Docket No. CP89-2102-000]

[Docket No. CP89-2103-000]

September 25, 1989.

Take notice that on September 14, 1989, Southern Natural Gas Company (Southern) Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket Nos. CP89-2102-000 and CP89-2103-000,[1] requests pursuant to § 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis, a maximum quantity of 350,000 MMBtu of natural gas for Entrade Corporation (Entrade), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on filed with the Commission and open to public inspection.

In Docket No. CP89-2102-000, Southern states that it would transport a maximum quantity of 350,000 MMBtu on a peak day, 349,041 MMBtu on an average day and 127,400,000 MMBtu on an annual basis from various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to various points in Georgia, Tennessee and South Carolina. Southern indicates that service commenced July 19, 1989, as reported in Docket No. ST89-4551.

In Docket No. CP89-2103-000, Southern states that it would transport the same maximum quantity of natural gas on peak days, average days and annually as previously noted for Docket No. CP89-2102-000. Southern would transport such gas from various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to various points in Alabama and Georgia. Southern indicates that service commenced July 19, 1989, as reported in Docket No. ST89-4550.

Southern also states that no new facilities are required to implement the proposed services.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. The Inland Gas Company, Inc.

[Docket No. CP89-2137-000]

September 25, 1989.

Take notice that on September 19, 1989, The Inland Gas Company Inc. (Inland) 336-338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP89-2137-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, for authorization to transport natural gas under its blanket certificate issued in Docket No. CP89-779-000, pursuant to section 7 of the Natural Gas Act for Louisville Fire Brick Works (Louisville Fire Brick), all as more fully set forth in the request on file with the Commission and open to public inspection.

Inland proposes to transport up to 300 MMBtu equivalent of natural gas per day, projected average daily and annual quantities of 270 MMBtu and 98,550 MMBtu, respectively, for Louisville Fire Brick.

Inland explains that service commenced August 4, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4538-000.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. The Inland Gas Co., Inc.

[Docket No. CP898-2136-000]

September 26, 1989.

Take notice that on September 19, 1989, The Inland Gas Company, Inc. (Inland) P.O. Box 1180, Ashland, Kentucky 41105-3171, filed in Docket No. CP89-2136-000 a request, as supplemented on September 21, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for American National Rubber Company (American National), an end-user, under Inland's blanket certificate issued in Docket No. CP89-779-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Inland states that pursuant to a transportation agreement dated August 8, 1989, it proposes to receive up to 300 Mcf per day from American National from two specified points located in the state of Kentucky and redeliver the gas at specified points located in the state of West Virginia. Inland estimates that the peak day, average day, and annual volumes would be 300 million Btu, 160 million Btu, and 58,400 million Btu, respectively. It is stated that on August 9, 1989, Inland commenced a 120-day transportation service for American National under Section 284.223(a) as reported in Docket No. ST89-4536-000.

Inland further states that no facilities need be constructed to implement the service. Inland indicates that the service would continue until February 3, 1990.

[1] These dockets are not consolidated.

Inland proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2147-000]

September 26, 1989.

Take notice that on September 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2147-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated July 10, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would transport the gas from receipt points of Texas, Oklahoma, Colorado, Kansas, Michigan, Ohio, and Illinois, and deliver such gas, less fuel used and unaccounted for line loss, to the Anadarko North Richland Plant in Texas County, Oklahoma.

Panhandle advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4665. Panhandle further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2149-000]

September 26, 1989.

Take notice that on September 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2149-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated June 26, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Colorado, Kansas, Michigan, Ohio, and Illinois, and deliver such gas, less fuel used and unaccounted for line loss, to the Anadarko Beaver Plant in Beaver County, Oklahoma.

Panhandle advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4661. Panhandle further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2143-000]

September 26, 1989.

Take notice that on September 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2143-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated September 19, 1988, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Colorado, Kansas, Michigan, Ohio, Illinois, and Wyoming, and deliver such gas, less fuel used an unaccounted for line loss, to National Helium in Seward County, Kansas.

Panhandle advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4662. Panhandle further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: November 13, 1989, 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 therefore, the proposed activity shall be deemed to be authorized effetive the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be

treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23113 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-2091-000, et al.]

Mid Louisiana Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Mid Louisiana Gas Co.

[Docket No. CP89-2091-000]
September 19, 1989.

Take notice that on September 13, 1989, Mid Louisiana Gas Company (Mid Louisiana), five Post Oak Park, Suite 800, Houston, Texas 77027 filed in Docket No. CP89-2091-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for Mobil Natural Gas, Inc. (Mobil) under Mid Louisiana's blanket certificate issued in Docket No. CP86-214-000, on March 12, 1986, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid Louisiana states that pursuant to a transportation agreement dated August 1, 1989, it proposes to transport natural gas for Mobil, on an interruptible basis, from a point of receipt located on West Cameron Block 32, 33, offshore Louisiana, to a point of interconnection with Tennessee Gas Pipeline Company, at Lower Mud Lake, Cameron Parish, Louisiana.

Mid Louisiana further states that the peak day, average day, and annual quantities would be 5,000 MMBtu, 5,000 MMBtu and 1,825,000 MMBtu equivalent of natural gas per day, respectively. It is also stated that service under Section 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4577-000, filed August 29, 1989.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. KN Energy, Inc.

[Docket No. CP89-2088-000]
September 19, 1989.

Take notice that on September 13, 1989, KN Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed a request with the Commission in Docket No. CP89-2088-000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate sales taps for the delivery of natural gas to three end-users under KN's blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

KN proposes to construct and operate sales taps to serve three residential end-users located along its jurisdictional pipelines in Scott County, Kansas, and Hamilton County, Nebraska. KN states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have an insignificant impact on KN's peak day and annual deliveries.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Equitrans, Inc.

[Docket No. CP89-2072-000]
September 19, 1989.

Take notice that on September 11, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, PA 15205, filed in Docket No. CP89-2072-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Angerman Associates, Inc. (Angerman), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated July 6, 1989 under its Rate Schedule ITS, it proposes to transport up to 147 Mcf per day of natural gas for Angerman. Equitrans states that it would transport the gas from receipt points in West Virginia, and would redeliver the gas at the interconnect between Equitrans and Equitable Gas Company in Allegheny County, Pennsylvania.

Equitrans advises that service under Section 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4523. Equitrans further advises that it would transport 147 Mcf on an average day and 53,655 Mcf annually.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Co.

[Docket No. CP89-2117-000]
September 19, 1989.

Take notice that on September 18, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2117-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated June 15, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for PSI. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Consumers Power in Elkhart County, Indiana.

Trunkline advises that service under Section 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4673. Trunkline further advises that it would transport 25,000 dt on an average day and 9,125,000 dt annually.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Co.

[Docket No. CP89-2100-000]
September 19, 1989.

Take notice that on September 14, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-2100-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of United States Gypsum Company (U.S. Gypsum), an end-user, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 8,900 dekatherms of natural gas per day for U.S. Gypsum from receipt points located in Offshore Louisiana, Louisiana, Offshore Texas and Alabama to delivery points located in Maryland, Massachusetts and New

York. Tennessee anticipates transporting an annual volume of 3,248,500 dekatherms.

Tennessee states that the transportation of natural gas for U.S. Gypsum commenced August 31, 1989, as reported in Docket No. ST89-4713-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87-115-000.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Co.

[Docket No. CP89-2077-000]

September 19, 1989.

Take notice that on September 12, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79998, filed in Docket No. CP89-2050-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for Gas Company of New Mexico, a Division of Public Service Company of New Mexico (Shipper), under its blanket certificate issued in Docket No. CP88-433-000 pursuant to Section 7 of the Natural Gas Act, all or more fully set forth in the request on file with Commission and open to public inspection.

El Paso states that it proposes to transport up to 158,250 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to various delivery points in Texas and New Mexico at the borderline between Arizona and California.

El Paso also states that the estimated daily and annual quantities would be 52,750 MMBtu and 19,253,750 MMBtu, respectively.

El Paso further states it commenced this service on August 12, 1989, as reported in Docket No. ST89-4566-000.

Comment date: November 3, 1989, in accordance with Standard paragraph G at the end of this notice.

7 Texas Gas Transmission Corp.

[Docket No. CP89-2109-000]

September 19, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2109-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tejas Power Corporation (Tejas), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated August 3, 1989, under its Rate Schedule IT, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Tejas. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to a delivery point in Acadia Parish, Louisiana, as shown in Exhibit "C" of the agreement.

Texas Gas advises that service under § 284.223(a) commenced August 5, 1989, as reported in Docket No. ST89-4522. Texas Gas further advises that it would transport 10,000 MMBtu on an average day and 10,950,000 MMBtu annually.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Great Lakes Gas Transmission Co.

[Docket No. CP89-1898-000]

September 19, 1989.

Take notice that on August 2, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-1898-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity to provide additional firm gas transportation service of 831,000 Mcf per day for ANR Pipeline Company (ANR), and to construct and operate facilities required to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Great Lakes states that the existing TransCanada-Great Lakes Gas Transportation Contract dated September 12, 1967 as amended, currently provides for firm transportation by Great Lakes of up to a maximum of 1,405,000 Mcf per day of volumes from a point of interconnection between the facilities of Great Lakes and TransCanada on the International Boundary at Emerson, Manitoba (Emerson Interconnection), to points on the International Boundary located at Sault Ste. Marie and St. Clair Interconnections. Great Lakes states that TransCanada has requested that the additional 831,000 Mcf per day be transported by Great Lakes from the Emerson Interconnection to the St. Clair Interconnection. To provide this service, an Amendatory Agreement dated July 28, 1989, (Amendment) has been executed by the parties, which provides for such increase to a total of 2,236,000 Mcf per day, which is expected to commence November 1, 1991. A second increase of 166,000 Mcf per day is expected to commence on November 1, 1992.

It is stated that ANR and Great Lakes have entered into a Transportation Service Agreement (ANR Service Agreement) dated July 28, 1989, under which Great Lakes has agreed to transport up to 43,700 Mcf per day on a firm basis, for ANR, from the Emerson Interconnection to an existing point of interconnection between the facilities of ANR and Great Lakes, located at Fortune Lake, Michigan (Fortune Lake Delivery Point). ANR has advised Great Lakes that it will receive these volumes into the ANR Pipeline system at Fortune Lake Delivery Point for alternate deliveries to the joint subsidiaries of Kamine Engineering and Mechanical Contracting, Inc. and the Besicorp Group, Inc. (Cogen Developers), who are constructing gas-fired cogeneration projects in South Glen Falls, South Corning, and Holtsville, New York.

Great Lakes states ANR will provide transportation of the subject volumes from the Fortune Lake Delivery Point to a proposed point of interconnection between the facilities of ANR and CNG Transmission Corporation (CNG) located at Lebanon, Ohio (Lebanon Delivery Point). The Cogen Developers are entering into arrangements with CNG and other entities for transportation of the volumes from the Lebanon Delivery Point to the sites for the cogeneration projects.

It is stated that the proposed service for ANR is expected to commence on November 1, 1991, with a daily firm contract quantity of 14,200 Mcf per day, which will be increased by 29,500 to 43,700 Mcf, commencing on or about November 1, 1992.

Great Lakes further states that TransCanada and ANR have advised Great Lakes that their respective transportation of the arrangements are primarily required to satisfy the market needs of the U.S. Northeast. A substantial portion of the proposed services will be utilized in conjunction with the Iroquois, Champlain, and ANR-Lebanaon projects, previously determined by the Commission to be discrete, its "Order Ruling on Discreetness of Additional Northeast Projects and Establishing Procedures" issued January 12, 1989, in Docket No. CP87-451-016, 46 FERC ¶ 61,012 (1989).

Great Lakes states that, in order to provide the proposed transportation

services, Great Lakes proposes to construct and/or install (1) thirty-three loop sections, totalling 68.5 miles of 36-inch diameter pipe and 465.1 miles of 42-inch diameter pipe; (2) seven compressor units of 27,000 horsepower class rating (3) twenty-five aerodynamic assemblies and station piping modifications at various Great Lakes' compressor stations; (4) an addition to Great Lakes' existing meter station located at St. Clair, Michigan; and (5) one aftercooler at an existing compressor station, as more fully explained in the application.

On September 7 1989, Great Lakes filed a Supplement to Application stating, "Exhibit "K" of the Application filed by Great Lakes on August 2, 1989, shows the facilities that are required to be constructed in 1991 and 1992 to provide the proposed transportation service. However, the text of the Application and the prayer for relief inadvertently omitted and reference to the 1992 facilities. Similarly, the *pro forma* Notice does not contain any such reference. This supplement is to clarify that Great Lakes is requesting authority to construct and operate the 1992 facilities shown in Exhibit "K" of the Application. The 1992 facilities are 161.1 miles of 42-inch diameter pipe.

The rate for transportation of the volumes for TransCanada will be the effective rate under Rate Schedule T-4 of the Original Volume No. 2 of Great Lakes' FERC Gas Tariff, applicable for deliveries at the St. Clair Interconnection. The rate for ANR will be determined from the components of the Base Tariff Rates of a comparable, long-term transportation arrangement, applicable to volumes being transported from the Emerson Interconnection to Great Lakes' central zone.

Comment date: October 10, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Columbia Gas Transmission Corp.

[Docket No. CP89-2106-000]

September 19, 1989.

Take notice that on September 15, 1989, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP89-2106-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Brooklyn Interstate Natural Gas Corporation (Brooklyn Interstate) under its blanket authorization issued in Docket No. CP86-240-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia would perform the proposed interruptible transportation service for Brooklyn Interstate, pursuant to an interruptible transportation service agreement dated June 30, 1989. The transportation agreement is effective as of the date of its full execution and shall continue in full force and effect from month-to-month thereafer unless terminated by either party upon thirty days written notice. Columbia proposes to transport up to a maximum of 100,000 MMBtu equivalent of natural gas per day; 60,000 MMBtu on an average day; and 36,500,000 MMBtu annually. Columbia proposes to receive and deliver the subject gas at various existing points located on its system. Columbia avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of Section 284.223(a)(1) of the Commission's Regulations. Columbia commenced such self-implementing service on July 6, 1989, as reported in Docket No. ST89-4418-000.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Trunkline Gas Co.

[Docket No. CP89-2116-000]

September 20, 1989.

Take notice that on September 18, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2116-000 a request pursuant to § § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Amoco Production Company (Amoco), a shipper and producer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 100,000 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of Amoco pursuant to a transportation agreement dated April 17 1989, between Trunkline and Amoco. Trunkline would receive the gas at various existing points of receipt on its system in Texas, offshore Texas, Louisiana, offshore Louisiana, Tennessee and Illinois and deliver equivalent volumes, less fuel used and unaccounted for line loss, to Illinois Power (Bourbon) in Douglass County, Illinois.

Trunkline states that the estimated daily and annual quantities would be 30,000 dkt and 10,950,000 dkt, respectively. Service under § 284.223(a) commenced on August 1, 1989, as reported in Docket No. ST89-4674-000, it is stated.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corp.

[Docket No. CP89-2112-000]

September 20, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301 filed in Docket No. CP89-2112-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing Inc. (Enron Marketing), under its blanket authorization issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Enron Marketing, a natural gas marketer, pursuant to a gas transportation agreement dated December 14, 1988 (contract no. L000421). The term of the transportation agreement is from the date of execution by Enron Marketing and shall continue in effect month-to-month thereafter, unless terminated upon 30 days written notice by either party. Texas Gas proposes to transport on a peak day up to 400,000 MMBtu; on an average day up to 80,000 MMBtu; and on an annual basis 29,200,000 MMBtu for Enron Marketing. Texas Gas proposes to receive the subject gas from an exiting points of receipt on its system for transportation and redelivery for Enron Marketing's account at existing points of delivery on Texas Gas' system. The proposed rate to be charged is contained in Texas Gas' IT rate schedule.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on

August 1, 1989, as reported in Docket No. ST89-4471-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corp.

[Docket No. CP89-2120-000]

September 21, 1989.

Take notice that on September 19, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-2120-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Greeley Gas Company (Greeley), a local distribution company, under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 2,000 MMBtu of natural gas per day for Greeley from receipt points located in Colorado Oklahoma, Oregon, Utah, Washington and Wyoming to delivery points located in Colorado, Idaho, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming. Northwest anticipates transporting 300 MMBtu of natural gas on an average day and an annual volume of 120,000 MMBtu.

Northwest states that the transportation of natural gas for Greeley commenced August 16, 1989, as reported in Docket No. ST89-4735-000, for a 120-day period pursuant to section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. ANR Pipeline Co.

[Docket No. CP89-2129-000]

September 21, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP89-2129-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 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.

ANR proposes to transport natural gas on an interruptible basis for Coastal Gas Marketing Co. (Coastal). ANR explains that service commenced July 14, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4592. ANR further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the States of Kansas, Louisiana, Oklahoma, Texas and the Offshore Texas and Louisiana gathering areas. ANR states that it would further deliver the gas to Coastal at existing interconnections located in the State of Indiana

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Co.

[Docket No. CP89-2123-000]

September 21, 1989.

Take notice that on September 19, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2123-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), a producer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated June 21, 1989, under its Rate Schedule IT, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for Kerr-McGee. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various delivery points in Alabama and Georgia.

Southern advises that service under § 284.223(a) commenced July 21, 1989, as reported in Docket No. ST89-4357-000. Southern further advises that it would transport 70,000 MMBtu on an average day and 25,550,000 MMBtu annually.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Southern Natural Gas Co.

[Docket No. CP89-2124-000]

September 21, 1989.

Take notice that on September 19, 1989, Southern Natural Gas Company (Southern), P.O. Box, 2563, Birmingham Alabama 35202-2563, filed in Docket No. CP89-2124-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), a producer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated June 21, 1989, under its Rate Schedule IT, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for Kerr-McGee. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various delivery points in Georgia, Tennessee and South Carolina.

Southern advises that service under § 284.223(a) commenced July 21, 1989, as reported in Docket No. ST89-4356-000. Southern further advises that it would transport 70,000 MMBtu on an average day and 25,550,000 MMBtu annually.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Southern Natural Gas Co.

[Docket No. CP89-2125-000]

September 21, 1989.

Take notice that on September 19, 1989, Southern Natural Gas Company (Southern), P.O. Box, 2563, Birmingham Alabama 35202-2563, filed in Docket No. CP89-2125-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), a producer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated June 21, 1989, under its Rate Schedule IT, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for Kerr-

McGee. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various production area points in Louisiana.

Southern advises that service under § 284.223(a) commenced July 21, 1989, as reported in Docket No. ST89-4358-000. Southern further advises that it would transport 70,000 MMBtu on an average day and 25,550,000 MMBtu annually.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

17 El Paso Natural Gas Co.

[Docket No. CP89-2080-000]

September 21, 1989.

Take Notice that on September 21, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed a request for authorization at Docket No. CP89-2080-000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, and El Paso's blanket certificate issued in Docket No. CP82-433-000 for authorization to continue interruptible transportation service for Arizona Public Service Company (Shipper), all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso states that transportation service for Shipper was initiated under part 284, subpart B on February 1, 1986 and El Paso's initial report in accordance with § 284.106(a) of the Commission's Regulations was filed with the Commission at Docket No. ST86-1024-000. El Paso further states that Shipper and El Paso have agreed to continue such transportation under subpart G of the Commission's Regulations and to terminate the subpart B transaction upon receipt of the appropriate regulatory approvals for the subpart G transaction. El Paso would transport up to 112,885 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to various delivery points in the State of Arizona. El Paso states that the estimated daily and annual quantities would be 84,400 MMBtu and 30,806,000 MMBtu, respectively.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Texas Gas Transmission Corp.

[Docket No. CP89-2113-000]

September 21, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2113-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Chevron U.S.A. Inc. (Chevron), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 10,000 MMBtu per day for Chevron. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 10,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4469.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-2119-000]

September 21, 1989.

Take notice that on September 18, 1989, Transcontinental Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-2119-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Consolidated Fuel Corporation (Consolidated) under its blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it would receive the gas for Consolidated at various existing points of receipt in Mississippi, offshore Louisiana, Louisiana, offshore Texas, Texas, and New Jersey, and would redeliver the gas at an existing delivery point located in Pennsylvania.

Transco further states that the maximum daily, average daily and annual quantities that it would transport for Consolidated would be 15,000 dt equivalent of natural gas, 10,000 dt equivalent of natural gas and 365,000 dt equivalent of natural gas, respectively.

Transco indicates that in a filing made with the Commission in Docket No. ST89-4603, it reported that transportation service for Consolidated commenced on August 2, 1989 under the 120-day automatic authorization provisions of Section 284.223(a).

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Inland Gas Company, Inc.

[Docket No. CP89-2135-000]

September 21, 1989.

Take notice that on September 19, 1989, Inland Gas Company, Inc. (Inland), 336-338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP89-2135-000 a request pursuant to sections 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Kentucky Electric Steel Corporation (Kentucky Electric) under its blanket certificate issued in Docket No. CP89-779-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Inland states that it proposes to transport natural gas for Kentucky Electric between a receipt point and a delivery point in Boyd County, Kentucky.

Inland further states that the maximum daily, average daily and annual quantities that it would transport for Kentucky Electric would be 3,000 MMBtu equivalent of natural gas, 1,800 MMBtu equivalent of natural gas and 657,000 MMBtu equivalent of natural gas, respectively.

Inland indicates that in a filing made with the Commission in Docket No. ST89-4537 it reported that transportation service for Kentucky Electric had begun on August 5, 1989 under the 120-day automatic authorization provisions of section 284.223(a).

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Trunkline Gas Co.

[Docket No. CP89-2118-000]

September 21, 1989.

Take notice that on September 18, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2118-000 a request pursuant to sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and

284.223) for authorization to perform an interruptible transportation service for Panhandle Trading Company (Panhandle Trading), a marketer, under Trunkline's blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated March 20, 1989, it proposes to receive up to 50,000 Mcf per day from Panhandle Trading at specified points located in Illinois, Texas and in offshore and onshore Louisiana and to redeliver the gas to Panhandle Trading, less fuel and unaccounted-for line loss, at Rotherwood Storage Facility in Harris County, Texas. Trunkline estimates that the peak day, average day, and annual volumes would be 50,000 dt equivalent of natural gas, 30,000 dt equivalent of natural gas, and 10,950,000 dt equivalent of natural gas, respectively. It is stated that on August 1, 1989, Trunkline initiated a 120-day transportation service for Panhandle Trading under Section 284.223(a) as reported in Docket No. ST89-4672-000.

Trunkline further states that no facilities need be constructed to implement the service. Trunkline indicates that the service would continue on a month-to-month basis until terminated by either party upon at least thirty days prior notice to the other. Trunkline proposes to charge rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. ANR Pipeline Co.

[Docket No. CP89-2132-000]

September 21, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89-2132-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Consolidated Fuel Corp. (Consolidated), under the authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Consolidated, a marketer of natural gas, pursuant to a transportation agreement dated July 26, 1989. The term of the transportation agreement is for a initial period of 120 days and thereafter until July 31, 1991, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice. ANR proposes to transport on a peak day up to 3,500 dekatherm; on an average day up to 3,500 dekatherm; and on an annual basis 1,278,000 dekatherm of natural gas for Consolidated. ANR states that it would receive the gas at ANR's existing points of receipt located in the States of Kansas, Louisiana, Oklahoma and Texas and the Offshore Texas and Louisiana gathering areas and redeliver the gas for the account of Consolidated at existing interconnections located in the State of Indiana. It is alleged that Consolidated would pay ANR the effective rate contained in ANR's Rate Schedule ITS and the applicable provisions of the General Terms and Conditions of ANR's FERC Gas Tariff, Original Volume No. 1-A. ANR avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of section 284.223(a)(1) of the Commission's regulations. ANR commenced such self-implementing service on August 8, 1989, as reported in Docket No. ST89-4654-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Texas Gas Transmission Corp.

[Docket No. CP89-2111-000]

September 21, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2111-000 a request pursuant to section 157.205 of the Commission's Regulations for authorization to transport natural gas for CNG Trading Company (CNG Trading), a marketer of natural gas, which has identified the end-user of the gas as Peoples Natural Gas Company, under Texas Gas' Order No. 509 blanket authorization 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.

Texas Gas proposes to transport, on an interruptible basis, up to 30,000 MMBtu equivalent on a peak day, 30,000 MMBtu equivalent on an average day and 6,950,000 MMBtu equivalent on an annual basis for CNG Trading. It is stated that Texas Gas would receive the gas for CNG Trading's account at various points on Texas Gas' system in the High Island area of offshore Texas, and would deliver equivalent volumes at a point on Texas Gas' system in the High Island area of offshore Texas. It is asserted that existing facilities would be used for the transportation service and that no construction of additional facilities would be required. It is explained that the transportation service commenced August 1, 1989, under the automatic authorization provisions of section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4688.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Tarpon Transmission Co.

[Docket No. CP89-2139-000]

September 21, 1989.

Take notice that on September 20, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2139-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Conoco, Inc. (Conoco), a producer, under the blanket certificate issued in Docket No. CP88-89-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tarpon states that pursuant to a transportation service agreement dated June 19, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,220 MMBtu per day equivalent of natural gas for Conoco. Tarpon states that it would transport the gas from a receipt point located in Eugene Island Area (S.A.), Block 361, offshore Louisiana, and would deliver the gas to a delivery point in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana.

Tarpon advises that service under Section 284.223(a) commenced June 23, 1989, as reported in Docket No. ST89-4771-000 (filed September 20, 1989). Tarpon further advises that it would transport 3,373 MMBtu on an average day and 1,231 MMBtu annually.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Southern Natural Gas Co.

[Docket No. CP89-2108-000]
September 22, 1989.

Take notice that on September 15, 1989, Souther Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2108-000, a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on an interruptible basis for Transco Energy Marketing Company (Transco Energy), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it would perform the proposed transportation service for Transco Energy pursuant to a service agreement dated June 21, 1989, under Southern's Rate Schedule IT. Southern further states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern indicates that the service agreement provides for a maximum quantity of 66,000 MMBtu of natural gas on a peak day, but Transco Energy anticipates requesting 30,000 MMBtu of natural gas on an average day, and accordingly, 10,950,000 MMBtu of natural gas on an annual basis. Southern states that it would receive the natural gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to Transcontinental Gas Pipe Line Corporation in Livingston Parish, Louisiana. Southern asserts that no new facilities would be required to implement the proposed service.

Southern states that it commenced the transportation of natural gas for Transco Energy on July 20, 1989, at Docket No. ST89-4547-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations (18 C.F.R. 284.223(a)).

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Williston Basin Interstate Pipeline Co.

[Docket No. CP89-2094-000]
September 22, 1989.

Take notice that on September 13, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismark, North Dakota 58501, filed an application with the Commission in Docket No. CP89-2094-000, pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to remove and abandon two gas compressors in Park County, Wyoming, all as more fully set forth in the application which is open to public inspection.

Williston Basin proposes to remove and abandon a 298-horsepower compressor at its South Elk Basin compressor station, because the station's other two compressors could adequately handle the declining natural gas production. Williston Basin also proposes to remove and abandon a 139-horsepower compressor at its Southeast Polecat compressor station because of uneconomical natural gas production. Williston Basin states that its proposal would not affect its service to any of its customers.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

27 Overthrust Pipeline Co.

[Docket No. CP89-2062-000]
September 22, 1989.

Take notice that on September 6, 1989, Overthrust Pipeline Company (Overthrust), 79 South State Street, Salt Lake City, Utah 84111, filed in conjunction with the settlement of its section 4(e) rate proceeding in Docket No. RP85-60-000, an abbreviated application pursuant to sections 157.7 and 284.221 of the Commission's Regulations requesting a certificate of public convenience and necessity to enable it to provide open-access transportation service pursuant to the Commission's Regulations, all as more fully set forth in the request on file with the Commission and open to public inspection.

Overthrust requests authority to provide firm and interruptible open-access transportation service on a nondiscriminatory first-come, first-served basis to all parties requesting such service in accordance with the terms and conditions set forth in its proposed Original FERC Gas Tariff, Volume No. 1-A.

Overthrust states that acceptance of a blanket certificate, if issued by the Commission, is conditioned upon the settlement in Docket No. RP85-60-000 being approved as proposed.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

28. ANR Pipeline Co.

[Docket No. CP89-2128-000]
September 22, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2128-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips 66 Natural Gas Company (Phillips), a marketer, under its blanket authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Phillips, pursuant to an interruptible transportation service agreement dated June 13, 1989. The transportation agreement is effective for a term until 120 days from the day of initial deliveries, and thereafter until June 30, 1991, and month to month thereafter until terminated by either party on thirty days written notice. ANR proposes to transport approximately 80,000 dth natural gas on a peak and average day; and on an annual basis 29,200,000 dth of natural gas for Phillips. ANR proposes to receive the subject gas at Phillips Sherman Plant located in sections 7 and 8, (Block 1-PSL Survey), Hansford County, Texas. ANR states that it will redeliver the gas for the account of Phillips at the existing interconnection with Natural Gas Pipeline Company of America in section 32 (Block 4-T, T & NO RR Survey), Hansford County, Texas.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of section 284.223(a)(1) of the Commission's Regulations. ANR commenced such self-implementing service on August 1, 1989, as reported in Docket No. ST89-4589-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Texas Gas Transmission Corp.

[Docket No. CP89-2049-000]
September 22, 1989.

Take notice that on September 1, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application with the Commission in Docket No. CP89-2049-000 pursuant to section 7(b) of the Natural Gas Act

(NGA) for permission and approval to abandon a six-inch meter station in Webster Parish, Louisiana, all as more fully set forth in the application which is open to public inspection.

Specifically, Texas Gas proposes to abandon its Cornerstone natural gas purchase meter station on its six-inch pipeline in Webster Parish, Louisiana. Texas Gas states that it placed the Cornerstone meter station in service December 1, 1987 to implement transportation service under Section 311 of the Natural Gas Policy Act of 1978. Since Texas Gas later used this meter station to provide jurisdictional natural gas service, Texas Gas states that it sought authorization for these facilities under its blanket certificate in Docket No. CP82-407-000 (20 FERC ¶62,417 September 2, 1982). Texas Gas now proposes to abandon the small Cornerstone meter station and replace it with a new meter station on its Sharon-Carthage 20-inch pipeline in Webster Parish, pursuant to the above blanket certificate. Texas Gas also states that since any gas measured at the Cornerstone meter station would be measured at the new Sharon-Carthage pipeline meter station, no service to any party would have to be abandoned or interrupted.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

30. Inter-City Minnesota Pipeline Ltd., Inc.

[Docket No. CP89-2093-000]

September 22, 1989.

Take notice that on September 13, 1989, Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City), 245 Yorkland Boulevard, North York, Ontario, Canada MSJ 1R1 filed in Docket No. CP89-2093-000 an application pursuant to Section 3 of the Natural Gas Act Part 157.7 (18 CFR 157.7) of the Commission's Regulations for a certificate of public convenience and necessity authorizing the transportation of Canadian natural gas for use in Canada by ICG Utilities (Ontario) Ltd. (ICG Ontario), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Inter-City requests Commission authorization to transport up to 15,600 Mcf of Canadian natural gas for ICG Ontario from the United States-Canadian border (border) at Sprague, Manitoba, where the gas enters the United States, across the State of Minnesota to the border at Baudette, Lake of the Woods County, Minnesota were the gas reenters Canada.

Inter-City requests an authorization term of 15 years to coincide with the term of the sale of electric power produced from the cogeneration facility that will be served by the Canadian gas supply. Inter-City proposes to transport the gas pursuant to a new Rate Schedule T-2 having an initial rate as contained in Inter-City's existing Rate Schedule T-1 Original Volume No. 2 of its FERC Gas Tariff.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

31. Black Marlin Pipeline Co.

[Docket No. CP89-2115-000]

September 22, 1989.

Take notice that on September 18, 1989, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-2115-000 an application pursuant to section 7 of the Natural Gas Act and subpart F of part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction and operation of certain facilities, for permission and approval to abandon certain facilities, and to perform other minor transactions eligible thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that such a certificate would allow Black Marlin, among other things, to make minor alterations and additions to its facilities with a minimum of delay in order to connect its system to additional suppliers and interconnect with other pipeline systems. Black Marlin states that it has no outstanding budget-type certificates, makes no sales for resale, and has no storage facilities. Black Marlin states that it will comply with the terms, conditions, and procedures specified in Subpart F of Part 157 of the Commission's Regulations. Black Marlin is requesting a blanket facilities certificate under section 157.201 so that it can connect its system to additional suppliers or interconnect with other systems holding blanket transportation certificates under section 284.221.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

32. Transwestern Pipeline Co., Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2104-000]

September 22, 1989.

Take notice that on September 15, 1989, Transwestern Pipeline Company, 1400 Smith Street, Houston, Texas 77002 and Panhandle Eastern Pipe Line Company (Applicants), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP89-2104-000, a request pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon the exchange agreement certificated by Commission order issued January 4, 1966, in Docket Nos. CP66-88 and CP66-83, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicants have agreed to terminate the above referenced agreement because Transwestern's gas purchase contracts behind this agreement have been released as of March 31, 1988, pursuant to Order 451 and six out of eleven wells behind Panhandle's two gas purchase contracts have been released as of July 1, and October 1, 1988, with one well having been plugged and abandoned. It is further stated that Transwestern would transport the gas from the four remaining wells for Panhandle under Rate Schedule ITS-1. Applicants state that the abandonment authorization requested herein would not adversely affect service to any customers.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

33. Viking Gas Transmission Co.

[Docket No. CP88-659-001]

September 22, 1989.

Take notice that on August 25, 1989, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-659-001 an application pursuant to section 7(c) of the Natural Gas Act for an amended certificate authorizing transportation for up to 125,000 Dt equivalent of natural gas per day for DeKalb Energy Canada, Ltd. (DeKalb) to serve end-users in addition to those authorized in the order issued March 29, 1989, in Docket No. CP88-659-000, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Viking states that the certificate issued in Docket No. CP88-659-000 authorized Midwestern Gas Transmission Company (Viking's predecessor) to transport up to 60,000 dt equivalent of gas per day for DeKalb on an interruptible basis. Viking proposes in the instant docket to amend the authorization by adding 65,000 dt equivalent to the daily transportation volume in order for DeKalb to serve marketers, local distribution companies and various additional end-users as

customers. It is asserted that the transportation of additional volumes is required by DeKalb to meet existing and future market requirements to provide additional markets for DeKalb's Canadian and domestic suppliers.

Comment date: October 13, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

34. Colorado Interstate Gas Co.

[Docket No. CP89-2087-000]

September 22, 1989.

Take notice that on September 13, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087 Colorado Springs, Colorado 80944, filed in Docket No. CP89-2087-000, an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of an observation well in the Boehm Storage Field located in Morton County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG avers that the observation well proposed to be abandoned is not useful as an observation well in the Boehm Storage Field and will be used as a gas well completed in a geological formation outside of the Boehm Storage Field.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

35. Texas Gas Transmission Corp.

[Docket No. CP89-2110-000]

September 22, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation (TGT), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2110-000 a request pursuant to sections 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Coastal Gas Marketing Company (Coastal Gas) under TGT's blanket transportation certificate issued by the Commission on September 15, 1988, in Docket No. CP88-686-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

TGT states it will receive the gas in High Island offshore Texas Block 244 and deliver the gas at an existing interconnection in High Island Block 247.

TGT proposes to transport on an interruptible basis up to 50,000 MMBtu of gas on a peak day, 35,000 MMBtu of gas on an average day and approximately 12,775,000 MMBtu of gas annually. TGT states the transportation service commenced under the 120-day automatic authorization of Section 284.223(a) of the Commission's Regulations on August 1, 1989, pursuant to a transportation agreement dated December 7 1988, TGT notified the Commission of the commencement of the transportation service in Docket No. ST89-4470-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

36. ANR Pipeline Co.

[Docket No. CP89-2133-000]

September 22, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP89-2133-000, pursuant to section 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the NGA, all as more fully set forth in the request which is open to public inspection.

ANR proposes to transport gas on an interruptible basis for Brock Oil & Gas Company (Brock), a marketer. ANR states that service commenced August 4, 1989, under section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4655. ANR also states that the peak day quantity would be 300 dekatherms, the average daily quantity would be 300 dekatherms, and that the annual quantity would be 110,000 dekatherms. ANR states that it would receive the natural gas at ANR's existing receipt points in Oklahoma and redeliver the gas for Brock's account at existing interconnections in Oklahoma.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

37 ANR Pipeline Co.

[Docket No. CP89-2131-000]

September 22, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2131-000 a request pursuant to section 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Odeco Oil & Gas Co. (Odeco), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 20,000 dt equivalent on a peak day for Odeco, 20,000 dt equivalent on an average day and 7,300,000 dt equivalent on an annual basis for Odeco. It is stated that ANR would receive the gas at designated points on ANR's system in Louisiana and offshore Louisiana, and would deliver equivalent volumes at designated points on ANR's system in Louisiana and offshore Louisiana. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced August 2, 1989, under the self-implementing authorization of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4622.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

38. ANR Pipeline Co.

[Docket No. CP89-2127-000]

September 22, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2127-000, a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Xebec Gas Company (Xebec), a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 4,477 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Xebec. ANR further states that it would receive the natural gas at ANR's existing points of receipt located in the states of Kansas, Louisiana, Michigan, Oklahoma and Texas and the offshore Louisiana and Texas gathering areas and would redeliver the natural gas for the account of Xebec at existing interconnections located in the states of Michigan and Indiana. ANR indicates that the average day and annual volumes of natural gas to be transported would be 4,477 dt and 1,634,000 dt, respectively.

ANR states that service under section 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on August 1, 1989, as reported in Docket No. ST89-4623-000.

Comment date. November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

39. El Paso Natural Gas Co.

[Docket No. CP89-2122-000]

September 22, 1989.

Take notice that on September 19, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request for authorization at Docket No. CP89-2122-000, pursuant to sections 157.205 and 284.223 of the Commission's Regulations Under the Natural Gas Act, to provide interruptible transportation service for San Diego Gas & Electric Company (Shipper), under its blanket certificate issued at Docket No. CP88-433-000, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso requests authority to transport up to 400,000 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to delivery points at the borderline between the States of Arizona and California. El Paso states that the estimated daily and annual quantities would be 26,375 MMBtu and 9,626,875 MMBtu, respectively. El Paso further states that transportation service under section 284.223(a) commenced on July 1, 1989, as reported at Docket No. ST89-4576-000.

Comment date: November 6, 1989, 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 Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23120 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-470-000]

AEP Generating Co., Initiation of Proceeding and Refund Effective Date

September 26, 1989.

Take notice that on September 22, 1989, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

The refund effective date will be the later of: the proposed effective date (the in-service date for Rockport Unit 2); or 60 days following publication in the **Federal Register** of this notice. In no event will the refund effective date be later than five months subsequent to the expiration of the 60-day period.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23114 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-14-51-000]

Great Lakes Gas Transmission Co., Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

September 26, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on September 21, 1989 tendered for filing Second Substitute Twenty-Fourth Revised Sheet Nos. 57(i) and 57(ii) and First Revised Third Substitute Tenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Second Substitute Twenty-Fourth Revised Sheet Nos. 57(i) and 57(ii) and First Revised Third Substitute Tenth Revised Sheet No. 57(v) reflected revised current PGA rates for the months of September and October, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective September 1, 1989, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

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 petitions or protests should be filed on or before October 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23109 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-53-000]

K N Energy, Inc., Tariff Filing

September 26, 1989.

On September 20, 1989, K N Energy, Inc. ("K N") tendered for filing the following revised tariff sheets:

Third Revised Volume No. 1

Forty-Third Revised Sheet No. 4
Twenty-First Revised Sheet No. 4B

K N states that these tariff sheets reflect the Commission's revised Annual Charge Adjustment (ACA) unit charge and requests that the tariff sheets be made effective on October 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 918 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23110 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-15-001]

Mid Louisiana Gas Co., Filing

September 26, 1989.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on September 21, 1989 tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets to become effective October 1, 1989:

Substitute Seventieth Revised Sheet No. 3a

Superseding

Seventieth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Substitute Seventieth Revised Sheet No. 3a is to correct a computation error contained on, Seventieth Revised Sheet No. 3a.

Mid Louisiana requests that Substitute Seventieth Revised Tariff Sheet No. 3a be accepted and allowed to become effective October 1, 1989.

This filing is being made in accordance with section 22 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene of Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 of the and 1.10). All such motions of protests should be filed on or before October 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23111 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and Time: October 19, 1989—8:30 a.m. to 5 p.m., October 20, 1989—8 a.m. to 3 p.m.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202

Contact: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545, Telephone: (301) 353-3081

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative Agenda: Briefings and discussions of:

October 19, 1989

Impact of the FY 1990 Appropriation Initiative on Research Related to Waste and the Environment
Public Comment (10 Minute Rule)

October 20, 1989

Organization of Basic Energy Sciences
BESAC Annual Report
Public Comment (10 Minute Rule)

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 27, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-23188 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-09-NG]

Consolidated Fuel Co.; Order Granting Long-Term and Short-Term Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting long-term and blanket authorization to import natural gas from Canada.

SUMMARY: The Ofice of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Consolidated Fuel Company (Consolidated Fuel) long-term and blanket authorization to import natural gas from Canada to the United States. The order issued in FE Docket No. 89-09-NG authorizes Consolidated Fuel to

import up to 6,000 Mcf per day of Canadian gas for a 15-year term and blanket authority to import up to 500 Mcf per day in spot purchases for a two-year term beginning on the date of commercial operation of a proposed 28-megawatt cogeneration facility being constructed in East Georgia, Vermont.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, 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, on September 22, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23185 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-30-NG]

Petro-Canada Hydrocarbons Inc., Order Extending Blanket Authorization To Import Natural Gas From Canada and Granting Intervention

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Petro-Canada Hydrocarbons Inc. (PCH) an extension of its existing blanket authorization to import 75 Bcf of Canadian natural gas which expires March 3, 1990. The order authorizes PCH to import up to 75 Bcf of natural gas over a one-year period beginning March 4, 1990, through March 3, 1991.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, 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, September 26, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23186 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Office Of Petroleum Reserves

Alternative Financing Methods for Funding the Purchase of Strategic Petroleum Reserve Oil Supplies and Facilities; Inquiry and Request for Proposed Financing Methods

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy is investigating alternative methods of financing crude oil acquisition and oil storage facilities for the Strategic Petroleum Reserve. The Department is interested in methods that would (1) reduce the total cost to the Federal Government or (2) reduce near-term effects on the Federal budget without significantly raising total costs. This notice requests ideas for or comments about the subject of alternative financing methods for completing the development and oil fill of the Strategic Petroleum Reserve.

DATE: Comments should be received by the Department by October 20, 1989.

ADDRESSES: Written comments (5 copies) should be addressed to: Howard G. Borgstrom, Director, Office of Planning and Financial Management; Office of Petroleum Reserves; Office of Fossil Energy; FE-43, Room 3G-038; U.S. Department of Energy; Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert G. Bidwell, Jr., Director, Analysis Division; Office of Planning and Financial Management; Office of Petroleum Reserves; Office of Fossil Energy; FE-431, Room 3G-045; U.S. Department of Energy; Washington, DC 20585; telephone number 202-586-1886.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy and Conservation Act (EPCA), Public Law No. 94-163(42 U.S.C. 6201 *et seq.*), December 22, 1975, declared it to be U.S. policy to establish a national Strategic Petroleum Reserve of up to one billion barrels of petroleum. The Government's currently stated commitment is to complete a 750 million barrel reserve, although the Congress has directed that a billion barrel goal be assumed for certain analytical purposes, and the Department of Energy recently submitted a technical report on a one billion barrel reserve to Congress.

The Strategic Petroleum Reserve is located in salt domes at six sites on the U.S. Gulf Coast, where the currently projected storage goal is 750 million barrels of crude oil. The first shipment of crude oil was received in July 1977 There now are over 570 million barrels of crude oil in these Strategic Petroleum Reserve storage facilities.

Past funding for Strategic Petroleum Reserve facilities and oil has come primarily from direct Congressional appropriations. The Federal Government has obtained sites from private owners, exercising its power of eminent domain. Oil for the Reserve has been purchased on the open market and through government-to-government contracts. Total SPR appropriations for oil and facilities through Fiscal Year 1989 have been $19 billion, of which 83 percent has been for oil acquisition and transport, and the remainder has been for storage facility development and operations and program management. The Government's commitment to 750 million barrels of oil could cost as much as $25 billion by 1995, with roughly 20 percent of costs being for storage facilities and management and 80 percent for crude oil.

Strategic Petroleum Reserve oil purchases and facilities development are currently funded on-budget through Congressional appropriations. They count against the Federal budget deficit under Gramm-Rudman-Hollings procedures. Funding levels for Fiscal Year 1990, which begins on October 1, 1989, have not yet been determined.

II. Purpose of Inquiry

The Department of Energy has long been interested in alternative methods of financing the Strategic Petroleum Reserve; that is, in methods other than the direct appropriation and outlay approach which has been utilized in SPR oil and facility acquisition up to this point in time. The Department is interested in alternatives that would reduce the cost to the Federal Government of developing the Reserve or at least reduce the Government's actual outlays in early years without appreciably increasing the final total cost of the Reserve.

The Deparment is well aware that there is interest in alternative financing proposals in the oil industry and the banking and financial community. The Department has received numerous unsolicited proposals in recent years and some of these proposals have been the subject of informal meetings.

The Congress also is interested in alternative financing methods. Congress, in recently extending title I of the Energy Policy and Conservation Act, required the Secretary of Energy to study alternative financing methods that could be used to finance completion of a 1 billion barrel Strategic Petroleum Reserve. Specifically, Public Law No.

101–46 sets out the following requirements:

Sec. 2. Study and Report on Oil Leasing and Other Arrangements to Fill SPR to One Billion Barrels.

(a) *In General.*—The Secretary of Energy shall carry out a study on potential financial arrangements (including long-term leasing of crude oil and storage facilities) that could be used to provide additional, alternative means of financing the filling of the Strategic Petroleum Reserve to one billion barrels. In carrying out such study, the Secretary shall—

(1) Assume that the legislation that extends title I of the Energy Policy and Conservation Act beyond April 1, 1990, will require the Secretary to amend, by July 1, 1990, the Strategic Petroleum Reserve Plan to provide plans for completion of storage of one billion barrels of petroleum products in the Reserve at an average fill rate of at least seventy-five thousand barrels per day;

(2) Consider a broad array of such arrangements;

(3) Consult with persons in the private sector who might be interested in leasing crude oil or storage facilities;

(4) Initiate, in cooperation with the Department of State, to the extent consistent with the interests of the United States, discussions with representatives of foreign governments and other entities as to the types of financial arrangements (including crude oil leasing arrangements) that would interest them; and

(5) Produce preliminary written solicitations for proposed alternative financial arrangements (including long-term leasing of crude oil and storage facilities) to assist in filling the Strategic Petroleum Reserve to one billion barrels.

(b) *Reports*—(1) The Secretary shall, no later than October 15, 1989, transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives an interim report containing—

(A) An enumeration of the specific resources (both personnel and funding) committed to the study described in subsection (a);

(B) A description of the progress made toward completing the study; and

(C) Any preliminary findings and conclusions made by such date.

(2) The Secretary shall, no later than February 1, 1990, transmit to such committees a copy of the solicitations described in paragraph (5) of subsection (a) and a final report containing the findings and conclusions of the study carried out under this section, together with a draft of the legislative changes that would be necessary to authorize the most significant alternative financial arrangements studied by the Secretary (including long-term leasing of crude oil and storage facilities) and recommendations of the Secretary with respect to the need for and desirability of such financial arrangements (including long-term leasing of crude oil and storage facilities).

The purpose of this inquiry is to obtain assistance in fulfilling these legislative requirements. Both Congress and the Department of Energy are interested in alternative financing methods that could reduce the impact on the Federal deficit of developing the Strategic Petroleum Reserve. To that end, the Department is interested in methods that could be used to finance any additional development of the Reserve above the more than 570 million barrels of crude oil currently in storage, either to a level of 750 million barrels or to a level of one billion barrels.

III. Alternative Methods of Financing the Development of the Strategic Petroleum Reserve

There are a wide range of possible alternative methods for financing the Strategic Petroleum Reserve. As noted above, most prior financing of the Strategic Petroleum Reserve has been through direct appropriations by the Congress. Exceptions included use of Naval Petroleum Reserve sales revenues to finance Strategic Petroleum Reserve oil purchases in Fiscal Year 1987 use of special "entitlements" provisions to augment direct appropriations in Fiscal Year 1981, and use of the profits from the Strategic Petroleum Reserve test sale in late 1986.

The Department wishes to invite comments on all possible alternative financing methods for completing the development of the Strategic Petroleum Reserve. Suggestions may concern the financing of storage facilities, of oil to be stored in the reserve, or both. Suggestions may be approaches permitted under current legislation, or they may be of a nature requiring additional legislation. Suggestions should be in as much detail as possible. The purpose of this Notice of Inquiry is to gather information and insights about the options.

The following list, which is not intended to be all-inclusive, illustrates possible alternative financing approaches. It is provided merely to show interested parties the range of methods that might be of interest to the Government:

Leases of oil;

Leases of facilities;

Bonds, other than conventional debt issued by the Treasury;

SPR user charge linked to oil imports or consumption;

Exchange of Federal assets for oil and/or storage facilities;

Non-Federal public financing of state or regional petroleum reserves;

Cancellation of government or private debt of foreign oil producers in return for oil;

Sale of rights to acquire Strategic Petroleum Reserve oil during a disruption.

In reviewing alternatives, the Department will consider the following factors, among others:

Effects on Strategic Petroleum Reserve costs under a broad range of plausible future energy conditions;

Budget effects;

Effects on Strategic Petroleum Reserve development schedules;

Impacts on the use of the Strategic Petroleum Reserve during a severe energy supply interruption;

Incentives created for foreign producer governments;

Effects on energy markets;

Incentives and disincentives for other parties to provide a reasonable degree of self-protection against the effects of a severe energy supply disruption;

Complexity and administrative burdens.

IV Request for Written Comments and Submission of Ideas for Alternative Methods of Financing the Development of the Strategic Petroleum Reserve

The Department of Energy hereby requests that interested parties submit ideas for or comments on the subject of alternative financing methods for further developing and filling the Strategic Petroleum Reserve. Five copies of each submission should be received by the Department by October 20, 1989. The proper address and other pertinent information are listed near the beginning of this notice.

Submissions believed to be "proprietary" should be identified as such. However, the decision that a financing method actually is proprietary is one that the Department reserves the right to make in light of all facts and circumstances. Submitters should be aware that a wide range of alternative financing concepts already have been considered by the Department over an extended period of time. The Department is charged with providing a public policy analysis to the Congress on this subject and may not be able to give full consideration to concepts which cannot be discussed openly. Potential respondents should be aware, furthermore, that should the Department request proposals for an alternative financing method or methods in the future, a competitive government solicitation may be used.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89–23187 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of June 19 Through June 23, 1989

During the week of June 19 through June 23, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for 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

Davis Wright & Jones, 6/21/89, KFA-0290

Davis Wright & Jones filed an Appeal from a partial denial by the Authority Official of the Idaho Operations Office of a Request for Information which the firm submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Authorizing Official did not adequately justify the deletion of information pursuant to Exemptions 4 and 6 of the FOIA. Accordingly, the DOE remanded the request and directed that the Authorizing Official either promptly release the material withheld or promptly issue a new determination which adequately justifies the applicability of Exemptions 4 and 6 to each deletion.

Palouse-Clearwater Environmental Institute, 6/23/89, KFA-0291

Palouse-Clearwater Environmental Institute (PCEI) filed an Appeal from a denial by the Freedom of Information Officer of the DOE's Idaho Operations Office of a request for a fee waiver which PCEI submitted under Freedom of Information Act. In considering the Appeal, the DOE found that PCEI had submitted information on appeal, which might be relevant to the merits of the fee waiver request. Accordingly, the DOE remanded PCEI's request and directed the FOI Officer to issue a new decision which considers the information and explains the reasons which justify either granting or denying the fee waiver request.

Remedial Order

Houston/Pasadena Apache Oil Company, Inc., 6/19/89, HRO-0299

Houston/Pasadena Apache Oil Company, Inc. objected to a Proposed Remedial Order that the DOE's Economic Regulatory Administration issued to the firm on April 30, 1985. In the PRO, the ERA alleged that the firm, a reseller-retailer, overcharged in wholesale and retail sales of motor gasoline during the period October 1, 1979 through December 31, 1979. The ERA requested that the firm be required to (i) refund the alleged overcharges and (ii) file a special report, for the period March 1, 1979 through September 30, 1979, from which its compliance with the price rules during the period could be determined.

With respect to the ERA's overcharge calculations, the DOE noted that the ERA's methodology was necessitated by the firm's failure to produce actual or reconstructed base period records. Accordingly, the DOE found, the firm had the burden of (i) demonstrating that the ERA's methodology was based on unreasonable assumptions or (ii) producing actual or reconstructed base period records and alternative MLSP calculations. Because the firm failed to meet that burden, the firm's objections were denied. Nonetheless, the DOE determined sua sponte that the portion of the PRO concerning the firm's retail transactions should be remanded to the ERA. Despite the firm's failure to produce any pre-audit period records, the ERA's MLSP calculations allowed the firm a bank to the extent permitted by 10 C.F.R. § 212.93(a)(4), which resulted in the virtual elimination of any alleged overcharges at the retail level. The DOE remanded so that the ERA could reconsider the allowance of a bank in light of the considerations noted in the Decision and Order. The portion of the PRO concerning the firm's wholesale transactions, with certain modifications, was issued as a final Remedial Order.

With respect to the ERA's request that the firm be required to file a special report for the period March 1, 1979 through September 30, 1979, the DOE noted that the firm had not challenged the ERA's assertion that the firm had sufficient resources to reconstruct its records for that period. The DOE upheld the requirement that the firm prepare a special report and stated that if the firm failed to comply with that requirement, the ERA might wish to consider the issuance of a second Proposed Remedial Order alleging overcharges based upon some reasonable reference to the overcharges found during the period October 1, 1979 through December 31, 1979.

Refund applications

ADA Resources, Inc./Galveston Wharves Board, 6/23/89, RQ24-513

The DOE issued a Decision and Order granting the second-stage refund application filed by the Galveston Wharves Board. Galveston filed its application pursuant to procedures established for the disbursement of funds remitted by Ada Resources, Inc. *Office of Enforcement*, 11 DOE ¶ 85,161 (1983). Galveston proposed to use its share of the Ada Resources, Inc. consent order fund to replace incandescent light fixtures with high pressure sodium lamps and to install new electrical conduit and wire. The DOE found that Galveston's proposal would result in increased energy efficiency and would benefit members of a class injured by the alleged Ada overcharges. The total amount granted to Galveston was $23,537

City of New York, NYC Health & Hospitals, New York City Housing Auth., City University of New York, City of New York, Dept. of General Services, Brooklyn Public Library, Queens Borough Public Library, 6/21/89, RF272-00380, RF272-24966, RF272-52194, RF272-62496, RF272-66172, RF272-75415, RF272-75416

The DOE issued a Decision and Order concerning seven Applications for Refund submitted by the City of New York on behalf of the Department of General Services and various other city entities. Each applicant requested a refund based on its respective purchases of refined petroleum products during the period August 19, 1973, through January 27 1981 pursuant to the provisions of 10 CFR part 205, subpart V

The DOE determined that the City of New York was ineligible to receive a subpart V crude oil refund because it was an affiliate of the New York City Departments of Sanitation (Sanitation) and Environmental Protection (DEP). Both Sanitation and DEP waived their rights and their affiliates' rights to a subpart V crude oil refund by participating in the Stripper Well Settlement Agreement, as claimants in the Refiners' Escrow. Accordingly, the Application submitted by NYC was denied.

The DOE further determined however, that the Waiver and Release which precluded NYC from receiving a subpart V crude oil refund was not binding upon the five other NYC entities. These entities demonstrated that they are independent municipal corporations. Accordingly, the DOE granted these five entities a refund based on the end-user presumption of injury. The sum of the refunds granted in this Decision is $970,504.

Farmers Union Marketing and Processing Associations, 6/21/89, RF272-28629

The DOE issued a Decision and Order granting refunds from crude oil

overcharge funds to Farmers Union Marketing and Processing Association, an agricultural cooperative, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. The applicant demonstrated the volume of its claim by using a reasonable estimate of its purchases. Generally, we grant refunds to a cooperative based on volumes resold to its members, on the condition that the cooperative certify that it will pass through any refund received to those members. As Farmers furnished such certification, it was granted a refund of $7,663.

Getty Oil Company/Harry's Super Service, 6/23/89, RF265-2807 RF265-2808

Harry's Super Service filed duplicate refund claims, based on the same purchases, both of which were inadvertantly granted in the Getty Oil Company special refund proceeding. In order to preclude the issuance of duplicative refunds, DOE issued a Supplemental Decision and Order withdrawing the second refund for Harry's Super Service in Case Nos. RF265-107 and RF265-108.

Gulf Oil Corporation/Bagwell & Spears, Inc., 6/20/89, RF300-5222

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Gagwell & Spears, Inc., a consignee and reseller of Gulf refined products. The applicant's refund was granted utilizing the appropriate presumptions of injury. The total refund granted in this Decision is $5,448.

Gulf Oil Corporation/Bob's Automotive Service, et al., 6/23/89, RF300-8350- et al.

The DOE issued a Decision and Order concerning 32 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $49,305.

Gulf Oil Corporation/Breezewood Gulf Service, et al., 6/23/89, RF300-113, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $88,472.

Gulf Oil Corporation/Cloverdale Gulf Service Station, et al., 6/20/89, RF300-39, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $38,106.

Gulf Oil Corporation/Hayes Service Station, et al., 6/23/89, RF300-8234, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $86,575.

Gulf Oil Corporation/Montgomery County Government, et al., 6/23/89, RF300-8334, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $78,478.

Gulf Oil Corporation/Reeves Oil Company, 6/20/89, RF300-5223.

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Reeves Oil Company, a consignee and reseller of Gulf refined products. The applicant's refund was granted utilizing the appropriate presumptions of injury. The total refund granted in this Decision is $6,641.

Gulf Oil Corporation/Texaco, Inc., Texaco Producing, Inc., NGL Div., Texaco, Inc., NGL Section, 6/23/89, *RF300-4092, RF300-9680, RF300-9681.*

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Texaco, Inc., Texaco Producing, Inc., NGL Div., and Texaco, Inc., NGL Section. Texaco was previously granted a refund of $1,866, including accrued interest, for 2,275,643 gallons in Case No. RF200-3774. Because each applicant was owned by Texaco during the consent order period, the applicants and Texaco were considered to be a single firm for purposes of the Gulf proceeding. The DOE determined that collectively the applicants were entitled to a $5,000 refund based on the small claims presumption of injury. Accordingly, the DOE subtracted the principal amount previously awarded to Texaco from the $5,000 refund to which it was entitled for all of the firms. The refund granted in this Decision is $4,707

Gulf Oil Corporation/Union Texas Petroleum Corporation, et al., 6/23/89, *RF300-6482, et al.*

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Ten of the applicants were resellers of Gulf products and one applicant was a reseller and consignee. The DOE approved all of the applications by utilizing the appropriate presumption of injury. The DOE held that the applicant which was claiming purchases as a reseller and as a consignee was unable to simultaneously elect both the small claims presumption of injury and the 10 percent presumption of injury for consignees, but rather would have its refund calculated by utilizing either the $5,000 small claims presumption, or the sum of the 40 percent mid-range presumption (for gallons purchased as a retailer) and the 40 percent consignee presumption, depending on which formula produced the largest refund. In this instance, the applicant received a larger refund by utilizing the $5,000 small claims presumption. The sum of the refunds granted in this Decision is $110,064.

Los Angeles Unified School District, 6/19/89, *RF272-9356.*

The DOE issued a Decision and Order granting an Appliation for Refund filed by the Los Angeles Unified School District (L.A.U.S.D.) in the subpart V crude oil refund proceedings. The DOE found that L.A.U.S.D. satisfactorily documented its purchases of petroleum products during the period of crude oil price controls by using a computerized monitoring system of fuel withdrawals from underground storage tanks and by consulting its records of credit and purchases. The DOE also found that L.A.U.S.D. was not "controlled" by the City of Los Angeles and therefore was not an "affiliate" of an entity that had waived its right to participate in the subpart V crude oil proceedings. The refund granted was $13,554.

Mobil Oil Corporation, Cantro Petroleum Corporation, 6/19/89, *RF225-37*

The DOE granted in part a Motion for Reconsideration filed by Cantro Petroleum Corporation (Cantro) in the Mobil refund proceeding. Cantro sought

an above-volumetric refund for an alleged overcharge involving the termination of an early payment discount. Cantro had submitted a letter from the DOE's Office of Special Counsel to Cantro in which the OSC had tentatively concluded that the Mandatory Petroleum Pricing Regulations entitled Cantro to a one percent early payment discount. However, Cantro failed to supply banks or any other evidence indicating that it was unable to pass through its higher costs. Instead, Cantro argued that it should not be required to prove its inability to pass through because: (1) according to classic microeconomic theory, passthrough was impossible; and (2) Cantro was entitled to keep the extra profit that would have resulted from the utilization of the discount, therefore it was harmed by its unavailability. The DOE rejected both of these arguments. However, the DOE found that the letter from OSC was strong evidence of injury and on that basis allowed Cantro to use the reseller level of absorption presumption. Therefore, the DOE granted a refund equal to the denied discount (i.e., one percent of the early payments made by Cantro), multiplied by 35 percent, the applicable reseller presumption. The total refund granted was $78,691.

Mobil Oil Corporation/Pettyjohn Oil Company, Haney Oil Company, 6/20/89, *RF225-6624, et al.*

The DOE issued a Decision and Order concerning Appliations for Refund filed by Pettyjohn Oil Company and Haney Oil Company in the Mobil Oil Corporation special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1986). The DOE granted Pettyjohn a refund of $5,386 ($4,271 in principal plus $1,115 in interest) based on its purchases of motor gasoline, middle distillates, and lubricants during the Mobil consent order period. The DOE denied the application filed by Haney pursuant to the $5,000 small claims presumption of injury since another Haney entity had previously received a $5,000 refund based on that presumption.

Murphy Oil Corporation/Consumers Cooperative Association, 6/20/89, *RF309-235.*

The DOE issued a Decision and Order granting an Application for Refund filed by Consumers Cooperative Association, an agricultural cooperative, in the Murphy Oil Corporation special refund proceeding. Consumers purchased directly from Murphy and requested a refund of less than $5,000. Accordingly, the applicant was granted a refund of $248.

Murphy Oil Corporation/Hydrocarbon Trading & Transport Co., Inc., 6/20/89, *RF309-302.*

The DOE issued a Decision and Order concerning an Application for Refund filed by Hydrocarbon Trading & Transport Co., Inc., in the Murphy Oil Corporation special refund proceeding. The DOE determined that Hydrocarbon was not eligible to receive a refund from the Murphy consent order fund because it was a spot purchaser and did not attempt to rebut the spot purchaser presumption of noninjury. *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). Accordingly, Hydrocarbon's application was denied.

Shell Oil Company/Bowsman's Shell Service Station, et al., 6/20/89, *RF315-4511, et al.*

The DOE issued a Decision and Order granting 131 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $114,694.

Shell Oil Company/Julius C. Rakisits, et al., 6/20/89, *RF315-4301, et al.*

The DOE issued a Decision and Order granting 127 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $91,713.

Shell Oil Company/Tygart's Shell Service, et al., 6/19/89, *RF315-1401, et al.*

The DOE issued a Decision and Order granting 155 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $132,628.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Abbott Laboratories *et al*	RF272-60216	6-21-89	99	$12,753
Alfred Seib *et al*	RF272-52801	6-21-89	140	15,532
Allyn Towers Co. *et al*	RF272-61600	6-21-89	107	15,613
Avila College *et al*	RF272-56201	6-20-89	126	18,525
Charlotte B. Towsend *et al*	RF272-59800	6-21-89	129	18,700
City of Robbinsdale *et al*	RF272-62000	6-19-89	117	15,585
Delton R. Schnakenberg *et al*	RF272-60800	6-23-89	129	17,114
Dennis D. Richman *et al*	RF272-56003	6-21-89	135	18,235
Dittmer Transit *et al*	RF272-58601	6-19-89	150	15,992
Don Ashley *et al*	RF272-53800	6-21-89	91	11,524
Dugger Farms *et al*	RF272-54600	6-19-89	150	18,487
Elmer Boney *et al*	RF272-59200	6-21-89	148	15,668
Gloval Steel Products *et al*	RF272-52600	6-23-89	135	17,537
House of Carpets & Glass *et al*	RF272-65201	6-20-89	107	11,778
Howard Moore Farms *et al*	RF272-55401	6-21-89	124	15,534
James A Redfern *et al*	RF272-61800	6-21-89	122	17,931
James H. Van Arket *et al*	RF272-63400	6-21-89	77	12,166
L.R. Pope *et al*	RF272-55000	6-21-89	152	18,344

Name	Case No.	Date	No. of applicants	Total refund
McCurdy & Co. *et al*	RF272-54800	6-21-89	138	18,810
Melvin C. Lowrey *et al*	RF272-61400	6-20-89	121	15,814
Melvin J. Schafer *et al*	RF272-56400	6-20-89	128	14,357
Merle Donbrock *et al*	RF272-65400	6-21-89	77	10,472
Overhead Door Corp. *et al*	RF272-64400	6-23-89	127	14,326
Pentair, Inc. *et al*	RF272-26608	6-20-89	40	354,282
Reed Williamson *et al*	RF272-69218	6-21-89	106	13,379
Robert J. Bolay *et al*	RF272-63209	6-21-89	128	15,494
Roxy Associates *et al*	RF272-64200	6-23-89	105	14,681
Roy Finley *et al*	RF272-62200	6-23-89	118	14,480
St. Brendan R.C. Church *et al*	RF272-65003	6-21-89	81	10,065
Swenson Bros. *et al*	RF272-64000	6-21-89	115	12,717
Sycamore Ranches *et al*	RF272-59401	6-21-89	131	15,698
Tiernay Metals *et al*	RF272-63000	6-19-89	101	13,694
Timberline Inc. *et al*	RF272-63604	6-21-89	103	13,326
Tobias Heller *et al*	RF272-63802	6-21-89	91	13,153
Tommy J. Montgomery *et al*	RF272-58800	6-23-89	154	17,846
Town of Granite Falls *et al*	RF272-60000	6-20-89	87	112,379
W.H. Gibson *et al*	RF272-66200	6-21-89	55	6,707
Willa Jean Dobson *et al*	RF272-58400	6-21-89	130	18,792

Dismissals

The following submissions were dismissed.

Name	Case No.
Charles Brown	RF272-33110
Crown Service, Inc.	RF313-108
D&S Corp.	RF272-32517
Earl's Place	RF272-58096
H.H.&K. Bergh, Inc.	RF304-2756
Medley's Heavy Equipment	RF272-32520

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, SW., 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.

September 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-23189 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders Issued the Week of July 3 Through July 7 1989

During the week of July 3 through July 7 1989, the decisions and orders summarized below were issued with respect to appeals and applications for 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

John R. Penley, 7/6/89, KFA-0289

John R. Penley filed an Appeal from a denial by the Savannah River Operations Office of the Department of Energy of a Request for a fee waiver he had submitted in connection with a Request for Information under the Freedom of Information Act. In considering the Appeal, the DOE found that the information Penley has requested is in the public interest, and that Penley is in a position to contribute significantly to the public's understanding of the subject of his request through use of the requested documents. Accordingly, the DOE granted Penley's fee waiver request with respect to those requested documents not already in the public domain.

Lynn Landon, 7/7/89, KFA-0300

Lynn Landon filed an Appeal from a determination issued by the Freedom of Information Officer of the DOE Idaho Operations Office, denying in part Landon's request for information which she submitted pursuant to the Freedom of Information Act (FOIA). Landon sought access to, *inter alia*, the personal notebooks of DOE employees who were members of an investigative board preparing a report on a firearms accident at a DOE facility in which the husband of the Appellant was fatally wounded. In considering the Appeal, the DOE noted that the requested information was the subject of a previous Appeal, *Imhoff & Lynch*, 15 DOE ¶ 80,121 (1987). In that determination, the DOE concluded that the investigators' notebooks contained predecisional and deliberative material which was properly withheld pursuant to Exemption 5 of the FOIA. The DOE found no reason to reverse that previous determination. Accordingly, the Landon Appeal was denied.

William R. Bowling II, 7/7/89, KFA-0170

William R. Bowling II filed an Appeal from a partial denial by the DOE Office of the Executive Secretariat of a request for information that he had submitted under the Freedom of Information Act. In considering Bowling's Appeal, the DOE found that the material deleted from the copy of the requested document that was provided to him was properly withheld under FOIA Exemption 3. Accordingly, his Appeal was denied.

Interlocutory Order

Southwestern States Marketing Corporation, Kenneth Walker, 7/7/89, KRZ-0092, KRZ-0093

On March 17 1989, the Trustee for the Estate in Bankruptcy of Southwestern States Marketing Corporation (Southwestern) filed a Motion to Reopen Evidentiary Hearing in connection with the remedial order proceeding involving Southwestern and Kenneth Walker. Shortly thereafter, on March 21, 1989, Kenneth Walker filed a Motion to Reopen Discovery in the same case. The filing of both motions was prompted by the Trustee's revelation at a hearing convened by the office of Hearings and Appeals (OHA) on March 8, 1989 that he had recently discovered "new" evidence relevant to the underlying enforcement case.

With respect to the Motion to Reopen Evidentiary Hearing, the OHA first decided that the motion should more appropriately be treated as a Motion for Reconsideration. The OHA then decided that the reconsideration motion should be granted in part, finding that the Trustee could not have discovered the

new evidence he now seeks to introduce in the case earlier, and that the introduction of new evidence at this late stage of the proceeding will cause only minimal delay in the case. The OHA allotted the Trustee a limited time period to submit additional information relevant to the Southwestern proceeding which he obtains from the records and files of Compton Corporation (Compton), one of Southwestern's subsidiaries.

As for the Motion to Reopen Discovery filed by Walker in the case, the OHA decided it should also be granted in part. The OHA determined that since Mr. Walker had no access to the Compton records and files which are alleged to contain information pertinent to the Southwestern case, there was no way for him to have known that discovery of the Compton materials might be useful. The OHA next found that discovery of the Compton materials might be relevant and material to the instant enforcement case. Finally, the OHA determined that the proceeding would not be unduly delayed as long as the time within which additional discovery must be completed is limited. The OHA then decided that Walker should be permitted discovery of only the records and files of Compton, not the records and files of all of Southwestern's trading partners, as Walker had requested. Accordingly, the OHA directed the Trustee to give Walker access to the Compton records and files thirty days after his receipt of the Decision.

Refund Applications

Atlantic Richfield Company/Energy Gases, Inc., et al., 7/7/89, RF304-3152 et al.

The DOE issued a Decision and Order concerning forty-nine Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claim or mid-level presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $85,937 representing $65,827 in principal and $20,110 in accrued interest.

Atlantic Richfield Company/Ken Wilton s Arco, et al., 7/6/89, RF304-2620, et al.

The DOE issued a Decision and Order concerning ten applications for refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in the Decision totalled $35,757 including $8,366 in accrued interest.

Exxon Corporation/A.T. Liner, 7/7/89, RF307-991

The DOE issued a Decision and Order denying an Application for Refund filed by Energy Refunds, Inc. on behalf of A.T. Liner in the Exxon Corporation special refund proceeding. A.T. Liner was a consignee agent, and in the Exxon proceeding consignee agents are presumed to have been unaffected by any alleged overcharges. Liner did not submit any arguments or information to demonstrate that he was injured by Exxon's overcharges. Accordingly, A.T. Liner's application was denied.

Exxon Corporation/Ray's Exxon, 7/7/89, RF307-9988

The DOE issued a Supplemental Decision and Order in the Exxon Corporation special refund proceeding to Ray's Exxon (Ray's), an applicant in *Exxon Corp./Fehring's Exxon Service Station*, 19 DOE ¶ 85,015 (1989). In that Decision, Ray's (Case No. RF307-3814) was granted a refund of $220 based on its purchases of refined petroleum products. However, Ray's had previously been granted a refund in the Exxon proceeding under the same case number and based upon the exact same purchase volume. Accordingly, the DOE rescinded the duplicate refund that was inadvertently granted to the claimant.

Kwikset Corporation, 7/5/89, RF272-18450

The DOE issued a Decision and Order granting an Application for Refund in the Subpart V crude oil refund proceedings to Kwikset Corporation (Kwikset) based on its purchases of petroleum products during the period from August 19, 1973, through January 27 1981. However, the DOE denied that part of Kwikset's claim which was based on its purchases of epoxy enamel paint and perchloroethylene. The DOE held that these products were too far removed from crude oil to be the basis of a refund in these proceedings. The firm estimated its gallonage figures. The DOE found the Applicant's estimation technique reasonable and acceptable. The Applicant was an end-user of petroleum products that it claimed to have purchased and, therefore, was presumed injured. The refund approved in this Decision is $528.

Longview Fibre Co., 7/5/89, RF272-18497 RD272-18497

The DOE issued a Decision and Order concerning an Application for Refund filed by Longview Fibre Co. (Longview), a manufacturer of paper products, in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to Longview's application on the grounds that certain studies of the pulp and paper industry and annual reports of Longview's profitability indicated that Longview was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this evidence was sufficient to rebut the end-user presumption relied upon by Longview and therefore the DOE should deny Longview's application. The DOE granted Longview's refund application, determining that the States had failed to show that Longview itself had passed through increased fuel costs. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut Longview's presumption of injury.

Murphy Oil Corporation/Eller & Slate Oil Co., Inc., et al., 7/6/89, RF309-250 et al.

The DOE issued a Decision and Order granting 17 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each Applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $30,844 ($26,195 principal plus $4,649 interest).

Petrolite Corporation, 7/6/89, RC272-48

The DOE issued a Supplemental Order rescinding the refund granted to Petrolite Corporation in *Merle Donbrock, et al.*, Case Nos. RF272-65400, *et al.*, (June 21, 1989). The amount of the refund rescinded was $188.

Russell Brothers Ranches, 7/6/89, RC272-49

The DOE issued a Supplemental Order rescinding the refund granted to Russell Brothers Ranches in *St. Brendan R.C. Church, et al.*, Case Nos. RF272-675003, *et al.*, (June 21, 1989). The amount of the refund rescinded was $137

Shell Oil Company/Ascarate Shell et al., 7/5/89, RF315-1100 et al.

The DOE issued a Decision and Order granting 160 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each Applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $151,762 ($130,007 principal plus $21,755 interest).

Shell Oil Company/Pallota Oil Co. et al., 7/7/89, RF315-3703 et al.

The DOE issued a Decision and Order granting 135 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each Applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $122,227 ($104,699 principal plus $17,528 interest).

Thorson, Inc., Bauerly Brothers, Inc., 7/5/89, RF272-14343, RD272-14343, RF272-17251, RD272-17251

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two construction companies, principally involved in asphalt production and road construction/paving. In reaching its determination, the DOE rejected the Objections to the applicants' claims submitted by a group of States and denied the States' Motions for Discovery. The DOE held that industry-wide data, with no particular reference to the applicants, is insufficient to rebut the presumption of injury for end-users outside of the petroleum industry. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that particular claimants were likely in fact to have passed through overcharges. The refund granted to Thorson, Inc., was $23,206 and the refund granted to Bauerly was $23,890.

Total Petroleum Inc./Imlay City Oil Co., Huron Valley Oil Co., 7/7/89, RF310-209, RF310-210

The DOE issued a Decision and Order concerning Applications for Refund filed by Imlay City Oil Company and Huron Valley Oil Company. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Both of the applicants purchased Total motor gasoline and No. 2 oils during the consent order period. Under the standards established in *Total Petroleum, Inc.* 17 DOE ¶ 85,542 (1988), the DOE granted Imlay City a refund of $35,638 ($30,006 principal and $5,632 interest) and Huron Valley a refund of $42,150 ($35,489 principal and $6,661 interest).

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Atlantic Pre-Hung Doors *et al.*	RF272-65708	7-3-89	19	$2,869
David Wickes *et al.*	RF272-70600	7-3-89	155	17,602
Mewes Farms Inc. *et al.*	RF272-62600	7-3-89	114	14,494
Publisher Clearing House *et al.*	RF272-66407	7-3-89	91	12,004
South Hamilton Community School *et al.*	RF272-70201	7-3-89	51	7,611
St. John the Baptist Church *et al.*	RF272-6600	7-3-89	97	11,821
Stanley R. Schilling *et al.*	RF272-67801	7-6-89	115	14,000

Dismissals

The following submissions were dismissed:

Name	Case No.
Bill's Apco	RF310-27
Greene County School System	RF272-49258
Michael Haberchak	RF304-7497
Terrol Energy, Inc.	KEF-0177
W&J Propane Gas, Inc.	RF304-4757
West Coast Oil Co.	KRO-0500
	HEE-0098

Copies of the full text of these decisons and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., 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.

Dated: September 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-23190 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of July 10 Through July 14, 1989

During the week of July 10 through July 14, 1989, the decisions and orders summarized below were issued with respect to applications for 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.

Supplemental Order

Getty Oil Company, 7/13/89, KFX-0067

The DOE issued a Supplemental Order returning $148.73 (plus appropriate interest) which the DOE erroneously received from the Bank of Delaware as part of the Getty Oil Company refund proceeding. *See Getty Oil Co.*, 18 DOE ¶ 85,808 (1989); *Getty Oil Co.*, 18 DOE ¶ 85,918 (1989).

Refund Applications

Atlantic Richfield Company/Poor Sam's Mini Market, et al., 7/12/89, RF304-233, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by Energy Refunds, Inc., on behalf of three claimants in the Atlantic Richfield Company special refund proceeding. All of the applicants were retailers that applied for small claims. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $10,636,

representing $8,128 in principal and $2,508 in accrued interest.

Atlantic Richfield Company/Stem Mar Arco or John Reuther Stem Mar or Ronald Reuther, 7/31/89, RF304-9734, RF304-9736, RF304-9735

The DOE issued a Supplemental Order concerning a Decision and Order issued on June 27 1989 to Stem Mar ACRO *et al.* in the Atlantic Richfield Company (ARCO) special refund proceeding. The DOE determined that the refunds granted to two claimants in that Decision had been miscalculated. Accordingly those refunds were rescinded and the correct refunds were granted to the claimants.

Benjamin Coal Company, 7/14/89, RF272-32857

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Benjamin Coal Company (Benjamin) based on its purchases of refined petroleum products during the period from August 19, 1973, through January 27 1981. Benjamin used petroleum products for surface mining and determined its volume claim by consulting actual purchase records and by reasonably estimating its consumption. Benjamin was an end-user of the products it claimed and was therefore presumed injured. The refund granted in this Decision is $41,203.

Conway Asphalt Co., 7/14/89, RC272-55

The DOE issued a Supplemental Order rescinding the refund granted to Conway Asphalt Co. in *Stanley R. Schilling, et al.*, Case Nos. RF272-67801 *et al.* (July 6, 1989). The amount of the refund rescinded was $10.

Crown Central Petroleum Corp./Chana, Inc., et al., 7/12/89, RF313-173, et al.

The DOE issued a Decision and Order considering application filed by six purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988). The total amount of refunds approved in this Decision was $56,931, representing $48,329 in principal plus $8,602 in accrued interest.

Crystal Oil Company, 7/10/89, RF272-36427

The DOE issued a Decision and Order denying an Application for Refund filed by Crystal Oil Company in the crude oil refund proceeding. The DOE found that Crystal had previously filed in the Refiners Escrow, one of the escrow funds established pursuant to the final Settlement Agreement in the DOE Stripper Well Exemption Litigation, M.D.L. No. 378, and in doing so, signed a Waiver and Release, waiving Crystal's right to file in the crude oil refund proceeding. Accordingly, Crystal's application was denied.

Doug's Shell, et al., 7/12/89, RF272-53077 et al.

The DOE issued a Decision and Order denying 20 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was either a reseller or a retailer of petroleum products during the period August 19, 1973 through January 27 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, the applicants were found ineligible for crude oil refunds.

Eveleth Mines, 7/10/89, RF272-22191

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Eveleth Mines, an iron ore mining operation, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Eveleth demonstrated the volume of its claim by consulting contemporaneous financial records. Eveleth was an end-user of the products it claimed and was therefore presumed injured by the DOE. Accordingly, the DOE granted Eveleth a refund of $51,502.

Exxon Corporation/Brocks Exxon et al., 7/10/89, RF307-8 et al.

The DOE issued a Decision of Order concerning five Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $2,165 ($1,804 principal plus $361 interest).

F.M. Asphalt, Inc. et al., 7/14/89, RF272-31712 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five applicants based on their purchases of refined petroleum products during the price control period from August 19, 1973 through January 27 1981. Each applicant used various actual records and/or reasonable estimates to support its gallonage claim. Each applicant was an end-user of the products that it purchased and was therefore presumed injured. The sum of the refunds granted in this Decision is $59,385. The claimants will be eligible for additional refunds as further crude oil overcharge fund become available.

Georgia Kraft Company/Kimberly-Clark Corporation, 7/13/89, RC272-53, RC272-54

The DOE issued a Supplemental Order modifying a previous Decision in which the DOE granted refunds from crude oil overcharge funds to Georgia Kraft Company and Kimberly-Clark Corporation. *Georgia Kraft Co.*, 19 DOE ¶ 85,023 (1989). Pursuant to the applicants' requests, the method of payment of those refunds has been changed. The refunds will now be paid by electronic wire transfer.

Gulf Oil Corporation/Abston Petroleum, Inc., George Gee, Sr., Sutton Oil Co., Div. of Cagney & Bvk, 7/14/89, RF300-4054, RF300-4326, RF300-4565

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by three applicants. Each of the applicants was either a consignee or consignee/reseller of covered Gulf products. The firms all claimed refunds less than $5,000. They were granted refunds based upon the small claims and consignee presumptions of injury. The sum of refunds granted in this Decision is $4,226.

Gulf Oil Corporation/Chambers Gulf Service, et al., 7/14/89, RF300-8613, et al.

The DOE issued a Decision and Order concerning 46 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $92,823.

Gulf Oil Corporation/Charles E. Colley, James E. Johnson, 7/12/89, RF300-4158, RF300-4264

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $2,034.

Gulf Oil Corporation/Kiel Brothers Oil Company, K.P Oil, Inc., 7/12/89, RF300-4105, RF300-10839

The DOE issued a Decision and Order concerning the Applications for Refund

submitted in the Gulf Oil Corporation special refund proceeding by Kiel Brothers Oil Company and K.P Oil, Inc. Because both applicants were commonly owned and operated during the consent order period, the applicants were considered to be a single firm for purposes of the Gulf proceeding. Because their collective total maximum refund exceeded $5,000 and no demonstration of injury was made, the Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is $29,670.

Martin Limestone Inc. et al., 7/10/89, RF272-10760 et al.

The DOE issued a Decision and Order granting refunds to 16 purchasers of refined petroleum products in the Subpart V crude oil proceeding. Each applicant was an end-user of the purchased products, and therefore was not required to demonstrate injury. The refunds approved in this Decision total $226,462.

Mead Paper, et al., 7/10/89, RF272-15878, et al., RD272-14529, et al.

The DOE issued a Decision and Order concerning applications for refunds filed by four manufacturers of paper products in the Subpart V crude oil proceeding. A group of States and Territories (the States) objected to the applications on the ground that certain studies indicate that the pulp and paper industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this evidence was sufficient to rebut the end-user presumption relied upon by the applicants and therefore the DOE should deny their applications. The DOE granted the refund applications, determining that the States has failed to show that the applicants themselves had passed through increased fuel costs. The DOE also denied the States' Motions for Discovery, determining that they were not appropriate where the States had not presented relevant evidence to rebut the applicants' presumption of injury.

Middle Street Garage, 7/12/89, RC272-51

The DOE issued a Supplemental Order rescinding the refund granted to Middle Street Garage in *Allyn Towers Co., et al.*, Case Nos. RF272-61600, *et al.*, (June 21, 1989). The amount of the refund rescinded was $306.

National Propane Corporation, Conservative Gas Division/Synergy Gas Corporation, 7/12/89, RF296-01

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of propane covered by a consent order that the DOE entered into with National Propane Corporation, Conservative Gas Division (NPC). The applicant submitted information indicating the volume of its propane purchases from NPC and was eligible for a refund below the $5,000 small claims threshold. The total refund approved in this Decision is $10,436, representing $4,977 in principal and $5,459 in accrued interest.

O'Connell Oil Company/Bona's Garage, Inc., 7/10/89, RF280-03

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline covered by a consent order that the DOE entered into with O'Connell Oil Company. The applicant submitted information indicating the volume of its motor gasoline purchases from O'Connell and was eligible for a refund below the $5,000 small claims threshold. The total refund approved in this Decision is $1,391, representing $710 in principal and $681 in accrued interest.

O'Farrell Insurance, 7/12/89, RC272-50

The DOE issued a Supplemental Order rescinding the refund granted to O'Farrell Insurance in *Tow of Granite Falls, et al.*, Case Nos. RF272-60000, *et al.*, (June 20, 1989). The amount of the refund rescinded was $85.

Paul S. Stevens, 7/14/89, RA272-9

The DOE issued a Supplemental Order concerning an Application for Refund filed in the Subpart V crude oil refund proceeding. In a prior decision, *Tuscan Dairy Farms, Inc.*, 19 DOE ¶ 85,057 (1989) (*Tuscan*), the DOE granted Paul S. Stevens (Case No. RF272-33002) a refund based upon an approved volume of 8,204,680 gallons. However, the purchase volume should have been stated as 82,047 gallons. Consequently, the DOE modified *Tuscan* to reflect the correct number of approved gallons and the correct refund amount to be granted to the applicant.

Shell Oil Company/North Star Shell Service Station et al., 7/14/89, RF315-1031 et al.

The DOE issued a Decision and Order granting 25 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or and end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of refunds granted in the Decision was $24,544 ($21,023 principal plus $3,521 interest).

Sysco Food Systems, 7/12/89, RF272-74004, RC272-247

The DOE issued a Decision and Order and Supplemental Order concerning two Applications for Refund filed on behalf of Sysco Food Systems (Sysco) in the Subpart V crude oil refund proceedings. On August 17 1988, the DOE had granted a refund from crude oil overcharge funds to Sysco, Case No. RF272-74068, based upon an application that had been submitted on Sysco's behalf by P.A.D., Inc. Because the gallonage amount listed in this application is incorrect, the DOE rescinded the August 17 1988 Decision and Order with respect to Case No. RF272-74608, now designated as Case No. RC272-47

In addition, the DOE received a second application submitted directly by Sysco, Case No. RF272-74004. Accordingly, the DOE granted a refund from crude oil overcharge funds to Sysco based on its claimed purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. Sysco was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The refund granted to Sysco in the Decision and Order was $1,053.

Total Petroleum/Marsh's APCO, 7/13/89, RF310-341

The DOE issued a Decision and Order concerning an Application for Refund filed by Marsh's Apco in which the firm sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted Marsh's a refund of $525 ($442 principal and $83 interest).

Tross Farming Company, 7/14/89, RF272-56

The DOE issued a Supplemental Order rescinding the refund granted to Tross Farming Company in *Delton R. Schnakenberg, et al.*, Case Nos. RF272-60800, *et al.*, (June 23, 1989). The amount of the refund rescinded was $179.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Archie Bell Trucking *et al*	RF272-70800	7/12/89	138	$16,883
Arnold Buhr *et al*	RF272-72800	7/10/89	147	$17,717
Ben L. Berry *et al*	RF272-74201	7/14/89	107	$13,559
Billows Electric Supply *et al*	RF272-69600	7/12/89	89	$11,453
Charles Batscelett *et al*	RF272-71403	7/10/89	127	$15,308
Charles Fellows *et al*	RF272-72607	7/14/89	108	$13,428
Colonial Mirror & Glass *et al*	RF272-71602	7/14/89	124	$18,928
Danner Farms *et al*	RF272-68600	7/13/89	155	$18,132
Edwin Bentham *et al*	RF272-73801	7/14/89	125	$15,411
Housing Auth/La Crosse *et al*	RF272-74002	7/12/89	130	$17,154
James C. Chambers *et al*	RF272-69801	7/10/89	146	$16,949
L.W. Honey Farm *et al*	RF272-64800	7/11/89	106	$13,618
Lake Region Truck Line *et al*	RF272-70402	7/11/89	126	$15,765
Larry Mitchell *et al*	RF272-73400	7/10/89	159	$18,893
Mark C. Herrington *et al*	RF272-71200	7/10/89	133	$16,794
Peter Croghan *et al*	RF272-73604	7/11/89	140	$17,305
Phil & Eli Sayer *et al*	RF272-71000	7/11/89	178	$16,527
Ronald Foppe *et al*	RF272-66800	7/13/89	134	$17,983
Shepherd Excavating *et al*	RF272-68400	7/14/89	85	$9,733
Wayne Sinclair *et al*	RF272-67600	7/10/89	112	$13,554

Dismissals

The following submissions were dismissed:

Name	Case No.
Adams Oil Company, Inc	RF307-6618
American Frozen Foods, Inc	RF272-70490
B & D Acro	RF304-9286
Brown's Automotive Service	RF307-8017
Bud's Arco Service	RF304-6229
Cahill's Arco	RF304-6815
Catanzaro Oil & Heating Co., Inc	RF285-1
De Marco's Arco, Inc	RF304-2594
Ferrari's Arco	RF304-7265
Jeff's Holiday Gulf	RF315-5652
Joe Wateska & Son	RF304-6939
John Patten	RF272-64531
Jones Arco	RF304-3843
Juall Arco	RF304-4724
Kenyon Oil Company	RF304-6504
Pollard Tire Company, Inc	RF304-8834
	RF304-8835
Richard's Arco	RF304-9328
Sahuaro Petroleum & Asphalt Co	RF272-65851
Seb's Arco Service	RF304-6870
Souza's Arco	RF304-9525
Sunlite Servicenter Inc	RF307-8357
Thomas P Reidy, Inc	RF264-13
Vic's Arco Service Station	RF304-6797
William S. Pittman, Jr	RF307-9878
Zatopek Oil Company	RF304-6874

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, SW Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. These are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 20, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

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Issuance of Decisions and Orders During the Week of July 17 Through July 21, 1989

During the week of July 17 through July 21, 1989, 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.

Appeal

Anne K. Magnuson, 7/20/89, KFA-0301

Anne K. Magnuson (Magnuson) filed an Appeal from a determination issued by the Chief of Freedom of Information and Privacy Acts (FOI Officer) in which the FOI Officer informed Magnuson that the DOE could not locate any documents responsive to her Freedom of Information Act (FOIA) request. In considering the Appeal, the Office of Hearings and Appeals (OHA) found that DOE's initial search was reasonably calculated to uncover responsive documents and was therefore adequate under the FOIA. The appeal was therefore denied.

Remedial Order

Rodgers Hydrocarbon Corporation, Ray V Rodgers, Jr., 7/20/89, HRO-0298

Rodgers Hydrocarbon Corporation and Ray V Rodgers, Jr. (collectively, RHC) filed a Statement of Objections to a Proposed Remedial Order (PRO) which alleged that RHC, a reseller, both failed to certify and miscertified barrels of crude oil it sold in violation of 10 CFR 212.131(b) during the period September 1977 through January 1980 (the audit period). The PRO directed RHC to refund $2,782,495.73, plus interest, which it received in its unlawful sales of crude oil.

The DOE agreed with RHC's objections in part, finding that the alleged overcharges should be reduced by $1,043,666.87 i.e., overcharges previously nullified in the settlement of related litigation involving RHC's affiliate, Summa Energy Corporation. DOE rejected the balance of RHC's objections and issued the PRO as a final Remedial Order. Important issues decided in this Order include the findings that: (1) RHC's reclaimed product, pipeline condensate, was "crude oil" within the meaning of 10 CFR 212.31; (2) ERA's "gross profit" method of calculating overcharges was the proper method of calculating overcharges in a DOE restitutionary action where a reseller had failed to certify and/or improperly certified crude oil; (3) Rodgers is personally liable for the overcharges under both the "piercing the corporate veil" and "central figure" theories; and (4) RHC failed to meet the threshold test for retroactive exception relief.

Request for Exception

Farmington Gas Co., Inc. 7/17/89, KEE-0175

Farmington Gas Co., Inc. (Farmington) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements. The exception request, if granted, would relieve Farmington of the requirement to file Form EIA-782B,

entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report. On July 17 1989, the Department of Energy (DOE) issued a Final Decision and Order which determined that the exception request be denied.

Implementation of Special Refund Procedures

Pedersen Oil, Inc., 7/19/89, HEF-0147

The DOE issued a Decision and Order implementing a plan for the distribution of $19,824.44 received pursuant to a Consent Order executed on October 15, 1981. The DOE determined that these funds should be distributed to successful claimants that had purchased motor gasoline from Pedersen during the period May 1, 1979 through September 30, 1979. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Appleton Papers, Inc., Inland Container Corporation, 7/19/89, RF272-4655, RD272-4655, RF272-5988, RD272-5988

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. A group of twenty-eight states and two territories of the United States (the States) filed identical, consolidated pleadings objecting to and commenting on the applications. The only evidence submitted by the States was affidavits by an economist stating that virtually every industry was able to pass through some costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive a refund. In addition, the States filed Motions for Discovery which were denied. The sum of the refunds granted in this Decision is $49,927 The claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Atlantic Richfield Company/Clarence C. Bernath, Halloran Service 7/17/89, RF304-684, RF304-2572

The DOE issued a Decision and Order concerning two Applications for Refund in the Atlantic Richfield Company (ARCO) special refund proceeding. The applications filed by Clarence C. Bernath and Halloran Service clearly state that the firms operated as consignees of ARCO products. The applicants were contacted by phone and/or in writing and informed that they could try to rebut the presumption of non-injury against consignees, but they did not wish to do so. The DOE determinnd that, as consignees, Bernath and Halloran are not entitled to any refunds and that their applications should be denied.

Atlantic Richfield Company/Effat Elsabban, et al., 7/17/89, RF304-3009, et al.

The DOE issued a Decision and Order concerning two Applications for Refund in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims or mid-level presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totaling $35,666, representing $27,261 in principal and $8,405 in accrued interest.

Atlantic Richfield Company/H. H. & K. Bergh, et al., 7/18/89, RF304-2383, et al.

The DOE issued a Decision and Order concerning fifty Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $73,946 ($56,508 in principal and $17,438 in interest).

Atlantic Richfield Company/Hutchison's ARCO, et al., 7/18/89, RF304-1195, et al.

The DOE issued a Decision and Order concerning twenty-eight Applications for Refund filed by twenty-five claimants in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants were either end users or reseller/retailers that applied for small claims. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totaling $51,713, representing $39,519 in principal and $12,194 in accrued interest.

Atlantic Richfield Company/L&M Express Company, et al., 7/20/89, FR304-4983, et al.

The DOE issued a Decision and Order concerning eleven Applications for Refund filed by six claimants from a consent order fund made available by Atlantic Richfield Company. As end-users or resellers and retailers applying for small claims refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totalling $18,875 representing $14,391 in principal and $4,484 in accrued interest.

Atlantic Richfield Company/Rodney C. Ripley, et al., 7/20/89, FR304-6687 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed by five claimants from a consent order fund made available by Atlantic Richfield Company. As resellers and retailers applying for small claims refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totalling $12,404, representing $9,457 in principal and $2,947 in accrued interest.

Atlantic Richfield Company/Sal's ARCO Service Station, et al., 7/20/89, FR304-4208, et al.

The DOE issued a Decision and Order concerning twenty applications for refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $30,574, including $7,265 in accrued interest.

Christian Haaland A/S, et al., 7/20/89, FR272-0244, et al.

Thirty-three foreign flagship carriers (Carriers) filed Applications for Refund from the Subpart V crude oil overcharge monies based upon their purchases of marine bunker fuel consumed by the Carriers' vessels for propulsion. A group of thirty States and two Territories of the United States (collectively "the States") filed objections opposing the receipt of refunds by the Carriers, on the basis that: (1) bunker fuel sales to the Carriers were "export sales" exempt from price controls and the Carriers are therefore ineligible to receive funds and (2) the Carriers were not injured by crude oil overcharges since they conventionally added bunker fuel surcharges to their shipping rates by means of industry regulation and also joined in ratemaking conferences which facilitated the passthrough of increased fuel costs. In considering the Carriers' refund claims and the States' objections, the DOE determined that the States' reading of the export sale exemption is

overbroad and the Carriers' purchases of bunker fuel for propulsion were not "export sales. Consequently, the Carriers were not disqualified from receiving refunds by virtue of their foreign status. In addition, the DOE found that the Carriers, as end-users, were injured as a result of overcharges. In this regard, the DOE rejected the States claims that the Carriers were automatically able to pass through increased costs of bunker fuel by means of industry regulation and trade practice. The DOE further determined, however, that the bunker fuel purchases claimed by the Carriers must be reduced to exclude any purchases made in the Panama Canal Zone. On the basis of these determinations, the Carriers' Applications for Refund were approved in substantial part. The Total of the refunds granted in this decision is $3,475,147

City of Burbank, Public Service Department, 7/17/89, RF272-2580

The DOE issued a Decision and Order granting an Application for Refund filed by the City of Burbank, Public Service Department in the Subpart V crude oil refund proceedings. Burbank used refined petroleum products in its operation of an electric generating plant during the period August 19, 1973, through January 27 1981. In addition to establishing its purchase volumes, Burbank submitted certification that it would notify the appropriate regulatory bodies of any refund it receives and pass through the entirety of the refund to its customers. Burbank is therefore eligible to receive its full volumetric share of available crude oil monies as an end-user of refined petroleum products. The total refund granted in this Decision is $166,345.

Exxon Corporation/Howmet Corp., Et al., 7/18/89, RF307-579, et al.

The DOE issued a Decision and Order concerning 23 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $35,190 ($29,339 principal and $5,851 interest).

Exxon Corporation/John Kara, Jr., et al., 7/19/89, RF307-2118, et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund of its full allocable share. The sum of the refunds granted in this Decision is $22,168 ($18,482 principal plus $3,686 interest).

Exxon Corporation/R.P Naquin, Dist. Inc., Jubilee Oil Company, Rankin Patterson Oil Company, 7/19/89, RF307-2708; RF307-6227 RF307-6964

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was a reseller whose allocable share exceeded $5,000. None of the applicants attempted to demonstrate injury, and each elected to limit its refund to $5,000 or 40 percent of its allocable share, whichever was greater. The sum of the refunds granted in this Decision is $37,519 ($31,749 principal plus $5,770 interest).

Exxon Corporation/Ron's Esso, et al., 7/19/89, RF307-2030, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. All of the applicants disagreed with the gallonage information recorded on their Exxon volume sheets and submitted alternative gallonage figures which they requested that OHA accept in combination with or in lieu of Exxon's figures. The OHA accepted the applicant's figures because they were taken from the applicants' actual purchase records for the consent order period. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $8,025 ($6,691 principal plus $1,334 interest).

Exxon Corporation/Scenic Exxon, et al., 7/18/89, RF307-1903, et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. All of the applicants disagreed with the gallonage information recorded on their Exxon volume sheets and submitted alternative gallonage figures which they requested that the OHA accept either in lieu of or in combination with Exxon's figures. The OHA accepted the applicants' figures either uniformly or in combination with Exxon's figures because they were taken directly from the firm's actual Exxon invoices or monthly sales records from the consent order period. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $18,621 ($16,390 principal plus $2,231 interest).

Exxon Corporation/Village Fuel, Inc., 7/19/89, RF307-2481

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation special refund proceeding. The applicant, a wholesale distributor of fuel oil and kerosene, disagreed with the gallonage information recorded on its Exxon volume sheet and submitted alternative gallonage figures which it requested that the OHA accept in lieu of Exxon's figures. The OHA accepted the applicant's figures for March 6, 1973 through July 1, 1976 because they were taken from the applicant's actual records. However, the OHA denied the applicant's request for a refund for its purchases of kerosene and fuel oil occurring after July 1, 1976 because kerosene and fuel oil were decontrolled effective July 1, 1976. The DOE determined that the applicant was eligible to receive a refund equal to its full allocable share. The sum of the refund granted in this Decision is $722 ($602 principal plus $120 interest).

Exxon Corporation/Walker Exxon, et al., 7/18/89, RF307-1912, et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $12,149 ($10,695 principal plus $1,454 interest).

General Telephone Company of Florida, 7/17/89, RF272-3787

The Department of Energy (DOE) issued a Decision and Order granting the application of the General Telephone Company of Florida (GTC) for a refund pursuant to the provisions of 10 CFR Part 205, Subpart V (Subpart V) for its purchases of crude oil products between August 1973 and January 1981. The DOE also rejected Motions for

Discovery and Objections filed in the proceeding by a group of 30 State governments and two territories (The States). The States argued that GTC should not receive a refund because a regulatory body allowed it to pass along the overcharges to its customers. The DOE found that the States' had failed to show that GTC was specifically allowed to pass along its energy costs to its customers. Furthermore, the DOE found that the States had failed to show the relationship of the rates set for GTC and the overcharges which GTC incurred during the life of those rates. Finally, the DOE rejected the States contention that GTC was required to determine what percentage of its propane purchases were crude oil based because the States provided no evidence to the contrary. The total refund granted in this Decision is $19,827

Gulf Oil Corporation/Highland Gulf, et al., 7/17/89, RF300-183, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $22,683.

Gulf Oil Corporation/J.C. Cornillie Company, et al., 7/19/89, RF300-6102, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $74,945.

Gulf Oil Corporation/L.S. & J.M. Gravelle, Inc., et al., 7/19/89, RF300-7871, et al.

The DOE issued a Decision and Order concerning 4 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $26,564.

International Mill Service, et al., 7/18/89, RF272-30460, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Each applicant used various actual records and/or reasonable estimates to support its gallonage claim. Each applicant was an end-user of the products that it purchased and was therefore presumed injured. The sum of the refunds granted in this Decision is $26,043. The claimants will be eligible for additional refunds as further crude oil overcharge funds become available.

Murphy Oil Corporation/Booker Massey, et al., 7/20/89, RF309-1018, et al.

The DOE issued a Decision and Order granting 17 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each applicant purchased directly from Murphy and was either an end-user or a reseller of Murphy products whose allocable share was less than $5,000. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision is $10,217 ($8,610 principal plus $1,607 interest).

Northeast Petroleum Industries, Inc./Huckins Oil Company, Inc., et al., 7/17/89, RF264-17 et al.

The DOE issued a Decision and Order concerning an Application for Refund filed by a motor gasoline reseller in the Northeast Petroleum Industries, Inc. special refund proceeding. The applicant submitted information indicating the volume of its purchases of motor gasoline from Northeast and elected to limit its claim to $5,000. The total refund approved in this Decision is $8,898, including $3,898 in accrued interest.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Alice L. Tiede *et al.*	RF272-71800	7/21/89	149	$14,371
Arickaree R-2 School *et al.*	RF272-74603	7/21/89	94	$13,650
Arlyn Cox *et al.*	RF272-74400	7/21/89	91	$11,615
Council Brothers, Inc. *et al.*	RF272-74804	7/21/89	108	$14,287
Elmer W. Fehd *et al.*	RF272-72202	7/21/89	129	$16,464
Jim Bernhardt *et al.*	RF272-73000	7/20/89	145	$13,510
Lyle A. Swisher *et al.*	RF272-72000	7/21/89	152	$18,160
Mrs. Clarence Garrett *et al.*	RF272-68800	7/21/89	126	$13,688
Rose Pork, Inc. *et al.*	RF272-73200	7/20/89	138	$15,109

Dismissals

The following submissions were dismissed:

Name	Case No.
ABC Oil Co	RF307-7155
Bee Clean Car Wash	RF300-3407
Bordonaro's Exxon	RF307-8151
Campora Wholesale Propane, Inc	RF304-6331, RF304-9123
Carter Weil Service, Inc	RF272-75459
Ferrari's Arco	RF304-3736
Griffin Bros. Fuel	RF307-7145
Hurley Oil Co., Inc	RF309-672
Middle Department Inspection Agency, Inc..	RF272-75448
Miracle Mile Exxon	RF307-9731
Patrons Oil Co., Inc	RF272-75548
Smith's Exxon	RF307-1796
Tweedell & Van Buren Oil Co	RF313-172
Walker Springs Exxon, John Parsons;.	RF307-1916
William R. Bolling II	KFA-0305

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, SW Washington, D.C. 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.

Dated: September 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

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Issuance of Decisions and Orders During the Week of July 31 Through August 4, 1989

During the week of July 31 through August 4, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for 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.

Appeal

Roger Dingman, 8/1/89, KFA-0016

Roger Dingman filed an Appeal from a denial by the Director of the Office of Classification of the Department of Energy (DOE) of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the requested material was properly classified and therefore not releasable under Exemption 3 of the FOIA. The Appeal was therefore denied. However, the DOE directed that a legible copy of a previously released document be provided to Mr. Dingman.

Motion for Discovery

Merit Petroleum Co. Inc., et al., 8/2/89, KRD-0530, KRH-0530, KRZ-0531, KRZ-0530

Merit Petroleum, Inc. (Merit), Thomas H. Battle (Battle) and Anton E. Meduna (Meduna) filed a Motion for Discovery in connection with their Statements of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to them on October 20, 1986. The DOE denied the respondents' request for contemporaneous construction and administrative record discovery of the layering regulation, 10 CFR 212.186, on the grounds that no new arguments had been presented that would cause it to reconsider determination in previous cases. The DOE also found that the respondents had presented no basis for granting discovery of ERA positions concerning the movement of the crude oil through pipelines or the involvement of Meduna in the crude oil transactions at issue. The DOE denied respondents' Motion for Evidentiary Hearing on the grounds that they had failed to identify the issues to be discussed and the witnesses to be called at such a hearing. The OHA also denied respondents' motion to clarify the Office of Hearings and Appeal's (OHA's) general authority to declare invalid regulations such as the layering rule. The DOE found this request to be unencessary, because the OHA was clearly delegated authority to review DOE regulations in the context of specific enforcement actions. Finally, the DOE granted a motion of the ERA and amended the PRO to reduce the potential liabiity of Battle and Meduna to conform to their respective shares of ownership in Merit at the time that the alleged overcharges occurred.

Supplemental Orders

Herbert L. Tanner/P.A.D., Inc., 8/3/89, KFX-0058

The DOE issued a Supplemental Order disposing of the Order to Show Cause issued to P.A.D. Inc. (PAD) and Herbert L. Tanner (Tanner), PAD's president. *Herbert L. Tanner, et al.*, 18 DOE ¶ 85,105 (1988). In the Order to Show Cause, OHA found that PAD and Tanner had violated 10 CFR 205.3(a) & (b) by: i) filing unauthorized refund applications or obtaining authorizations from applicants through misstatements of fact; ii) filing applications on behalf of firms that PAD knew or should have known were ineligible for refunds; and iii) using inaccurate and unsupported purchase volume estimates in cases where actual volume figures were available. PAD and Tanner filed a number of responses to the Show Cause Order in which they alleged that remedial action had been taken to remedy the violations outlined in that Order. The parties then requested that OHA allow a successor corporation, FRI, to take over the processing of all PAD claims pending before OHA. In the Supplemental Order, OHA determined that both PAD and Tanner be permanently denied the privilege of participating in all proceedings before the Office of Hearings and Appeals. OHA also denied PAD's request to allow FRI to take over the processing of PAD's claims.

Texaco Inc., 8/2/89, KFX-0068

The DOE issued a Supplemental Order correcting two errors made in a Decision issued on July 25, 1989 regarding the distribution of the crude oil portion of the Texaco consent order fund, *Texaco Inc.*, 19 DOE ¶_____, Case No. KFX-0066 (July 25, 1989). In the Order, the DOE corrected the calculation of the crude oil volumetric factor and the computation of the amount of interest to be distributed.

Implementation of Special Refund Procedures

McClure Oil Company, 8/4/89, KEF-0009

The DOE issued a Decision and Order implementing procedures for the distribution of $35,000 received as a result of a Stipulation and Agreed Final Judgment entered into by the DOE and McClure Oil Company on January 30, 1985. The DOE determined that these funds should be distributed to customers that purchased motor gasoline, diesel fuel and propane from McClure during the period November 1, 1973 through March 31, 1974. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Atlantic Richfield Company/Arthur F Hazel & Son, Inc., et al., 8/4/89, RF304-3200 et al.

The DOE issued a Decision and Order concerning 58 Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims or mid-level presumptions. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds, totaling $134,033, representing $102,181 in principal and $31,852 in interest.

City of Troy, et al., 8/2/89; RF272-17773 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 61 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore found injured and entitled to a refund. The sum of the refunds granted in this Decision is $64,275.

Exxon Corporation/Earl Davis Service Station et al., 8/4/89, RF307-2050 et al.

The DOE issued a Decision and Order concerning 35 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $26,489 ($21,925 principal plus $4,564 interest).

Exxon Corporation/W.A. Fowler Co., Propane Gas Service, Inc., L.L. Smith and Son, Inc., 8/1/89, RF307-1893, RF307-2715, RF307-6509

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeds $5,000. Instead of making an injury showing to receive its full allocable share, each applicant elected to receive either 40 percent of its allocable share or $5,000, whichever is greater. The sum of the refunds granted in this Decision is $24,192 ($20,021 in principal and $4,171 in interest).

Gulf Oil Corporation/Lykes Bros. Steamship Co., Inc., et al., 8/4/89, RF300-8262 et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest is $55,074.

Hammermill Paper Co., et al, 8/1/89, RF272-19647 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to forty-four applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $48,201.

James R. Morse, 8/2/89, RC272-59

The DOE issued a Supplemental Order rescinding the refund granted to James R. Morse in Ben L. Berry, *et al., 19 DOE ¶* _____, Case Nos. RF272-74201, *et al.*, (July 14, 1989). The amount of the refund rescinded was $20.

Murphy Oil Corporation/Cougar Oil, Inc., et al. 7/31/89, RF309-1.37 et al.

The DOE issued a Decision and Order granting 14 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus interest. The sum of the refunds granted in the Decision was $21,907 ($18,461 principal plus $3,446 interest).

Nippon Yusen Kaisha, Yamashita-Shinnihon Steamship, Shinwa Kaiun Kaisha, Ltd., Showa Line Ltd., N.V Bocimar S.A. 8/4/89, RC272-62, RC272-63, RC272-64, RC272-65, RC272-66

Nippon Yusen Kaisha, Yasmashita-Shinnihon Steamship, Shinwa Kaium Kaisha, Ltd., and N.V Bocimar S.A. (collectively "the Applicants") filed a request for Supplemental Order regarding a July 21, 1989 Decision and Order which approved Subpart V crude oil refunds for thirty-three foreign ocean carriers, including the applicants. *Christian Haaland A/S,* 19 DOE ¶ _____, Case No. RF272,0244 (July 21, 1989). In *Christian Halland,* The DOE directed that the refund checks be made payable to the named ocean carriers. In their request for Supplemental Order, however, the Applicants stated that pursuant to Powers of Attorney which they executed, their refund checks should have instead been made payable to their counsel, Philip P Kalodner. Accordingly, the DOE issued a Supplemental Order directing that the Applicants' refund checks approved in the *Christian Haaland* decision be made payable to Mr. Kalodner.

Northeast Petroleum Industries, Inc./ Chevron U.S.A., Inc., 8/1/89, RF264-14

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Northeast Petroleum Industries, Inc. Chevron U.S.A., Inc. submitted information indicating the volume of its purchases of motor gasoline from Northeast and elected to limit its claim to the $5,000 small claims threshold. The total refund approved in this Decision is $8,938, representing $5,000 in principal and $3,938 in accrued interest.

Pacer Oil Company of Florida, Inc./ Highway Oil, Inc., 8/4/89, RF218-02

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline covered by a Consent Order that the DOE entered into with Pacer Oil Company of Florida, Inc. Highway Oil, Inc, submitted information indicating the volume of its purchases of motor gasoline from Pacer and elected to limit its claim to the $5,000 small claims threshold. The total refund approved in this Decision is $7,670, representing $5,000 in principal and $2,670 in accrued interest. However, DOE directed that the refund amount of $7,670 should be held in a separate interest-bearing escrow account on behalf of Highway Oil pending the outcome of an enforcement proceeding involving the firm which is currently before the Office of Hearings and Appeals.

Pacific Steamship Navigation Co., 8/1/ 89, RF272-10502

Pacific Steamship Navigation Co. (Pacific) filed an Application for Refund from the crude oil overcharge monies currently available for disbursement under 10 CFR 205, subpart V In its Application, Pacific stated that it is a foreign flagship carrier, operating ocean-going vessels which transport cargo in foreign commerce. Pacific sought a refund with respect to 33,592,107 gallons of bunker fuel consumed by the firm's vessels for purposes of propulsion, all of which was purchased in the Panama Canal Zone. In considering Pacific's Application for Refund, the DOE determined on the basis of the decision in *Christian Haaland A/S,* 19 DOE ¶_____ (July 21, 1989), that ocean carriers are not entitled to receive refunds with respect to purchases made in the Panama Canal Zone since these purchases were not subject to price controls. Accordingly, Pacific's Application for Refund was denied.

Ron Loytercamp et al., 8/2/89, RF272-4498 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine 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 activities. Each applicant determined its volume claim either by utilizing actual purchase records from the crude oil price control period or by estimating its petroleum consumption during that period. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $10,487

Shell Oil Company/Carl Robinson, Jr. et al., 8/2/89, RF315-5202 et al.

The DOE issued a Decision and Order granting 92 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $78,510 ($66,763 principal plus $11,747 interest).

Upshur-Rural Electric Co-op Corp., 8/4/ 89, RF272-7125

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Upshur-Rural Electric Co-op Corp. (Upshur) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Upshur is an electric distribution cooperative which used the petroleum products to operate its fleet of vehicles. Upshur determined its volume claims by utilizing actual purchase records from the crude oil price control period. Upshur was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The refund granted in this Decision is $438.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applicants	Total refund
Arganbright Farms *et al.*	RF272-48001	8-2-89	40	$21,065
Barton W. Lowe *et al.*	RF272-49501	8-4-89	40	21,666
Bay Island Drainage Dist. *et al.*	RF272-39002	8-3-89	68	86,543
Buffalo Goodwill Industries *et al.*	RF272-53001	8-3-89	44	19,698
Cazenovia Central School *et al.*	RF272-61500	8-3-89	83	50,060
City of Graham *et al.*	RF272-60002	8-4-89	103	63,804
Cord Meyer Development *et al.*	RF272-56504	8-3-89	70	42,117
Don Zimbleman *et al.*	RF272-51002	8-2-89	14	6,270
E.E. Guthrie *et al.*	RF272-55012	8-2-89	47	28,174
Elk Mound Area School District *et al.*	RF272-45005	8-4-89	52	26,454
Faulkton I.S.D. 24-2 *et al.*	RF272-43505	8-1-89	45	23,511
Forest Carpenter *et al.*	RF272-46043	8-4-89	11	20
Hamilton Co-op Apartments *et al.*	RF272-49005	8-3-89	35	21,152
Holy Cross Electric Association *et al.*	RF272-58001	8-3-89	57	32,273
Horchem and Sons *et al.*	RF272-44039	8-4-89	54	23,475
Houghton Chemical Co. *et al.*	RF272-61000	8-3-89	54	34,508
James C. Ray *et al.*	RF272-44500	8-1-89	36	16,915
Norwalk—La Miranda U.S.D. *et al.*	RF272-47503	8-1-89	43	22,666
Patrick J. Maloney *et al.*	RF272-52016	8-4-89	33	18,823
Peter Brega *et al.*	RF272-51516	8-2-89	43	24,519
Russell Dixon *et al.*	RF272-38005	8-1-89	19	17,925
San Jose Unified School Dist. *et al.*	RF272-53504	8-2-89	46	32,932
Shanks Farms, Inc. *et al.*	RF272-59001	8-2-89	49	31,033
Sheepshead Terrace Co-op *et al.*	RF272-54542	8-4-89	47	29,222
Standley Farms *et al.*	RF272-55504	8-4-89	55	33,748
Swanberg Twins, Inc. *et al.*	RF272-63502	8-4-89	60	36,639
Skolness, Inc. *et al.*	RF272-54029	8-1-89	53	31,721
Wahoo, Inc. *et al.*	RF272-56009	8-3-89	64	33,487
Wayne Sparks *et al.*	RF272-42514	8-1-89	50	25,731
West-Cal Construction *et al.*	RF272-60503	8-4-89	52	32,224
William W. Rowe *et al.*	RF272-59515	8-2-89	53	34,040
Wyoming County Community Hospital *et al.*	RF272-43020	8-4-89	48	26,306

Dismissals

Name	Case No.
Armstrong Oil Co	RF313-167
Bellemeade Spur	RF309-1354
Bonnett's Exxon	RE307-9154
	KRO-0580
	KRZ-0580
	KRO-0590
	KRD-0590
	KRH-0590
	KRZ-0590
Clark Oil & Refining Corp	KRD-0591
Apex Oil Company	KRO-0600
Novelly Oil Company	KRZ-0600
Goldstein Oil Company	KRO-0610
Apex Holding Company	KRZ-0610
Jacksonville Electric Authority	RC272-61
Towne Mall Esso	RF307-8698

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, SW 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.

September 20, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

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Issuance of Decisions and Orders During the Week of August 7 Through August 11, 1989

During the week of August 7 through August 11, 1989 the decisions and orders summarized below were issued with respect to 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.

Remedial Order

The Crude Company, 8/7/89, KRO-0440

The Crude Company (TCC) objected to a Proposed Remedial Order (PRO) issued to it on January 9, 1987 by the Economic Regulatory Administration (ERA). In the PRO, the ERA alleged that TCC unlawfully received excess revenues by reselling crude oil at a price that exceeded its maximum lawful selling price (MLSP) and permissible average markup. Based on the arguments presented by the firm in this proceeding, the DOE determined that the ERA failed to follow the appropriate regulations in establishing TCC's MLSP in two regards. First, the ERA incorrectly selected the Permian Corporation (Permian) as TCC's nearest comparable outlet. The DOE determined that, due to the wide disparity in the business operations of TCC and Permian, Permian could not be considered comparable to TCC. Second, the DOE stated that the ERA erroneously calculated TCC's base period sales price by failing to rely on the prices charged by TCC's nearest comparable outlet, and instead setting the firm's base price at the price TCC

charged for crude oil in its first sales transaction. Since the DOE determined that the ERA failed to calculate TCC's MLSP in accordance with the appropriate regulations, it could not use that MLSP as a basis for calculating the firm's alleged overcharges. Accordingly, the PRO was dismissed.

Request For Exception

Range Oil Co., 8/10/89, KEE-0170

Range Oil Co. filed an Application for Exception from the requirement to file Form EIA-83 with the DOE's Energy Information Agency. In considering the request, the DOE found that the firm had failed to establish its claims that it did not have the necessary staff to complete the form and that hiring outside consultants in order to comply would be burdensome. Accordingly, exception relief was denied.

Refund Applications

A.S. Csaky Communications, 8/7/89, RC272-60

The DOE issued a Supplemental Order rescinding the refund granted to A.S. Csaky Communications in *Ben L. Berry, et al.*, 19 DOE ¶ ____, Case Nos. RF272-74201, *et al.*, (July 14, 1989). The amount of the refund rescinded was $12.

Atlantic Richfield Company/B & R Service, et al., 8/8/89, RF304-4247 et al.

The DOE issued a Decision and Order concerning forty-four Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $68,696 ($52,173 in principal and $16,423 in interest).

Bizzack Brothers Construction Corp., 8/11/89, RF272-33336, RD272-33336

The DOE granted a refund to Bizzack Brothers Construction Corp. (Bizzack), a purchaser of refined petroleum products during the period August 19, 1973 through January 27 1981. A group of thirty states and two territories of the United States (the States) filed a consolidated pleading objecting to and commenting on Bizzack's application. The only evidence submitted by the States was an affidavit by an economist stating that virtually every industry was able to pass through some cost to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the States filed a Motion for Discovery which was denied. Accordingly, Bizzack was granted a refund of $16,817

City of Austin Electric Utility Department, 8/11/89, RF272-6695

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the City of Austin Electric Utility Department (Austin), a regulated public utility, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Philip P Kalodner (Kalodner), Counsel for Utilities, Transporters, and Manufacturers, filed an Objection to Austin's Application for Refund. The DOE determined that Kalodner's Objection was insufficient to rebut the presumption of end-user injury. Austin certified that it will notify its appropriate state regulatory agency of any refund received in the crude oil proceedings and that it will pass through the amount of any refund received to its customers. The refund granted to Austin is $24,004. Austin will be eligible for additional refunds as additional crude oil overcharge funds become available.

Crown-Trygg Corporation et al., 8/8/89, RF272-18874 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 30 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $47,980. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Diamond Gas & Fuel Company, 8/7/89, RR272-35

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Diamond Gas and Fuel Company in the Subpart V Crude Oil proceeding. Diamond requested that the DOE reconsider its Decision of May 4, 1989, in which the DOE denied Diamond a refund because Diamond had failed to demonstrate injury as is required for resellers in the crude oil refund proceedings. The DOE determined that Diamond had not introduced any new evidence of injury from crude oil overcharges. Therefore, Diamond's Motion for Reconsideration was denied.

Eastern Fine Paper, Inc., 8/10/89, RF 272-16591, RD272-16591

The DOE issued a Decision and Order concerning an application for refund filed by Eastern Fine Paper, Inc. (Eastern), a manufacturer of paper products, in the Subpart V crude oil proceeding. A group of States and Territories (the States) objected to Eastern's application on the grounds that certain studies of the pulp and paper industry may indicate that Eastern was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this evidence was sufficient to rebut the end-user presumption relied upon by Eastern and therefore the DOE should deny Eastern's application. The DOE granted Eastern's refund application, determining that the States had failed to show that Eastern itself had passed through increased fuel costs. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut Eastern's presumption of injury.

Exxon Corporation/Edith M. Wolfe, et al., 8/9/89, RF307-7042 et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $19,510 ($16,143 principal plus $3,367 interest).

Exxon Corporation/J and M Service, Inc., 8/10/89, RF307-10043

The DOE rescinded one refund granted in *Exxon Corp./Murphy's Exxon*, 19 DOE ¶xx, Case Nos. RF307-812 *et al.* (July 26, 1989). In that Decision, the DOE granted J and M Service a refund based upon its purchases from Exxon. However, it was discovered that this was a duplicate of a refund granted to J and M in *Exxon Corp./Leonard H. Arridson*, 19 DOE ¶ 85,042 (1989). Accordingly, the DOE rescinded the duplicate refund.

Exxon Corporation/Taylor Oil Company, Floyd A. Labarre, 8/7/89, RF3097-5771, RF307-5871

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. The applicants, wholesale distributors of Exxon products, each had an allocable share in

excess of $5,000. Each applicant elected to receive as its refund the larger of $5,000 or 40% of its allocable share up to $50,000. Each applicant was granted a refund of $5,000, plus interest. The sum of the refunds granted in this Decision is $12,084 ($10,000 in principal and $2,084 in interest).

Gulf Oil Corporation/Attleboro & Plainville Coal Company, Inc., et al., 8/11/89, RF300-8976 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $65,925.

Gulf Oil Corporation/Bayside Fuel Oil Depot Corp., et al., 8/9/89, RF300-923 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $89,833.

Gulf Oil Corporation/Columbia Road Gulf Inc., Pembroke Gulf, 8/7/89; RF300-8260, RF300-8261

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Columbia Road Gulf Inc., and Pembroke Gulf. Because the firms are commonly owned or run, and because their combined allocable share exceeds $5,000, it is appropriate to consider them together when applying the presumptions of injury. The refund granted in this Decision, which includes both principal and interest, is $6,641.

Gulf Oil Corporation/Dalee Oil Company, 8/9/89, RF300-5020

The DOE issued a Decision and Order concerning an Application For Refund submitted in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The total refund granted in this Decision is $17,575.

Gulf Oil Corporation/F.&M. Canterbury, Inc., 8/9/89, RF300-10854

The DOE granted two refunds to F.&M. Canterbury, Inc. *See Gulf Oil Corporation/James D. Pressly, et al.*, 18 DOE ¶ 85,291 (1988); *Gulf Oil Corporation/J.D. Melton Gulf Station, et al.*, 18 DOE ¶ 85,312 (1988). Because of ownership changes, the DOE issued a Supplemental Order rescinding the $2,376 refund granted to F.&M. Canterbury, Inc. in *Gulf Oil Corporation/J.D. Melton Gulf Station.*

Gulf Oil Corporation/Floyd Oil, Inc., et al., 8/11/89, RF300-628 et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $13,984.

Gulf Oil Corporation/McAdory Oil Company, Woodford Oil Company, James M. Walker, Jr., 8/11/89, RF300-5321, RF300-5481, RF300-5485

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each of the applicants is a consignee and reseller of Gulf refined products and each elected to base its refund on the appropriate presumptions of injury. Each applicant's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, the applicants were not required to provide a detailed demonstration that they absorbed Gulf's alleged overcharges. The sum of the refunds granted in this Decision is $9,605.

Gulf Oil Corporation/Sheridan Gulf, 8-7-89, RF300-10859

The DOE issued a Supplemental Order regarding Sheridan Gulf, an applicant who received a refund in *Gulf Oil Corporation/Alexander's Gulf Service Station*, 18 DOE ¶ 85,895 (1989). The OHA was unable to locate the applicant, and thus rescinded the $1,435 refund.

Gulf Oil Corporation/W.A. Hill & Sons, Inc., 8/11/89, RF300-5154

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision is $6,641.

Harris Marine & Tire, et al., 8/9/89, RF272-42092 et al.

The DOE issued a Decision and Order, denying 19 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer of refined petroleum products during the period August 19, 1973 through January 27 1981. Because the Applicants did not demonstrate that they were injured due to the crude oil overcharges, their Applications for Refund were denied.

James River Corporation, 8/11/89, RF272-11244, RD272-11244

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to James River Corporation (James River), a manufacturer of pulp, paper and plastic products. In reaching its determination, the DOE rejected the objections to the applicant's claim submitted by a group of States and denied the States' Motions for Discovery. Specifically, the DOE restated its position that industry-wide data in general is insufficient to rebut the presumption that an end-user outside of the petroleum industry was injured by crude oil overcharges. The DOE also determined that the States' showing of sustained growth and profitability of a particular indusry or firm does not rebut the end-user presumption. The total refund granted to James River was $1,188,372.

Jeddo-Highland Coal Co., Empire Iron Mining Partnership, 8/9/89, RF272-4104, RF272-5179, RD272-4104, RD272-5179

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Jeddo-Highland Coal Co. and Empire Iron Mining Partnership based on their respective Partnership purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. Both applicants used the products in their mining activities, and both determined their claims by consulting actual purchase records. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A consortium of 29 states and 2 territories filed Statements of Objections and Motions for Discovery with respect to each Applicant. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end users. Therefore, the Applications for Refund were granted and the Motions for Discovery were denied. The sum of the refunds granted in this Decision is $39,758.

Murphy Oil Corporation/Gene's Spur Service, et al., 8/9/88, RF309-1077 et al.

The DOE issued a Decision and Order granting 13 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was

granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $13,609 ($11,468 principal plus $2,141 interest).

Oil Industry Lessors of Louisiana, Inc., et al., 8/9/89, RF272-56430 et al.

The DOE issued a Decision and Order denying five Applications for Refund filed in the Subpart V crude oil refund proceedings. Each of the five Applicants was engaged in the business of renting and/or leasing motorized vehicles during the period August 19, 1973 through January 27 1981. The OHA has consistently considered vehicle renting and leasing companies to be retailers for the purposes of OHA-administered refund proceedings. Accordingly, these five Applicants were considered retailers of refined petroleum products. Because the Applicants did not demonstrate that they were injured due to the crude oil overcharges, their Applications for Refund were denied.

Palo Pinto Oil & Gas/Belridge Oil Co./National Helium Corp./Coline Gasoline Corp./Standard Oil Co. (Indiana)/Vermont, 8/10/89, RQ5-515 et al.

The DOE issued a Decision and Order granting the State of Vermont permission to use monies from the Palo Pinto Oil & Gas, Belridge Oil Co., National Helium Corp., Coline Gasoline Corp., and Standard Oil Co. (Indiana) second-stage refund proceedings for two programs. The first, Seniors Helping Seniors, is a program to train volunteers to provide senior citizens with information on, and assistance with, home energy efficiency measures. The other program involved the production of a booklet of information on energy conservation for owners of mobile homes. The OHA determined that the two programs would provide restitution to injured consumers of petroleum products and authorized the disbursal of $86,541 ($49,300 in principal plus $37,241 in interest) to Vermont.

Shell Oil Company/Fort Schuyler Shell, et al., 8/11/89, RF315-2237 et al.

The DOE issued a Decision and Order granting 105 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $81,641 ($69,429 principal plus $12,212 interest).

Shell Oil Company/Whittemore's Shell Service, et al., 8/11/89, RF315-5689 et al.

The DOE issued a Decision and Order granting 134 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $107,630 ($91,530 principal plus $16,100 interest).

State Escrow Distribution, 8/7/89, RF302-7

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $102,000,000.00 to the State Governments. Those funds had been set aside for distribution to the States in *Texaco Inc.*, 19 DOE ¶____, No. KFX-0066 (July 31, 1989), as well as *Hood Goldsberry*, 18 DOE ¶ 85,902 (1989). The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applicants	Total refund
American National Corp. *et al*	RF272-64516	8/10/89	55	$32,991
Anjo's Motor Service, Inc. *et al*	RF272-74501	8/10/89	46	28,244
Central New York Redevelopment Co. *et al*	RF272-73513	8/8/89	50	28,940
City Van & Storage Co., Inc. *et al*	RF272-65006	8/10/89	49	30,718
Core Ltd. *et al*	RF272-66001	8/11/89	53	32,255
David Johnson *et al*	RF272-70518	8/11/89	40	25,002
Delta Farms *et al*	RF272-72509	8/11/89	56	23,074
Ernest Construction Co. *et al*	RF272-50501	8/7/89	46	25,958
Glen H. Lewton *et al*	RF272-70004	8/11/89	36	19,718
Glenwood C. Debolt *et al*	RF272-68000	8/11/89	136	14,902
Gould Academy *et al*	RF272-64002	8/7/89	77	46,536
H.G. Page & Sons *et al*	RF272-66511	8/11/89	61	35,902
James R. Williamson *et al*	RF272-75200	8/7/89	114	14,390
Joslaw Real Estate *et al*	RF272-48513	8/8/89	77	44,939
Kenneth Collins *et al*	RF272-69505	8/11/89	57	39,135
Lynchburg Ready Mix Concrete *et al*	RF272-57513	8/7/89	53	29,002
Lynwood Klaver *et al*	RF272-31006	8/7/89	17	39,789
M. Cohen Iron & Metal Co. *et al*	RF272-67002	8/10/89	47	29,909
Maryland Leasing Co. *et al*	RF272-63008	8/8/89	67	38,770
Midas International Corp. *et al*	RF272-62020	8/7/89	50	29,973
Nebtex Land Co. *et al*	RF272-72013	8/11/89	37	21,974
Paul & Marie Jensen *et al*	RF272-73011	8/10/89	47	24,544
Paul Johnson, Inc. *et al*	RF272-69001	8/9/89	42	26,167
Pioneer Steel Ball Co. *et al*	RF272-45506	8/8/89	29	15,875
Robert J. Faivre *et al*	RF272-71506	8/9/89	57	31,611
Rockledge-Hartsdale Assoc. *et al*	RF272-50021	8/7/89	41	24,908
Tooele County Board of Education *et al*	RF272-42023	8/7/89	43	26,333
Torrey Wood & Son, Inc. *et al*	RF272-71026	8/10/89	44	24,981
Urbana School District #116 *et al*	RF272-68506	8/10/89	36	23,859
William Gore & John Maxwell *et al*	RF272-46511	8/8/89	9	13

Dismissals

The following submissions were dismissed:

Name	Case No.
Abernathy Exxon	RF307-64
Banner Exxon (5187)	RF307-9987
David C. Walker	RF304-4948
Forest Park Arco	RF304-9383
Fowler Oil Company	RF307-7148
Gutshall's Exxon	RF307-9939
Harmon & Sanders	RF307-9900
J.P Stevens & Co., Inc	RF307-9707
James S. Rother	RF307-9985
Joe Trafficano	RF307-9928
L.A. Harris	RF307-6382
Los Olivos Arco	RF304-9188
Manifold Oil Company	RF304-7146
Monticello Energy Corp	RF304-7509
Norb's Arco	RF304-8053
Norman and Bob's Esso North 5494.	RF307-9938
Orazzi Service Station	RF304-4625
Paxville Road Exxon	RF307-8006
Penns Grove Exxon	RF307-840
Raymon L. Mobley	RF307-9901
Rochelle's Exxon	RF307-8716
Rudat's Variety Store	RF304-4650
Stanley Jajko	RF304-4949
Steve Hajas	RF304-4953
T. Frieze Company, Inc	RF304-1746
Texas Solvents & Chemical Co	RF307-5906
	RF307-5907
Vitro Corporation	RF307-9984
Walls Exxon	RF307-9142
Weyerhaeuser Paper Co	RF272-30473
Zimmerman's Exxon Service	RF307-8041

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 SW., 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.

Dated: September 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-23195 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Meeting Postponement

An open meeting of the National Petroleum Council which was scheduled to be held on Tuesday, October 10, 1989, at 9:00 a.m., the Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, DC, has been postponed. This meeting was announced in the **Federal Register**, Vol. 54, No. 182 on Thursday, September 21, 1989 54 FR 38892.

J. Robert Franklin,

Deputy Advisory Committee Management Office.

[FR Doc. 89-23375 Filed 9-29-89; 11:16 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3653-3]

Rogue River, OR; Ocean Dredged Material Disposal Site; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA) Region 10.

ACTION: Notice of Intent to prepare an environmental impact statement (EIS) on the final designation of an interim Ocean Dredged Material Disposal Site (ODMDS) located off the Rogue River, Oregon.

PURPOSE: The U.S. EPA, Region 10, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), and with the cooperation of the U.S. Army Corps of Engineers, Portland District, will prepare a draft EIS on the designation of an ODMDS off the Rogue River, Oregon. The EIS will provide the information necessary to designate an ODMDS. This Notice of Intent is issued pursuant to Section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1977 and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION CONTACT: Mr. John Malek, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue WD-138, Seattle, Washington, 98101-3188, Phone (206) 442-1286. Questions regarding disposal site studies may also be directed to: Mr. Mark Siipola, U.S. Army Engineer District, Planning Division, P.O. Box 2946, Portland, Oregon, 97208-2946, Phone (503) 326-6463.

SUMMARY: The Rogue River navigation channel requires periodic maintenance dredging to ensure safe navigation. Disposal of dredged sediments at an interim designated ODMDS has occurred in the past. Studies to support final site designation were conducted by the Corps of Engineers, Portland District, and coordinated with EPA, Region 10. Designation of a final ODMDS site at this location provides a feasible and environmentally acceptable disposal site for present and anticipated future maintenance work in the area.

Need for Action: The Corps of Engineers, Portland District, has requested that EPA designate an ODMDS offshore from the Rogue River, Oregon, for disposal of sediments dredged to maintain the federally-authorized navigation project and for disposal of materials during other actions authorized in accordance with Section 103 of the MPRSA. EPA has voluntarily committed to prepare EISs in conjunction with ocean dumping site designations. This EIS will provide the necessary information to evaluate alternatives and designate a preferred ODMDS.

Alternatives

1. No action: The no action alternative is defined as not designating an ocean disposal site and termination of ocean disposal for this area.

2. Alternative disposal options in the nearshore, mid-shelf, and shelf break region of the Pacific Ocean, and on the uplands.

Scoping: A scoping meeting is not contemplated. Scoping will be accomplished with affected federal, state, and local agencies, and with interested parties by correspondence, telephone contact, etc.

Estimated Date of Release: The draft EIS will be available in Autumn 1989.

Responsible Official: Robie G. Russell, Regional Administrator, Region 10.

Dated: September 20, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-23166 Filed 9-29-89; 8:45 am]

BILLING CODE 6560-50-M

[ECAO-CD-86-073 (FRL-3653-4)]

Draft Criteria Document for Carbon Monoxide—Health Effects Chapters

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a peer-review workshop to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA s Office of Health and Environmental Assessment to facilitate preparation of an external review draft of an Air Quality Criteria Document for Carbon Monoxide. The conference site is the Washington Duke Inn, Durham, North Carolina.

DATES: The workshop will be held on October 16 and 17 1989, from 8:30 a.m. to 5:00 p.m. and on October 18 from 8:30

a.m. to 12:00 p.m. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: James A. Raub, Project Manager, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4157 or FTS 629-4157

SUPPLEMENTARY INFORMATION: Periodic revisions of the air quality criteria documents are required under the Clean Air Act to incorporate relevant new information that may either support or suggest reevaluation of existing national ambient air quality standards. EPA is currently revising the criteria document for carbon monoxide as announced in the **Federal Register** on July 22, 1987 (52 FR 27580).

ECAO is holding this workshop to review certain draft chapters. These draft chapters cover population exposure, pharmacokinetics and mechanisms of action, health effects of CO alone or combined with other environmental factors, and population groups potentially at risk from exposure to carbon monoxide. Copies of the workshop draft will be made available to the public at the meeting, and members of the public will have an opportunity to make brief oral statements. The draft chapters subsequently will be revised and released as part of an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of an external review draft. The public comment period for the extenal review draft will be announced in a subsequent **Federal Register** notice.

Dated: September 22, 1989.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-23164 Filed 9-29-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3653-5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of Salina, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding the City of Salina, Kansas.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On September 13, 1989, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-3853, the following Complaint: In the Matter of the City of Salina, Kansas, EPA Docket No. VII 89-W-007 The Complaint proposes a penalty of $55,000, for failure to implement and enforce the City's pretreatment program pursuant to the terms of Special Condition D of the City's National Pollutant Discharge Elimination System (NPDES) Permit No. KS-00038474.

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will open for public inspection during normal business hours. All information submitted by the City of Salina, Kansas is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Jean Crank at (913) 236-2808.

Dated: September 13, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89-23161 Filed 9-29-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3653-6]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of Topeka, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the City of Topeka, KS.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On September 13, 1989, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2853, the following Complaint: In the Matter of the City of Topeka, Kansas, EPA Docket No. VII 89-W-0012. The Complaint proposes a penalty of $53,000, for failure to implement and enforce the City's pretreatment program pursuant to the terms Special Condition D of the City's

National Pollutant Discharge Elimination System (NPDES) Permit No. KS-0042722.

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Topeka, Kansas is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Jean Crank at (913) 236-2808.

Dated: September 13, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89-23162 Filed 9-29-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3655-1]

Approval of Washington's National Pollutant Discharge Elimination System (NPDES) General Permits Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of Washington's National Pollutant Discharge Elimination System General Permits Program.

SUMMARY: On September 26, 1989, the Regional Administrator of the Environmental Protection Agency, Region 10, approved the State of Washington's NPDES General Permits Program. This action authorizes state issuance of general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Ms. Andi Manzo, Water Permits Section, WD-134, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits. State authority to issue general permits will reduce the backlog of unissued NPDES permits and reduce the administrative burden and cost of issuing individual permits.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

On November 14, 1973, Washington received authority to administer the NPDES program under section 402 of the Clean Water Act. Their program, as previously approved, did not include provisions for the issuance of general permits. The state's final application for authority to issue general permits was received November 30, 1988. The submittal included a letter from the state asking for approval, a copy of the Memorandum of Agreement (MOA), a supplementary NPDES program description, and copies of relevant state statutes and regulations. The submittal also included a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the state has adequate legal authority to administer the general permits program.

EPA determined that the State's application was complete and, as required under 40 CFR 123.62, issued a 30-day public notice of the State's request for authority to issue general permits. Three comment letters were received during the comment period. Each letter expressed support for delegation of the General Permits Program to Washington.

EPA concluded, upon review of the State's application and all public comments, that the State has legal authority to administer the general permits program. In addition, based upon Washington's program description and upon the State's experience in administering an approved NPDES program, EPA has concluded that the State has the necessary resources and procedures to adminiter the general permits program.

The following are responses to major comments.

Response to Comments

1. *Comment:* The Memorandum of Agreement (MOA) should clarify that any general permits issued by Ecology in the Puget Sound Basin will comply with requirements of the 1989 Puget Sound Water Quality Management Plan (PSWQMP) and the 1989 State/EPA Agreement (SEA).

Response: The MOA is a binding, long-term agreement between EPA Region 10 and the Washington Department of Ecology. The MOA is intended to outline broad, long-term commitments between these two agencies related to Ecology's implementation of the NPDES General Permits Program. In assuming this program, Ecology will be required to carry out Federal law as it pertains to the issuance and enforcement of general permits. It is beyond the scope of this Agreement to address state commitments to a third agency.

According to 40 CFR 123.24(c), the MOA should be consistent with the SEA; however, the SEA may not override the MOA. Page 2 of the MOA addresses this issue by stating that "all specific state commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan/SEA process.

2. *Comment:* Effective July 1, 1989, WAC 173-223 (permit fees) will be changed to WAC 173-224.

Response: The reference has been changed accordingly.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

State	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
Arkansas	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89
Colorado	03/27/75		

State	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Connecticut	09/26/73	01/09/89	06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	08/12/83
Illinois	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	08/28/85	
Kentucky	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri	10/30/74	06/26/79	06/03/81
Montana	06/10/74	06/23/81	
Nebraska	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	08/31/78	
New Jersey	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
Rhode Island	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77		08/10/83
Utah	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82
Virgin Islands	06/30/76		
Virginia	03/31/75	02/09/82	04/14/89
Washington	11/14/73		09/30/86
West Virginia	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	

Indicates State approved to issue General Permits.

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Approval of the Washington State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any municipal or industrial category. Program approval merely provides a simplified administrative process. Because this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not necessary.

Dated: September 26, 1989.

Robie G. Russell,

Regional Administrator, Region 10.

[FR Doc. 89-23300 Filed 9-29-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.. 224-200078-004

Title: Maryland Port Administration Lease Agreement.

Parties:

Maryland Port Administration (MPA).

Clark Maryland Terminals, Inc. (CMTI).

Synopsis: The Agreement modifies Agreement No. 224-200078 for the use of portions of the Dundalk Marine Terminal to reflect the division of the overall leased premises into two Parcels, A" and "B" Parcel "A shall be used for cargo for all of CMTI's customers, except for customers to which Parcel "B" shall be specially dedicated. Parcel "B" shall be used exclusively for cargo of Orient Overseas Container Line (UK) Ltd. ("OOCL-UK") and by Orient Overseas Container Line, Inc. ("OOCLI") and any other carriers that are party to any cooperative working, sailing, or space charter agreements with OOCL-UK or OOCLI providing for use of the same terminals facilities and associated stevedoring services. The Agreement also replaces Agreement No. 224-200253 between MPA and CMTI.

By Order of the Federal Maritime Commission.

Dated: September 27 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-23156 Filed 9-29-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Elmwood Bancshares, Inc., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 19, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Elmwood Bancshares, Inc., Elmwood, Illinois; to acquire Warren E. Stenwall, d/b/a Stenwall Insurance Agency, Elmwood, Illinois and thereby engage in general insurance agency activities in Elmwood, Illinois, a town whose population does not exceed 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23123 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

Fifth Third Bancorp, et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices:" Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to merge with First Ohio Bancshares, Inc., Toledo, Ohio, and thereby indirectly acquire First National Bank of Toledo, Toledo, Ohio, and The Home Banking Company, Gibsonburg, Ohio.

In connection with this application, Applicant proposes to acquire First Ohio Life Insurance Company, Toledo, Ohio, and thereby engage in providing credit insurance pursuant to § 225.25(b)(8)(i); and First Ohio Investment Services, Inc., Toledo, Ohio, and thereby engage in providing portfolio management advice and services pursuant to § 225.25(b)(4) of the Board's Regulation Y

B. **Federal Reserve Bank of Richmond** (Lloyd W Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. MNC Financial, Inc., Baltimore, Maryland; to merge with Equitable Bancorporation, Baltimore, Maryland, and thereby indirectly acquire Equitable Bank, N.A., Baltimore, Maryland, and Equitable Bank of Delaware, Dover, Delaware.

In connection with this application, Applicant proposes to acquire E.B. Mortgage Corporation, Towson, Maryland, and thereby engage in making, acquiring, and servicing mortgage loans for its own account and the accounts of others pursuant to § 225.25(b)(1); Equiban Life Insurance Company, and thereby engage in underwriting, as reinsurer, credit life, accident and health insurance and involuntary unemployment insurance in connection with extensions of credit by Equitable Bancorporation's subsidiaries, including Equitable Bank, N.A., Equitable Bank of Delaware, and E.B. Mortgage Corporation pursuant to § 225.25(b)(8); Fayette Insurance Corporation, Baltimore, Maryland, and thereby engage in acting as agent or broker for the sale of credit life, accident and health insurance solely in connection with extensions of credit by Equitable Bancorporation's subsidiaries, including Equitable Bank, N.A., Equitable Bank of Delaware, and E.B. Mortgage Corporation pursuant to § 225.25(b)(8); and Internet, Inc., Reston, Virginia, and thereby engage in providing data processing switching services for automatic teller machine and point of sale networks. Internet Inc. also provides and maintains data processing software to banks and other

financial institutions for the operation of this hardware, and maintain ATM and POS data bases for some banks and financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23124 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

Fuji Bank, Limited, et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Fuji Bank, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary, Kleinwort Benson Government Securities, Inc., in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. The Plains Corporation, Lubbock, Texas; to engage *de novo* through its subsidiary, Plains Financial Corporation, Lubbock, Texas, a *de novo* corporation, in originating loans for itself or for others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in West Texas.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23125 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorp, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 18, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Peoples Bancorp, Inc., Lebanon, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples National Bank of Lebanon, Lebanon, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Huntington Bancshares Incorporated, and Huntington Bancshares Michigan, Inc., Columbus, Ohio; to acquire 100 percent of the voting shares of First Macomb Bancorp, Inc., Mount Clemens, Michigan, and thereby indirectly acquire First Macomb Bank, Mount Clemens, Michigan.

C. **Federal Reserve Bank of Richmond** (Lloyd W Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. New East Bancorp, Raleigh, North Carolina; to acquire 100 percent of the voting shares of New East Bank of Elizabeth City, Elizabeth City, North Carolina, a *de novo* bank.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W Atlanta, Georgia 30303:

1. Bradford Bankshares, Inc., Starke, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Bradford County, Starke, Florida, *de novo* bank.

2. First Commerce Bancorp, Inc., Commerce, Georgia; to merge with Citizens Holding Company, Lexington, Georgia, and thereby indirectly acquire Citizens Banking Company, Lexington, Georgia.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Sterling Bancorp, Inc., Sterling, Illinois; to acquire 100 percent of the voting shares of Rock Falls Bancshares, Inc., Rock Falls, Illinois, and thereby indirectly acquire Rock Falls National Bank, Rock Falls, Illinois.

E. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. PBM Bancorp, Inc., Marion, Illinois; to merge with Rend Lake Bancorp, Inc., Marion, Illinois, and thereby indirectly acquire at least 80 percent of the voting

shares of Rend Lake Bank, Christopher, Illinois.

F **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lincoln Holding Company, Canton, South Dakota; to become a bank holding company by acquiring 80.4 percent of the voting shares of Farmers State Bank of Canton, Canton, South Dakota.

2. WRZ Bankshares, Inc., Plainview, Minnesota; to become a bank holding company by acquiring at least 80 percent of the voting shares of Peoples State Bank, Plainview, Minnesota.

G. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Farmers State Bankshares, Inc., Circleville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers State Bank of Circleville, Circleville, Kansas.

2. Mountain West Banking Corporation, Denver, Colorado; to acquire 100 percent of the voting shares of Citywide Bank of Thornton, Thornton, Colorado, and NBR Financial, Inc., Boulder, Colorado, and thereby indirectly acquire National Bank of the Rockies, Boulder, Colorado, and National Bank of the Rockies, Denver, Colorado.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23126 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

Stichting Amro, and Amsterdam-Rotterdam Bank N.V., Amsterdam, the Netherlands; Proposal To Engage in Securities Brokerage and Investment Advisory Services on a Separate and Combined Basis

Stichting Amro and Amsterdam-Rotterdam Bank N.V both of Amsterdam, the Netherlands, have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of the Board's Regulations Y (12 CFR 225.23(a)), to engage in a joint venture by increasing its ownership of the voting shares of DBI Holdings, Inc., New York, New York ("DBI Holdings"), from 5 percent to up to 66.3 percent.

DBI Holdings conducts its business through two wholly-owned subsidiaries, Discount Brokers International, Inc., New York, New York ("DBI London"). Applicants propose to conduct securities brokerage services through DBI London pursuant to section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9) and § 211.23 of the Board's Regulation K (12 CFR 211.23).

Applicants propose to engage in a joint venture through DBI whereby DBI will combine its business with Henry Kreiger & Co. to form Henry Kreiger/DBI, L.P New York, New York, and thereby to engage in the following activities:

(1) Securities brokerage pursuant to § 225.25(b)(15) of Regulation Y (12 CFR 225.25(b)(15));.

(2) Investment or financial advice as permitted by § 225.25(b)(4)(ii), (iii), (iv), and (v) of Regulaton Y (12 CFR 225.25(b)(4)(ii), (iii), (iv), and (v)); and

(3) Securities brokerage services in combination with investment advisory services to institutional and retail customers ("full-service brokerage").

Applicants propose to conduct these activities on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. Applicants have applied to conduct their full-service brokerage activities in accordance with the limitations set forth in previous Board Orders approving these activities for a number of bank holding companies. *See, e.g., Bankers Trust New York Company*, 74 Federal Reserve Bulletin 695 (1988); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988); and *The Bank of Nova Scotia*, 74 Federal Reserve Bulletin 249 (1988).

Applicants believe the proposed transactions will benefit the public by permitting Henry Kreiger/DBI, L.P to enter the market *de novo* as an investment advisor and by expanding the activities of DBI to U.S. customers. Applicants believe that the proposed transaction will result in increased convenience to customers and in increased efficiencies for Henry Kreiger/DBI, L.P

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 20, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23127 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9215]

Coca-Cola Bottling Company of the Southwest; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that Dr Pepper take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against the Coca-Cola Bottling Company of the Southwest in this proceeding.

DATE: Comments must be received on or before December 1, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James E. Elliott, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 72501, 214-767-5503.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying

at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order

In the matter of Coca-Cola Bottling Co. of the Southwest a corporation, and Dr Pepper/Seven-Up Companies, Inc. a corporation.

The Agreement herein, by and between the Dr Pepper/Seven-Up Companies, Inc. (hereinafter referred to as "Dr Pepper"), by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission (hereinafter referred to as the "Commission"), is entered into in accordance with the Commission s. Rules governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent Dr Pepper is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with principal offices at 8144 Walnut Hill Lane, Dallas, Texas 75231.

2. The Commission has issued and served upon Coca-Cola Bottling Company of the Southwest (hereinafter referred to as "CCSW"), and Dr Pepper a complaint charging them with violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Dr Pepper has filed an answer to the complaint denying said charges.

3. Dr Pepper admits all jurisdictional, facts set forth in the Commission's complaint in this proceeding.

4. Dr Pepper waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become a part of the public record of this proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days for the receipt and consideration of comments or views from any interested person and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Dr Pepper, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding with respect to respondent Dr Pepper.

6. This Agreement is for settlement purposes only and does not constitute an admission by Dr Pepper that the law has been violated as alleged in the complaint issued by the Commission.

7 This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to Dr Pepper, (1) issue its decision containing the following order in disposition of the proceeding with respect to respondent Dr Pepper, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to Dr Pepper's address as stated in this Agreement shall constitute service. Dr Pepper waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in this Agreement may be used to vary or to contradict the terms of the order.

8. Dr Pepper has read the complaint and the order contemplated hereby. Dr Pepper understands that once the order has been issued, Dr Pepper will be required to file one or more compliance reports showing that it has fully complied with the order. Dr Pepper further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I—Definitions

For purposes of this Order the following definitions shall apply:

A. "Dr Pepper" means Dr Pepper/Seven-Up Companies, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal place of business at 8144 Walnut Hill Lane, Dallas, Texas, and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns;

B. "CCSW" means Coca-Cola Bottling Company of the Southwest, a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal place of business at One Coca-Cola Plaza, San Antonio, Texas and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns;

C. Asset Purchase Agreement" means the Asset Purchase Agreement Between San Antonio Dr Pepper Bottling Company, Dr Pepper Company and Coca-Cola Bottling Company of the Southwest, dated as of August 28, 1984;

II

It is ordered That Dr Pepper shall take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against CCSW in this proceeding to the extent that it prohibits CCSW from retaining any assets or business conveyed to CCSW under the Asset Purchase Agreement or to the extent that it orders CCSW to cease and desist from bottling or distributing any products pursuant to the Asset Purchase Agreement.

III

It is further ordered That for a period of ten years following the date of this Order, for the purpose of determining compliance with this Order, upon written request of the Federal Trade Commission, the Director or any Assistant Director of the Bureau of Competition or the Director of the Dallas Regional Office of the Federal Trade Commission made to Dr Pepper at its principal offices and subject to any legally recognized privilege, Dr Pepper shall permit duly authorized representatives of the Federal Trade Commission, of the Bureau of Competition or of the Dallas Regional Office:

A. Reasonable access during the office hours of Dr Pepper, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, reports and other records and documents in Dr Pepper's possession or control that relate to any matter contained in this Order; and

B. An opportunity, subject to the reasonable convenience of Dr Pepper, to interview officers or employees of Dr Pepper, who may have counsel present, regarding such matters.

IV

It is further ordered That Dr Pepper shall cooperate in this proceeding by producing, at its own expense, information and documents in its possession, custody or control and individuals to provide deposition or hearing testimony as may be requested

by complaint counsel in connection with this proceeding.

V

It is further ordered That, while paragraph III of this Order is effective, Dr Pepper shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale, or acquisition resulting in th emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, or any other change in the corporation which may affect compliance with the obligations arising out of this Order.

VI

It is further ordered That, within sixty (60) days after service upon Dr Pepper of the Commission's final order against CCSW in this proceeding and at such other times as the Commission or its staff may request, Dr Pepper shall file with the Commission a verified written report setting forth in detail the manner and form in which Dr Pepper has complied with this Order.

Signed this 4th day of August 1989.

Analysis of Proposed Consent Order to Aid Public Comment

[FTC Docket No. 9215]

In the Matter of; Coca-Cola Bottling Company of the Southwest

The Federal Trade Commission ("Commission") has provisionally accepted an agreement containing a proposed consent order with Dr Pepper/7-Up Companies, Inc. ("Dr Pepper") in partial settlement of a Complaint challenging the acqusition of assets and business of the then San Antonio Dr Pepper Bottling Company by Coca-Cola Bottling Company of the Southwest ("CCSW"). The Commission's Complaint against CCSW is still pending and is currently in adjudication in an administrative proceeding.

The proposed consent order with Dr Pepper has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint, which was issued on July 29, 1988, challenges the acquisition and the acquisition agreement among CCSW, San Antonio Dr Pepper Bottling Company and Dr Pepper as violations of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint alleges that, at the time of the acquisition, CCSW and San Antonio Dr Pepper Bottling Company were substantial, direct competitors in a concentrated market, namely, a market that is no broader than all carbonated soft drinks sold in a ten county area which includes San Antonio, Texas. The Complaint also alleges that entry into the relevant market is difficult. The Complaint further alleges that the acquisition and the acquisition agreement have the effect of reducing competition in the relevant market; eliminating San Antonio Dr Pepper Bottling Company as a significant competitor in the relevant market; significantly increasing the levels of concentration in the relevant market; significantly enhancing the likelihood of collusion or interdependent coordination among remaining firms in the relevant market; significantly raising the costs of production, distribution and sale by other firms in the relevant market; significantly lessening competition between Coca-Cola brands and both Dr Pepper and Canada Dry brands; and significantly enhancing the likelihood of dominant firm behavior to increase price in the relevant market.

The proposed consent order with Dr Pepper, accepted subject to final approval, preserves the Commission's remedial options with respect to the on-going administrative proceeding. The proposed consent order provides that Dr. Pepper shall take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against CCSW in this proceeding to the extent that such relief prohibits CCSW from retaining any assets or business conveyed to CCSW under the acquisition agreement or to the extent that CCSW is ordered to cease and desist from bottling or distributing any products pursuant to the acquisition agreement.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the Complaint or the agreement containing the proposed consent order, or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-23196 Filed 9-29-89; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 8718]

Lenox Inc., Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Order granting in part request to reopen and set aside order.

SUMMARY: The Federal Trade Commission has set aside a portion of the 1970 consent order with Lenox, Inc., thus removing the provisions that prohibited respondent from terminating dealers after receiving complaints from other dealers and that required the respondent to reinstate dealers terminated for discounting prices or for transshipping products.

DATES: Consent order issued July 24, 1970. Order granting in part request to reopen and set aside order issued April 19, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore or Sondra Mills, FTC/S-2115, Washington, DC 20580. (202) 326-2687 or 326-2673.

SUPPLEMENTARY INFORMATION: In the Matter of Lenox, Incorporated. The prohibited trade practices and/or corrective actions, as set forth at 35 FR 12754, are deleted in part.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

In the matter of Lenox, Inc., a corporation.

Order Granting in Part and Denying in Part Request to Reopen and Set Aside Order

On December 20, 1988, Lenox, Incorporated ("Lenox"), filed a "Request of Lenox, Incorporated to Vacate Final Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. In the Request, Lenox asks the Commission to reopen the proceeding and set aside the cease and desist order entered by the Commission on July 24, 1970 (77 F.T.C. 860) and modified by the Commission on July 12, 1982 (100 F.T.C. 259). Lenox alleges that setting aside the order is warranted by changed conditions of fact and law and the public interest. Request at 2. The Request was placed on the public record for thirty days, pursuant to § 2.51(c) of the Commission's Rules, and two comments were received. On February 24, 1989, Lenox submitted an affidavit responding to one of the public comments.

The Commission has carefully considered Lenox's Request, the public comments and Lenox's response to one comment and has concluded that Lenox has not made a satisfactory showing that changed conditions of fact or law or the public interest require that the order be set aside in its entirety. The order prohibits Lenox from agreeing with its dealers with respect to resale prices and in essence requires compliance with section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Lenox has not shown changed circumstances that eliminate the need for the order. Lenox also has not shown that it is undüly burdened by an order that merely requires it to abide by the law, and, therefore, setting aside the order is not warranted in the public interest.

The Commission believes that the second part of paragraph 3 of the order should be set aside in the public interest. The second part of paragraph 3 prohibits conduct that by itself may not be unlawful, and this provision is no longer necessary to ensure Lenox's compliance with the law. In addition, paragraphs 9 (a) and (b), which require Lenox to reinstate dealers terminated for failing to observe Lenox's suggested resale prices or for transshipping Lenox products, are inconsistent with subsequent modifications of the order. Consequently, the public interest is served by setting aside these provisions.

I

The Commission's complaint in this matter, issued October 13, 1966, alleged that Lenox agreed with its dealers to fix the resale prices for its products. In the original proceeding, the Commission found that "agreements as to resale prices between respondent and its dealers do in fact exist, 73 F.T.C. at 597 and held that Lenox had entered into unlawful price agreements with its dealers in violation of Section 5 of the Federal Trade Commission Act. On appeal, the United States Court of Appeals for the Second Circuit affirmed the Commission's decision and order, as modified. *Lenox, Inc.* v. *FTC*, 417 F.2d 128 (2d Cir. 1969).[1]

The final order of the Commission contains provisions to remedy unlawful price maintenance by Lenox.[2] Paragraphs 1 and 2 of the order prohibit Lenox from requiring its dealers to agree to sell Lenox products at specified prices as a condition of dealing. The first part of paragraph 3 prohibits Lenox from asking its dealers "to report any person or firm who does not observe the resale prices suggested by respondent. The second part of Paragraph 3 prohibits Lenox from "acting on reports so received" by refusing to sell to noncompliant dealers. Paragraph 4 prohibits Lenox from "[h]arassing, intimidating, coercing, threatening or otherwise exerting pressure on dealers" to comply with established resale prices. Paragraph 7 prohibits Lenox from "[u]tilizing any other cooperative means of accomplishing the maintenance of resale prices. Paragraph 10 (later renumbered as paragraph 9) requires Lenox to reinstate dealers that had been terminated for failing to maintain resale prices or for transshipping.

Paragraphs 5 and 6 of the order, both of which expired in 1973, prohibited Lenox from selling to dealers at a discount from retail prices and from publishing suggested retail prices. Paragraph 8, which was vacated in 1982, prohibited Lenox from banning transshipment of its products by dealers. 100 F.T.C. 259 (1982).[3]

II

Section 5(b) of the Federal Trade Commission Act, 45 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel C. Hoffman, Esq. (March 24, 1983), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order. *Damon Corp.*, Docket No. C-2916, 101 F.T.C. 686, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.

The language of section 5(b) plainly anticipates that the burden is on the petitioner to make "a satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, by means other than conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

III

Lenox has shown neither changed conditions of law or fact nor public interest considerations that require setting aside the order in this matter in its entirety. The order prohibits agreements to fix resale prices, conduct

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The court held that the Commission lacked authority to prohibit resale price maintenance agreements in states permitting such agreements under "fair trade laws, enacted pursuant to the McGuire Act. The Commission modified the order accordingly, incorporating fair trade law proviso as paragraph 9 (later renumbered as paragraph 8) of the order. 77 F.T.C. 860.

Four of the remaining eight paragraphs of the original order have no further effect. Paragraphs 5 and 6 were time-limited and expired in 1973. Former Paragraph 8, which prevented Lenox from banning dealer transshipments of its products, was set aside by the Commission in 1982. Finally, Lenox complied with the order provision that required it to file a compliance report 60 days after service of the order.

After Paragraph 8 was set aside, Paragraphs 9 and 10 were renumbered Paragraphs 8 and 9. 100 F.T.C. at 259.

that is *per se* unlawful. The changed circumstances advanced by Lenox do not affect the *per se* illegality of agreements to maintain resale prices or bring the order into conflict with existing law. In addition, Lenox "has not shown that complying with an order that essentially requires adherence to the law is causing it injury. *William H. Rorer, Inc.*, Docket No. 8599, Order Modifying Cease and Desist Order, 104 F.T.C. 544, 545 (1984).[4]

Lenox asserts that the law governing vertical restraints and the circumstances in which an unlawful agreement can be inferred have changed significantly since the order was entered in 1970. According to Lenox, its argument in the original proceeding that its conduct was unilateral and therefore lawful under *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919), was rejected by the Commission on the authority of decisions that had expanded the circumstances in which an agreement between a manufacturer and its dealers could be inferred. Subsequent decisions, according to Lenox, "have changed the legal criteria for evaluating whether an agreement to maintain resale prices can be inferred" to such an extent that the evidence considered by the Commission in this matter "would not have given rise to [the original] proceeding much less to a conclusion of violation, under today's standards. Request at 55.

Lenox relies on *Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984), in which the Supreme Court said that an unlawful vertical price agreement must be proved by unambiguous evidence so as not to deter or penalize legitimate, unilateral conduct and legitimate communications between a manufacturer and its dealers. The evidence must "tend to exclude the possibility that the manufacturer and the nonterminated distributor were acting independently. Lenox also cites *Business Electronics Corp.* v. *Sharp Electronics Corp.*, ___ U.S. ___, 108 S. Ct. 1515 (1988), in which the Court said that a vertical restraint is not *per se* unlawful unless it includes an agreement on price or price levels.[5] In both of these cases, the Supreme Court reiterated the *Colgate* doctrine that a manufacturer generally has a right to deal or to refuse to deal with whomever it likes, as long as it does so independently.

The Commission's conclusion in the original proceeding that Lenox had engaged in unlawful resale price agreements was based on findings consistent with these cases. The Commission expressly found that Lenox had required its dealers to agree to resale prices. *See* 73 F.T.C. at 594–95 & 597 Lenox is incorrect when it suggests that the standards applied by the Commission in the original proceeding are inconsistent with current law. Accordingly, Lenox has not shown that changed conditions of law require the Commission to reopen and set aside the order.

Here, as in *Monsanto*, it is necessary to distinguish between concerted and independent action and between concerted action to set prices, which is *per se* unlawful, and concerted action on nonprice vertical restraints, which is judged under the rule of reason. The order in this matter proscribes concerted action to set prices. Paragraphs 1 and 2 of the order prohibit Lenox from entering into agreements concerning price with its dealers. These prohibitions are consistent with *Monsanto* and *Sharp*, in which the Court said the vertical agreements to fix price are *per se* unlawful.

The first part of paragraph 3 and paragraphs 4 and 7 of the order also are consistent with *Monsanto* and *Sharp*. The first part of paragraph 3, which bars Lenox from "[r]equesting dealers, either directly or indirectly, to report any person or firm who does not observe the resale prices suggested by respondent, in essence prohibits Lenox from inviting its dealers to participate in a resale price maintenance scheme. *See Monsanto*, 465 U.S. at 764 n.9 and 765. This provision does not bar dealers from complaining to Lenox about price cutters. Instead, it bars Lenox from seeking the dealers' participation in policing and maintaining resale prices.

Similarly, paragraph 4 of the order prohibits Lenox from coercing its dealers, by threats of termination or otherwise, to comply with Lenox's resale prices. Paragraph 7 prohibits Lenox from using "any other cooperative means of accomplishing the maintenance of resale prices fixed by respondent. Nothing in *Monsanto* makes the conduct described in these provisions of the order lawful. Threats to obtain dealer acquiescence in resale prices are "plainly relevant and persuasive to a meeting of the minds. *Monsanto*, 465 U.S. at 765 & n.10. Although cooperation and coordination between Lenox and its dealers "to assure that their product will reach the consumer persuasively and efficiently" is not unlawful, 465 U.S. at 763–64, cooperation to maintain resale prices clearly is unlawful.

The second part of paragraph 3 of the order prohibits Lenox from "acting on reports so obtained by refusing or threatening to refuse sales to the dealers so reported. As written, this provision applies only when Lenox solicits and obtains the cooperation of its dealers in enforcing compliance with resale prices and acts on the information so obtained. In addition, termination of a price cutting dealer is not lawful in all circumstances. For example, a manufacturer's threat to refuse to deal to obtain compliance with resale prices can evidence an invitation to an unlawful agreement. *Monsanto*, 465 U.S. at 765. Nevertheless, this provision will be set aside in the public interest. As the Court explained in *Monsanto*, dealers "are an important source of information for manufacturers, dealer complaints about price cutters 'arise in the normal course of business and do not indicate illegal concerted action' and a manufacturer's termination of a dealer following complaints from other dealers would not, by itself, support an inference of concerted action. 465 U.S. at 763–64. To the extent that this second part of paragraph 3 may inhibit Lenox from legitimate unilateral conduct, it may cause competitive injury.[6] Because any conduct that would be unlawful under this part of paragraph 3 would be prohibited by other provisions of the order, the reasons to set aside this provision outweigh any reasons to retain it.

IV

Lenox alleges that "changes in market facts warrant vacation of the order. Request at 36. Lenox has not shown that these alleged changed conditions require setting aside the order. Agreements to fix resale prices remain unlawful, and Lenox has not shown that changed conditions of fact require setting aside

In *Rorer*, the Commission declined to modify an order provision that "in essence" required the respondent to comply with section 2(a) of the Robinson-Patman Act. *See also Alhambra Motor Parts*, Docket No. 6889, Letter to John C. Peirce, Esq. (January 19, 1988), at 6–7 (denying petition to set aside order prohibiting violations of section 2(a) of Robinson-Patman Act).

In *Monsanto*, the Court held that a *per se* unlawful agreement could not be inferred from nothing more than a dealer termination following competitors' complaints. In *Sharp*, the Court said that a vertical agreement to terminate a price-cutting dealer is not *per se* unlawful unless there is also an agreement on price or price levels. Absent an agreement on price, the rule of reason applies.

As discussed below, Lenox's claims of competitive disadvantage and injury are premised for the most part on its perceived inability unilaterally to refuse to deal with firms that have small retail mark ups and do not provide customer services. Request at 16–20 & 52–54; *see* note 8 *infra*. Although paragraph 3 does not prohibit unilateral refusals to deal, the modification eliminates any ambiguity in that regard.

order provisions that require compliance with the law.

Lenox claims that intrabrand competition has increased significantly. Since 1976, when the McGuire Act was repealed, Lenox states that it has authorized "multiple, quality dealers" in all marketing areas and that price competition among Lenox dealers is and will continue to be "the norm. Request at 326–37 An increase in the number of authorized Lenox dealers and increased competition among them are not changed conditions that eliminate the need for the order or make continued application of it inequitable. Instead of demonstrating a need to reopen and modify the order, these conditions appear to be consistent with compliance with the order.

Lenox also claims that interbrand competition has changed since 1970. According to Lenox, domestic manufacturers of fine china have withdrawn from the market, and imports have become dominant. Lenox claims that its foreign rivals are not restricted from preventing dealer practices that "tarnish[] [Lenox's] image and sap[] the profit of other quality dealers, so that Lenox is at a competitive disadvantage. Request at 38. Lenox does not claim that Lenox is competitively disadvantaged by the fact that other U.S. firms are no longer its competitors.[7] Increased competition from foreign firms also is not a changed condition that requires reopening and modification of the order. To the extent that the foreign firms do business in the United States, they, like domestic firms, are required to comply with the law, and they are not free to agree with their dealers to fix resale prices.

Lenox also alleges that marketing has changed, citing increased competition from "certain deep-discounting dealers, trading on the efforts of others" and "destroying Lenox's distribution through prestige outlets. Request at 38–39. According to Lenox, "deep" discounters often sell Lenox products at prices 30% to 50% less than suggested resale prices. *See* Velsmid Affidavit at 2. These discounters usually (but not always) maintain inferior displays and only minimal inventories of Lenox china and do not offer the full range of services that Lenox expects from its dealers. *Id.* at 3. Many of these discounters accept telephone orders from distant customers, who select their china from the displays of full-service dealers.

As a result of deep discounting and free riding, Lenox claims, full-service dealers discontinue or reduce their sales efforts for Lenox products, Request at 39–40, and Lenox's image of quality, prestige and elegance has begun to erode. To substantiate this claim, Lenox has submitted affidavits from its employees and from "prestige" retailers who say that such retailers have either cut back or discontinued their displays and sales of Lenox products, because widespread deep discounting has made carrying them both unprofitable and incompatible with the "quality image" of their stores. Lenox vigorously contends that its quality image is a major component of the value of fine china to consumers and that it must be allowed to terminate deep discounters to protect that image before it is irreversibly damaged. Request at 40–45. In addition, Lenox asserts that interbrand competition is impaired when prestige retailers curtail or discontinue sales of the Lenox lines. Request at 37–38.

Neither free riding nor the erosion of Lenox's quality image is a changed condition that would warrant vacating the order. The order prohibits vertical price fixing, which is unlawful. The order does not bar Lenox from imposing lawful nonprice vertical restraints to protect its product image.[8] Lenox, however, has made a threshold showing that continued application of the second part of paragraph 3 and of paragraphs 9 (a) and (b) of the order is causing injury to its competitive position. As discussed above, the second part of paragraph 3 may inhibit Lenox from legitimate conduct. Paragraphs 9 (a) and (b) of the order require Lenox to reinstate dealers terminated for discounting or for transshipping Lenox products.[9] Because unilateral termination of a dealer for discounting is not unlawful and because the order's prohibition of Lenox's ban on transshipments was set aside in 1982, requiring Lenox to reinstate dealers for these reasons would be inconsistent with the order, as modified, and clearly would serve no further remedial purpose. To the extent that conduct described in these provisions might be in furtherance of an unlawful scheme to fix resale prices, such conduct would be prohibited by the other provisions of the order. Consequently, the need to set aside these provisions of the order outweighs any reasons to retain them.

Accordingly, *it is ordered that* Lenox's Request to reopen and set aside the order in this matter in its entirety be, and it hereby is, denied; and

It is further ordered that this matter be reopened and that the Commission's order in Docket No. 8718, issued June 24, 1970, as modified by order dated July 12, 1982, be, and it hereby is, modified, as of the date of service of this order, by setting aside paragraph 9 and by deleting from paragraph 3 "or acting on reports so obtained by refusing or threatening to refuse sales to the dealers so reported.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–23197 Filed 9–29–89; 8:45 am]

BILLING CODE 6750-01-M

[7] Lenox also does not claim that the withdrawal of other domestic firms, impliedly reducing interbrand competition, is in any way attributable to the order.

[8] To the extent that Lenox's injury claim turns on free riding by deep discounters on services provided by other dealers, Lenox has been able to ban resale of its products to unauthorized dealers since the 1982 modification of the order. Nothing in the order prevents Lenox from requiring its dealers to provide customer services and from terminating dealers for failing to do so.

Lenox asserts that these provisions are "no longer applicable. Request at 7–8, footnote. By their terms, however, these paragraphs are still in effect.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health: RF-Induced Body Current and Absorbed Power Determinations; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC).

Name: RF–Induced Body Current and Absorbed Power Determinations.

Time and Date: 9:30 a.m.–5:00 p.m.—October 24, 1989.

Place: Robert A. Taft Laboratories, Taft Auditorium, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To review and discuss the utility of body current methodology and calculations to determine and minimize worker exposures to radiofrequency (RF) sources.

Contact Person: David L. Conover, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, (C27), Cincinnati, Ohio 45226, Telephone: Commercial: (513) 533–8482, FTS: 684–8482.

Dated: September 26, 1989.

Robert L. Foster,

Assistant Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89–23128 Filed 9–29–89; 8:45 am]

BILLING CODE 4160-19-M

Health Care Financing Administration

[IOA-21-N]

Medicare and Medicaid Programs; Meeting of the Quadrennial Advisory Council on Social Security

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

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Quadrennial Advisory Council on Social Security.

DATE: The meeting will be held on October 13, 1989, from 1 p.m. to 5 p.m. eastern daylight saving time (e.d.s.t.), and on October 14, 1989, from 8 a.m. to 4 p.m. e.d.s.t. The meeting will be open to the public.

ADDRESS: The meeting will be held at the Park Hyatt, 24th and M Sts. NW., Washington, DC 20037

FOR FURTHER INFORMATION CONTACT: Darleen DiGirolamo, Administrative Officer, Quadrennial Advisory Council on Social Security, (202) 245-0217

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints a Quadrennial Advisory Council on Social Security every four years. The Quadrennial Advisory Council examines issues affecting the Social Security retirement, disability and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the Quadrennial Advisory Council specifically to address the following:

—The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

—Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Phillip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignani, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller; and the Chair, Deborah Steelman. The Council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

Agenda items for the meeting will include the presentation of background information and general discussion related to health care financing for the elderly and nonelderly populations. Presentations will also include alternative systems with a mix of roles for government, employers, and individuals, including public payor/provider systems, systems that emphasize private responsibility, and systems that combine public and private responsibility in different ways.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance)

Dated: September 25, 1989.

Deborah J. Chollet,

Executive Director, Quadrennial Advisory Council on Social Security.

[FR Doc. 89-23348 Filed 9-29-89; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Notice of Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the second meeting of the National Deafness and Other Communication Disorders Advisory Board on October 6, 1989. The meeting will take place from 9 a.m. to 4:30 p.m. in the Bethesda Holiday Inn. Notice of the meeting room will be posted in the lobby.

The meeting will be open to the public and will include reports from Advisory Board subcommittees and a report from the Acting Director of the National Institute on Deafness and Other Communication Disorders (NIDCD). Attendance by the public will be limited to space available.

Notice of this meeting is late because the meeting date had to be changed and it was difficult to find a agreeable time for all Board members.

The Acting Executive Officer, Geoffrey Grant, NIDCD, Building 31, Room 1B62, Bethesda, Maryland 20892, (301) 496-7243, will furnish the meeting agenda, rosters of board members, and substantive program information upon request.

Dated: September 28, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-23366 Filed 9-29-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-89-906; FR-2694]

Delegation of Authority With Respect to HUD Programs for the Homeless

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Title IV subtitles C and D, and title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (Public Law 100-77 July 22, 1987· 42 U.S.C. 11301, *et seq.*) authorize the Secretary to carry out supportive housing demonstration programs for the provision of transitional housing and permanent housing for deinstitutionalized homeless persons, homeless families with children, homeless persons with mental disabilities, and other handicapped homeless persons; to provide supplemental assistance to facilities which assist the homeless for costs in excess of those covered by the Emergency Shelter Grant and Supportive Housing Demonstration Programs; and to identify suitable Federal real property for use as facilities to assist the homeless.

This notice delegates, to the Assistant Secretary for Community Planning and Development, the Secretary's power and authority with respect to these programs, with the exception of the authority to sue and be sued, and revokes delegations previously made to other assistant secretaries with respect to these programs.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: James Forsberg, Coordinator, Special Needs Assistance Program, Department of Housing and Urban Development, 451 Seventh Street, SW Washington, DC 20410, telephone (202) 755-6300. (This is not a toll-free number.)

The Assistant Secretary for Community Planning and Development is delegated the power and authority of the Secretary of HUD with respect to the Homeless programs authorized by title IV subtitles C and D and Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (Public Law 100-77 July 22, 1987 42 U.S.C. 11301, *et seq.*) which are set forth below, with the authority to redelegate such authority to employees of the Department unless otherwise specified. The Assistant Secretary for Community Planning and Development may issue rules and regulations to carry out these programs, and may waive such rules or regulations to the extent authorized by statute or by the rules or regulations but may not redelegate the authority to issue or waive rules and regulations. This delegation includes:

1. The authority of the Secretary of Housing and Urban Development with respect to the Supportive Housing Demonstration Program authorized by title IV subtitle C of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77 approved July 22, 1987· 42 U.S.C. 11381, *et seq.*).

2. The authority of the Secretary with respect to supplemental assistance for facilities to assist the homeless under title IV subtitle D of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77 approved July 22; 1987· 42 U.S.C. 11392, *et seq.*).

3. The authority of the Secretary to identify unutilized and underutilized Federal real property for use as facilities to assist the homeless under title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (Public Law 100-77 approved July 22, 1987· 42 U.S.C. 11411).

Delegations Revoked

Paragraph 12 of the Consolidated Delegations of Authority to the Assistant Secretary for Policy Development and Research, 52 FR 48730, 48731 (December 2, 1988).

[Docket No. D-88-889]

Paragraph 17 of the Consolidated Delegations of Authority to the Assistant Secretary for Housing-Federal Housing Commissioner, 54 FR 22033, 22034 (May 22, 1989).

[Docket No. D-89-896]

Any redelegations issued, or actions taken, under any delegation revoked herein shall remain in effect until expressly modified or revoked.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 25, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-23093 Filed 9-29-89; 8:45 am]

BILLING CODE 4210-29-M

Office of Administration

[Docket No. N-89-2056]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507· Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 26, 1989.

John T. Murphy,

Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Income Verification Procedures for Applicants and Participants in HUD Programs FR-2588.

Office: Office of Inspector General.

Description of the Need for the Information and Its Proposed Use: Section 904 of Public Law 100-628, permits the Department to require applicants/participants and household members to sign consent forms allowing HUD, Public Housing Authorities (PHAs), or the owner to verify employee income information. Also, HUD or PHAs can request that the State Wage Information Collection Agency (SWICA) release wage and unemployment information. A SWICA is required to disclose data to HUD and PHAs.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Wage and claim information	53		1		16		848

Total Estimated Burden Hours: 848
Status: New
Contact: Mary P Barry, HUD, (202) 426-6493; John Allison, OMB, (202) 395-6880.

Dated: September 26, 1989.

[FR Doc. 89-23095 Filed 9-29-89; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing, Federal Housing Commissioner

[Docket No. N-89-2057; FR-2701]

FHA Debenture Recall

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Chief, Financial Procedures and Review Branch, Office of Financial Management, Room 9138, Department of Housing and Urban Development, 451 Seventh Street SW Washington, DC 20410, telephone (202) 755-1591. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures with coupon rates of 8.5 percent or higher, outstanding as of September 30, 1989. The date of the call is January 1, 1990. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Philadelphia by December 1, 1989.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debenture will be paid with the principal at redemption. During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by a mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1989. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after October 1, 1989, and provision will be made for the payment of final interest due on January 1, 1990, with the principal thereof, to the actual owner, as shown by the assignments thereon.

Instructions for the presentation and surrender of debentures for redemption will be provided by the Department of the Treasury.

Dated: September 26, 1989.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-23094 Filed 9-29-89; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1948; FR-2607]

Requirements for Single Family Mortgage Instruments; Announcement of Mandatory Date for New Requirements; and Corrections

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of policy; announcement of mandatory date for new single family mortgage instruments requirements; announcement of OMB control number; and correction.

SUMMARY: On June 29, 1989, the Department published a notice announcing a new approach for creating mortgage instruments for HUD single family mortgage insurance programs. The notice indicated that mortgagees would be responsible for developing or procuring their own instruments with provisions required by HUD, since the Department will no longer print or distribute single family mortgage forms, and will not approve the text of a complete form for each state. The effective date section of that document stated that the notice was effective June 29, 1989, but compliance would be optional until a later date or dates was announced in the **Federal Register**. This document announces a mandatory date for those new requirements. It also announces an OMB approval number under the Paperwork Reduction Act and corrects the Model Mortgage Form, which was Exhibit A to the notice of policy.

EFFECTIVE DATE: Compliance with the new requirements will be mandatory for insured single family mortgages closed on or after March 1, 1990 (June 1, 1990 for Puerto Rico, the Virgin Islands and Guam). Mortgagees may comply with the new requirements earlier at their option.

FOR FURTHER INFORMATION CONTACT: Donald B. Alexander, Home Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, Room 9252, 451 7th Street, SW Washington, DC 20410, telephone No. (202) 755-7070. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 29, 1989 (54 FR 27596), the Department published a notice of policy that announced a new approach for creating mortgage instruments for HUD single family mortgage insurance programs. The notice indicated that HUD will no longer print or distribute single family mortgage forms and will not approve the text of a complete form for each state. Mortgagees are now responsible for developing or procuring their own instruments, including in them certain specific provisions required by HUD and any additional provisions needed to produce a legally enforceable instrument conforming to the law of the state in which the property is located.

The effective date section of that notice stated that although the notice itself was effective on June 29, 1989, compliance was optional until "a date or dates to be later announced in the **Federal Register**. Initially, the Department was unable to announce a mandatory date for the new requirements because OMB had not granted approval of the information collection requirements as required under the Paperwork Reduction Act of 1980. OMB has now granted approval under OMB control number 2502-0404. Therefore, the Department now has a mandatory compliance date for these new requirements.

In addition, this document corrects the Model Mortgage Form which was Exhibit A to the policy notice. The first sentence of Paragraph 17 of the Model Mortgage Form was intended to be an adaptation of language from the FNMA/FHLMC mortgage form for Michigan, as indicated in footnote 6 of the Model Mortgage Form. Some of the FNMA/FHLMC language was inadvertently omitted.

The first sentence of Paragraph 17 of the Model Mortgage Form is being corrected.

Accordingly, the following corrections are being made to the Requirements for Single Family Mortgages Instruments, Notice of Policy, FR Doc. 89-15325,

published June 29, 1989 (54 FR 27596), to read as follows:

1. On page 27596, in the first column, the **EFFECTIVE DATE** is corrected to read:

EFFECTIVE DATE: Compliance with the new requirements will be mandatory for insured single family mortgages closed on or after March 1, 1990 (June 1, 1990 for Puerto Rico, the Virgin Islands and Guam). Mortgagees may comply with the new requirements earlier at their option.

2. On page 27596, in the **SUPPLEMENTARY INFORMATION** section, in the third column, correct the first sentence and remove the second and third sentences under the heading "Paperwork Requirements" to read:

"The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0404. Public reporting *"

3. On page 27607 in Exhibit A, the Model Mortgage Form, in Paragraph 17 remove the first sentence, following the bracketed material, and substitute the following:

"If Lender requires immediate payment in full under paragraph 9,[6] Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 17 including, but not limited to, reasonable attorneys' fees and costs of title evidence.

Dated: September 26, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-23092 Filed 9-29-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerials Program Advisory Committee

Renewal; National Strategic Materials and Minerals Program Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the renewal of the National Strategic Materials and Minerals Program Advisory Committee. Following consultation with the General Services Administration, the Secretary is renewing the Advisory Committee to advise the Secretary of the Interior with respect to his responsibilities for stratgeic materials and minerals issues.

Further information regarding the National Strategic Materials and Minerals Program Advisory Committee may be obtained from Brenda Kay, Staff Assistant, Office of Water and Science, Room 6650, U.S. Department of the Interior, 18th and C Streets, NW Washington, DC 20240; (202) 343-2136.

The certification of renewal is published below.

Certification

I hereby certify that the renewal of the National Strategic Materials and Minerals Program Advisory Committee is necessary and in the public interest in connection with performance of duties imposed on the Department of the Interior by those statutory authorities listed in the Federal Land Policy and Management Act, the Mining and Minerals Policy Act of 1970, the National Materials and Minerals Policy Research and Development Act of 1980, the Defense Production Act of 1950, as amended, and the organic legislation of the Department and the several bureaus and agencies thereof.

Manuel Lugan Jr.,

Secretary of the Interior.

[FR Doc. 89-23096 Filed 9-29-89; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Land Management

[AZ-027-9-25]

Availability of the Final Lower Gila South Resource Management Plan Amendment (Goldwater Amendment) and Environmental Assessment, Phoenix District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Final Lower Gila South Resource Management Plan Amendment (Goldwater Amendment) and Environmental Assessment, Phoenix, District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, section 102(2)(c) of the National Environmental Policy Act of 1969 and the Military Lands Withdrawal Act of 1986 (Pub. L. 96-606), the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Lower Gila South Resource Management Plan. The amendment involves 1.8 million acres of land in southwest Arizona. The land lies within Maricopa, Pima and Yuma counties. The amendment describes the resource management practices the BLM intends to implement on the Barry M. Goldwater Air Force Range.

Among the management actions prescribed in the Final Amendment are the designation of three Areas of Critical Environmental Concern encompassing 191,500 acres. These areas include: (1) Tinajas Altas Mountains 53,000 acres; (2) Gran Desierto Dunes 25,500 acres and (3) Mohawk Mountains and San Dunes 113,000 acres. Major resource use limitations within these ACECs include:

—limit vehicle use to designated roads;
—limit military use, to the extent possible, within ACECs;
—establish interpretation facilities, hiking trails, and primary public access routes;
—prohibit land use authorizations for non-military actions;
—reclaim damaged soils and landscape areas using applicable measures;
—establish long-term study plots for ecological evaluation;
—establish regular use supervision by rangers;
—prohibit woodcutting and camping within certain areas.

The protest period will begin upon publication of this notice in the **Federal Register** and will run for 30 days after which the Decision will become final.

The document contains procedures for protesting the plan or any part of it. These procedures also can be found in the Code of Federal Regulations (43 CFR 1610.5-2).

Except for any portions under protest, the BLM's Arizona State Director may approve the plan after 30 days from the date of this notice.

SUPPLEMENTARY INFORMATION: A limited number of copies of the amendment and environmental assessment are available upon request to the Phoenix District Manager, Bureau of Land Management, 2015 W Deer Valley Road, Phoenix, Arizona 85027 There are also copies available for review at the above location.

FOR FURTHER INFORMATION CONTACT: Carole Hamilton, Lower Gila Resource Area Manager, 2015 W Deer Valley Road, Phoenix, Arizona 85027 Telephone—602-863-4464.

Dated: September 26, 1989.

Charles Frost,

Associate District Manager.

[FR Doc. 89-23129 Filed 9-29-89; 8:45 am]

BILLING CODE 4310-32-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-451 (Preliminary)]

Gray Portland Cement and Cement Clinker From Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-451 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 511.14 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 13, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207 subparts A and B (19 CFR part 207), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201), as amended by 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: September 27 1989.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-252-1191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 26, 1989 by Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement of Washington, DC.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989) each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on October 17 1989 at the U.S. International Trade Commission Building, 500 E Street SW Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-252-1191) not later than October 13, 1989 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 20, 1989 a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information. Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7), as amended by 54 FR 13672 (April 5, 1989) and 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), may comment on such information in their written brief, and may also file additional written comments on such information no later than October 23, 1989. Such additional comments must be limited to comments on business

proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: September 28, 1989.

By order of the Commission.

Lisbeth K. Godley,

Acting Secretary.

[FR Doc. 89-23260 Filed 9-29-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-448, 449, and 450 (Preliminary)]

Sweaters Wholly or in Chief Weight of Man-Made Fibers From Hong Kong, the Republic of Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-448, 449, and 450 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Hong Kong, the Republic of Korea ("Korea"), and Taiwan of sweaters, wholly or in chief weight of man-made fibers ("sweaters of man-made fibers") [1] provided for in subheadings 6103.23.00, 6103.29.10, 6103.29.20, 6104.23.00, 6104.29.10, 6104.29.20, 6110.30.10, 6110.30.20, 6110.30.30, and 6110.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 381.24, 381.25, 381.35, 381.66, 381.85, 381.89, 381.90, 381.99, 384.18, 384.27 384.54, 384.77 384.80, 384.96, and 791.74 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 6, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207 subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted in response to a petition filed on September 22, 1989, by the National Knitwear on Sportswear Association, New York, NY

Participation in the investigations—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 12, 1989, at the U.S. International Trade Commission Building, 500 E Street SW Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-252-1177) not later than October 6, 1989 to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions—Any person may submit to the Commission on or before October 16, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15

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[1] For purposes of this investigation, sweaters of man-made fibers are defined as knitted or crocheted garments wholly or in chief weight of man-made fibers, designed to cover the upper parts of the body and in a variety of forms, including jackets, vests, cardigans with button or zipper fronts, and pullovers, the foregoing usually having ribbing around the neck, bottom, and/or cuffs (if any). The term encompasses garments of various lengths but most typically ending at the waist. The phrase "in chief weight of man-made fibers" includes sweaters where the man-made fibers predominate by weight over each other single textile material. *Excludes* sweaters 23 percent or more by weight of wool. *Includes* men's, women's, boys' or girls' "sweaters" as defined above, but does *not* include sweaters for infants 24 months of age or younger. *Includes* all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, includes only those with knit-on rib at the bottom.

p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information. Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than October 19, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: September 27 1989.

Lisbeth K. Godley,

Acting Secretary.

[FR Doc. 89-23237 Filed 9-29-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 314X)]

Exemption; CSX Transportation, Inc.—Abandonment Exemption—In Logan County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonment to abandon its 4.21-mile line of railroad between milepost 0.0, at Mud Junction, and milepost 4.21, at Island Creek Mine No. 29 near Argonne, in Logan County, WV

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 1, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 12, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 23, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 6, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 20, 1989.

By the Commission, Jane F Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-22934 Filed 9-29-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any entity seeking stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; United States v. Haverstraw Joint Regional Sewerage Board

In accordance with Department policy, 28 CFR 50.7 notice is hereby given that a proposed Consent Decree in *United States* v. *Haverstraw Joint Regional Sewerage Board,* 89 Civ. 6355 (MEL), has been lodged with the United States District Court for the Southern District of New York. The complaint alleges violations by the Haverstraw Joint Regional Sewerage Board ("HJRSB") of Section 301 of the Clean Water Act, 33 U.S.C. 1311, and HJRSB's State Pollutant Discharge Elimination System ("SPDES") permit resulting from HJRSB's failure to timely and adequately implement its Industrial Pretreatment Program. The complaint seeks injunctive relief and civil penalties. The consent decree requires HJRSB to inspect all industrial users ("IUs") within three months of entry of the decree, issue wastewater contribution permits to all unpermitted significant industrial users ("SIUs") within two months of the date of entry of the consent decree, submit monthly progress reports to EPA regarding pretreatment program implementation, develop and implement specific Enforcement Response Procedures to address any pretreatment violations, and pay a civil penalty of $25,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Haverstraw Joint Regional Sewerage Board,* D.J. Reference No. 90-5-1-1-2878.

The proposed Consent Decree may be examined at the office of the United States Attorney, One St. Andrew's Plaza, New York, New York 10007 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647 (D), Ninth Street and Pennsylvania Avenue, NW Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $3.20 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23177 Filed 9-29-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated March 2, 1989, and published in the **Federal Register** on March 14, 1989, (54 FR 10597), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 22, 1989.

Gene R. Haislap,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-23076 Filed 9-29-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Economic Survey Schedule

AGENCY: Office of the Secretary, Labor.

ACTION: Submission of the Economic Survey Schedule for clearance under the Paperwork Reduction Act.

SUMMARY: The Employment Standards Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C., chapter 35, 5 CFR Part 1320 (53 CFR 16618 to 16632, May 10, 1988)), is submitting a data collection on economic data in American Samoa to the Office of Managmeent and Budget for that Agency's approval. The information is to be collected under the authority of 29 CFR 511.6 and .11, Wage Order Procedure for Puerto Rico, Virgin Islands, and American Samoa.

DATE: ESA has requested an expedited review of this submission under the Paperwork Reduction Act, to be completed within 30 days of the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the data collection should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Ave., NW., Room N-1301, Washington, DC 20210 (telephone (202) 523-6331). Comments should also be sent to the Paperwork Reduction Project, Office of Management and Budget, Room 3208, Washington, DC (telephone (202) 395-5880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTARY INFORMATION: Current regulations (29 CFR 511.6 and 511.11) require that the Administrator of the Wage and Hour Division prepare for the industry committee an economic report containing data pertinent to establishing an industry wage rate in Samoa. Form WH-1, Economic Survey Schedule, is used by the Administrator to gather the information necessary to prepare this econimic report. Data concerning business operations and employment are provided on the WH-1 by respondents in Samoa covered by the FLSA. This information is essential to enable the Administrator to prepare the economic report for the committee so that wage rates can be set for the various industries in American Samoa.

The Agency estimates that approximtely 120 respondents will be responding and the burden will be 45 minutes per response for a total of 90 burden hours.

Data collection must begin at the end of November 1989 in order to insure that the Department's economic report will be provided to the industry committee in a timely fashion.

The following submission for approval of the data collection has been submitted to OMB with a request for expedited approval under the Paperwork Reduction Act.

Signed at Washington, DC this 21st day of September 1989.

Paul E. Larson,

Departmental Clearance Officer.

BILLING CODE 4510-27-M

Standard Form 83
(Rev September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request
U S Department of Labor
Employment Standards Administration
Wage and Hour Division

2. Agency code
1 2 1 5

3. Name of person who can best answer questions regarding this request
Howard Ostmann

Telephone number
( )

4. Title of information collection or rulemaking
Form WH-1 Economic Survey Schedule
WH-1 Inst. Instructions for completing WH-1

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*
29 USC 205, 206(a)-(d), 29 CFR 511.6 and 511.11
208

6. Affected public *(check all that apply)*

1 ☐ Individuals or households
2 ☐ State or local governments
3 ☐ Farms
4 ☒ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☐ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)
___ ___ ___ ___ ___ ___ ___ ___, or, None assigned ☐

8. Type of submission *(check one in each category)*

Classification
1 ☐ Major
2 ☐ Nonmajor

Stage of development
1 ☐ Proposed or draft
2 ☐ Final or interim final, with prior proposal
3 ☐ Final or interim final, without prior proposal

Type of review requested
1 ☐ Standard
2 ☐ Pending
3 ☐ Emergency
4 ☐ Statutory or judicial deadline

9. CFR section affected
_____ CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No
If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E O 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less 'Compensation minimum wages salary surveys economic surveys industry committees American Samoa' Form WH-1 is used by the Wage-Hour Division to prepare an economic report used by an industry committee to set industry minimum wage rates in American Samoa.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 ☐ Regular submission
2 ☐ Emergency submission *(certification attached)*

Information collections contained in rules

3 ☒ Existing regulation *(no change proposed)*
4 ☐ Notice of proposed rulemaking (NPRM)
5 ☐ Final, NPRM was previously published
6 Final or interim final without prior NPRM
A ☐ Regular submission
B ☐ Emergency submission *(certification attached)*
7 Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 ☐ New collection
2 ☐ Revision of a currently approved collection
3 ☐ Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 ☒ Reinstatement of a previously approved collection for which approval has expired
5 ☐ Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

WH-1, WH-1 Inst.

17. Annual reporting or disclosure burden

1 Number of respondents	120
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	120
4 Hours per response	45 mins.
5 Total hours *(line 3 times line 4)*	90

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	90
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	90
Explanation of difference	
4 Program change	+ 90
5 Adjustment	

20. Current *(most recent)* OMB control number or comment number

1215-0028

21. Requested expiration date

Jan. 31, 1990

22. Purpose of information collection *(check as many as apply)*

1 ☐ Application for benefits
2 ☐ Program evaluation
3 ☐ General purpose statistics
4 ☒ Regulatory or compliance
5 ☐ Program planning or management
6 ☐ Research
7 ☐ Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 ☐ Recordkeeping

Reporting

2 ☐ On occasion
3 ☐ Weekly
4 ☐ Monthly
5 ☐ Quarterly
6 ☐ Semi-annually
7 ☐ Annually
8 ☒ Biennially
9 ☐ Other *(describe)*: _____

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 ☒ Voluntary
2 ☐ Required to obtain or retain a benefit
3 ☐ Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? ☐ Yes ☒ No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? ☐ Yes ☒ No

27. Regulatory authority for the information collection

29 CFR 511.6 and 511.11 or _____ FR _____ or, Other *(specify)* 29 U S C. 205, 206(a)(3) 208

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official Daniel F Liveney, Chief, Branch of Management Review and Analysis — Date 9/19/89

Signature of agency head, the senior official or an authorized representative — Date 21 SEP 89

U.S. GOVERNMENT PRINTING OFFICE 1984 O - 4 3-469

Justification—WH-1, Economic Survey Schedule

1. Sections 5, 6(a) (3) and 8 of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 et seq.) require that covered, non-exempt employees in American Samoa must be paid at the applicable minimum wage rate established by the Secretary of Labor in accordance with recommendations of a special industry committee. The committe is to recommend to the Secretary the highest minimum wage rate (not to exceed the rate required in FLSA section 6(a) which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment. The committee must consider the wages established by collective bargaining agreements in various industries and wages paid by employers who voluntarily maintain minimum wage standards. This committee, appointed by the Secretary, is composed of residents of Samoa including disinterested persons representing the public, a like number representing employees in the industry and a like number representing employers in the industry. The Secretary must submit to the industry committee available data to enable the committee to recommend the industry wage rates.

Current regulations (29 CFR 511.6 and 511.11) require that the Administrator of the Wage and Hour Division prepare for the industry committee an economic report containing data pertinent to establishing an industry wage rate in Samoa. Form WH-1, Economic Survey Schedule, is used by the Administrator to gather the information necessary to prepare this economic report. Data concerning business operations and employment are provided on the WH-1 by respondents in Samoa covered by the FLSA. This information is essential to enable the Administrator to prepare the economic report for the committee so that wage rates can be set for the various industries in American Samoa.

2. WH-1 is a voluntary use form completed by businesses in American Samoa to disclose certain economic data concerning their particular industry. All covered industries in Samoa are requested to provide data. The completed forms are collected and examined by an employee of the Wage-Hour Division sent to American Samoa for one month to complete the survey. In addition, the employee identifies any business which has improperly completed or failed to complete the form and provides assistance that may be required by these businesses in completing the form. The data supplied on the completed forms are used by Wage-Hour to prepare an economic report to provide the industry committee with the information necessary to set the appropriate wage rates. Without the information provided on the forms, the Department would be unable to prepare an economic report and thus would be unable to provide the industry committee with the data necessary to recommend wage rates for the various industries in American Samoa.

3. There is no approved information technology available to provide the data required to prepare the economic report necessary to set wage rates in American Samoa. However, the submission of photocopies of the economic survey form is sufficient to satisfy the requirements of the regulations.

4. There is no duplication of existing Wage-Hour requirements.

5. Since the setting of wage rates in American Samoa is a program unique to the Wage and Hour Division, no similar information is available from any other source.

6. The information collection does involve small businesses. The use of the form, however, is optional. It also provides an easy method for the paticipating businesses to provide the information necessary to prepare the economic report needed by the industry committee to set the wage rates in American Samoa as required by law. The burden on small businesses to complete this voluntary form would be minimal since the information requested would generally be maintained in customary or usual business records.

7 It is a statutory requirement of the FLSA that the Department of Labor provide economic data to an industry committee to enable that committee to set wage rates in various industries in American Samoa. Less frequent collection of the economic data would prevent the Department from fulfilling its statutory obligation.

8. The information collection is conducted in a manner which is consistent with the guidelines on 5 CFR 1320.6.

9. The form was last utilized in the fall of 1986. No negative comments were received from employers who were contacted regarding completion of the form.

10. Confidentiality is assured with respect to income and expense statements provided by the businesses completing the forms. Financial information is protected from disclosure under Exemption 4 of the Freedom of Information Act and 29 CFR Section 70.24.

11. There are no sensitive questions.

12. The biennial Federal cost includes the printing and mailing of 120 forms. In additioin, there is the cost incurred in sending a GS-12/4 Wage-Hour Compliance Officer (annual salary, $38,039) to American Samoa for one month to collect the survey forms and the cost for three months spent by a GS-12/4 Wage-Hour analyst (annual salary, $38,039) to review the forms and prepare the economic report. Therefore, the annual Federal costs would be:

Printing 120 copies of the form	$8.00
Mailing (120 forms x $.25)	30.00
Travel and expense for Compliance Officer:	
Salary (½ year x $38,039)	3,170.00
Per diem (30 days x $102)	3,060.00
Travel (round trip from Honolulu to Pago Pago, American Samoa)	700.00
Car rental (estimated at $30 per day for a maximum of 30 days)	900.00
Other incidental expenses	300.00
Wage-Hour Analyst expense (¼ year x $38,039)	9,510.00
Total Federal costs	17,678.00

13. It is estimated that 120 forms are used biennially. Each form is completed only once by each respondent in the year the survey is conducted. Therefore, there are 120 annual responses. It is estimated that it requires 45 minutes for each respondent to complete this form since much of the information requested would already be maintained in customary or usual business records. This produces 90 annual burden hours (120 annual responses x 45 minutes = 90 annual hours).

14. This form was formerly cleared through 10/31/89 and has dropped from inventory. When the form was last cleared, burden was estimated at one hour per response. This has been reestimated at 45 min. because of the deletion of some questions and simplification of the form.

15. This information is not published. The survey material is used only by the Wage-Hour Division in the preparation of the economic report provided to the industry committee to determine the industry wage rates in American Samoa.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division, Washington, DC 20210

Subject: 1989 Wage-Hour Survey for American Samoa

Sir/Madam: Please read the enclosed instructions and complete the enclosed Form WH-1, Economic Survey Schedule.

The information in this report will be used by an Industry Committee to recommend minimum wage rates for industries in American Samoa.

Please remember that the "reference payroll period" is the calendar week of November 12, 1989 to November 18, 1989. See items 8 and 9 and page 2 of the Economic Survey Schedule. You may request assistance in filling out this form.

A Compliance Officer will be in Pago Pago to conduct the survey. Please keep the Economic Survey Schedule (Form WH-1) and show it to him/her when he/she calls at your establishment.

Thank you for your cooperation.

Sincerely,

BILLING CODE 4510-27-M

Economic Survey Schedule

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

OMB No. 1215-
Expires:

1. Name and Address of Establishment:
(Include ZIP Code and telephone number)

2. Industry and Classification:

3. Type of business activity:

4. Source of materials:

5. Destination of finished products:

6. Is firm tax exempt?

☐ Yes ☐ No ☐ Pending

7. You are requested to furnish copies of balance sheets and income and expense statements for the 2 most recent years. (Income and expense statements are held in confidence.) Attached:

☐ Yes ☐ No

8. Survey payroll period:

Begins _____ Ends _____

9. a. Total employment during survey payroll period:

b. Employees covered by this industry wage order:

c. Employees not covered by this industry wage order:

10. Employment covered by this industry wage order (Item 9b) for the 3 most recent years:

Year	Feb.	May	Aug.	Nov.

11. Collective bargaining agreement: ☐ Yes ☐ No If yes, please attach a copy.

12. Fringe benefits provided by establishment:

Number of paid holidays: _____ ☐ Health care plan

Number of paid vacation days: _____ ☐ Pension plan

Number of paid sick leave days: _____ ☐ Other (specify) _____

13. Additional remarks:

14. Name of person submitting information:	Title:	Date submitted:

Form WH-1
Rev. July 1989

ECONOMIC SURVEY SCHEDULE	Payroll Period: From _____ Thru _____	Page _____ of _____

15. Name:						1	2	3
16. Address:								
17. Wage order industry:						4	5	6
18. Wage order classification:						7	8	9
19. Wage order rate in effect during payroll period:					10	11	12	13
20. Unduplicated number of covered employees under this classification in this establishment: Total = _____	14	15	16	Homeworkers _____		17	18	19

21. EMPLOYMENT AND EARNINGS

a. Number Of workers 20 22	b. Straight time hourly wage rate 23 26	c. Salary or incentive earnings (1) Hours worked for → 27 30	(2) Total straight-time earnings 31 36	a. Number Of workers 20 22	b. Straight time hourly wage rate 23 26	c. Salary or incentive earnings (1) Hours worked for → 27 30	(2) Total straight-time earnings 31 36

Public Burden Statement

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0028), Washington, D.C. 20503.

BILLING CODE 4510-27-C

U.S. Department of Labor

Employment Standards Administration,

Wage and Hour Division

Instructions for Completing Form WH-1 Economic Survey Schedule

Information requested on Form WH-1 is for use in Industry Committee Review of Minimum Wage Rates, pursuant to sections 5, 6 and 8 of the Fair Labor Standards Act (FLSA). The following instructions have been prepared to assist you in completing the form.

Use of form: For companies with more than one establishment, use a separate survey form for each establishment. Where a single location encompasses two or more distinct and separate economic activities for which different industry wage order definitions are applicable, such activities should be treated as separate establishments.

Establishment defined: An "establishment" is generally defined as a single physical location where business is conducted or where services or industrial operations are performed; for example, a factory, mill, store, mine, or farm. Where a single physical location comprises two or more units which maintain separate payroll and inventory records and which are engaged in distinct or separate industrial activities, each unit should be treated as a separate establishment. An establishment is not necessarily identical with the business concern or firm, which may consist of one or more establishments. It is also to be distinguished from organizational sub-units, departments, or divisions within an establishment.

Item 1. If the establishment has a legal name and a trade name, enter the legal name, the abbreviation "dba" (doing business as), and the trade name. Enter the address of the office of the establishment. If the address of the plant or the store is different from the address of the office, enter it in Additional remarks. Enter the post office box number, if any, and the telephone number where management can be reached.

Item 2. Enter the name of the industry, and classification within the industry if applicable, whose definition covers the activities of this establishment.

Item 3. State the principal activity or activities performed by the establishment. If the establishment is engaged in manufacturing, list the principal products. If the establishment is engaged in service activity, list the types of services performed.

Item 4. Indicate whether raw materials or goods to be sold at retail are obtained from the U.S. mainland, from a foreign country, or from local sources. Please name the foreign countries.

Item 5. Indicate whether goods are shipped to the U.S. mainland, to foreign markets, or sold locally. Please name the foreign countries.

Item 6. If yes, please indicate length of exemption.

Item 7 Income and expense statements are held in confidence. A combined statement will be prepared for an industry only if it can be done without revealing individual firm data.

Item 8. The survey payroll period is the most recent period which includes the 12th of the month. If this period is not a normal payroll period, enter the first normal payroll period which precedes it. Note the reason for an abnormal payroll period in Additional remarks. Examples of payroll periods considered abnormal would be those during which there was little business activity due to seasonal factors, natural disasters, strikes, etc.

Item 9a. Total employment includes all employees in the establishment, whether or not covered by FLSA or exempt from FLSA overtime provisions. Include part-time employees and any employee who received pay for any part of the survey payroll period. Also include persons on vaction or sick leave for which they received pay.

Item 9b. Include all covered, nonexempt employees.

Item 9c. Include those employees exempt from FLSA overtime provisions, those not covered by FLSA, and those who may be covered by another FLSA industry wage order.

Item 10. Enter the total number of covered employees employed during workweeks containing the 12th of the month. For the current payroll period this figure would be the same as Item 9b. If accurate data cannot be given going back 3 years, then please provide estimates.

Item 11. If a collective bargaining agreement is in effect, please attach a copy.

Item 12. Only fringe benefits involving a cost to the employer should be entered. Enter in Additional remarks" any information on variations in fringe benefits based on length of service or other factors.

Item 13. If it is necessary to clarify or expand on the information requested, use this section to do so.

Item 14. Enter the name and title of the person submitting the information and the date submitted.

Items 15–21. This section of the form is used to report data on the employment and earnings in each surveyed establishment in a manner permitting direct tabulation by automatic data processing equipment. It is therefore essential that, for companies with more than one establishment or establishments with employees in two or more classifications, a separate sheet be used to report the employment and earnings in each classification in each establishment.

If more than one sheet is required for an establishment due to the volume of employees or a multiplicity of classifications within the establishment, enter the sequential page number and total pages for the establishment, e.g. Page 1 of 3, 2 of 3, 3 of 3. Include all classifications within the establishment in the total number of pages. Schedules for multi-establishments within a single company shall be stapled together to facilitate the assignment of a code number which will identify the individual establishments and classifications as well as the company.

Payroll period. Enter the beginning and ending date of the payroll period covered by the survey. (See Item 8.)

Item 15. Enter the legal and trade name of the firm. Leave boxes 1–3 blank.

Item 16. Enter the address of the physical location of the establishment.

Item 17 Enter the name of the wage order industry. Leave boxes 4–6 blank.

Item 18. Enter the name of the classification within the wage order industry. Leave boxes 7–9 blank.

Item 19. (To be completed by the Wage and Hour Division.) Enter the current wage order rate (industry minimum) applicable to this industry or classification in boxes 10–13. The rate is to be reported in dollars and cents with cents expressed in decimals, not in fractions. For example, if the current wage order rate in effect is one dollar and eight-five cents, the entry in boxes 10–13 would be 1850. If the current wage order rate is one dollar, eighty-five and one-half cents, the entry in boxes 10–13 would be 1855. Note that box 13 is always assigned to the fractional part of a cent and must be zero if the wage rate is an even-cent amount.

Item 20. Enter the total unduplicated number of employees covered and not exempt in this industry and classification in this establishment in boxes 14–16. Include any homeworkers reported in boxes 17–19. NOTE: If an employee has worked in two or more classifications or in two or more establishments of the same company, he is to be reported only once in the establishment and classification in which he worked the greater number of hours during the survey period. If the hours worked in each classification or establishment cannot be determined or

are equally proportioned, include the employee only once in the applicable classification with the highest wage order rate.

Enter the unduplicated number of homeowners covered and not exempt under this classification in this establishment in boxes 17–19. The entries in boxes 14–16 and 17–19 shall be preceded by zeros, where necessary, to fill all of the boxes.

Numbers which have more digits then the number of boxes provided shall be entered in entirety in the available space to the left of the boxes.

Item 21. Enter the employment data in column a. and the earnings data in column(s) b. or c(1) and c(2) as applicable.

Hourly paid employees. Neither hours worked (column c(1)) nor total earnings (column c(2)) need be shown for employees whose pay is based solely on flat hourly rates. Where two or more employees have the same hourly wage rate, enter (on one line) in column a. the number of workers and in column b. the hourly rate. The hourly rate is to be reported in dollars and cents rounded to the nearest half cent. Cents are to be expressed in three decimal places and not in fractions. For example, if the employee is paid one dollar and forty-five cents an hour, the entry would be 1.450; if the employee is paid one dollar and two and one-half cents an hour, the entry would be 1.025.

Employees paid salaries and/or incentive earnings. It is not necessary to compute the straight-time hourly wage rate (column b) of employees paid salaries or incentive earnings. If two or more workers have the same number of hours worked and total straight-time earnings, enter the combined data on one line. Otherwise enter data for each employee on a separate line.

Column c(1). "Hours worked for" shall include total hours worked at straight-time and overtime rates, plus any hours paid for standby, reporting time, holidays, vacations, sick leave, or other leave, providing that payment was made directly by the establishment. Do not convert overtime or other premium paid hours to straight-time equivalent hours. The number of hours is to be counted in quarter hours and expressed in two decimal places and not in fractions. For example, if an employee worked thirty-eight and three-quarters hours, the entry would be 38.75; if the employee worked thirty-nine and one half hours, the entry would be 39.50; if he worked forty-one and one-quarter hours, the entry would be 41.25.

Column c(2). "Total straight-time earnings" refer to earnings before deductions for old age and unemployment insurance, group insurance, withholding tax, bonds, and union dues. This includes pay for holidays, vacations, sick leave, and other leave, if payment is made directly by the establishment. It excludes premium (extra) pay for overtime or holday work; bonuses (unless earned and paid regularly each pay period); and retroactive pay. Straight-time earnings, including straight-time earnings for overtime hours worked, are to be reported in dollars and cents rounded to the nearest whole cent.

Homeworkers. If homeworkers are employed, indicate the total number of homeworkers in column a. and combined earnings in column c(2). Enter the letter "H" in column c(1) and enter the applicable classification wage order rate in column b. expressed in dollars and cents to three decimal places (See Item 19).

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BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D–7959 et al.]

Proposed Exemptions; Carstens Health Industries, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requested for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507 200 Constitution Avenue, NW Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representation with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Carstens Health Industries, Inc. Employees Profit Sharing and 401(k) Plan (the Plan), Located in Chicago, Illinois

[Application No. D–7959]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of

section 4975 (c)(1) (A) through (E) of the Code shall not apply to a proposed sale by the Plan of certain real estate limited partnership units (the Units) to Carstens Health Industries Inc. (the Employer), the sponsor of the Plan and as such, a party in interest with respect to the Plan, provided the sales price is the greater of $226,300 or the fair market value of the Units at the time of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which as of January 1, 1988, had 68 participants and $1,810,840 in assets. The trustees of the Plan are George P Block, Barbara Ann Block and George R. Block, Jr. (the Turstees), who are also officers and directors of the Employer. George P Block is also the majority shareholder of the Employer. The Employer is an Illinois corporation which is in the business of manufacture and sale of medical patient charting systems and other health care related facilities.

2. The 2010 Building Partnership (the Partnership) was formed on October 23, 1987 The sole business of the Partnership is the ownership and operation of a three-story medical office building, known as 2010 South Arlington Heights Road, Arlington Heights, Illinois (The Building). On June 12, 1987 the Plan paid $230,599 cash for 4.621 units of the Partnership and received $4,311.90 from the Partnership as a distribution for the quarter ending March 31, 1988. The Applicant represents that the Plan has not made any capital contributions to the Partnership since its initial investment. The Units were purchased from the Partnership, at that time an unrelated third party. The Trustees of the Plan believed that the purchase was a prudent investment for the Plan. However, the Building has depreciated in value and the rate of return has been lower than expected.

3. Donald C. Carroll and Warren E. Albert, independent appraisers with Allstate Appraisal Inc., were retained to determine the fair market value of these assets (Allstate Appraisal). The Allstate Appraisal determined the value of the Building as of May 23, 1988 by using a market comparison analysis of the earnings yield of similar parcels in the same marketing location. The Allstate Appraisal determined that the fair market value of the Building is $3,825,000. The net fair market value of the Partnership's assets was determined by subtracting the remaining bond mortgage ($1,677,607) from the fair market value. Thus, the net fair market value of the Partnership's assets is $2,147,393. The Plan has 4.621 units, each valued at $39,043. The net fair market value of the Plan s Units is thus $180,420.

4. The Employer proposes to purchase the Units from the Plan for $226,300 in cash.[1] This price equals the Plan's initial investment minus distributions during the holding period of the Units. The purchase price of $226,300 will also allow the Plan to recover any losses incurred as a result of the investment. No entities or individuals will receive a sales commission as a result of the transaction. The Employer currently owns 1.5 units of the Partnership. However, the proposed purchase of the Plan s Units will not create additional value for the units already owned by the Employer in as much as the Employer will continue to have only a minority interest in the Partnership.

5. Chicago Title and Trust Company (CTT), is a custodian and an investment manager for the Plan and it represents that it has no other relationship to the Employer or the Plan. CTT has advised the Plan to sell the Units because the investment is illiquid and was earning less than other alternative investments could earn. Also, CTT represents that because the investment is considered a long term investment by its definition and has certain restrictions regarding any sale, it does not lend itself to the participant directed type investment found in this profit sharing plan.

6. In summary, the Applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale will be a one-time cash transaction;

(b) The Plan will not pay any commissions or other expenses with respect to the sale;

(c) The sale will allow the Plan to invest in other investment instruments with a higher return;

(d) The sale will allow the Plan to create a greater diversification of its assets;

(e) The sale will permit the Plan to recover its initial investment in the Units; and

(f) The purchase price will be the greater of $226,300 or the fair market value as determined by a qualified, independent appraiser at the time of the sale.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ms. Ekaterina Uzlyan of the Department telephone (202) 523-8194. (This is not a toll-free number.)

The Jay A. Baier, Ltd. Employees Profit Sharing Plan and Trust (the Plan), Located in Chicago, Illinois

[Application No. D-8026]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1(40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of undivided 25% and 50% interests in two real estate partnerships (collectively, the Partnerships) to Jay A. Baier (Mr. Baier), a party in interest with respect to the Plan.[2]

Summary of Facts and Representations

1. The Plan is a defined contribution plan which as of December 31, 1988 had $647,301 in assets. Jay A. Baier, Ltd. (the Employer) is an Illinois corporation engaged in the practice of law. Mr. Baier is the sole participant in the Plan, and the sole shareholder of the Employer.

2. In February 1975, Mr. Baier acting as a trustee for the Plan, purchased a 25% interest in the Read Limited Partnership (Read) for $30,625 cash. In September 1977 Mr. Baier purchased for the Plan a 25% interest in the Eakins Limited Partnership (Eakins) for $20,500 cash. The underlying asset of both Partnerships consists of farm land (the Land) which has been utilized in farming operations. The Land was purchased by

[1] The Employer represents that the limitations of section 415 of the Internal Revenue Code regarding employer contributions to defined contribution plans will not be exceeded as a result of the proposed transaction wherein the purchase price of the Units may exceed their fair market value.

[2] Because Jay A. Baier is the only participant in the Plan and the Employer is wholly owned by Jay A. Baier, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Read and Eakins by a combination of equity contributed by the partners and mortgage financing. The mortgages are held by an independent third party. The Plan's mortgage liability in Read and Eakins is proportionate to the Plan's interest in each Partnership.

3. In August 1977 Read sold the original underlying farm property and in September 1977 acquired another farm for a total of $442,500. As a result of this sale and acquisition, the Plan retained its 25% interest in Read and received $6,103 in distribution from the sale of the original farm property. Since the acquisition of the Read interest in 1975, the Plan contributed to Read $56,432 to pay its share of Partnership costs, essentially interest on debt financing for property held by Read.

4. Between March 1984 and July 1987 approximately 45 acres of land held by Eakins were sold to independent third parties. The aggregate proceeds to Eakins from this sale amounted to $204,000, which was used to pay off a portion of the mortgage indebtedness on the remaining land held by Eakins. In 1985, the Plan paid $21,287 for an additional 25% interest in Eakins. Currently, Eakins holds approximately 80 acres of farm land. Since the acquisition of the Eakins' interest in 1977 the Plan contributed to Eakins an additional $44,378 to pay its share of partnership costs, essentially interest on debt financing.

5. The fair market value of the remaining Land held by the Partnerships has been determined by Robert Jaeger and Gene Jaeger, independent and qualified appraisers with Jaeger and Jaeger Midwest Appraisers. The appraisal, dated October 26, 1988, estimated that the fair market value of the land held by Read was $778,500. The second appraisal, dated December 2, 1988, also by Robert and Gene Jaeger, estimated that the fair market value of the land held by Eakins was $336,000. Both appraisals used the comparison and income approaches in determining the fair market value of the Land.

6. Two appraisals of the Plan's Partnership interests were performed by Steven M. Busa, a certified public accountant, independent of the parties involved (Appraisal 1 and Appraisal 2). Appraisal 1, dated April 11, 1989, estimated that as of December 31, 1988, the net fair market value of the 25% Read interest was $131,280. Read's liabilities are limited to a mortgage in the amount of $256,698 as of December 31, 1988, held by Furnas Realty. Appraisal 1 represented that there are no discounts for minority or majority positions in Read and that the interests are not readily marketable.

7 Appraisal 2, dated April 11, 1989, estimated that as of December 31, 1988 the net fair market value of the 50% interest in Eakins was $134,133. The Eakins' liabilities are also limited to a mortgage in the amount of $103,073 as of December 31, 1988, held by Furnas Realty. Appraisal 2 represented that there are no discounts for minority or majority positions in Eakins and that the interests are not readily marketable.

8. Mr. Baier proposes to purchase the Read and Eakins interests currently owned by the Plan for, respectively, $131,280 and $134,133 or their fair market values, if greater. The Applicant represents that the holding of interests in the Land is not in the best interest of the Plan. The economic return to the Plan can be increased through other investment instruments with a higher return. Also, currently approximately 50% of the Plan's assets are tied up in Eakins and Read. Thus, the sale will allow the Plan to greatly diversify its investment portfolio.

9. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The respective prices for Read and Eakins will be the greater of $131,280 and $134,133 or the fair market value as determined by an independent, qualified appraiser at the time of the sale;

(c) The Plan will pay no costs or commissions associated with the sale;

(d) The sale will allow the Plan to diversify its investment portfolio; and

(e) Jay A. Baier as the sole participant of the Plan would be the only individual affected by the transaction.

Notice to Interested Persons

Because Jay A. Baier is the sole participant of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 523-8194. (This is not a toll-free number).

James E. McIntosh, M.D., P.A. Defined Benefit Pension Plan (the Plan), Located in Tyler, Texas

[Application No. D-8077]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain unimproved real property located in Missoula County, Montana (the Property) to James E. McIntosh, M.D. (Dr. McIntosh), a disqualified person with respect to the Plan; provided that all terms of such transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with total assets of $651,125.35 as of September 30, 1988. The Plan is sponsored by James E. McIntosh, M.D., P.A. (the Employer), a Texas professional corporation by which Dr. McIntosh has engaged in the general practice of medicine in Tyler, Texas. Dr. McIntosh is the Plan's sole participant and trustee and the sole shareholder of the Employer.[3] Dr. McIntosh retired from practice on October 1, 1986, at which time the Employer ceased active operations. There are no active employees of the Employer. The Plan is in process of termination and Dr. McIntosh represents that there will not be any additional Plan participants.

2. Because Dr. McIntosh is in retirement and the Plan is being terminated prior to distribution of the assets, he is planning alternative investments and a rollover of assets into an individual retirement account. To accomplish these objectives, Dr. McIntosh represents that the Plan assets, including the Property, must be converted to cash. Therefore, Dr. McIntosh proposes to purchase the Property in his individual capacity from the Plan and is requesting an exemption to permit such transaction under the terms and conditions described herein.

3. The Property consists of 160 acres of unimproved forest and meadow land in Missoula County, Montana and is located approximately twenty five miles west of the city of Missoula. The Property was purchased on behalf of the Plan from unrelated parties in 1975 for a cash purchase price of $56,000. The

[3] Since Dr. McIntosh is the sole shareholder of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Property was selected for its investment potential with the intention that the Plan would realize a return on the investment therein upon resale of the Property. Dr. McIntosh represents that neither he nor any other parties in interest have utilized or occupied the Property, which remains vacant, since its acquisition by the Plan. As of June 20, 1988, the Property had a fair market value of $80,000, according to an appraisal conducted by the independent professional real estate appraisal firm of Hall-Widdoss, Inc. (Hall-Widdoss) in Missoula, Montana, which also describes the highest and best use of the Property as a combination of agricultural, residential and recreational uses.

4. It is proposed that Dr. McIntosh will pay the Plan cash for the Property in the amount of no less than $80,000. The appraisal of the Property conducted by Hall-Widdoss will be updated as of the sale date and the final purchase price for the Property will reflect increases, if any, in the Property's fair market value since the appraisal of June 20, 1988. Dr. McIntosh will bear all costs and expenses related to the transaction and no sales commissions or other fees will be paid in connection with the transaction.

5. In summary, the applicant represents that the proposed transaction satisfies the requirements of section 4975(c)(2) of the Code for the following reasons: (1) The proposed transaction will enable the Plan's sole participant, Dr. McIntosh, to realize a total distribution of the Plan's assets in cash and to roll over such assets into an individual retirement account; (2) The Plan will receive cash for the Property in the amount of no less than its fair market value as of the date of the sale; and (3) The proposed transaction will only affect its sole participant, Dr. McIntosh, who desires that the transaction be consummated.

Notice to Interested Persons: Because Dr. McIntosh is the sole shareholder of the Plan sponsor and the sole participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Casino Signs Inc. Money Purchase Pension Plan (the Plan), Located in Las Vegas, Nevada

[Application No. D-8086]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of real property (the Property) by the Plan to W Ben Maze, K.A. Maze and Michael Dean Rogers individually, officers and directors of Casino Signs Inc. (the Employer), and as such parties in interest with respect to the Plan, provided the Plan receives the greater of $96,6000 or the fair market value as determined by an independent, qualified appraiser at the time of the sale.

Summary of Facts and Representations

1. The Plan is a money purchase plan and trust with approximately 37 participants, which as of October 31, 1988 had $502,917 in assets. The current trustees of the Plan are W. Ben Maze, K.A. Maze and Michael Dean Rogers (the Trustees) who are also officers and directors of the Employer. The Employer is a Nevada corporation which is in the sign making business.

2. On September 3, 1985, the Plan bought the Property for $82,851 from an unrelated third party. The Property consists of .64 acres of unimproved vacant land located in Oquendo Industrial Park, Las Vegas, Nevada. The Property was originally purchased in order to diversify the Plan's investment portfolio and to increase the return to the Plan. However, since its purchase the Property has not appreciated as envisioned by the Trustees. It is represented that the Property has not been used by any parties in interest since its acquisition by the Plan.

3. The Applicant proposes to sell the Property to the Trustees, and after the sale, the Trustees intend to leaseback the Property to the Employer. An appraisal of the Property was prepared by Dennis Pulsipher (Mr. Pulsipher), an independent real estate appraiser with Circle Realty. Mr. Pulsipher used the comparable sales method and estimated that the fair market value of the Property as of May 15, 1989 was $92,000. However, because the Property will be ultimately leased back to the Employer, Mr. Pulsipher concluded that the Property's adjacency to the Employer's facilities merited a premium above the fair market value of $92,000. Specifically, Mr. Pulsipher stated that the Trustees should be willing to pay a premium for the Property because it would enable the Employer to expand its facilities. Mr. Pulsipher estimates that a $4,600 premium should thus be placed on the original appraisal value of $92,000. Thus, the Plan will receive at least $96,600 for the Property.

4. The Applicant represents that the transaction is desirable for the Plan and will increase the liquidity of the Plan's investment portfolio. The transaction is protective of the Plan and the fair market value of the Property was determined by a qualified independent appraiser. Finally, the Applicant maintains that economic hardship will result if the transaction is not consummated as the Plan will forego an opportunity to invest in vehicles with a higher return.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one time cash transaction;

(b) The price paid to the Plan will be the greater of $96,600 or the fair market value at the time of the sale as determined by an independent qualified appraiser;

(c) The Plan will pay no expenses associated with the sale; and

(d) The sale will allow the Plan to liquidate its assets and will provide cash for investments with a higher yield.

FOR FURTHER INFORMATION CONTACT: Ekaterina Uzlyan of the Department, telephone (202) 523-8184. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of September, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-23173 Filed 9-29-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-85; Exemption Application No. D-7954 et al.]

Grant of Individual Exemptions; Margaret L. Lial, Inc. Defined Benefit Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Margaret L. Lial, Inc. Defined Benefit Pension Plan (the Plan) Located in Sacramento, California

[Prohibited Transaction Exemption 89-Exemption Application No. D-7954]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain real property (the Property) from the Plan to Edwin C. Lial and Margaret L. Lial, disqualified persons with respect to the Plan, provided the Plan receives the greater of $220,000 or fair market value for the Property at the time of sale.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 23, 1989, at 54 FR 35097

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Hawaii Carpenters Annuity Fund (the Annuity Fund) and Hawaii Carpenters Financial Security Fund (the FS Fund; together, the Funds) Located in Honolulu, Hawaii

[Prohibited Transaction Exemption 89-86; Exemption Application Nos. D-8048 and D-8049]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer of assets from the Annuity Fund to the FS Fund, provided each of the assets will be valued at its fair market value at the time of the transfer.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 3, 1989 at 54 FR 27962.

Written Comments: The Department received one written comment with respect to the proposed exemption. The comment raised concerns regarding the allocation of the respective assets of the Annuity Fund and the FS Fund between pensioners and active employees. The applicants have responded that both Funds are defined contribution plans. Each participant has his own account in the plan, and the assets of that account can be used only for the benefit of that participant. In the case of a rollover from the Annuity Fund to the FS Fund, a separate account will be created for the participant making the rollover. The benefits payable to each participant will be limited to the value of his account(s). If the proposed transaction is consummated, the applicant represents that each participant making a rollover will have an aggregate account balance in the FS Fund that equals the sum of his previous FS Fund balance and his previous Annuity Fund balance. The participant's ultimate FS Fund benefit will be whatever benefit can be

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[1] Because the Lial's are the sole shareholders of the Employer and the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

purchased with such aggregate account balance. Each participant's benefits are paid only from his account(s), and no participant's account is or will be used to pay the benefits of any other participant.

The commentator also raised concerns relating to the allocation of administrative expenses of the two Funds. The applicants responded that administrative expenses of the Funds are properly allocated on a per capita basis and that after the proposed transaction is consummated, the administrative expenses should be lower because there will be one Fund rather than two.

The Department, having considered the entire record, has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

A. C. Products Co. Defined Benefit Pension Plan (the Plan) Located in Wooster, Ohio

[Prohibited Transaction Exemption 89-87; Exemption Application No. D-8090]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a parcel of improved real property (the Property) to Wayne Mullet, a party in interest with respect to the Plan; provided that the terms of the sale are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; and provided further that the sales price is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 8, 1989 at 54 FR 32543.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of September, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-23174 filed 9-29-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed revision to Federal Standard 1035.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on Federal Telecommunications Standard 1035, "Coding, Modulation, and Transmission Requirements for Single Channel, Medium and High Frequency Radiotelegraph Systems Used in Government Maritime Mobile Communications. This Federal Standard is being reviewed to determine: (1) If it is obsolete (no longer of value) and should be withdrawn, (2) If it is still useful but should be modified and updated, (3) If the service it standardizes is still required, but the standard should be completely rewritten.

DATE: Comments are due by January 2, 1990.

ADDRESS: Send comments to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Mr. Robert T. Adair, telephone (303) 497-3723, or Mr. Tom Jones, telephone (303) 497-5953.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards.

2. Prior to the adoption of proposed Federal standards, it is important that propoer consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the proposed FED-STD 1035A should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 89-23205 Filed 9-29-89; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Meeting; Opera-Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works Pre-Screening Section) to the National Council on the Arts will be held on October 24-26, 1989, from 9:00 a.m.-5:30 p.m. in Room 716 of

the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: September 22, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-23147 Filed 9-29-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-454, 50-455, 50-456, and 50-457]

Commonwealth Edison Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the licenses for the Commonwealth Edison Company (CECo, the licensee) for Byron Station, Units 1 and 2, located in Ogle County, Illinois, and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would modify Technical Specification Figure 3.2-2 which depicts the normalized heat flux hot channel factor as a function of core height.

These revisions to the licenses of Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, would be made in response to the licensee s application for amendment dated December 4, 1987

The Need For The Proposed Action

Pursuant to 10 CFR 50.90, the licensee has proposed amendments to Facility Operating Licenses NPF-37 and NPF-66 for Byron Station, Units 1 and 2, respectively and Facility Operating Licenses NPF-72 and NPF-77 for Braidwood Station, Units 1 and 2, respectively. The amendments would modify Technical Specification Figure 3.2-2 to include more operating margin. This resulted from removing some conservatism when the small break loss of coolant accident analysis was repeated for the hot leg temperature reduction program.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed amendments. The modification to Figure 3.2-2 is acceptable since the analyses on which it is based used acceptable codes and the results of these analyses meet the criteria of 10 CFR 50.46. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Byron Station, Units 1 and 2" dated April 1982 and in the "Final Environmental Statement related to the operation of Braidwood Station, Units 1 and 2" dated June 1984, regarding environmental impacts from the plants during normal operation or after accident conditions, are not adversely altered by this action.

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statements related to these facilities.

Agencies and Persons Consulted

The NRC staff reviewed the licensee s submittal of December 4, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on December 31, 1987 (52 FR 49540). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application dated December 4, 1987 and the Final Environmental Statements for Byron, dated April 1982, and Braidwood, dated June 1984; which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW Washington, DC 20555; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 25th day of September 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III-2, Division of Reactor Projects—III, IV V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23159 Filed 9-29-89; 8:45 am]

BILLING CODE 7590-01-M

Department of Energy and National Aeronautics and Space Administration (Galileo Radioisotope Thermoelectric Generators); Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a petition dated September 3, 1989, filed by Thomas J. Saporito, Jr., on behalf of the Nuclear Energy Accountability Project (NEAP). NEAP requested that action be taken by the Nuclear Regulatory Commission (NRC) to intervene and stop the launch of the Galileo Spacecraft scheduled for October 12, 1989. The Petition alleged that the launch of the Galileo Spacecraft, which contains considerable quantities of plutonium-238, would be in violation of Public Law 94-79 which provides that the NRC shall not license any shipments by air transport of plutonium in any form with the exception of certain medical devices. The Petition also alleged a number of health and safety concerns should the launch fail and should the material be dispersed into the atmosphere.

On September 15, 1989, the Director of the Office of Nuclear Material Safety and Safeguards acknowleged receipt of the Petition and notified NEAP that a Decision pursuant to 10 CFR 2.206 would be issued within a reasonable time.

The Director has determined that the Petition should be denied. The reasons for the denial are set forth in the Director's Decision under 10 CFR 2.206, DD-89-07 issued on September 25, 1989, which is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW, Washington, DC.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 25th day of September 1989.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-23098 Filed 9-29-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-603 and 50-604; ASLBP No. 89-596-01-OM/SC

All Chemical Isotope Enrichment, Inc., Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding

All Chemical Isotope Enrichment, Inc.

Construction Permit Nos. CPEP-1 and CPEP-2 (Order Modifying Licenses)

This Board is being designated pursuant to Licensee's request for a hearing regarding an order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated August 8, 1989, entitled "Order Modifying Licenses and Order To Show Cause Why Licenses Should Not Be Revoked" in the matter of All Chemical Isotope Enrichment, Inc. (54 FR 35544-46, August 28, 1989).

The Board is comprised of the following administrative judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 26th day of September 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-23141 Filed 9-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-36-MLA; ASLBP No. 89-593-01-MLA]

Combustion Engineering, Inc., Hearing and Prehearing Conference

September 26, 1989.

In the Matter of Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility, Special Nuclear Materials License No. SNM-33).

This proceeding involves a proposed amendment to Special Nuclear Materials License No. SNM-33, to authorize Combustion Engineering, Inc. to operate new pellet production lines at its facility in Hematite, Missouri. In response to a Notice of Opportunity for Hearing published on May 24, 1989 (54 FR 22510), four requests for a hearing and petitions for leave to intervene were received.

Notice is hereby given that a hearing will be held in this matter. By Memorandum and Order dated August 18, 1989 (LBP-89-23) and Memorandum and Order dated September 25, 1989 (LBP-89-25), the Presiding Officer has granted the petitions of Ms. Martha T. Dodson, of Crystal City, Missouri, Sen. Jeremiah W (Jay) Nixon, of Jefferson County, Missouri, and Ms. Karen Sisk, of Imperial, Missouri. The Presiding Officer deferred action on the petition of the Coalition for the Environment, of St. Louis, Missouri, pending further consideration at a hearing conference.

This proceeding will be conducted under the Commission s "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, set forth in 10 CFR part 2, subpart L. Further details appear in LBP-89-23 and LBP-89-25, referenced above. Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L St. NW Washington, DC.

Although this proceeding may be decided entirely on the basis of the parties' written filings, together with relevant documents, the Presiding Officer has the option in specified circumstances to entertain oral presentations from the parties. In addition, for reasons set forth in LBP-89-25, the Presiding Officer has determined that a prehearing conference to define and narrow issues to be litigated in the proceeding would be useful.

Please take notice that a prehearing conference will be held on Wednesday, October 25, 1989, beginning at 9:00 a.m., at the Student Center Building, Viking Room, Jefferson College, Hillsboro, Missouri.

Pursuant to 10 CFR 2.1211(a), any member of the public who is not a party to the proceeding may make a limited appearance in order to state his or her views on the issues involved in this license amendment proceeding. Although these statements are not evidence and do not become part of the decisional record, the Presiding Officer may ask the parties to develop information for the record (or at least have the NRC Staff consider information) concerning matters raised in such statements and not directly

covered by issues identified by the parties. Limited appearances may either be in writing or oral. The Presiding Officer will hear oral statements on Tuesday, October 24, 1989, the evening prior to the prehearing conference, from 7:00–9:30 p.m. (or until the last person present has delivered his or her statement, whichever is earlier), at the Arts and Sciences Building, Little Theatre, Jefferson College, Hillsboro, Missouri. Written statements, and requests to make oral statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of statements and requests should also be forwarded to the Presiding Officer.

Dated: September 26, 1989, Bethesda, Maryland.

Charles Bechhoefer,

Presiding Officer, Administrative Judge.

[FR Doc. 89–23143 Filed 9–29–89; 8:45 am]

BILLING CODE 7590–01–M

Duquesne Light Co., Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66 issued to Duquesne Light Company, et al. (the licensees) for operation of the Beaver Valley Power Station Unit 1 located in Shippingport, Beaver County, Pennsylvania.

The proposed amendment would revise the Technical Specifications, Table 3.6–1 (Containment Penetrations) to remove containment isolation valve SI–91 listed for penetration 113–1–A. The bypass line on which valve SI–91 is installed would be eliminated since its function has been obviated by Amendment No. 71. The physical change would involve cutting the line and capping the resulting stubs.

Before issuance of the proposed license amendment, the Commissoin will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The bypass line and associated isolation valve were originally installed to flush the safety injection piping downstream of the Boron Injection Tank (BIT) after a safety injection actuation or functional test. Amendment 71 reduced the required BIT boron concentration so that flushing the downstream piping is no longer required. In addition, this piping configuration is similar to that arrangement identified in NRC Bulletin 88–08 "Thermal Stresses in Piping Connected to Reactor Coolant Systems, and if this valve and piping were removed, the potential for the incident that occurred at Farley Unit 2 would also be removed. This would effectively increase the safety posture of the plant by eliminating a potential unisolable piping failure. Hence the answer to the first criterion is negative.

The containment isolation valve will be physically removed and will no longer provide a potential pathway for containment leakage. The seal-welded caps on the piping will eliminate the potential for containment and safety injection leakage through this piping. Therefore, the answer to the second criterion is negative.

No analytical assumptions or acceptable criterion will be affected in any way by the proposed amendment. Hence the answer to the third criterion is also negatve.

Therefore, based on the above considerations, the staff has made a proposed determination that the requested amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By November 1, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 wich is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW Washington, DC 20555 and at the Local Public Document Room located at B.F Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.174, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in

the proceeding, but such an amended petition must satisify the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should also be given Datagram Identification Number 3737 and the following message addresed to John F. Stolz: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW. Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 22, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at B.F. Jones Memorial Library, 663 Franklin Ave., Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 26th day of September, 1989.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23158 Filed 9-29-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-18655; ASLBP No. 89-597-01-EA]

Nuclear and Radiological Imaging Physicians; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Nuclear and Radiological Imaging Physicians

Byproduct Material License No. 21-24472-01 EA 89-068

This Board is being established pursuant to the Licensee's request for a hearing regarding an Order issued by the Director, Office of Enforcement, dated August 23, 1989, entitled "Order Suspending License and Revoking License." (54 FR 36922-24, September 5, 1989)

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Judge B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108.

Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 26th day of September 1989.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-23142 Filed 9-29-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27285; File No. SR-NASD-89-40]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Service Charge for NASDAQ Workstation™ Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing an amendment to part IX of Schedule D of the Schedules to the By-Laws revising the service charges applicable to NASDAQ Workstation™ Service.

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

The NASD is proposing a revision to the existing monthly charge for NASDAQ Workstation™ Service. The current monthly service charge for NASDAQ Workstation Service includes charges for Level 2/3 service, communication lines, and development expenditures. The new rate of $345 per month per device reflects increases in the communications cost component of the service charge, in the recovery of development costs, and in the recovery of charges for NASDAQ/National Market System last sale information (payable to Market Services Inc.), of $7.50 per terminal per month, which was not included in the original fee structure for Workstation Service. In its order granting permanent approval of the Workstation Service and applicable fees [1] the Commission in 1987 recognized that the costs for the Workstation Service could only be estimated at the phase-in stage, and the NASD represented that it would undertake to reevaluate the fee structure when the Workstation Service had replaced the Harris Level 2/3 service. Although the NASD still supports both Workstation and Harris terminal service, it has reviewed the existing rate structure for the services in light of empirical cost data derived from a sample based on geographical distribution of the Workstation Service and hereby proposes this pricing modification.

The NASD proposes increasing the communication component of the service charge for the Workstation Service at this time because of increased regional telephone line costs associated with delivering the service to subscribers as a result of rate increases and conversion of small locations to the Service. In addition, the development component of the service charge is being increased to defray costs associated with enhancements to Workstation Service which have increased the functionality and efficiency of the service beyond that available at its initial implementation in 1987 The additional costs consist of $11 per terminal per month for communication expenses and $4,200,000 unrecovered development costs which are being amortized over a period of 39 months. These costs are being written off over a projected average NASDAQ Workstation population of 3,050 terminals through the end of 1992.

As the Commission acknowledged in its approval order, the NASD proposed the fee for Workstation Service to provide for costs for Level 2/3 service, communication costs, and development costs: "The Commission believes that it is sufficient that the proposed fee bears a reasonable relationship to the existing fee structure for Level 2 and 3 terminals with a good faith estimate of the additional costs attributable to the development and operation of the Workstation, and the Commission found "that the proposed fees for the Workstation Service are consistent with the requirements of section 15A. [2] The NASD believes that the increases in fees for Workstation service are within the guidelines of the original order approving the service and reflect increases in communication line costs as well as development costs that could only be approximated when the service first became available in 1987

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange Act of 1934 ("Act"). Section 15A(b)(5) requires that the rules of the NASD "provided for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The NASDAQ Workstation Service fee increase proposed in this filing has been formulated on the basis of the costs of developing and operating that service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not foresee any burden on competition by the proposed rule change not necessary or appropriate in furtherance of purposes of the Act because the proposed fee seeks to recover increased costs associated with operating the Workstation™ Service, and will be applicable to all recipients of that service.

C. Self-Regulatory Organization s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rules change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

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See Release No. 34-25156, 52 FR 45894, December 2, 1987.

Id., at 52 FR 45896.

the purposes of the Securities Exchange Act of 1934.

IV Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all writtten 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23154 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27284; File No. SR-NASD-89-39]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Fees for the Intermarket Trading System/Computer Assisted Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement by the Terms of Substance of the Proposed Rule Change

The NASD is proposing an amendment to part IX of Schedule D of the Schedules to the By-Laws revising the transaction charges assessed market makers for use of the ITS/CAES linkage.

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 NASD 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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change in transaction charges for the ITS/CAES market makers proposed in this filing is to assess the same charge for ITS/CAES commitments entered by market maker participants as currently are applied to a member that receives commitments through ITS. In the past, the NASD charged transaction fees to both the market making and order entry side of a trade. Currently, however, the NASD does not assess transaction fees to order entry firms in the CAES system. This rule change maintains the current distinction between order entry firms and market makers but seeks to assess ITS market makers for transaction related charges and thereby recover the costs associated with use of the ITS/CAES System to send as well as receive ITS commitments to trade. The NASD believes that assessing this transaction fee on outgoing commitments as well as incoming commitments is appropriate because all NASD participants in the ITS linkage with exchanges are market makers, and the operational expenses of the system are accrued for incoming and outgoing traffic pattern usage. At present there is no charge imposed upon members for outbound commitments to an ITS exchange participant and correspondingly no revenue to offset the costs of outbound transactions through ITS/CAES. In addition, the proposed transaction fee for outbound ITS commitments will reduce the yearly deficit that operating the ITS/CAES system accounts for by approximately 50%.

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange Act of 1934 ("Act"). Section 15A(b)(5) requires that the rules of the NASD "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The NASD believes the proposed transaction charge allocated for ITS/CAES commitments entered by market makers is equitable as prescribed in section 15A(b)(5) of the Act as the proposed transaction charge is the same amount currently applied to members that receive commitments through ITS.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended. Market maker participation in ITS/CAES is voluntary and the proposed rule change will apply to all ITS/CAES market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The following rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23155 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17153; (811-5244)]

Investment Grade Bond Trust; Notice of Application

September 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Investment Grade Bond Trust ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The Application was filed on July 10, 1989 and a supplemental letter was submitted on September 21, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on October 19, 1989, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicant, Investment Grade Bond Trust, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272-2856 or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is availble 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, organized as Massachusetts Business Trust, is registered under the 1940 Act as an open-end, diversified management investment company.

2. On July 20, 1987 Applicant registered under the 1940 Act and filed a registration statement for an indefinite number of shares of beneficial interest without par value. The registration statement became effective on December 4, 1987 Applicant began offering its shares in January, 1988 to insurance company separate accounts (shareholders) in connection with the insurance of certain variable life insurance and variable annuity contracts. Applicant served as an underlying investment for insurance company separate accounts of Keystone Provident Life Insurance Company ("KPLIC").

3. Effective December 31, 1988, KPLIC became a wholly-owned subsidiary of Liberty Mutual Insurance Company. At a meeting on December 15, 1988, the Board of Trustees of the Applicant voted to authorize the dissolution of Applicant, effective January 1, 1989. On December 31, 1988, there were 269,264 shares of beneficial interest outstanding. The aggregate net asset value of those shares was $2,597,438 and the per share value was $9.65. Applicant redeemed in kind all of its asets, in the amount of $2,597,438, and KPLIC, the sole shareholder of Applicant, transferred all of Applicant's assets to a SteinRowe Variable Investment Trust ("SteinRoe Trust"). SteinRoe Trust is a series company advised by Stein Roe & Farnham Incorporated, an indirect subsidiary of Liberty Mutual Insurance Company.

4. To effectuate the dissolution, Applicant's Board of Trustees by unanimous writtten consent, dated September 13, 1988, authorized the filing of an application with the SEC for an order pursuant to sections 6(c), 17(b) and 26(b) of the 1940 Act and Rule 17d-1 thereunder. On December 30, 1988, Applicant received an order (Investment Company Act Release No. 16728) approving a redemption in kind of shares of certain funds, including Applicant, the redemption of cash of certain shares of the Public Mutual Funds, and the purchase with the redemption proceeds of shares of the portfolios of the SteinRoe Trust.

5. At the time of dissolution, there were $3,587 in unamortized organizational expenses. Applicant was reimbursed the unamortized organizational expenses by KPLIC.

6. No brokerage commissions were paid in connection with the transaction. No expenses were incurred in connection with the liquidation of the Applicant.

7 At the time of the filing of the application, Applicant had no securityholders and there were no existing shareholder balances or claims. No assets have been retained by applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant filed a Form N-SAR for the period ending December 31, 1988. If a Form N-SAR is required for any period from December 31, 1988 through the date Applicant is deregistered, Applicant undertakes to file such form promptly after the earlier of the due date of the form or the issuance of the requested order.

9. Applicant filed with the Commonwealth of Massachusetts and the City of Boston, Massachusetts a Secretary's Certificate certifying that the Applicant's Board of Trustees approved the dissolution of the Massachusetts Business Trust creating the Applicant, effective January 1, 1989.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23150 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17152; (811-4505)]

Government Securities Zero Coupon Trust; Notice of Application

September 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Government Securities Zero Coupon Trust ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The Application was filed on July 10, 1989 and a supplemental letter was submitted on September 21, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on October 19, 1989, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW Washington, DC 20549; Applicant, Government Securities Zero Coupon Trust, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272-2856 or Karen L. Skidmore, Branch Chief, (202) 272-3023, 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, organized as a Massachusetts Business Trust, is registered under the 1940 Act as an open-end, diversified management investment company.

2. On November 27 1985, Applicant registered under the 1940 Act and filed a registration statement for an indefinite number of shares of beneficial interest without par value. The registration statement became effective on August 7 1986. Applicant issued five series of shares: MMS 1991, MMS 1993, MMS 1996, MMS 1998, and MMS 2001. Only MMS 1991 and MMS 1996 series were offered for sale. Applicant began offering its shares on August 12, 1986 to insurance company separate accounts (shareholders) in connection with the insurance of certain variable life insurance and variable annuity contracts. Applicant served as an underlying investment for insurance company separate accounts of Keystone Provident Life Insurance Company ("KPLIC").

3. Effective December 31, 1988, KPLIC became a wholly-owned subsidiary of Liberty Mutual Insurance Company. At a meeting on December 15, 1988, the Board of Trustees of the Applicant voted to authorize the dissolution of Applicant, effective January 1, 1989. On December 31, 1988, there were 12,519 shares of MMS 1991 series outstanding. The aggregate net asset value of those shares was $114,323 and the per share value was $9.13. On the same date there were 23,589 shares of beneficial interest of MMS 1996 series outstanding. The aggregate net asset value of those shares was $201,979 and the per share value was $8.56. Applicant redeemed in kind all of its assets, in the aggregate amount of 316,302, and KPLIC, the sole shareholder of Applicant, transferred all of Applicant's assets to a SteinRowe Variable Investment Trust ("SteinRoe Trust"). SteinRoe Trust is a series company advised by Stein Roe & Farnham Incorporated, an indirect subsidiary of Liberty Mutual Insurance Company.

4. To effectuate the dissolution, Applicant's Board of Trustees by unanimous written consent, dated September 13, 1988, authorized the filing of an application with the SEC for an order pursuant to sections 6(c), 17(b) and 26(b) of the 1940 Act and Rule 17d-1 thereunder. On December 30, 1988, Applicant received an order (Investment Company Act Release No. 16728) approving a redemption in kind of shares of certain funds, including Applicant, the redemption of cash of certain shares of the Public Mutual Funds, and the purchase with the redemption proceeds of shares of the portfolios of the SteinRoe Trust.

5. At the time of dissolution, Applicant's MMS 1991 series had $557 in unamortized expenses and Applicant's MMS 1996 series had $558 in unamortized expenses. Applicant's MMS 1991 and MMS 1996 series were reimbursed the unamortized organizational expenses by KPLIC.

6. No brokerage commissions were paid in connection with the transaction. No expenses were incurred in connection with the liquidation of the Applicant.

7 At the time of the filing of the application, Applicant had no securityholders and there were no existing shareholder balances or claims. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant filed a Form N-SAR for the period ending December 31, 1988. If a Form N-SAR is required for any period from December 31, 1988 through the date Applicant is deregistered, Applicant undertakes to file such form promptly after the earlier of the due date of the form or the issuance of the requested order.

9. Applicant filed with the Commonwealth of Masschusetts and the City of Boston, Massachusetts a Secretary's Certificate certifying that the Applicant's Board of Trustees approved the dissolution of the Massachusetts Business Trust creating the Applicant, effective January 1, 1989.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23149 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17151; 812-6793]

Kidder, Peabody & Co. Inc., et al., Notice of Application

September 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Execution under the Investment Company Act of 1940 ("1940 Act").

Applicants: Kidder, Peabody & Co. Incorporated on behalf of itself and all series of Target Unit Investment Trust, Corporate High Yield Series.

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 17(b) from section 17(a).

Summary of Application: Applicants seek an order to permit Kidder, Peabody & Co. Incorporated ("Sponsor") to purchase securities from the series of Target Unit Investment Trust, Corporate High Yield Series ("Trust" or "Trust") in principal transactions under certain conditions.

Filing Date: The application was filed on July 15, 1987 and amended on May 13, 1988, August 10, 1988, February 23, 1989, and July 18, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application

will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 16, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, 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. Applicants, Kidder, Peabody & Co. Incorporated, 10 Hanover Square, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each series of the Trust, including future series, is or will be a registered unit investment trust under the 1940 Act with units of beneficial interest therein (the "Units") registered under the Securities Act of 1933. The Sponsor is the sponsor of the Trusts.

2. The principal objective in selecting securities for series of the Trust is the achievement of a high level of income through an investment in a varied portfolio of "high yield" bonds. The term "high yield" securities typically refers to obligations which are rated below investment grade quality by recognized rating services (i.e., lower than Baa (3) by Moody's Investors Service, Inc. or BBB—by Standard & Poor's Corporation).

3. Virtually all trading of high yield securities takes place in over-the-counter markets consisting of groups of market markers who are primarily major securities firms. Because the high yield security market is a dealer market, rather than an auction market, there is not a single obtainable price for a given security that prevails at any given time. Prices are determined by negotiation between buyers and sellers.

4. Not all dealers maintain markets in all high yield Bonds. By its nature, the high yield bond market is a very specialized market and investors in it have been predominantly financial institutions. The Sponsor is presently a major market maker in high yield corporate bonds. Over the past three years, the Sponsor has been among the top ten firms in the high yield bond market.

5. Upon the occurrence of certain specified events, enumerated in the indenture that creates the Trusts, the Sponsor of the Trusts may direct the trustee (the "Trustee") to dispose of a portfolio security. One such event is where a sale is necessary to meet a redemption request. Such a sale is anticipated to be made infrequently and would be made in order to provide funds to meet Unit redemption requirements.

Applicants' Legal Analysis

1. The Sponsor, under the limited circumstances set forth below, requests an exemption from section 17 of the 1940 Act to permit it to repurchase securities from the Trusts. The Sponsor will not purchase any security from any series of the Trust unless the security is being sold to meet redemption requests and, at the time of sale, there are three market makers for the security who are not affiliated persons of the Sponsor. Purchases may be made by the Sponsor only when there are three independent market makers who will have bid on the securities at the time of purchase.

2. While the Sponsor will not be obligated to make a market in any security deposited in one of the Trusts, the inability of the Trust to sell to the Sponsor under the conditions described in paragraph 3 below would not be beneficial to unitholders, in furtherance of the 1940 Act, or consistent with the 1940 Act's enunciated goal of protecting investors.

3. Conforming to the statutory prohibition of section 17(a) of the 1940 Act on a sale by one of the Trusts to the Sponsor when the Sponsor is the market maker with the best quoted price for the deposited security being sold would either force the Trust to retain a security under circumstances when the retention of such security would not be in the best interests of the unitholders or force the Trustee of the Trust to sell the security at a price lower than the best available price in the marketplace.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions in connection with the sale of any security from the Trusts to the Sponsor:

1. Before any transaction is executed with the Sponsor, the particular Trust will first obtain such information as it deems necessary to determine the "best price" available with respect to the quantity of the security being sold and, in doing so, the Trustee will be required to check with at least three other unaffiliated dealers to obtain a competitive quotation. These dealers must be those who, in the experience of the Trustee, are in a position to quote favorable prices and are actively engaged in the market making of high yield bonds.

2. The Sponsor will not purchase any security from any series of the Trust, unless at the time of sale, there are three market makers for the security who are not affiliated persons of the Sponsor. The Sponsor's bid will be accepted only if a minimum of three bids are received from persons other than the Sponsor or its affiliates.

3. In each instance where other quotations are obtained, a determination will be required, based upon the information available to the Trustee, that the price quoted by the Sponsor is "better than" the price quoted from other sources in order for the Trustee to effect the sale with the Sponsor. To be considered "better than" that available from other sources, the Sponsor quotation must be at least ⅛ of 1% of the principal amount ($1.25 per $1,000 principal amount) better than the quotations from other sources.[1] The Trustee will maintain records with respect to any transactions effected with the Sponsor where the Sponsor quotes the "best price to the Trust including documentation for having obtained quotations from other dealers.

4. While the determination that a security should be sold from a Trust will be made by the Sponsor as Sponsor, the personnel and officers of the Sponsor making these decisions will not be the same personnel and officers that are directly involved in the underwriting and market making of "high yield" securities. The department of the Sponsor that identifies market opportunities and then structures the portfolios of the Trusts (the "Research Group") will not inform the Sponsor s High Yield Trading department (the "Department"), which exclusively performs the Sponsor's market making of high yield securities, of the Research Group s recommendations to sell a portfolio security. All transactions involving the sale of portfolio securities

[1] The "high yield" corporate bond market does not have standard minimum price increment; however, ⅛ of 1% of principal amount generally is greater than the range of minimum price increments prevalent in this market.

will originate with the Trust, the Research Group and the Sponsor's Unit Investment Trust Group (the "UIT Group"), the department of the Sponsor that actually administers the Trusts, and not with the Department. In discussions with respect to proposed sales between the Trusts and the Sponsor, the Department personnel will confine their activities to responding to inquiries from the Trusts, the Trustee, the Research Group and the UIT Group. No solicitation will be made of the Trusts by the Department. The Department will not attempt to influence or control in any way the placing of orders to sell portfolio securities by the Trusts with the Sponsor.

5. Purchases by the Sponsor from the Trust will be limited to transactions necessary to generate cash to meet redemptions.

6. For the period of six months following the Sponsor's purchase of a security from the Trust, should the Sponsor resell that same security and receive a price greater than that paid by the Sponsor for the security, the Sponsor must tender that difference between the purchase and sales prices to the series of the Trust that sold the security to the Sponsor. The Sponsor may retain an amount equal to the transaction costs of the subsequent resale and certain "carrying costs. For purposes of these transactions, carrying costs will consist of interest charges computed at the lower of: (i) the prime commercial lending rate charged by Citibank, N.A., during the period from the date the Sponsor acquires the security from the Trust until the Sponsor transfers its ownership interest in the security to the subsequent purchaser; or (ii) the effective cost of borrowings by the Sponsor during such period. The "effective cost of borrowings" is equal to the Sponsor's "actual cost of funds" as calculated on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during such period.

7 The Legal Department of the Sponsor will prepare guidelines for the Sponsor's personnel to follow in connection with any transactions effected pursuant to the proposed exemptive order and the Legal Department will periodically monitor the activities of the Sponsor in this regard to determine adherence to these policies.

8. The Trustee of the Trust will prepare guidelines for the Trust and the Trustee to enable the Trust to obtain the best price and execution for the security being sold pursuant to the exemptive order.

9. The Sponsor will undertake to maintain complete and segregated records of all the relevant documentation required under the application and of all necessary support documentation implicit in satisfying the conditions set forth or otherwise referred to in the application and herein. Such records will be readily available to the SEC for review purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23151 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17150; File No. 812-7349]

Nationwide Life Insurance Co., et al., Notice of Application

September 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the Act").

Applicants: Nationwide Life Insurance Company ("Nationwide Life"), Nationwide Variable Account-II ("Variable Account") and Nationwide Financial Services, Inc. ("NFS").

Relevant 1940 Act Sections: Order requested under Section 26(b).

Summary of Application: Applicants seek an order to approve the substitution of shares of the American Variable Insurance Series for the shares of the American Life-Annuity Series held by the Variable Account.

Filing Date: The application was filed on June 28, 1989 and amended on August 3, 1989, August 15, 1989 and August 29, 1989.

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 request must be received by the SEC by 5:30 p.m., on October 16, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy 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; Nationwide, Variable Account, and NFS, One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, at (202) 272-2058, or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

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) 258-4300).

Applicants' Representations

1. Nationwide Life, a stock life insurance company incorporated under the laws of the State of Ohio, is the depositor of the Variable Account. The Variable Account is a separate account of Nationwide Life registered under the 1940 Act as a unit investment trust, and was established for the purpose of funding individual deferred variable annuity contracts (the "Contracts"). NFS is the general distributor of the Contracts issued by the Variable Account.

2. Purchase payments made under the Contracts are allocated by the Contract Owners ("Owners") to the Variable Account and invested in shares of one or more diversified, open-end management investment companies ("mutual funds") which are registered under the 1940 Act. For each mutual fund option available within the Variable Account, there is a sub-account of the Variable Account for Contracts issued under tax qualified plans and one for Contracts under nonqualified plans. Presently under the Contracts, purchase payments are allocated to sub-accounts consisting of 13 mutual funds managed by five different fund managers.

3. Nationwide Life does not deduct a sales charge from purchase payments made for the Contracts. However, if any part of the Contract value of the Contracts is surrendered, Nationwide Life will, with certain exceptions, deduct from the Owner's Contract value a contingent deferred sales charge not to exceed 7% of the lesser of the total of all purchase payments made within 84 months prior to the date of the request to surrender, or the amount surrendered. Owners may exchange amounts among the mutual fund options without charge and without limitation. Nationwide Life has reserved the right under the Contracts to substitute, without consent of the Owners, shares of any mutual

funds held by the Variable Account for shares of another mutual fund.

4. For Contracts issued on or after May 1, 1987 the Variable Account utilizes three separate series of the American Life/Annuity Series ("AL Series"). These funds are the High-Yield Bond Fund, the Growth Fund, and the U.S. Government Guaranteed/AAA-Rated Securities Fund (collectively AL Funds"). The AL Series was organized as a Massachusetts business trust in 1986 and is registered under the Act as a diversified, open-end management investment company. Capital Research and Management Company provides investment advisory services to the AL Series.

5. Nationwide Life has been informed that at a meeting held on March 6, 1989 the Board of Trustees of the AL Series decided to cease operations of the AL Series because of the AL Series relatively small asset size and high level of expenses. Thus, Nationwide Life on behalf of the Variable Account proposes to effect a substitution of all shares of the AL Funds for shares of funds available under the American Variable Insurance Series ("VI Series").

6. The VI Series was organized as a Massachusetts Business Trust in 1983 and is registered with the Commission under the Act as a diversified, open-end management investment company. The investment objectives of the VI Funds are almost identical to the investment objectives of the corresponding funds of the AL Series. Like the AL Series, the VI Series is advised by Capital Research and Management Company. Presently, Lincoln National Life Insurance Company is the only insurance company investing in the VI Series. The annual expenses, as expressed as a ratio of expenses to average net assets, of the VI Funds for 1987 and 1988 were, with one exception, lower than the 1987 and 1988 expenses for the corresponding AL Funds. For both the AL Series and the VI Series, CRMC receives, as compensation for investment advisory and other services, a monthly fee which is accrued daily at the annual rates of 0.60% on the firsat $30 million of each fund's net assets, plus 0.50% on each fund's net assets in excess of $30 million.

7 It is proposed that shares of the AL Funds be substituted for shares of the corresponding funds of the VI Series (collectively "VI Funds"). Accordingly, in effect, shares of the VI Series High-Yield Bond Fund will be substituted for shares of the AL Series High-Yield Bond Fund, shares of the VI Series Growth Fund will be substituted for shares of the AL Series Growth Fund, and shares of the VI Series U.S. Government Guaranteed/AAA-Rated Securities Fund will be substituted for shares of the AL Series U.S. Government Guaranteed/AAA-Rated Securities Fund. Thereafter, Owners would be permitted to direct Contract Values to the VI Fund(s) of their choice pursuant to the free exchange privileges afforded by the Contracts. Applicants have been advised by the AL Series and the VI Series that the AL Series and the VI Series will seek exemptive relief under the Act to engage in a sale and purchase transaction, respectively, of the securities held by the AL Series when the Variable Account redeems its shares of that Series.

8. Any expenses of the substitution with respect to the Contracts will be borne by Nationwide Life or CRMC. Any expenses incurred in winding down and liquidation of the AL Series (including deregistration under the Act) will be borne by CRMC. Accordingly, the costs of the proposed substitution will not be borne by the Owners.

9. At the time of substitution, Nationwide Life will redeem, without charge to Owners and at net asset value, all shares of the AL Funds it currently holds on behalf of the Variable Account and will simultaneously purchase, at net asset value, shares of the corresponding VI Funds, so that the purchases will be for the exact amounts of the redemption proceeds. As a result, at all times, Contract values attributable to Owners currently invested in the AL Funds will be fully invested. It is intended that the above transaction will be effected by a simple net asset value exchange without charge to Owners. Applicants believe that no transaction nor brokerage costs will result from the redemption and purchase transaction. However, in the event such expenses are incurred, they will be borne entirely by CRMC. After the substitution, the VI Funds, not the AL Funds will be available for all Contracts issued on or after May 1, 1987 and before September 1, 1989. The Owners of such Contracts will, in the future, have access to the VI Funds, with the ability to transfer assets in and out of the VI Funds, and to make additional purchase payments. The VI Funds will not be available for Contracts issued on or after September 1, 1989.

10. The Owners' interests in the Contracts in practical economic terms, will be the same after the substitution as such interests immediately prior to the substitution. The substitution will in no way alter the annuity or other benefits to Owners or the contractual obligations of Nationwide Life. In addition, the substitution will not affect the voting rights of the Owners. Furthermore, the fees and charges paid by the Owners will not be any different after the substitution than they were before the substitution.

11. Within five days after the substitution, Nationwide Life will send Owners written notice of the substitution that identifies the shares of the AL Funds that have been eliminated and the shares of the VI Funds that have been substituted. Nationwide Life will include in such mailing the prospectus for the AL Funds and a revised prospectus for the Variable Account which describes the substitution. Owners will be reminded in the notice that they may exchange all assets, as substituted, to any other mutual fund option available under their Contract without charge and without limitation. Following the substitution, Owners will be afforded the same Contract rights with regard to amounts invested under the Contracts as they currently have.

12. The proposed substitution is consistent with the principles and purposes of section 26(b) and will not entail any of the abuses it is designed to prevent, is in the best interest of the Owners, and is consistent with their investment expectations. Of primary significance is the fact that the substitution is occasioned by a compelling corporate purpose. Because the operation of the AL Series is being discontinued, continued investment in the AL Series by the Variable Account is not possible.

13. The substitution will not result in the type of costly forced redemption which 26(b) was intended to guard against for the following representations and reasons: (1) The substitution is of shares of the VI Funds whose objectives, policies and restrictions are virtually indentical to those of the AL Funds in all material respects as to continue fulfilling the objectives and expectations of Owners; (2) Owners will be notified after the substitution to allow them to direct their contract values to other investment options available under the Contracts; (3) the substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charges; (4) the substitution will in no way alter the annuity benefits to Owners or the contractual obligations of Nationwide Life; (5) no sales load is deducted from purchase payments made to the Contracts and no charges are imposed on amounts exchanged among the mutual fund options available under the Contracts; (6) the substitution will not affect the voting rights of the Owners; (7) the fees and charges paid by Owners will not be any different after the substitution than they were before the substitution; (8) Nationwide Life has

determined that no adverse tax consequences will be incurred by Owners as a result of the substitution; (9) it is anticipated that in the future the total expenses of the VI Funds will not be greater than the expenses would have been for the AL Funds, had the AL Funds not been discontinued; (10) the cost of the substitution will be borne entirely by Nationwide Life, not by the Owners; and (11) the substitution is expected to confer other economic benefits to Owners in that the larger asset size of the VI Funds than the AL Funds gives the VI Funds greater flexibility in meeting the investment policies and objectives of the VI Funds.

14. The application states that, for the reasons set forth above, the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23152 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17149; 812-7311]

Transamerica Life Insurance and Annuity Company, et al., Notice of Application

September 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

Applicants: Transamerica Life Insurance and Annuity Company ("Transamerica Life") and Separate Account VA-1 of Transamerica Life Insurance and Annuity Company (the "Separate Account").

Relevant 1940 Act Section: Order requested under Section 26(b).

Summary of Application: Applicants seek an order to approve the substitution of shares of the American Variable Insurance Series for the shares of the American Life/Annuity Series held by the Separate Account.

Filing Date: The Application was filed on May 5, 1989 and amended on August 9, 1989 and August 30, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 16, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request 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. Transamerica Life Insurance and Annuity Company, 1150 South Olive Street, Los Angeles, California 90015.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst at (202) 272-2058 or Clifford E. Kirsch, Acting Assistant Director at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations and Statements

1. Transamerica Life is a stock life insurance company incorporated in California. The Separate Account, which was established by Transamerica Life to fund flexible premium deferred variable annuity contracts (the "Contracts"), is registered as a unit investment trust under the Act. The Separate Account has five divisions ("Sub-accounts"), each of which currently invests exclusively in a corresponding fund of the American Life/Annuity Series (the AL Series"). The AL Series, a registered, diversified, open-end management investment company, consists of five funds: the Cash Management Fund, the High-Yield Bond Fund, the Growth-Income Fund, the Growth Fund, and the U.S. Government Guaranteed/AAA-Rated Securities Fund. Capital Research and Management Company ("CRMC") provides investment advisory services to the AL Series.

2. The American Variable Insurance Series (the "VI Series"), a registered, diversified, open-end management investment company, is also advised by CRMC and consists of six funds: The Cash Management Fund, the High-Yield Bond Fund, the Growth-Income Fund, the Growth Fund, the U.S. Government Guaranteed/AAA-Rated Securities Fund, and the Asset Allocation Fund. The investment objectives of the funds are almost identical to the investment objectives of the corresponding funds of the AL Series. The application states that the VI Series is an existing mutual fund that, according to Post-Effective Amendment No. 11 to its registration statement, began operations in 1984 and as of January 1989, was selling its shares to separate accounts of the Lincoln National Life Insurance Company. Following the substitution, the VI Series will be the only investment vehicles for the Contracts.

3. A Series Participation Agreement (the Agreement") between Transamerica Life, the Separate Account, the AL Series and CRMC provides that the AL Series will sell shares of the funds to the Separate Account to fund the Contracts. The Agreement also gives each party the right to terminate the Agreement at any time upon six months written notice to the other parties. The Contracts reserve to Transamerica Life the right to replace the shares of the AL Series held by the Separate Account with shares of another registered investment company such as the VI Series, subject to Commission approval.

4. Transamerica Life has been informed that at a meeting held on March 6, 1989, the Board of Trustees of the AL Series decided to cease operations of the Series because of its relatively small asset size and high level of expenses. Accordingly, the AL Series notified Transamerica Life in writing on March 15, 1989 that it was exercising its option to terminate the agreement and that it would discontinue making its shares available to the Separate Account on September 15, 1989 or, with Transamerica Life's consent, at such earlier time when Transamerica Life has arranged for a substitute investment vehicle for the Separate Account.

5. Transamerica Life has, subject to Commission approval, arranged to substitute shares of the Cash Management, High-Yield Bond, Growth-Income, Growth, and U.S. Guaranteed/AAA-Rated Securities Funds of the VI Series for shares of the corresponding AL Series funds held by the Separate Account. Transamerica Life believes that the substitution would be consistent with the interests of Contract Owners because of the substantial similarity, or indeed the near identity between the VI Series and the AL Series. Both Series have the same investment adviser, CRMC, and the corresponding funds of the VI Series (the proposed series) have investment objectives that are, for all practical purposes, indentical to those of the AL Series (the current series) funds. The annual expenses of the VI Series' funds for 1988 were lower than the 1988

expenses for the corresponding funds of the AL Series.

6. The transaction is intended to be effected by a simple net asset value exchange, so that, following the substitution, the dollar amount invested in shares of each fund of the AL Series would be redeemed and invested in shares of the corresponding fund of the VI Series. That is, all of the shares of each fund of the AL Series held by the Separate Account would be redeemed at the net asset value per share, calculated in accordance with Rule 22c-1 under the Act, and the proceeds would be used to purchase shares of the corresponding fund of the VI Series, at the net asset value per share, also calculated in accordance with Rule 22c-1.

7 The application states it will be an in-kind redemption, and that no transaction or brokerage costs will result from the redemption and purchase transaction. Applicants understand that, in order to eliminate any possible doubt as to full compliance with the Act, CRMC, the AL Series and the VI Series (and possibly other affiliates of CRMC and/or one or both Series) will obtain whatever exemptive relief is deemed necessary or appropriate from Section 17 of the Act and the rules thereunder. Accordingly, in effect, shares of the Cash Management Fund of the VI Series would be substituted for shares of the Cash Management Fund of the AL Series; shares of the High-Yield Bond Fund of the VI Series would be substituted for shares of the High-Yield Bond Fund of the AL Series; shares of the VI Series' Growth-Income Fund would be substituted for shares of the AL Series' Growth-Income Fund; shares of the VI Series' Growth Fund would be substituted for shares of the AL Series' Growth Fund; and shares of the VI Series' U.S. Government Guaranteed/AAA-Rated Securities Fund would be substitued for shares of the AL Series' U.S. Government Guaranteed/AAA-Rated Securities Fund. Thereafter, Contract Owners would be permitted to direct Contract Value to the VI Series fund(s) of their choice (with the exception of the Asset Allocation Fund) pursuant to the transfer privileges afforded by the Contacts.

8. Any expenses of the substitution with respect to the contracts will be borne by Transamerica Life or CRMC. Any expenses incurred in winding down the AL Series (including deregistration under the Act) will be borne by CRMC. Accordingly, the costs of the substitution will not be borne by the Contract Owners. Contract owners will be given notice of the substitution and an opportunity to allocate policy value among the funds of the VI Series as they wish (in the absence of a request for a different allocation, the policy values would be appropriately allocated to the corresponding funds of the VI Series). As Transamerica Life imposes no fee on transfers between Sub-accounts of the Separate Account, Contract Owners will incur no transfer fees in connection with this re-allocation of Contract Value (the VI Series will be the only fund available after the substitution), and Transamerica Life does not limit the frequency of transfers. The substitution will have no federal income tax consequences for Contract Owners. In addition, the substitution will in no way alter the insurance benefits to Contract Owners or the contractual obligations of Transamerica Life, and Contract Owners will continue to look to Transamerica Life with regard to their rights under the Contracts. The voting rights of Contract Owners will be the same before and after the substitution. The fees and charges paid by Contract Owners will be no greater after the substitution than before the substitution as a result of the substitution. Finally, the substitution is expected to confer economic benefits to Contract Owners, as the VI Series' expenses for 1988 were lower than those of the corresponding funds of the AL Series in that year.

9. The application states that the requested Order under Section 26(b) of the 1940 Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23153 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-078]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

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 November 1, 1989 in Room 6244 at Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC. The meeting is scheduled to 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
3. Presentation of any new items for consideration by the Subcommittees.
4. Adjournment.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 2nd Street, SW Washington, DC 20593-0001, (202) 267-1483.

Dated: September 25, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-23131 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-077]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Avisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on November 2, 1989 in Room 2415 at 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. Topics on the proposed agenda are as follows:

Subcommittee Reports

A. Tug-Barge Construction, Certification and Operations
1. Vessel Tonnage in U.S. Laws and Regulations
2. 46 CFR Part 151
3. Review of Inspection Requirements for Tank Barges and Consideration of Cargo Tank High Level Alarms
4. Recommended Nondestructive Testing (NDT) Requirements for

Pressure Vessel Type Cargo Tanks
5. Other matters
B. Personnel Manning and Licensing
C. Port Facilities and Operations
D. Personnel Safety and Work Place Standards
Discussion of Coast Guard Task Statements and Issue Briefs
Any other matter properly brought up before the Committee.

With advance notice, and at the discretion of the Chairman, 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 at any time; however, to ensure distribution to each member of the Committee, 20 copies of the written material should be submitted to the Executive Director no later than October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 2nd Street, SW, Washington, DC 20593-0001, (202) 267-1483.

Dated: September 25, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety; Security and Environmental Protection.

[FR Doc. 89-23130 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Flight Service Station Closure, Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight service station closure—Cedar Rapids, Iowa.

SUMMARY: Notice is hereby given that on October 1, 1989, the Flight Service Station at Cedar Rapids, Iowa, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Fort Dodge, Iowa. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on September 18, 1989.

William Behan,

Acting Air Traffic Division Manager.

[FR Doc. 89-23133 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station Closure; Springfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station closure—Springfield, Missouri.

SUMMARY: Notice is hereby given that on October 1, 1989, the Flight Service Station at Springfield, Missouri, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Columbia, Missouri. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on September 18, 1989.

William Behan,

Acting Air Traffic Division Manager.

[FR Doc. 89-23134 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Approval of Applicant as Trustee; Central Trust Co., N.A.

Notice is hereby given that The Central Trust Company, N.A., with offices at 201 East Fifth Street, Cincinnati, Ohio, has been approved as Trustee, pursuant to Public Law 100-710 and 46 CFR 221.47

Dated: September 25, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89-23091 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 26, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and the the Treasury Department Clearance Officer, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue, NW Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0021
Form Number: TD F 90-22.1
Type of Review: Reinstatement
Title: Report of Foreign Bank and Financial Accounts
Description: This reporting requirement is intended to discourage the use of foreign financial accounts to facilitate illegal activities including tax fraud. A failure to report that is related to other violations of law is a felony. It will also be used for economic analysis. Banks, multinational corporations, and wealthy individuals are the ones most effected by the requirement.
Respondents: Individuals and households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 200,000
Estimated Burden Hours Per Response/Recordkeeping: 10 mintues
Frequency of Response: Annually
Estimated Total Reporting Burden: 34,000 hours
Clearance Officer: Dale A. Morgan (202) 343-0263 Departmental Offices Room 2409, Main Treasury Building 1500 Pennsylvania Avenue, NW Washington, DC 20220
OMB Reviewer: Milo Sunderhauf (202) 395-6880 Office of Management and Budget Room 3001,, New Executive Office Building Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-23171 Filed 9-29-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 26, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0140

Form Number: Form 2210 and Form 2210F

Type of Review: Extension

Title: Underpayment of Estimated Tax by Individuals and Fiduciaries; Underpayment of Estimated Tax by Farmers and Fishermen

Description: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. This form is used by taxpayers to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether the taxpayer is subject to the penalty, and to verify the penalty amount.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 900,000

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 1 hour, 19 minutes

Learning about the law or the form: 31 minutes

Preparing the form: 1 hour, 16 minutes

Copying, assembling, and sending the form to IRS: 20 minutes

Frequency of Response: Annually

Estimated Total Recordkeeping/ Reporting Burden: 2,965,500 hours

OMB Number: 1545-0904

Form Number: None

Type of Review: Extension

Title: Foreign Management and Foreign Economic Processes Requirements of Foreign Sales Corporation

Description: The regulations provide rules for complying with foreign management and foreign economic process requirements to enable Foreign Sales Corporations to produce foreign trading gross receipts and qualify for reduced tax rates. Rules are included for maintaining records to substantiate compliance. Affected public is limited to large corporations that export goods or services.

Respondents: Businesses or other for-profit

Estimated Number of Recordkeepers: 11,001

Estimated Burden Hours Per Recordkeeper: 2 hours

Frequency of Response: Other

Estimated Total Recordkeeping/ Reporting Burden: 22,001 hours

OMB Number: 1545-0938

Form Number: Form 1120-IC-DISC, Schedules K and P

Type of Review: Revision

Title: Interest Charge Domestic International Sales Corporation Return—1989; Shareholder's Statement of IC-DISC Distributions; Computation of Inter-Company Transfer Price or Commission

Description: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (IC-DISC) file Form 1120-IC-DISC to report their income and deductions. The IC-DISC is not taxed but IC-DISC shareholders are taxed on their share of IC-DISC income. IRS uses Form 1120-IC-DISC to check the IC-DISC's computation of income. Schedule P (Form 1120-IC-DISC) is used by the IC-DISC to report its dealings with related suppliers, etc., Schedule K (Form 1120-IC-DISC) is used to report income to shareholders.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 5,673

Estimated Burden Hours Per Response/Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to IRS
1120-IC-DISC	96 hrs., 23 mins	18 hrs., 40 mins	27 hrs., 5 mins	53 mins.
Sched. K	4 hrs., 4 mins	47 mins	54 mins	
Sched. P	11 hrs., 58 mins	1 hr., 17 mins	1 hr., 34 mins	

Frequency of Response: Annually

Estimated Total Recordkeeping/ Reporting Burden: 1,032,087

OMB Number: 1545-1019

Form Number: Schedule S (Form 706)

Type of Review: Revision

Title: Increased Estate Tax on Excess Retirement Accumulations

Description: Schedule S (Form 706) is used by estates to compute and pay the increased estate tax imposed by Internal Revenue Code section 4980A(d). IRS uses the information to determine whether the tax was correctly computed and paid.

Respondents: Individuals or households

Estimated Number of Respondents: 1,000

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 40 minutes

Learning about the law or the form: 32 minutes

Preparing the form: 45 minutes

Copying, assembling, and sending the form to IRS: 25 minutes

Frequency of Response: On occasion

Estimated Total Recordkeeping/ Reporting Burden: 2,350

Clearance Officer: Garrick Shear (202) 535-4297 Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-23172 Filed 9-29-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 26-89]

Treasury Notes of September 30, 1991, Series AE-1991

Washington, September 21, 1989.

1. Invitation of Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of September 30, 1991, Series AE-1991 (CUSIP No. 912827 XZ 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 2, 1989, and will accrue interest from that date, payable on a semiannual basis on March 31, 1990, and each subsequent 6 months on September 30

and March 31 through the date that the principal becomes payable. They will mature September 30, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, September 26, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, September 25, 1989, and received no later than Monday, October 2, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7 Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, October 2, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 28, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has

been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-23206 Filed 9-27-89; 3:32 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 27-89]

Treasury Notes of September 30, 1993, Series Q-1993

Washington, September 21, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of title 31, United States Code, invites tenders for approximately $7,750,000,000 of United States securities, designated Treasury Notes of September 30, 1993, Series Q-1993 (CUSIP No. 912827 YA 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 2, 1989, and will accrue interest from that date, payable on a semiannual basis on March 31, 1990, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will ge issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, September 27 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 26, 1989, and received no later than Monday, October 2, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts for customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks ad foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive bidder will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7 Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, October 2, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 28, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-23207 Filed 9-27-89; 3:32 pm]

BILLING CODE 4810-40-M

Customs Service

[T.D. 89-90]

Extension of Analyses for Which Commodity Control Services, Inc., an Accredited Customs Laboratory, Have Been Accredited to Perform

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

ACTION: Notice of additional analysis for which Commodity Control Services, Inc., a Customs accredited commercial laboratory, have been accredited to perform.

SUMMARY: Commodity Control Services Inc., of Clark, New Jersey, a Customs accredited commercial laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of their commercial laboratory accreditation to include the following analyses: Reid Vapor Pressure, Saybolt universal viscosity, percent by weight sulfur of petroleum products, and percent by weight lead in gasoline.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses from Customs-accredited commercial laboratories for certain products. Commodity Control Services Corp., which holds Customs accreditation in certain laboratory analyses has applied to Customs to extend its accreditation to the performance of additional analyses. Review of Commodity Control Corp.'s qualifications shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW Washington, DC 20229 (202-566-2446).

Dated: September 26, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-23090 Filed 9-29-89; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

Federal Tax Deposit Fee Reduction

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that Treasury plans to reduce the fees paid to depositaries for processing Federal tax deposit (FTD) payments beginning in November 1989. It is the Department of the Treasury s intent to announce rate changes to the affected financial institutions prior to the effective date of the change and allow them the opportunity to comment. Treasury plans to reduce the current per-item fee from $0.30 to $0.25 for large depositaries that process FTD dollar deposit volumes in excess of $10 million annually. The affected depositaries will include depositaries in the remittance option Class 1 category and the note option Class B and Class C categories. At this time, fee reductions will not be implemented for depositaries that process the smaller FTD dollar deposit volumes (depositaries in the note option Class A category and remittance option Class 2 category) or any depositary that participates in the Federal Government's Minority Bank Deposit Program (MBDP). This fee reduction will become effective with the Federal Reserve Banks' November reporting cycle which begins November 2, 1989. The new fee structure will be reflected in the fees paid to depositaries in December 1989 for the FTD payments processed during the November 1989 reporting cycle.

DATES: Comments must be received by October 20, 1989.

ADDRESS: Comments may be mailed to the Treasury Programs Branch, Financial Management Service, U.S. Department of the Treasury, Room 420, Liberty Center, 401 14th Street SW., Washington, DC 20227

FOR FURTHER INFORMATION CONTACT: Michael C. Salapka on (202) 287–0590.

SUPPLEMENTARY INFORMATION: On March 1, 1989, Treasury published a final rule concerning the reduction of fees in the **Federal Register** (54 FR 8532). Treasury proposes to reduce the per-item fee paid to the large note option and remittance option depositaries from thirty ($0.30) cents per Federal tax deposit coupon processed to twenty-five ($0.25) cents. Treasury regulations in the "Treasury Financial Manual" on paying fees to financial institutions for maintaining Treasury Tax and Loan (TT&L) accounts and processing Federal tax deposit payments will be revised to reflect the new fee schedule. The "Treasury Financial Manual" may be obtained from any Federal Reserve Bank.

Reasons for Treasury's policy regarding FTD payments include: First, depositaries that choose to participate in the Treasury Tax and Loan Investment program earn interest on the overnight use of funds deposited as Federal tax payments. Second, Treasury has determined that the larger depositaries are in a better position to accommodate the fee reduction. The larger depositaries process the largest dollar deposit volumes and generally benefit most from the overnight use of Federal funds.

Treasury estimates the earning capacity of depositaries from the overnight use of Federal tax deposit funds during Fiscal Year 1988 was approximately $142 million. This estimate is based on the FY 1988 Federal tax deposit dollar volume cited in the "Daily Treasury Statement" dated September 30, 1988. Further, Treasury estimates that implementing the new fee structure on November 2, 1989 will save the Treasury nearly $3.3 million in Fiscal Year 1990.

Treasury plans to reduce fees paid to all depositaries that process over $10 million in Federal tax deposit dollar volumes annually, regardless of classification as note option or remittance option depositaries. However, there is an exception for the MBDP participants. Treasury will decide at a later date when fee reductions, if any, will be implemented for the smaller depositaries and MBDP depositaries. The new and any subsequent fee schedules will be published in the "Treasury Financial Manual. Future notice of, and opportunity to comment on, any subsequent reductions in the fees paid to depositaries for processing FTD payments will be provided to the affected financial institutions.

Economic Assessment

Nearly, 3,200 financial institutions participate as note option depositaries while approximately 11,400 financial institutions participate as remittance option depositaries. Treasury estimates that approximately 3,900 financial institutions will be affected by the fee reduction. The larger financial institutions process the largest dollar deposit volumes and generally benefit most from the overnight use of Federal funds. In Fiscal Year 1988, the note option depositaries processed $498.6 billion in FTD payments which comprised 70% of the total FTD dollar deposit volumes received by TT&L depositaries. The remittance option depositaries processed $211.2 billion in FTD payments in FY 1988 which was 30% of the total FTD dollar deposit volumes received by TT&L depositaries. Note option Class B and Class C depositaries and remittance option Class 1 depositaries would lose proportionately less income from loss of fees relative to the smaller note option Class A and remittance option Class 2 depositaries. Therefore, Treasury has determined that the fee reduction will be limited to note option Class B and Class C depositaries and remittance option Class 1 depositaries, which process over $10 million in FTD deposits annually.

Distribution of the revised "Treasury Financial Manual" to the Federal Reserve Banks and TT&L depositaries will be coordinated with the fee reduction.

W.E. Douglas,

Commissioner.

[FR Doc. 89–23257 Filed 9–29–89; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance under Notice 89–61, 1989–21 I.R.B. 25, of petitions requesting that *formic acid, isopropyl acetate, normal propyl acetate, isobutyl acetate, normal butyl acetate,* and *ethyl acetate* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATE: Written comments and requests for a public hearing relating to these petitions must be delivered or mailed by December 1, 1989.

ADDRESS: Send comments and requests for a public hearing to the Internal Revenue Service, Attention: CC:CORP:T:R (Petition), Room 4429, 1111 Constitution Avenue NW Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). Telephone 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on July 13, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of this

substance. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Formic Acid

Harmonized Tariff System number: 2915.11.00 00 7
Schedule B number: 2915.11
Chemical Abstract Service number: 64-18-6

This substance is derived from the taxable chemical *butane*. Formic acid is produced as a co-product in the liquid phase oxidation of butane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{butane}}{C_4H_{10}} + \underset{\text{oxygen}}{2.5\ O_2} \longrightarrow \underset{\text{formic acid}}{HCOOH} + \underset{\text{propionic acid}}{C_2H_5\ COOH} + \underset{\text{water}}{H_2O}$$

According to the petition, taxable chemicals constitute 98.2 per cent by value of the materials used to produce this substance. The stated cost for butane is $0.0678 per pound and the stated cost for oxygen is $0.0009 per pound. The rate of tax for this substance would be $1.90 per ton. This is based upon a conversion factor for butane of 0.3900.

Isopropyl Acetate

Harmonized Tariff System number: 2915.39.50 00 4
Schedule B number: 2915.39
Chemical Abstract Service number: 108-21-4

This substance is derived from the taxable chemicals *ethylene* and *methane*. Isopropyl acetate is produced predominantly by esterifying isopropyl alcohol with acetic acid. Isopropyl alcohol is produced predominantly by the hydrogenation of propionaldehyde. Propionaldehyde is produced by the oxo reaction of ethylene with synthesis gas. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{ethylene}}{C_2H_4} + \underset{\text{methane}}{3\ CH_4} + \underset{\text{water}}{2\ H_2O} \longrightarrow \underset{\text{isopropyl acetate}}{CH_3COOC_3H_7} + \underset{\text{hydrogen}}{5\ H_2}$$

According to the petition, taxable chemicals constitute 67.9 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.34 per ton. This is based upon a conversion factor for ethylene of 0.3260 and a conversion factor for methane of 0.2173.

Normal Propyl Acetate

Harmonized Tariff System number: 2915.39.45 10 0
Schedule B number: 2915.39
Chemical Abstract Service number: 109-60-4

This substance is derived from the taxable chemicals *ethylene* and *methane*. Normal propyl acetate is produced predominantly by esterifying normal propyl alcohol with acetic acid. Normal propyl alcohol is produced predominantly by the hydrogenation of propionaldehyde. Propionaldehyde is produced by the oxo reaction of ethylene with synthesis gas. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{ethylene}}{C_2H_4} + \underset{\text{methane}}{3\ CH_4} + \underset{\text{water}}{2\ H_2O} \longrightarrow \underset{\text{n-propyl acetate}}{CH_3COOC_3H_7} + \underset{\text{hydrogen}}{5\ H_2}$$

According to the petition, taxable chemicals constitute 67.9 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.26 per ton. This is based upon a conversion factor for ethylene of 0.3149 and a conversion factor for methane of 0.2118.

Isobutyl Acetate

Harmonized Tariff System number: 2915.34.00 00 0
Schedule B number: 2915.34
Chemical Abstract Service number: 110-19-0

This substance is derived from the taxable chemicals *Propylene* and *Methane*. Isobutyl acetate is produced predominantly by esterifying isobutyl alcohol with acetic acid. Butyl alcohol is produced predominantly by the hydrogenation of butyraldehyde. Butyraldehide is produced by the oxo reaction of propylene with synthesis gas. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$C_3H_6 + 3\,CH_4 \quad 2\,H_2O \rightarrow CH_3COOC_4H_9 + 5\,H_2$$

propylene methane water isobutylacetate hydrogen

According to the petition, taxable chemicals constitute 71.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.86 per ton. This is based upon a conversion factor for propylene of 0.4524 and a conversion factor for methane of 0.1920.

Normal Butyl Acetate

Harmonized Tariff System number: 2915.33.00 00 1
Schedule B number: 2915.33
Chemical Abstract Service number: 123-86-4

This substance is derived from the taxable chemicals *propylene* and *methane*. Normal butyl acetate is produced predominantly by esterifying normal butyl alcohol with acetic acid. Butyl alcohol is produced predominantly by the hydrogenation of butyraldehyde. Butyraldehide is produced by the oxo reaction of propylene with synthesis gas. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$C_3H_6 + 3\,CH_4 \quad 2\,H_2O \rightarrow CH_3COOC_4H_9 + 5\,H_2$$

propylene methane water N-butylacetate hydrogen

According to the petition, taxable chemicals constitute 71.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.72 per ton. This is based upon a conversion factor for propylene of 0.4242 and a conversion factor for methane of 0.1882.

Ethyl Acetate

Harmonized Tariff System number: 2915.31.00 00 3
Schedule B number: 2915.31
Chemical Abstract Service number: 141-78-6

This substance is derived from the taxable chemical *butane*. Ethyl acetate is produced predominantly by esterifying acetic acid with ethyl alcohol. Ethyl alcohol is produced predominantly by the fermentation of grain. The predominant method for the synthetic production of ethyl alcohol is ethylene hydration. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane. Hoechst Celanese uses the esterification method to produce ethyl acetate. The acetic acid and the ethyl alcohol are prepared as a co-product by the oxidation of butane.

The stoichiometric material consumption formula for this substance is:

$$C_4H_{10} + 1.5\,O_2 \rightarrow CH_3COOC_2H_5 + H_2O$$

butane oxygen ethyl acetate water

According to the petition, taxable chemicals constitute 54.7 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.40 per ton. This is based upon a conversion factor for butane of 0.9032.

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel, (Corporate).

[FR Doc. 89-23085 Filed 9-29-89; 8:45 am]

BILLING CODE 9830-01-M

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance under Notice 89-61, 1989-21 I.R.B. 25, of petitions requesting that *vinyl acetate* and *acetic acid* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATE: Written comments and requests for a public hearing relating to these petitions must be delivered or mailed by December 1, 1989.

ADDRESS: Send comments and requests for a public hearing to the Internal Revenue Service, Attention: CC:CORP:T:R (Petition), Room 4429, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special

Industries). Telephone 202-566-4475 (not a toll-free number.).

SUPPLEMENTARY INFORMATION: The petitions were received on July 11, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Acetic Acid

Harmonized Tariff System number: 2915.21.

Schedule B number: 2915.21.

Chemical Abstract Service number: 64-19-7

This substance is derived from the taxable chemical *methane*. Acetic acid is produced predominantly by methanol carbonylation. Carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$2CH_4 + 2H_2O \longrightarrow CH_3COOH + 4H_2$$

methane, water, acetic acid, hydrogen

According to the petition, taxable chemicals constitute 92.7 per cent by value of the materials used to produce this substance. The stated cost for methane is $0.0436 per pound and the stated cost for steam is $0.0027 per pound. The rate of tax for this substance would be $1.28 per ton. This is based upon a conversion factor for methane of 0.3709.

Vinyl Acetate

Harmonized Tariff System number: 2915.32.

Schedule B number: 2915.32.

Chemical Abstract Service number: 108-05-4.

This substance is derived from the taxable chemicals *ethylene* and *methane*. Vinyl acetate is produced predominantly by oxyacetylation of ethylene with oxygen and acetic acid. Acetic acid is made predominantly by carbonylation of methanol.

The stoichiometric material consumption formula for this substance is:

$$C_2H_4 + 2CH_4 + H_2) + {}^{2}O_2 \longrightarrow CH_3COOHCH_2 + 4H_2$$

ethylene, methane, water, oxygen, vinyl acetate, hydrogen

According to the petition, taxable chemicals constitute 63.8 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.72 per ton. This is based upon a conversion factor for ethylene of 0.3669 and a conversion factor for methane of 0.2695.

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel, (Corporate).

[FR Doc. 89-23084 Filed 9-29-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Governemnt in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, September 26, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the Corporation's corporate activities; (2) matters relating to the possible closing of an insured bank; and (3) matters relating to the Corporation's supervisory activities.

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 and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' ntoice 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)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (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: September 27, 1989.

Federal Deposit Insurance Corporation.

Rober E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-23243 Filed 9-28-89; 9:27 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 25, 1989, 54 FR 39255.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 27 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG-4, CAG-5, CAG-28 and CAG-93 on the Agenda of 9/27/89:

Item No., Docket No., and Company

CAG-4
RP89-75-000 and RP89-213-000, Black Marlin Pipeline Company
CAG-5
RP89-203-000, Southern Natural Gas Company
CAG-28
RP88-259-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-93
RP88-177-061 and RP88-67-012, Texas Eastern Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 89-23351 Filed 9-28-89; 3:43 pm]

BILLING CODE 6717-02-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, October 5, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207 beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meting.

Date: September 27, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-23264 Filed 9-28-89; 10:58 am]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:24 p.m. on Wednesday, September 27 1989, the Board of Directors of the Resolution Trust Corporation met in open session to consider the requirements that a potential bidder must meet in order to qualify as an acceptable bidder for a failed thrift institution.

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 and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 27, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.

Executive Secretary.

[FR Doc. 89-23315 Filed 9-28-89; 2:04 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-144]

Oriental Fruit Fly

Correction

In rule document 89-19611 beginning on page 34477 in the issue of Monday, August 21, 1989, make the following corrections:

§ 301.93-2 [Corrected]

1. On page 34481, in the second column, in the 30th line, *(Sandericum koetjape)* was misspelled.
2. On the same page, in the same column, in the 39th line, *(Lycopersicon esculentum)* was misspelled.

§ 301.93-3 [Corrected]

3. On the same page, in the third column, in paragraph (b), in the 18th line, "of" should read "or

§ 301.93-5 [Corrected]

4. On page 34482, in the second column, in paragraph (a)(1)(ii), in the second line, "premises" was misspelled.
5. On the same page, in the same column, in footnote 5, the section number should read § 301.93-5(a)(2).

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of California

Correction

In notice document 89-21947 beginning on page 38423 in the issue of Monday, September 18, 1989, make the following corrections:

On page 38423, in the first column, in the fourth paragraph, in the seventh line "bran" should read "brain" and in the tenth line "obain" should read "obtain"

On the same page, in the third column, under *Docket Number:* 89-211, in the fifth line "BM 900T" should read "EM 900T"

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force; Meeting

Correction

In notice document 89-22636 appearing on page 39456 in the issue of Tuesday September 26, 1989, make the following correction:

In the third column, in the third line, the meeting date should read "Monday, November 13, 1989"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on the Analysis of Workplace Air for Diesel Exhaust Particulates

Correction

In notice document 89-21911 beginning on page 38438 in the issue of Monday, September 18, 1989, make the following correction:

On page 38438, in the third column, under **ACTION**, "Nation" should read "Notice"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404

RIN 0960-AB96

[Regulations No. 4 and 16]

Disability Insurance and Supplemental Security Income; Mental Disorders in Children

Correction

In proposed rule document 89-18763 beginning on page 33238 in the issue of Monday, August 14, 1989, make the following corrections:

1. On page 33239, in the third column, in the third complete paragraph, in the first line, "of" should read "or"

Appendix 1 to Part 404- [Corrected]

2. On page 33241, in the second column, in 112.00A., in the second line, "listing" should read "listings"
3. On page 33242, in the second column, in 112.00C.2., in the second line from the bottom of the first complete paragraph, the second "of" should read "or"
4. On the same page, in the third column, in 112.00D., in the ninth line, "aware" should read "are"
5. On page 33243, in the first column, in the last incomplete paragraph, in the third line, insert "of" after "determination"

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Uruguay Round Negotiations on Tariff and Non-Tariff Measures

Correction

In notice document 89-21865 beginning on page 38311 in the issue of Friday, September 15, 1989, make the following correction:

On page 38312, in the second column, under **III. PUBLIC HEARING**, in the second paragraph, in the eighth line, "Seventh" should read "Seventeenth"

BILLING CODE 1505-01-D

federal register

Monday
October 2, 1989

Part II

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone and Restricted Area Regulations; Notice of Proposed Rulemaking

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone and Restricted Area Regulations

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the danger zone and restricted area regulations in 33 CFR part 334 to remove obsolete materials and add procedural type requirements. These danger zone, restricted area and prohibited area regulations were consolidated under 33 CFR part 334 on October 22, 1985. We are eliminating the designation "prohibited area" and redesignating them as restricted areas.

DATE: Comments must be received on or before November 1, 1989.

ADDRESS: USACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard or Mr. Sam Collinson at (202) 272-1783.

SUPPLEMENTARY INFORMATION: On October 22, 1985 (50 FR 42696-42699), the Department of the Army published final rules which combined all danger zones, restricted areas and prohibited areas in a new part. In order to avoid confusion and to keep the consolidated rules as brief as possible, only the repromulgated rules were published while new definitions, procedures and corrections were planned, but were held in abeyance. Those interpretive type rules and other changes to remove obsolete materials in 33 CFR part 334 are now proposed.

In § 334.1 we have stated the purpose of this part; in § 334.2 we are proposing the definitions of "restricted area" and "danger zone;" in § 334.3 we are proposing special policies which concern the establishment of danger zones and restricted areas and in § 334.4 we are proposing procedures for establishing danger zones and restricted areas. The term "prohibited area" is being deleted because the function of denying access to a defined area is also achieved by designating the area as a restricted area.

We are also making minor editorial amendments which reflect that the titles of several military commands have changed. We are making a change in the designation of the color of signal lights from red to blue on Navy patrol boats as specified in § 334.230 to avoid confusing those lights with lights commonly used on U.S. Coast Guard aids to navigation. We have added the feminine gender within the regulations where appropriate.

NOTES

1. The U.S. Army Corps of Engineers has determined that this rule is not a major rule within the meaning of Executive Order 12291 and is in accordance with the exemption provided military functions.

2. The undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

Accordingly, we proposed to amend part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS [AMENDED]

1. The authority citation for part 334 continues to read as follows:

Authority: (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

2. Section 334.1 *Purpose* is added as follows:

§ 334.1 Purpose.

The purpose of this part is to:

(a) Prescribe procedures for establishing danger zones and restricted areas,

(b) List the specific danger zones and restricted areas and their boundaries; and

(c) Prescribe specific requirements, access limitations and controlled activities within the danger zones and restricted areas.

3. Section 334.2 *Definitions* is added as follows:

§ 334.2 Definitions.

(a) *Danger zone.* A defined water area (or areas) used for target proactice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. The danger zones may be closed to the public on a full time or intermittent basis, as stated in the regulations.

(b) *Restricted area.* A defined water area for the purpose of prohibiting or limiting public access to the area. Restricted areas generally provide security for government property and/or protection to the public from the risks of damage or injury arising from the government's use of that area.

4. Section 334.3 Special policies is added as follows:

§ 334.3 Special policies.

(a) *General.* The general regulatory policies stated in 33 CFR part 320 will be followed as appropriate.

(b) *Food fishing industry.* The authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Whenever the proposed establishment of a danger zone or restricted area may affect fishing operations, the district engineer will consult with the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior and the Regional Director, National Marine Fisheries Service, National Oceanic & Atmospheric Administration (NOAA).

(c) *Temporary, occasional or intermittent use.* If the use of the water area is desired only for such temporary, occasional, or intermittent periods that operations can be operated safely without imposing unreasonable restrictions on navigation, applicants may be informed that formal regulations are not required. However, proper notices for mariners requesting that vessels avoid the area will be issued by the district engineer, or if appropriate, the Agency requesting such use of the water area, to all known interested persons. Copies will also be sent to appropriate state agencies, the Commandant, U.S. Coast Guard, Washington, DC 20590, and Director, Defense Mapping Agency, Hydrographic Center, Washington, DC 20390, ATTN: Code NS 12.

5. Section 334.4 *Establishment procedures* is added as follows:

§ 334.4 Establishment procedures.

(a) *Application.* Any request for the establishment, amendment or revocation of a danger zone or restricted area must contain sufficient information for the district engineer to issue a public notice, and as a minimum must contain the following:

(1) Name, address and telephone number of requestor including the identity of the command and DoD facility.

(2) Name of waterway and if a small tributary, the name of a larger connecting waterbody.

(3) Name of closest city or town, county/parish and state.

(4) Location of proposed or existing danger zone or restricted area with a map showing the location, if possible.

(5) A brief statement of the need for the area, its intended use and detailed description of the times, dates and extent of restriction.

(b) *Public notice.* (1) The Corps of Engineers will normally publish public notices and **Federal Register** documents concurrently. Upon receipt of a request for the establishment, amendment or revocation of a danger zone or restricted area, the district engineer should forward a copy of the request with his/her recommendation, a copy of the draft public notice and a draft **Federal Register** document to the Office of the Chief of Engineers, ATTN: CECW-OR. The Chief of Engineers will publish the proposal in the **Federal Register** concurrent with the public notice issued by the district engineer.

(2) *Content.* The public notice and **Federal Register** documents must include sufficient information to give a clear understanding of the proposed action and should include the following items of information:

(i) Applicable statutory authority or authorities; (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

(ii) A reasonable comment period. The public notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after publication of the notice.

(iii) The address of the district engineer as the recipient of any comments received.

(iv) The identity of the applicant/proponent;

(v) The name or title, address and telephone number of the Corps employee from whom additional information concerning the proposal may be obtained;

(vi) The location of the proposed activity accompanied by a map of sufficient detail to show the boundaries of the area(s) and its relationship to the surrounding area.

(3) *Distribution.* Public notices will be distributed in accordance with 33 CFR 325.3(d)(1). In addition to this general distribution, public notices will be sent to the following Agencies:

(i) The Federal Aviation Administration (FAA) where the use of airspace is involved.

(ii) The Commander, Service Force, U.S. Atlantic Fleet, if a proposed action involves a danger zone off the U.S. Atlantic coast.

(iii) Proposed danger zones on the U.S. Pacific coast must be coordinated with the applicable commands as follows:

Alaska, Oregon and Washington: Commander, Naval Base, Seattle
California; Commander, Naval Base, San Diego
Hawaii and Trust Territories: Commander, Naval Base, Pearl Harbor

(c) *Public hearing.* The district engineer may conduct a public hearing in accordance with 33 CFR part 327

(d) *Environmental documentation.* The district engineer shall prepare environmental documentation in accordance with Appendix B to 33 CFR part 325.

(e) *District engineers recommendation.* After closure of the comment period, and upon completion of the district engineer's review he/she shall forward the case through channels to the Office of the Chief of Engineers, ATTN: CECW-OR with a recommendation of whether or not the danger zone or restricted area regulation should be promulgated. The district engineer shall include a copy of environmental documentation prepared in accordance with Appendix B to 33 CFR part 325, the record of any public hearings, if held, a summary of any comments received and a response thereto, and a draft of the regulation as it is to appear in the **Federal Register.**

(f) *Final decision.* The Chief of Engineers will notify the district engineer of the final decision to either approve or disapprove the regulations. The district engineer will notify the applicant/proponent and publish a public notice of the final decision. Concurrent with issuance of the public notice the Office of the Chief of Engineers will publish the final decision in the **Federal Register** and either withdraw the proposed regulation or issue the final regulation, as appropriate. The final rule shall become effective no sooner than 30 days after publication in the **Federal Register** unless the Chief of Engineers finds that sufficient cause exists and publishes that rationale with the regulations.

6. Section 334.80 is amended by revising the section heading as follows:

§ 334.80 Narragansett Bay, R.I., restricted area.

7 Section 334.110(b)(4) is revised to read as follows:

§ 334.110 Delaware Bay, off Cape Henlopen, Del., naval restricted area.

(b)

(4) The regulations in this section shall be enforced by the Commandant, Naval Base, Philadelphia, and such agencies as he/she may designate.

8. Section 334.120(b)(2) is revised to read as follows:

§ 334.120 Delaware Bay off Milford Neck; naval aircraft bombing target area.

(b)

(2) The regulations in this section shall be enforced by the Commandant, Naval Base, Philadelphia, and such agencies as he/she may designate.

9. Section 334.150 is amended by revising the section heading and paragraphs (a) and (b)(4), to read as follows:

§ 334.150 Severn River, at Annapolis, MD; experimental test area, David W. Taylor Naval Ship Research and Development Center.

(a) *The restricted area.* The waters of Severn River shoreward of a line beginning at the southeasternmost corner of the David W Taylor Naval Ship Research and Development Center sea wall and running thence southwesterly perpendicular to the main Severn River channel, approximately 560 feet, thence northwesterly parallel to and 50 feet shoreward of the edge of the channel, 1,035 feet, and thence northeasterly perpendicular to the channel, approximately 600 feet, to the shore. Spar buoys will mark the corners of the area adjacent to the channel.

(b)

(4) The regulation in this section shall be enforced by the Superintendent, U.S. Naval Academy, and such agencies as he/she may designate.

10. Section 334.230(a)(2)(iii) is revised to read as follows:

§ 334.230 Potomac River.

(a)

(2)

(iii) The regulations in this section shall be enforced by the Commander, Naval Surface Weapons Center and such agencies as he/she may designate. Patrol boats, in the execution of their mission assigned herein, shall display a square red flag during daylight hours for purposes of identification; at night time, a flashing blue light shall be displayed at the mast head. The Naval Surface Weapons Center (Range Control) can be contacted by marine VHF radio (Channel 16) or by telephone (703) 663-8791.

11. Section 334.260 is amended by revising the section heading, the heading of paragraph (a)(1) and revising paragraphs (a)(2) and (b)(1), as follows:

§ 334.260 York River, Va., naval restricted areas.

(a) *The areas*—(1) *Naval mine service-testing area.*

(2) *Naval mine service-testing area.* A rectangular area adjacent to the northeast boundary of the area described in subparagraph (1) of this paragraph, beginning at latitude 37 16'00" N., longitude 76 32'29" W thence to latitude 37 16'23" N., longitude 76 32'00" W thence to latitude 37 15'27" N., longitude 76 30'54" W thence to latitude 37 15'05" N., longitude 76 31 27"

W thence to latitude 37 15'27" N., longitude 76 31 48" W thence to latitude 37 15'42" N., longitude 76 32'06" W thence to latitude 37 15'40" N., longitude 76 32 09" W and thence to the point of beginning.

(b) *The regulations.* (1) All persons and all vessels other than naval craft are forbidden to enter the area described in paragraph (a)(1) of this section

*

12. Section 334.310(b)(3) is revised to read as follows:

§ 334.310 Chesapeake Bay, Lynnhaven Roads; navy amphibious training area.

(b)
(3) This section shall be enforced by the Commander, Naval Base, Norfolk, and such agencies as he/she may designate.

13. Section 334.320(b)(2) is revised to read as follows:

§ 334.320 Chesapeake Bay entrance; naval restricted area.

(b)
(2) This section shall be enforced by the Commander, Naval Base, Norfolk, VA.

14. Sections 334.400, 334.500, 334.540 and 334.560 are amended by revising the section headings to read as follows:

§ 334.400 Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; naval restricted area.

§ 334.500 St. Johns River, Fla, Ribault Bay; restricted area.

§ 334.540 Banana River at Cape Canaveral Missile Test Annex, Fla., restricted area.

§ 334.560 Banana River at Patrick Air Force Base, Fla., restricted area.

15. Section 334.700 is amended by revising the section heading and paragraph (b)(2) to read as follows:

§ 334.700 Choctawatchee Bay, Aerial Gunnery Ranges, Armament Division, Eglin Air Force Base, Fla.

(b)
(2) *Enforcing agency.* The regulation in this section shall be enforced by the Commander, Armament Division, Eglin AFB, and such agencies as he/she may designate.

16. Section 334.710 is amended by revising the section heading and paragraph (b)(2) as follows:

§ 334.710 The Narrows and Gulf of Mexico, adjacent to Santa Rosa Island, Armament Division, Eglin Air Force Base, Florida.

(b)
(2) The regulations in this section shall be enforced by the Commander, Armament Division, Eglin Air Force Base, Florida, and such agencies as he/she may designate.

17 Section 334.720 is amended by revising the section heading and paragraph (b)(4) as follows:

§ 334.720 Gulf of Mexico, south from Choctawhatchee Bay; guided missiles test operations area, Armament Division, United States Air Force, Eglin Air Force Base, Florida.

(b)
(4) The regulations in this section shall be enforced by the Commanding Officer, Armament Division, Eglin Field, Florida, and such agencies as he/she may designate.

18. Section 334.730 is amended by revising the section heading and paragraph (b)(5) as follows:

§ 334.730 Waters of Santa Rosa Sound and Gulf of Mexico, adjacent to Santa Rosa Island, Armament Division, Eglin Air Force Base, Florida.

(b)
(5) The regulations in this section shall be enforced by the Commander, Armament Division, Eglin Air Force Base, Florida, and such agencies as he/she may designate.

19. Sections 334.870(d), 334.880(a) and (b)(3) and 334.890(b)(3) are revised to read as follows:

§ 334.870 San Diego Harbor, Calif.; restricted areas.

(d) *Enforcement.* The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

§ 334.880 San Diego Harbor, Calif., naval restricted area adjacent to Point Loma.

(a) *The area.* That portion of San Diego Bay southerly of Ballast Point, exclusive of the southwesterly portion of the restricted area described in § 334.890 located westerly of the entrance channel, bounded on the west by the shoreline at Point Loma, on the east by the entrance channel west project line, and on the south by latitude 32 40'

(b)
(3) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, Calif., and such agencies as he/she may designate.

§ 334.890 Pacific Ocean, off Point Loma, Calif.; naval restricted area.

(b)
(3) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

20. Section 334.920(b)(4) is revised to read as follows:

§ 334.920 Pacific Ocean, off the east coast of San Clemente Island, Calif., naval restricted area.

(b)
(4) The regulations in this section shall be enforced by security personnel attached to the U.S. Naval Ordance Test Station, China Lake, California, and by such agencies as may be designated by the Commander, Naval Base, San Diego, California.

21. Section 334.950(b)(2) is revised to read as follows:

§ 334.950 Pacific Ocean at San Clemente Island, Calif., Navy shore bombardment area in vicinity of Pyramid Cove.

(b)
(2) Except in an emergency, no vessel shall anchor in the area without first obtaining permission from the Commander, Naval Base, San Diego, or from the Senior Officer present in the anchorage who may grant permission to anchor not exceeding the period he himself, is authorized to remain there. The Senior Officer present shall advise the Commander, Naval Base, San Diego, when and to whom he/she assigns a berth.

22. Section 334.960(b)(5) is revised to read as follows:

§ 331.960 Pacific Ocean, San Clemente Island, Calif.; naval danger zone off West Cove.

(b)
(5) The regulations in this section shall be enforced by security personnel attached to the Naval Ordnance Test Station, Pasadena Annex, and by such agencies as may be designated by the Commander, Naval Base, San Diego.

23. Section 334.960(b)(2) is revised to read as follows:

§ 334.970 Pacific Ocean, San Clemente Island, Calif., naval danger zone off China Point.

(b)
(2) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she may designate.

24. Section 334.980(d)(5) is revised to read as follows:

§ 334.980 Pacific Ocean, around San Nicolas Island, Calif., naval restricted area.

(b)

(5) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Range, Point Mugu, California, and by such agencies as may be designated by the Commander, Naval Base, San Diego, Calif.

25. Section 334.1000, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1000 San Francisco Bay, north of Alcatraz Island; submarine operating area.

(a) *The area.*

(b) *The regulations.* Prior notification of the dates and times of all operations will be made by local notice to mariners. A patrol boat will direct the movement of vessels passing in the vicinity of the operating area by means of signal light and loud hailer. Vessels traversing this area shall be alert and comply with the orders of the patrol boat. The regulations in this paragraph shall be enforced by the Commander, Naval Base, San Francisco, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

§ 334.1010 [Amended]

26. In Section 334.1010, the heading preceding paragraph (a) is removed.

27 In § 334.1020, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a)(1) (i) and (ii) are redesignated as (a) (1) and (2), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1020 San Francisco Bay and Oakland Inner Harbor; restricted areas in vicinity of Naval Air Station, Alameda.

(a) *The areas.*

(1)

(2)

(b) *The regulations.* (1) No vessel or other craft, except vessels of the United States Government or vessels duly authorized by the Commanding Officer U.S. Naval Air Station, Alameda, California, shall navigate, anchor, or moor in the area described in paragraph (a)(1) of this section.

(2) No vessel without special authority from the Commander, Twelfth Coast Guard District, shall lie, anchor, or moor in the area described in paragraph (a)(2) of this section. Vessels may proceed through the entrance channel in process of ordinary navigation or may moor alongside wharves on the Oakland side of the channel.

§ 334.1030 [Amended]

28. In § 334.1030, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a) and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1040 [Amended]

29. In § 334.1040, paragraph (a) heading is removed, paragraph (a)(2) is redesignated as paragraph (b), and former paragraphs (a)(2) (i) and (ii) are redesignated as paragraphs (b) (1) and (2).

§ 334.1050 [Amended]

30. In § 334.1050, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1060 [Amended]

31. In § 334.1060, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1070 [Amended]

32. In § 334.1070, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

33. In § 334.1080, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1080 San Francisco Bay adjacent to northeast corner of Treasure Island; naval restricted area.

(a) *The area.*

(b) *The regulations.* No vessels, except those engaged in naval operations, shall lie, anchor, moor or unnecessarily delay in the area. Vessels may pass through the area in the process of ordinary navigation except as directed by patrol boats. The regulations in this paragraph shall be enforced by the Commander, Naval Base, San Francisco, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

§ 334.1090 [Amended]

34. In § 334.1090, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1100 [Amended]

35. In § 334.1100, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b).

§ 334.1110 [Amended]

36. In § 334.1110, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b).

37 In § 334.1120, is amended by revising the section heading and revising paragraph (b)(6) to read as follows:

§ 334.1120 Pacific Ocean, in the vicinity of Point Mugu, California; naval small arms firing range.

(b) *The regulations.*

(6) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

38. Section 334.1140 is amended by revising paragraph (c)(7) to read as follows:

§ 334.1140 Pacific Ocean at San Miguel Island, Calif., naval danger zone.

(c) *The regulations.*

(7) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Test Center, Point Mugu, California, and by such other agencies as the Commander, Naval Base, San Diego, California, may designate.

39. Section 334.1170(b) is amended by designating the existing text as paragraph (b)(1) and adding new paragraph (b)(2) to read as follows:

§ 334.1170 San Pablo Bay, Calif., gunnery range, Naval Inshore Operations Training Center, Mare Island, Vallejo.

(b) *The regulations.*

(1)

(2) The regulations in this section will be enforced by the Commander, Naval Base, San Francisco, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

40. Section 334.1180(c) is revised to read as follows:

§ 334.1180 Strait of Juan de Fuca, Washington; air-to-surface weapon range, restricted area.

(c) The regulations in this section shall be enforced by the Commander, Naval Base, Seattle, Washington, and such agencies as he/she may designate.

41. Section 334.1190 is amended by revising paragraphs (a)(2)(ii), (b)(1) and (c) to read as follows:

§ 334.1190 Hood Canal and Dabob Bay, Wash., naval non-explosive torpedo testing areas.

(a) *Hood Canal in vicinity of Bangor.*

(2) *The Regulations.*

(ii) Navigation will be permitted within the area at all times except when naval exercises are in progress. No vessel shall enter or remain in the area when such exercises are in progress. Prior to commencement of an exercise, the Navy will make an aerial or surface reconnaissance of the area. Vessels under way and laying a course through the area will not be interfered with, but they shall not delay their progress. Vessels anchored or cruising in the area and vessels unobserved by the Navy reconnaissance which enter or are about to enter the area while a torpedo is in the water will be contacted by a Navy patrol boat and advised to steer clear. Torpedoes will be tested only when all vessels or other craft have cleared the area.

(b) *Dabob Bay in the vicinity of Quilcene*—(1) *The area.* All waters of Dabob Bay beginning at latitude 47 39'27" longitude 122 52'22"; thence northeasterly to latitude 47 40'19" longitude 122 50'10"; thence northeasterly to a point on the mean high water line at Tskutsko Pt., thence northerly along the mean high water line to latitude 47 48'00"; thence west on latitude 47 48'00" to the mean high water line on the Bolton Peninsula; thence southwesterly along the mean high water line of the Bolton Peninsula to a point on longitude 122 51'06"; thence south on longitude 122 51'06" to the mean high water line at Whitney Pt., thence along the mean high water line to a point on longitude 122 51'15"; thence southwesterly to the point of beginning.

(c) The regulations in this section shall be enforced by the Commander, Naval Base, Seattle, Washington, and such agencies as he/she may designate.

§ 334.1200 [Amended]

42. In section 334.1200, paragraph (a) heading is removed, paragraph (a)(1) is redesignated (a), paragraph (a)(2) is redesignated (b), paragraph (a)(3) is redesignated (c), former paragraphs (a)(3) (i) and (ii) are redesignated (c) (1) and (2) and former paragraph (a)(4) is redesignated (d).

§ 334.1210 [Amended]

43. In § 334.1210, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b), and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1220 [Amended]

44. In § 334.1220, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) and (4) are redesignated as (b), (c), and (d), former paragraphs (a)(3) (i) and (ii) are redesignated (c)(1) and (c)(2), and former paragraphs (a)(3)(ii) (A), (B), (C), (D) and (E) are redesignated as (c)(2) (i), (ii), (iii), (iv), and (v).

§ 334.1230 [Amended]

45. In § 334.1230, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b) and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1240 [Amended]

46. In § 334.1240, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) are redesignated as (b) and (c) and former paragraphs (a)(3) (i), (ii) and (iii) are redesignated as (c) (1), (2) and (3).

§ 334.1250 [Amended]

47 In § 334.1250, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) are redesignated as (b) and (c), former paragraphs (a)(2) (i), (ii), (iii), (iv), and (v) are redesignated as (b) (1), (2), (3), (4), and (5), former paragraphs (a)(2)(v) (*a*) through (*g*) are redesignated as (b)(5) (i) through (vii), and former paragraph (a)(2)(v)(*a*) (*1*) through (*3*) are redesignated as (b)(5)(i) (A) through (C).

§ 334.1260 [Amended]

48. In § 334.1260 paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b) and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1270 [Amended]

49. In § 334.1270, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a) and paragraph (a)(2) is redesignated as (b).

Dated: September 14, 1989.

Wilbur T. Gregory,

Colonel, Corps of Engineers, Executive Director of Civil Works.

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Part III

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision; Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This document presents the final rule partially implementing section 103(m) of Public Law 99-662, 33 U.S.C. 2213m, which directs the Secretary of the Army to reduce the non-Federal cost-share of flood control and agricultural water supply projects under an "ability to pay determination. This rule applies only to flood control projects. Guidelines for agricultural water supply projects are to be promulgated in the future.

EFFECTIVE DATE: October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Daniel (202) 272-8568.

SUPPLEMENTARY INFORMATION: An interim final rule was published in the **Federal Register** on September 23, 1987 (52 FR 35875). Comments were solicited prior to publication of the final rule. As a result of the comments received, certain changes have been made. These changes, as well as certain technical clarifications which have arisen as a result of the comments received and application of the rule since September 23, are discussed in the supplementary information.

The basic structure of the interim final rule has been retained. Two tests are applied to each flood control project in order to determine whether a project qualifies for a reduction in the non-Federal cost-share. The benefits test sets an alternative cost-sharing floor whenever one fourth of the benefit-cost ratio, expressed as a percentage, is less than the standard cost-share as defined in the applicable portion of section 103 of Public Law 99-662, 33 U.S.C. 2213. To be eligible for any cost-share reduction that would result from application of the benefits test, a project must also have an Eligibility Factor that exceeds zero. The Eligibility Factor is determined by the income test which compares the income of people in the project area (as measured by the county) and state to the national average. If the county and state per capita income values are low, projects with an alternative non-Federal cost-share established by the benefits test will be eligible for a reduction.

There are three major changes to the interim final rule. First, the income test has been modified by giving less weight to state per capita personal income (PCI) and more weight to the income of the project area (as represented by county PCI). Second, when the income test yields an Eligibility Factor which is greater than zero, we are permitting deferred payments for a portion of the non-Federal share by non-Federal parties regardless of the outcome of the benefits test. Third, when a Native American tribe or village is the local sponsor, the Eligibility Factor is based on income data for the tribe or village only.

Background

There were 11 responses to the interim final rule. Some concentrated on a single point, others brought up a number of concerns. Each point raised by the commenters is addressed in the discussion that follows.

In our previously published discussion of September 23, 1987 on interpretation of section 103(m), we argued that the language was broad and that there was no definite Congressional direction on how the Secretary is to proceed. We concluded that every flood control project should retain at least a five percent non-Federal share. Several commenters disagreed, expressing the view that the Secretary should grant exemptions to non-Federal cost-sharing in the most extreme economic circumstances. In two letters, it was pointed out that Rep. Roe was asked specifically about the projects authorized by section 202 of Public Law 96-367 94 Stat. 1339. In his response, Rep. Roe stated that "It is the committee's view that improverished areas such as those affected by the Section 202 projects should be exempted from the cost sharing provisions of the bill pursuant to the Secretary's authority. (p. H11567). A third commenter also pointed to Rep. Roe's remarks in supporting the review that exemptions from cost sharing be generally considered. We acknowledged in our previous discussion that Rep. Roe expressed his view that the Secretary should be encouraged to provide new flood control protection at reduced or no non-Federal cost-sharing. We also found evidence of the opposite position, as taken by Sen. Stafford: "It is anticipated that the Secretary will only rarely invoke this authority. And this provision can never be used to eliminate the non-Federal share. (p. S16983).

Both Rep. Roe and Sen. Stafford were quoted in order to show the wide range of opinions that Congress had towards this provision. We continue to believe that we can retain non-Federal cost-sharing requirements for all flood control projects, without damaging the underlying purpose of section 103(m). Furthermore, our policy is constructive in maintaining the integrity of the cost-sharing philosophy which would be damaged by wider divergences in the non-Federal share. We have consistently opposed cost-sharing exemptions and Congress has generally held the same view, making only a small number of exemptions in Pub. L. 99-662 (Barbourville and Harlan KY were the only two section 202 projects exempted). Given this background, we will retain our requirement that at least five percent of the project be a non-Federal share.

The Role of the Local Sponsor

The interim final rule was premised in part on our view that the state should have a responsibility to participate in project financing when a local sponsor's financing options are limited. In the comments received, there was some disagreement on this point. One commenter saw no role for state government: "until Congressional intent is clearly established, the COE should follow existing Federal policy on this issue, i.e., Federal responsibility remains with the involved federal agency for water project costs over and above the local sponsor's contribution. Others stressed the importance of the local sponsor below the state level in planning and financing decisions citing political, legal, and other institutional constraints which limit state participation. The opposite extreme was also expressed, "if the Corps insists that '* states have a responsibility in cases where the local sponsor seems incapable of providing the non-Federal share. then perhaps it is incumbent upon only the states to contract for these projects.

We do not want to exclude consideration of state resources as a source of financing. There is no basis for the assertion that state participation is against Federal policy. This is abundantly clear from the various arrangements states have made for providing state support for such projects. In some cases, when state constraints present a problem, we believe it is incumbent on state and local Governments to address these problems directly, rather than seek additional Federal support. At the same time, we do not feel it is appropriate to insist that states be solely responsible, or attempt to define with any precision, the degree to state involvement in individual cases. In many cases that

state and local governments have preferred to use the smaller jurisdiction as the source of financing.

Our formula therefore continues to include state income as a factor in the analysis. In response to the concerns expressed in the comments, we have however, changed the weights given to state and local incomes so that the local income is now given twice the weight of the state.

The Use of Project Benefits in Developing a Cost-Share Alternative

We argued previously that "local sponsors and their states have two sources of economic resources that can be used to pay for the non-Federal share of the project. First, existing resources as reflected in traditional measures of income and/or wealth, may be sufficient. Second the project itself will generate benefits.

Many of the benefits to flood control projects are either due to flood damage reduction or to income enhancement to households and businesses located in the project area. These benefits represent an important source of income and wealth that will be available for project funding no matter how poor the project area is before implementation."

Several commenters disagreed with our use of project benefits to define the limits of cost-share reductions. They expressed the view that benefits do not represent the "real dollars" needed for project financing and that the "approach favors projects with less merit and discriminates against those projects that provide the greater *National* benefits. We remain convinced that the resources saved (i.e. the National benefits) by a flood control project can legitimately be used in an ability to pay evaluation and that this will not in any way favor low benefit projects over those with high benefits. The Federal policy, which gives the highest priority to projects with a high benefit/cost ratio, will be unaffected. Communities will still prefer projects with high benefit/cost ratios, because the extra benefits received will be greater than the additonal non-federal costs that might be incurred after application of the ability to pay rule.

We will therefore, continue to use project benefits to determine the alternative level of cost-sharing under the ability to pay test. This alternative level establishes a benefits based floor (BBF) below which the non-Federal cost-share will not be reduced. When projects are fully eligible based on the income test describe below, the reduction in the non-Federal share will be such as to set the share equal to one fourth of the project's benefit/cost ratio, when this ratio is expressed as a percentage. For example, if a project has a benefit/cost ratio of 1.2, share reductions cannot bring the share below one fourth of this, or 30 percent of project first costs. In this example, if the "stardard" level of cost-sharing, i.e. the amount required by section 103(a) or 103(b), 33 U.S.C. 2213, a and b, is less than 30 percent, there will be no reduction under the ability to pay provision.

We are, however, modifying our interim rule by allowing that for projects with an Eligibility Factor greater than zero, a portion of the non-Federal share may be deferred even if the BBF exceeds the standard non-Federal cost-share. We require for structural projects, that the local sponsor provide during construction, cash payments equal to five percent of total project costs, and to contribute lands, easements, rights of way, relocations, and dredged material disposal areas (LERRD) paid for or acquired by the local sponsor prior to signing a cost-sharing agreement. The remaining non-Federal share, either for LERRD or for cash requirements in excess of 5 percent of project costs, can be deferred. For non-structural projects, we require during construction LERRD paid for or acquired by the local sponsor prior to the agreement with the remainder eligible for deferment. By permitting deferred payments when the Eligibility Factor exceeds zero, we are more closely matching the non-Federal payment requirement to the benefits stream for projects in low income areas. In those areas with the greatest possible cost-share reductions (Eligibility Factor equals or exceeds one), payments during construction and repayments of deferred amounts need be no greater than one fourth of project benefits. We do not believe this represents a hardship

As in the interim rule, any reductions in non-Federal shares under the ability to pay provision will apply to first costs only. For administrative simplicity, we will use one fourth of the benefit-cost ratio as an alternative share, even though the costs in this calculation include O&M costs. This ratio will be calculated based on the discount rate which the Corps is using to evaluate projects at the time the local cooperation agreement (LCA) is signed. For LCA's signed in 1989 for example, an 8.875 percent discount rate would be used.

The Use of Per Capita Personal Income To Determine Project Eligibility

The final rule continues to determine project eligibility for reductions in the non-Federal share by using the per capita personal income of the project area (using county income as the surrogate for project area income) and the state in which the project is located. In developing the interim final and final rule, two of our guiding principles have been: (a) That the rule should not be any more complex than is necessary; and (b) that it should be based on easily accessible, publicly available data. We concluded that a standard measure of income would be the appropriate statistic to use. Several comments were directed towards our approach.

One observation was made that since local or county government taxes are structure-based rather than income-based, household income, rather than per capita personal income would be a better measure to use. There are three sources of income data available from the Federal Government which might be used to measure the underlying resource base of political subdivisions below the state level. First is per capita personal income (PCI), published yearly for each county, by the Bureau of Economic Analysis (BEA). Second is per capita money income available biannually for counties and incorporated (sub-county) places, published by the Bureau of the Census. Third is median family income (MFI), available yearly for each county, from data published by the Department of Housing and Urban Development (HUD). The HUD estimates are more up to date (HUD currently has estimates for 1988, while the BEA data are currently available only through 1986), but are based in part on projections of previous years' data using other economic factors as the basis of the projections.

We continue to feel that data should be available on a yearly basis and that a three-year average should be used in the calculation of the Eligiblity Factor. This limits our choice to per capita personal income and median family income. There are a number of reasons for differences in the measures of PCI and MFI. Perhaps the most significant is that PCI is a measure of the mean, while MFI is a measure of the median. This is relevant to our choice of income variable. The revenue potential from a structure-based tax is more closely related to the total value of the structures (and therefore to the mean) than to the median value. It allows that if income is being used as a proxy for wealth to measure a local government's revenue potential, the mean is a more appropriate measure than the median, even if a local government raises revenues by using a structured-based tax. Thus we have decided to stay with PCI in our eligibility formula.

Two commenters pointed out that the local sponsor may be an entity which is

smaller than the county level, so that county income does not necessarily represent the income of the residents under the sponsor's jurisdiction. As pointed out above, this information is not available on a yearly basis. Even if it were available, we do not feel it necessary or desirable to match the income estimate precisely to the project sponsor's jurisdiction, since sponsors vary from project to project.

One disagreed with our "formula approach" stating that it would be preferable to have the Secretary apply judgment to each project rather than rely on a "simplistic and unsophisticated formula" We believe that a formula approach is far preferable to a case by case analysis. It is important that any rule be capable of being applied consistently and objectively throughout the nation. This requires that specific factors be identified and that the consequences of these factors be the same in all ability to pay tests. By keeping the formula relatively simple, there is a possibility that a subtle aspect of a single project may be missed. At the same time, we have proposed an approach which can be easily understood and fairly applied. This advantage far outweighs the disadvantages.

One commenter argued that since Native American tribes and villages have special relationships with the Federal Government, the use of county and state PCI figures is inappropriate for projects sponsored by these groups. We are persuaded that such projects do warrant different consideration. Indian, Eskimo, and Aleut tribes and villages do not receive support from state and local governments. Unfortunately, current income data for reservations, tribes, and villages are very limited. The most recent comprehensive information is from the Bureau of Census, 1980 Census, which reports median family income, by reservation, for 1979 in *American Indians, Eskimos and Aleuts on Identified Reservations and in Historic Areas of Oklahoma (Excluding Urbanized Areas)*, Part 1, Table 10; and per capita money income for 1979 in *General Social and Economic Characteristics-United States Summary (1980)*, Table 252. The data are for Native Americans living on reservations or in villages and are not strictly comparable to the income of all Tribal members, or for all Native Americans living on or near a reservation or village. Our revised procedures require the use of publicly available data such as that appearing in the Census publications identified here and a comparison of data for the relevant Indian, Eskimo, or Aleut group to the national average of the same concept of income and for the same year. For example, using the data cited above, the median family income for the reservation would be compared to 1979 median family income for the United States. We will require the use of the most recently available data, which in any case must be no earlier year than the 1979 data cited above. If later or more accurate information is available, it may be used as a substitute provided that the substitute data is comparable to an equivalent national average which is publicly available. These projects will, of course, also be subject to the benefits test.

We have maintained our decision from the Interim Final Rule, that all U.S. Territories will be eligible for the full amount of cost-share reduction derived from the benefits test. Unpublished data from the Bureau of Economic Analysis indicates that in 1985, per capita personal income in the territories ranged from 66 percent of the U.S. average (Guam) to 25 percent of the U.S. average (American Samoa).

We will continue to exclude unemployment and the sponsor's borrowing capability in our Eligibility Factor formula. While no one advocated that unemployment be used, several comments addressed our decision to exclude borrowing capability. One commenter for example, pointed out that the legal constraints against borrowing vary from state to state and should therefore be a factor in our ability to pay analysis. Consideration of these constraints would result in unequal treatment on a national scale and in our judgment, would be inappropriate. In addition, per capita income itself represents a rough measure of fiscal capacity which can be applied without regard to past spending and taxing decisions, or legal or other institutional constraints. Our final rule implicitly recognizes a potential limit to borrowing capacity for "low income projects" When the Eligibility Factor, described below, exceeds zero we will allow payments over time rather than during construction, for a portion of the non-Federal share. As pointed out above, this repayment provision applies whenever the income of the project area and state is low, regardless of the outcome of the benefits test.

The Eligibility Formula

The eligibility factor (EF) is determined by:

$$EF = a - b_1 \times (\text{State PCI Index}) - b_2 \times (\text{County PCI Index})$$

where a, b_1, and b_2 are positive constants. The county and state PCI indices are a measure of the local PCI relative to the national average. If per capita income in a state equals the national average, the state s index number would be 100. If a project includes beneficiaries in more than one county, the county PCI index will be a combined PCI index, where each county PCI index is weighted by the share of project benefits which can be located geographically. Similarly, when project beneficiaries are located in more than one state, the state index will be determined using weights determined by the states' shares of project benefits.

If EF is less than zero, the project is not eligible for cost-share reductions under the ability to pay test. If EF is greater than or equal to one, the project is eligible for full application of the benefits based cost-share alternative described above. For EF less than one but greater than zero, the value represents the degree of application for which the project is eligible. For example if the standard cost-share is 50 percent and the minimum cost-share under the ability to pay formula is 30 percent and EF = .6, the non-Federal cost-share reduction will be the fractional amount 0.6 or 60 percent of the difference between 50 percent and 30 percent. The cost-share in this example would be 38 percent $(50 - .06 \times (50-30) = 38.0)$.

In the interim final rule, we gave equal weights to state and county PCI, that is b_1 and b_2 were set equal to each other. As discussed above (the role of the local sponsor), we have reevaluated the weights and concluded that the county index factor should be set at twice the state factor. The values for a, b_1 and b_2 will be published in Engineering Circulars. The formula will reflect our view that the ability to pay provision should only apply in exceptional circumstances. Therefore, two thirds of the counties will not be eligible; 20 percent of the counties will be eligible for the full application; and the remaining 13⅓ percent will be eligible for a partial application.

Available county PCI data lag behind available state PCI data. County information currently exists through 1987 state information through 1988. The guidelines require the use of the three latest years even if these years are different for counties and states. We believe that this represents the most up to date economic profile of a project area which can be applied uniformly to all projects.

Other Issues

We have retained the five percent minimum cash requirement of section

103(a)(1)(A), 33 U.S.C. 2213(a)(1)(A), even for projects where the ability to pay test leads to a reduction in the non-Federal cost-share. This requirement is intended to demonstrate that the non-Federal interest has a serious commitment to the project. It is identical to the cash requirement in the interim final rule. One commenter found no basis for a cash requirement in section 103(a)(1)(A) (although the comments included recognition that section 104(g), 33 U.S.C. 2214, refers to the 103(a)(1)(A) requirement as a cash requirement. We believe that this reference, plus the language in the Conference Report for Public Law 99-662 (p. 206) shows clearly that a 5 percent cash payment is required under standard cost-sharing of structural flood control projects. By keeping the 5 percent cash requirement under the ability to pay provision, it may be necessary to negotiate cash repayments to the local sponsor at the end of the project, or to make Federal payments for Lands, Easements, Rights of Way, Relocations, and Dredge Material Disposal Areas (LERRD) that are, under standard cost-sharing, the responsibility of the non-Federal interest.

Two commenters observed that the Ability to Pay Interim Final Rule did not address the relationship between credits given under section 104 and cost-share reductions under 103(m). In cases where a project is eligible for both credits and a cost-share reduction, the ability to pay calculation should be made first. Credits would then be applied against the non-Federal share as adjusted. The application of credits is subject to a separate regulation, ER 1165-2-29, published in the **Federal Register**, Nov. 18, 1987 (33 CFR 240).

The remaining comments (and our response) are listed here:

Comment: The ecological design of a project can reduce economic benefits, which becomes a liability under the ability to pay guidelines.

Response: When economic benefits are reduced, the project's benefit-cost ratio is reduced, increasing the likelihood that there will be a reduction under the ability to pay test.

Comment: The Secretary does not have the legal authority to reduce the non-Federal share under section 103(m).

Response: In our judgment, the record shows that this authority has in fact been given to the Secretary.

Comment: It is not clear how the rule is to be applied when the state, rather than a smaller entity, is the non-Federal sponsor.

Response: The rule is applied to all projects in exactly the same way regardless of the nature of the local sponsor.

Comment: The rule should include a chart showing how the ability to pay tests would affect projects with various characteristics.

Response: This suggestion was made by an advocate of a simpler formula. Given the number of factors in the final rule, a chart may cause imprecision in the application of the rule which our formula avoids.

Three other points have arisen during application of the interim rule which require clarification. First, some projects have been authorized without calculation of the economic benefit-cost ratio as defined in the Water Resource Council's Principles and Guidelines. In these cases, such a calculation must be made before the ability to pay test can be applied. Second, when determining the alternative cost share, it should be calculated to the nearest 1/10 of one percent. Finally, the test must be applied to projects constructed under section 208 of the 1954 Flood Control Act, 33 U.S.C. 701g (as amended), as well as the projects constructed under the other continuing authority programs identified in the interim final rule.

E.O. 12291 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. section 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, it imposes few, if any, administrative burdens of any sort on small entities. Furthermore, the number of entities affected by this rule is small.

List of Subjects in 33 CFR Part 241

Community facilities, Flood control, Intergovernmental relations, Water resources.

Kenneth L. Denton,

Alternate Army Liaison Officer, with the Federal Register.

The Corps of Engineers is hereby issuing final rules revising part 241 in title 33, chapter II as follows:

PART 241 FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

Sec.
241.1 Purpose.
241.2 Applicability
241.3 References.
241.4 General policy.
241.5 Procedures for estimating the alternative cost-share.
241.6 Deferred payments for certain qualifying projects.
241.7 Application of test.

Authority: Sec. 103(m), Water Resources Development Act of 1986 Pub. L. 99-662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Public Law 99-662, 33 U.S.C. 2213, as it applies to flood control projects.

§ 241.2 Applicability.

This regulation applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE) elements and field operating activities (FOA's) of the Corps of Engineers having Civil Works responsibilities.

§ 241.3 References.

(a) Water Resources Development Act, 1986, Public Law 99-662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

(b) U.S. Water Resources Council, *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies,* March 10, 1983.

(c) Office of Personnel Management, *FPM Bulletin* 591-30.

(d) Office of Personnel Management, *FPM Bulletin* 591-32

(e) U.S. Army Corps of Engineers, *Engineer Regulation* 1165-2-29.

§ 241.4 General policy.

(a) Procedures described herein establish an "ability to pay" test which will be applied to all flood control projects. As a result of the application of the test, some projects will be cost-shared by the non-Federal interest at a lower level than the standard non-Federal share that would be required under the provisions of section 103 of Public Law 99-662, 33 U.S.C. 2213. The "standard share" as used herein, refers to the non-Federal share that would apply to the project before any ability to pay consideration.

(b) Section 103(m) requires that all cost-sharing agreements for flood control covered by the terms of section 103(a) or 103(b) be subject to the ability to pay test. The test must therefore be applied not only to projects specifically

authorized by Congress, but to the continuing authority projects constructed under Section 14 of the 1946 Flood Control Act (33 U.S.C. 701r), section 205 of the 1948 Flood Control Act (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act (33 U.S.C. 701g), all as amended.

(c) The ability to pay test shall be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The ability to finance is addressed in a statement of financial capability which considers current borrowing constraints, alternative sources of liquidity, etc. It is therefore much more narrowly defined than the ability to pay test, which considers the underlying resource base of the community as a whole. The ability to pay test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(d) Any reductions in the level of non-Federal cost-sharing as a result of the application of this test will be applied to construction costs only. Operations, maintenance and rehabilitation responsibilities are unaffected by the ability to pay test.

(e) When projects are eligible for credits as outlined in ER 1165-2-29, reference § 241.3(e), the ability to pay test will be applied before any adjustments are made for credits. If the ability to pay test results in a lower non-Federal share, the allowable amount of credits will be limited by the lower share.

(f) The test is based on the following principles:

(1) Since the standard non-Federal cost-share is substantilly less than full costs in every case, the ability to pay test should be structured so that reductions in the level of cost-sharing will be granted in only a limited number of cases of severe economic hardship.

(2) The test should depend not only on the economic circumstances within a project area, but also on the conditions of the state(s) in which the project area is located. Although states' policies with respect to supporting local interests on flood control projects are not uniform, the state represents a potential source of financial assistance which should be considered in the analysis.

(3) The alternative level of cost-sharing determined under the ability to pay principle should be governed in part by project benefits. If, as a result of the project, local beneficiaries receive more income, or are required to use fewer resources on flood damage repair or replacement, or on flood insurance, a portion of these resources should be available to pay for the non-Federal share, even in those cases where an analysis of current economic conditions indicates that there are relatively limited resources in the project area and its state.

(4) Since project benefits represent availability of resources in the future, but not the present, project sponsors should be permitted to defer a certain percentage of the non-Federal share whenever current economic circumstances suggest that non-Federal resources may be limited.

(g) The Non-Federal interest may, at its discretion, waive the application of the ability to pay test. In this case, the Non-Federal interest shall be considered to have the ability to pay the standard cost-share and no further economic inquiry will be required.

§ 241.5 Procedures for estimating the alternative cost-share.

(a) *Step one, the benefits test.* Determine the maximum possible reduction in the level of non-Federal cost-sharing for any project.

(1) Calculate the ratio of flood control benefits (developed using the Water Resources Council's *Principles and Guidelines*—ref. § 241.3(b)) to flood control costs for the project based on the discount rate which the Corps is currently using to evaluate projects. Costs include operations and maintenance as well as first costs. Divide the result by four. For example, if the project's (or separable element's) benefit-cost ratio is 1.2:1, the factor for this project equals 0.3. If a project has been authorized for construction without a benefit-cost ratio calculated in accordance with the Principles and Guidelines, determination of the ratio is a prerequisite for consideration under the ability to pay provision.

(2) If the factor determined in § 241.5(a)(1), when expressed as a percentage, is greater than the standard level of cost-sharing, the standard level will apply.

(3) If the factor determined in § 241.5(a)(1), when expressed as a percentage, is less than the standard level of cost-sharing, projects may be eligible for either a reduction in the non-Federal share to this "benefits based floor" (BBF), or for a partial reduction to a share between the standard level and the BBF as determined by the procedures in step two, § 243.5. In no case however, will the non-Federal cost-share be less than five percent.

(b) *Step two, the income test.* Projects may qualify for the full amount of the reduction in cost-sharing calculated in Step one, or for some fraction of the reduction in cost-sharing, depending on a measure of the current economic resources of the project area and of the state or states in which the project is located.

(1) To assure consistency, the calculations in § 241.5(b) (2) and (3) will be performed by HQUSACE and distributed to all FOA's via Engineering Circulars. The information will be updated and distributed to HQUSACE and to the field as soon as new data are available. The procedures may be verified for any single county or state using the sources cited.

(2) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the state in which the project beneficiaries are located, and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April *Survey of Current Business.* (If the project beneficiaries are located in Alaska or Hawaii, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI as contained in References §§ 241.3(c) and 241.3(d).) Determine the state's per capita personal income as an index number in comparision to the national average (U.S.=100), and calculate the three year average of the state's index number.

(3) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the county where the project beneficiaries are located (the "project area"), and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April *Survey of Current Business.* (If the project beneficiaries are located in Alaska or Hawaii, divide the county's per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI.) Calculate the index for the county's per capita personal income to the national average (U.S.=100), and calculate the three year average of the county's index number.

(4) When the project area, as determined by the location of the project's beneficiaries, includes more

than one county, calculate a composite project area index by taking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county. When the project area includes more than one state, the state index for the project should be calculated using the same weighting technique.

(5) Calculate an "Eligibility Factor" for the project according to the following formula:

$EF = a - b_1 \times (\text{state factor}) - b_2 \times (\text{area factor})$.

If EF is one or more, the project is eligible for the full reduction in cost-share to the benefits based floor. If EF is zero or less, the project is not eligible for a reduction. If EF is between zero and one, the non-Federal cost-share will be reduced proportionately to an amount which is greater than the BBF but less than the standard non-Federal cost-share in accordance with the procedures described in paragraph § 241.5(c) below. The values of a, b_1 and b_2 will be determined by HQUSACE. The parameter values will be based on the latest available data and set so that 20 percent of counties have an EF of 1.0 or more, while 66.7 percent have an EF of 0 or less. These values will be adjusted periodically as new information becomes available. Changes will be published in Engineering Circulars. The values will be set so that $b_2 = 2 \times b_1$, giving local income twice the weight of state income.

(6) Since estimates (available from the Bureau of Economic Analysis) of per capita personal income for Puerto Rico, Guam and other U.S. territories are well below the national average, the eligibility factor for projects in these areas is administratively established to be equal to 1.

(7) For flood control projects sponsored by Native American tribes or villages, the EF shall be calculated using information on tribe or village income as a replacement factor for both the area and state factor (that is multiply the replacement income factor by both b_1 and b_2 and subtract each from a in the equation in § 241.5(b)(5)). The replacement factor will be tribe or village income as a percentage of the national average for the equivalent definition of income (for example a Tribe s median family income as a percentage of the median family income for all U.S. families). The data should be the latest available information. It is acceptable, but not required that the data be obtained from the Bureau of the Census, *American Indians, Eskimos and Aleuts on Identified Reservations and in Historic Areas of Oklahoma (Excluding Urbanized Areas)*, part 1, Table 10, or *General Social and Economic Characteristics—United States Summary (1980)*, Table 252. Since both sources contain information for Native Americans living on reservations, rather than all Tribe or Village members, the sources should be used only when appropriate, or when no better information is available.

(c) *Application of the Ability to Pay Formula to the Basic Cost-sharing Provisions of Section 103.* If a flood control project has a BBF which is less than the standard cost-share and an EF which is greater than zero, the non-Federal cost-share will be reduced. The alternative non-Federal share will be calculated and reported to the nearest one tenth of one percent. The actual reduction is determined by applying the ability to pay formula to the basic flood control cost-sharing provisions of section 103 of Public Law 99-662, 33 U.S.C. 2213, as follows:

(1) When EF > 1, non-Federal cost-share = BBF

(2) For structural projects covered by section 103(a), when $0 < EF < 1$:

(i) If LERRD equals or exceeds 45 percent:
non-Federal cost-share = 50 − EF × (50 − BBF)

(ii) If LERRD exceeds 20 percent but is less than 45 percent:
non-Federal cost-share = (LERRD + 5) − ER × [(LERRD + 5) − BBF]

(iii) If LERRD is less than 20 percent:
non-Federal cost-share = 25 − EF × (25 − BBF)

(3) For non-structural projects covered by section 103(b), when $0 < EF < 1$:
non-Federal cost-share = 25 − EF × (25 − BBF)

(4) In no case however, can the non-Federal share be less than five percent, even if the calculation made in § 241.5(c) (1), (2), or (3) results in a smaller number.

(5) Note: LERRD equals the costs of lands, easements, rights-of-way, relocations, and dredged material disposal areas expressed as a percentage of total project costs. The BBF and numerical terms in the equations above are also expressed as percentages.

§ 241.6 Deferred payments for certain qualifying projects.

(a) Whenever a project's Eligibility Factor exceeds zero, the project sponsor will be permitted to defer a portion of its share of flood control costs. The maximum allowable amount deferred equals the total non-Federal share less (for structural projects) five percent of total project costs and less (for all projects) any amounts for LERRD paid for or acquired by the sponsor prior to the time the LCA is signed. If for example, the non-Federal share of a structural project = 35.0 percent (after the ability to pay adjustment, if any) of which 10 percent is LERRD already paid for by the local sponsor, the maximum allowable amount to be deferred = 20 percent of project flood control costs (35 less the 5 percent cash requirements, less the 10 percent LERRD already acquired). Deferred payments at the option of the sponsor will be allowed regardless of the outcome of the benefits test described in § 241.5(a) whenever the Eligibility Factor exceeds zero.

(b) When EF > 1, the project sponsor may defer as much as the maximum allowable amount as described in § 241.6(a).

(c) When $0 < EF < 1$, the sponsor may defer a fraction of the maximum allowable amount described in § 241.6(a), where the fraction equals the Eligibility Factor expressed to three decimal places. Continuing the example described in § 241.6(a), if EF = .712, total allowed deferral equals .712 × 20 percent = 14.2 percent of total project costs.

(d) The deferred payment can be made in equal installments over any period of time selected by the non-Federal sponsor, provided that all repayments are made between the end of construction and thirty years thereafter. The amount repaid shall include interest during the repayment period as well as interest for the appropriate portion of the construction period for any amounts deferred prior to the end of construction. The rate of interest shall be determined in accordance with the provisions of section 106 of Public Law 99-662, 33 U.S.C. 2216.

§ 241.7 Application of test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost-share is lower than the standard share, the revised estimated cost-share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Local Cooperation Agreement (LCA) between the Corps of Engineers and the Non-Federal sponsor is signed. For structural flood control projects, the standard level of cost-sharing will not be known until the end of the project (since the standard level as specified in section 103(a), 33 U.S.C. 2213, includes LERRD). In this case, if the Eligibility Factor is greater than zero but less than one, the ability to pay non-Federal share will be determined using estimated costs.

(c) The LCA for all projects subject to the ability to pay test will include a "whereas" clause indicating the results

of the test. If the project is eligible for a lower non-Federal share:

(1) The revised share will be specified in the LCA (there will be no recalculation of this share once the LCA is signed).

(2) An exhibit attached to the LCA will include the Benefits Based Floor (BBF) determined in § 241.5(a); the Eligibility Factor (EF) determined in § 241.5(b); if the Eligibility Factor is greater than zero but less than one, the estimated standard non-Federal share; and the formula used in determining the ability to pay share as described in paragraphs § 241.5 (c)(1) through (c)(4).

(d) If at the time of project completion, the standard non-Federal share based on actual costs is less than the ability to pay share specified in the LCA, the standard share will apply.

(e) For structural projects. (1) If the standard LERRD plus cash requirement exceeds the ability to pay cost-share, the Federal Government will make any necessary adjustments in expenditures in the following order: First, paying any cash requirement in excess of five percent of total project costs (if any) that would, under standard cost-sharing, have been the responsibility of the non-Federal sponsor; second, making payments for LERRD; and third, providing for reimbursement at the end of construction. Federal payments for LERRD will be made only after the non-Federal payment for LERRD reaches a percentage of total project costs equal to the ability to pay non-Federal cost-share less the five percent cash requirement. If such arrangements are necessary, the LCA should be prepared to reflect agreement on the best manner available for acquisition of those LERRD over the limiting percentage, or for reimbursing the sponsor upon completion of construction.

(2) The non-Federal sponsor will be required to provide a cash payment equal to a minimum of five percent of estimated total project costs, regardless of the outcome of the ability to pay test. The project sponsor shall make cash payments during construction at a rate such that the amount of non-Federal payments in each year, as a percentage of total non-Federal cash payments, equals the amount of Federal expenditures (including sunk pre-construction engineering and design costs as a first year Federal construction expenditure) as a percentage of total Federal expenditures. Total Federal expenditures include cash payments for construction and if necessary (due to ability to pay considerations), for LERRD, and for reimbursement to the non-Federal sponsor. Total Federal expenditures for the purpose of this calculation, do not include expenditures which allow the non-Federal sponsor to defer payment of the non-Federal share under the provisions of this rule.

(f) For non-structural projects, reductions in the non-Federal cost-share as a result of the ability to pay test will not affect the procedures for determining the non-Federal and Federal payment schedules. For non-structural projects, no specific cash payments during construction are required by law.

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federal register

Monday
October 2, 1989

Part IV

Department of Transportation

Federal Aviation Administration

Aeronautical Charts and Aeronautical Publications Change of Effective Dates; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26024]

Aeronautical Charts and Aeronautical Publications Change of Effective Dates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy.

SUMMARY: This notice proposes to change the day of the week on which aeronautical charts and aeronautical publications will become effective. Currently aeronautical charts and publications become effective on Thursdays at 0901 Universal Coordinated Time. However, increases in air traffic activity on weeknights indicate that a change may be required to resolve problems being experienced by certain Air Freight Operators.

DATES: Comments must be received on or before December 1, 1989.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26024, 800 Independence Avenue, SW Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Oliver F Cooper, National Flight Data Center, Airspace-Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW Washington, DC 20591, telephone (202) 267-9311.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed policy change by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposal. Communications should identify the docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this proposed policy change must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26024. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed change. The proposal may be changed as a result of comments received. All comments submitted will be available for examination in the Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposed policy change will be filed in the docket.

Availability of the Proposed Policy

Any person may obtain a copy of the notice of proposed policy by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this proposed policy. Persons interested in being placed on a mailing list for future proposals should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

In January 1989, the FAA was requested, by way of a letter from seven major air freight carriers, to change the day on which aeronautical charts and related publications are put into effect. The letter was followed by several conferences with the FAA Administrator and others to discuss this request. As a result of these discussions, the FAA has agreed to evaluate a proposal to change the effective dates of certain charts and associated aeronautical publications.

Discussion

The International Civil Aviation Organization (ICAO) Annex 15 prescribes, in part, that the various forms of notices to airmen regarding circumstances affecting aeronautical systems, e.g., flight information regions, air traffic system routes, navigation aids, communication facilities, air traffic service procedure, etc., shall be originated under the Aeronautical Information Regulated System. That is, the establishment or withdrawal of, or significant changes to elements of such systems are to be based on a series of common effective dates at 28-day intervals beginning Thursday, May 5, 1966. Additionally, Annex 15 provides procedures for the origination and distribution of aeronautical information well in advance of effective dates (Annex 15, section 5.2). Further, the current edition of Annex 15 specifies January 15, 1987 a more recent date, on the same "28-day Thursday" interval.

The United States follows these provisions except that, since 1975, the United States, along with Canada and Mexico, has used a 56-day cycle, i.e., alternate "28-day Thursdays. Flight information publications, including navigation charts and other aeronautical documents used by all operational and planning elements of the aviation community, are processed on the same cycle.

Air route traffic control center (ARTCC) computer systems must be shut down to update their data bases with the system changes effective on Aeronautical Information Regulation and Control Thursdays. This shutdown procedure requires all flight plans in the system to be printed out and then re-entered manually when changeover to the updated data base is completed. In one ARTCC in particular, the shutdown and startup must be accomplished between the inbound and outbound peak traffic periods of eight air freight carriers—a period of about 2 hours. Approximately 200 proposed flight plans must be re-entered when the updated system is operational. If hardware, software, or other problems delay the system startup, flight delays can, and have resulted from lack of flight plan information. These carriers report that the consequences of this situation have included late freight deliveries, missed connections, financial loss, and customer dissatisfaction for the air freight companies.

Thursday has become one of the busiest days for air traffic operations. The problem could be alleviated by changing the aeronautical information regulations and control (AIRAC) day to Monday when air freight traffic and other traffic activity are at their lowest. To accomplish this change, the United States would be required to propose to ICAO that Annex 15 be amended accordingly. Such a proposed amendment would need to be coordinated and approved through the Interagency Group on International Aviation (IGIA) before being submitted to ICAO.

Issues for Public Comment

Before presenting the issue to IGIA, the FAA is soliciting comments from all interested parties on the desirability of changing the AIRAC day to Monday. Comments should address the advantages or disadvantages, e.g., economic, procedural, operational, safety, etc., that would result if this policy change were made.

Issued in Washington, DC, on September 22, 1989.

David J. Hurley,

Acting Director, Air Traffic Operations Service.

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federal register

Monday
October 2, 1989

Part V

Department of Transportation

Coast Guard

46 CFR Parts 50, 56 and 61
Vessel Piping Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 56 and 61

[CGD 77-140]

RIN 2115-AA17

Vessel Piping Systems

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations amend the vessel piping systems regulations to clarify technical requirements, correct errors, and revise the lists of acceptable standards and specifications. These changes result from advances in technology and suggestions from industry and Coast Guard field units and provide a better understanding of the technical requirements for vessel piping systems. In addition, these amendments delete the manufacturers' affidavit system used to verify compliance of various piping components with the regulations and, instead, incorporate industry developed standards. These changes eliminate the submission of technical information for these components and reduce the overall cost burden in staff hours and paperwork for both industry and the Government, while providing a better method for ensuring that the components comply with Coast Guard regulations.

DATES: This rule is effective on November 1, 1989. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Peter Richardson, Office of Marine Safety, Security, and Environmental Protection; Marine Technical and Hazardous Materials Division, (202) 267-2206.

SUPPLEMENTARY INFORMATION: On January 9, 1985, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (50 FR 1072). The NPRM was entitled "Miscellaneous Changes to parts 50 and 56, and 27 comments were received on the proposal. On May 18, 1988, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) entitled "Vessel Piping Systems, in the **Federal Register** (53 FR 17868). The SNPRM expanded upon the earlier NPRM and further proposed deletion of the affidavit system whereby manufacturers verify compliance with regulations in the fabrication of vessel piping system components. The Coast Guard received 8 comments in response to the SNPRM, bringing the total number of comments received on the proposal to 35. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this document are Mr. Howard L. Hime, Project Manager, and Mr. Stephen H. Barber and Lieutenant Commander Don M. Wrye, Project Counsels, Office of Chief Counsel.

Background

These regulations clarify certain technical requirements for vessel piping systems in 46 CFR part 56, correct errors, and revise the lists of acceptable standards and specifications. In addition, these regulations delete from 46 CFR part 50 the manufacturers' affidavit system used to verify compliance of various piping components with the regulations and, instead, incorporates industry developed standards. These regulations have no effect on installations and equipment already accepted by Coast Guard marine inspectors and maintained in good and serviceable condition. However, when a piece of equipment or a system is replaced, these regulations (as well as other regulations issued after the original date of acceptance) which relate to the equipment or system would be applicable to the replacement.

Discussion of Comments and Changes

1. Section 50.25-1

This section was revised by the SNPRM to describe the basic acceptance criteria for materials and piping components.

One comment requested clarification of the marking required by paragraphs (c) and (d). Paragraph (c) was revised to clarify that the marking is that required by the adopted industry standard. Paragraph (d) and § 50.25-10, which are for components not complying with an industry standard, were not changed since it is clear that the marking is that which is normally applied to the component by the manufacturer.

2. Section 56.01-3

One comment pointed out the section title is incorrect since there is no longer a 102.4.7 in American National Standards Institute (ANSI) B31.1. The section title in the final rule has been revised to delete this reference.

3. Section 56.01-6

This section has been removed and all standards referenced in that section have been incorporated into a new § 56.01-2. Regarding comments on the old § 56.01-6, one comment recommended the adoption of American Society for Testing and Materials (ASTM) F-25 and ASTM F-25.13 standards. Several standards developed under ASTM F-25 Committee on Shipbuilding Standards were proposed for incorporation by reference under the SNPRM. The Coast Guard is actively involved with industry in the development of shipbuilding standards through this committee, its subcommittees, and its task groups. The final rule incorporates many of these standards. As more standards are developed and found to be suitable for incorporation into the regulations, they will be included by future rulemaking projects.

4. Section 56.01-10

A new paragraph (f) was added by the proposed rule which would have permitted the substitution of a piping system diagram (required to be submitted by § 56.01-10(c)(1)) which contained locations where required and a fully detailed material list in lieu of an arrangement drawing (as required by § 56.01-10(c)(2)) unless calculations were also required for that system.

Three comments questioned the requirement in paragraph (f)(2) for "a fully detailed bill of material. One stated the requirement should be deleted since the presently permitted diagram material schedule is sufficient. One felt the wording needed clarification. One indicated the wording was misleading and would be incompatible with the efforts of the National Shipbuilding Standards Program (Panel SP-6) to develop a standardized method of describing pipe and piping system components on piping diagrams. The introductory sentence to paragraph (f) of the final rule has been changed to clarify that this paragraph provides an alternative to submitting the arrangement drawings of § 56.01-10(c)(2). Paragraph (f)(2) has been reworded to ensure that piping diagrams contain sufficient information to enable plan reviewers to substantiate that components comply with applicable regulations, while at the same time be compatible with the efforts of Panel SP-6 of the National Shipbuilding Standards.

5. Section 56.04-10

This section was changed by the proposed rule to clarify the acceptance criteria for piping systems which do not require specific plan approval.

One comment indicated that a statement should be included in this section to indicate that pressure vessels would have to meet part 54 as applicable. This recommendation has not been incorporated. Pressure vessels are not considered appurtenances and are not covered by this section. It is unnecessary to indicate that pressure vessels must meet part 54, as applicable.

One comment said paragraph (c) should specify "operational" failures, since failure in any pressurized system could constitute a hazard to personnel. This recommendation has not been incorporated. The wording has been unchanged in the final rule. This paragraph allows the inspector to evaluate systems and consider many parameters (e.g., proximity to switchboards, locations relative to personnel access routes, the dependence of vital systems upon them, etc.) in determining whether they are inherently safe and suitable for the environment in which they are installed.

6. Section 56.07–5

This section was amended by the addition of a definition for "vital system.

Two comments said the definition was itself subject to broad interpretation and did little to clarify the intent of the term. This definition has been changed to coincide with the definition for "vital system or equipment" found in § 62.10 of this subchapter. This change was made to promote uniformity in the regulations and clarify the intent behind this definition.

7. Section 56.07–10

Paragraph (c) of this section was revised by the proposed rulemaking to clarify that it replaced only paragraph 101.5.3 of ANSI B31.1, which deals with considerations to account for earthquake effects, with requirements which relate specifically to ship motion dynamic effects.

One comment questioned the requirement of paragraph (c)(2) of reducing tabulated allowable stress values by at least 20% when a ship motion analysis is not conducted for Class I systems. The comment stated that since the system would not be operated while the ship was in motion, no dynamic ship motion analysis should be required and no reduction in specified allowable stresses would be necessary. This paragraph is unchanged in the final rule. The proposed wording is clear in specifying when allowable stress values must be reduced. If vessel owners feel they have extenuating circumstances which warrant a relaxation of this requirement, they may seek an approval of their system on a case-by-case basis from the Marine Safety Center.

One comment said that paragraph (d)(1) should reference 102.2.2 of ANSI B31.1 instead of 102.2. This recommendation has been included in the final rule.

8. Section 56.15–1

Paragraph (a) of this section was amended by the proposed rules to clarify the fact that materials used in the fabrication of pipe joining fittings manufactured in accordance with standards referenced in these regulations must comply with subpart 56.60 of this part.

One comment said that requiring a component's material to meet Subpart 56.60 when it complied with a referenced standard was unjustified. The comment stated that any material specified within an adopted standard should be acceptable for use. This paragraph was revised by the SNPRM and the wording in question has been left unchanged in the final rule. Component materials must meet the requirements of subpart 56.60, since these have been found to be specifically suitable for shipboard applications. While referenced standards ensure components of acceptable pressure/temperature designs, some materials accepted in those standards may be unsuitable for the marine environment.

9. Section 56.20–1

This section was amended by the proposed rules to clarify wording that has been a frequent cause of confusion. Additionally, the SNPRM deleted reference to the affidavit system, instructed manufacturers how to obtain acceptance of their products, permitted, with some limitations, the use of welded valves, and incorporated into the regulations additional current industry standards for valves.

Three comments were received in response to the initial proposed rules. One stated the valve specification should be broadened to include modern valve designs not currently acceptable. The SNPRM accomplished this with its proposed method for manufacturers to gain product acceptance of valves not built to referenced standards. These procedures are included in the final rule.

One comment indicated that clarification was needed as to what constitutes a "welded valve. The SNPRM expands upon the present working of the regulations and clarifies that the procedures of subpart 56.70 and part 57 must be followed for welded valves. These requirements are applicable to welds which form part of the pressure-containing boundary of the valve (i.e., body, bonnet).

10. Section 56.20–9

This section was revised by the proposed rules for clarification purposes and to limit the use of wafer valves to agree with the American Bureau of Shipping (ABS) Rules for Building and Classing Steel Vessels and allow piping inboard of a skin valve to be removed without drydocking the vessel.

Three comments indicated questions remained with the revised wording of paragraph (a). They also all uged that quarter-turn (rotary) valves be permitted in addition to outside yoke and screw valves with rising-stem. The attempt to clarify the requirements of this section obviously led to further confusion. Quarter-turn (rotary) valves have long been accepted aboard Coast Guard inspected and certificated vessels. Numerous standards referenced in Table 56.60–1 (b) relate to this type of valve. Paragraphs (e) and (f) of this section specifically address plug cocks. Section 56.20–15 addresses resiliently seated valves, traditionally quarter-turn valves. The fact that three commenters said such valves should be permited indicates still further clarification of this section is necessary. Therefore, requirements have been added for quarter-turn and lever operated valves.

Four comments indicated that further clarification of paragraph (b) was necessary, while one commenter felt that the paragraph was overly restrictive on the size limitation for socket type welding ends for class I piping systems. These comments are agreed with. The size restrictions have been changed to agree with other socket weld restrictions in the regulations and the ABS Rules for Building and Classing Steel Vessels, which also clarifies the requirements of this paragraph.

One comment requested further clarification of the allowable use of wafer-type valves for shell connections in paragraph (c). This recommendation has been incorporated in the final rule. The intent behind not allowing wafer-type valves as shell connection shut-off valves is that many wafer valves are held in place by the pressure exerted by adjacent piping flanges. They do not permit piping immediately inboard of the valve to be removed for repair without raising the shell connection out of the water. This is not in keeping with good marine practice. Therefore, this paragraph has been revised to clarify this point.

11. Section 56.20–15

A new paragraph (c) was added by the proposed rule which clarified the requirements of resiliently seated valves. It specified how manufacturers are to qualify their valves to desired categorization.

One comment pointed out that the valve categorization specified in paragraph (b) did not coincide with the valve categorization criteria of paragraph (a). This comment is agreed with. The first sentence of paragraph (b) has been revised to include positive shutoff valves as a third category of resiliently seated valves.

Several comments were received which related to paragraph (c). Three indicated that actual fire testing provided the most meaningful results and should be used to determine Category A and positive shutoff designations. Four questioned the formulas used to determine leakage rates for the various categorizations, claiming they were unclear or incapable of being met. None of the comments made were incorporated. Being a new requirement, confusion was anticipated. These tests were included in the regulations to provide definite limits to be used in categorizing resiliently seated valves. Testing a valve by removing the resilient seating material affords manufacturers a way to avoid bearing the cost of fire testing their product. It is a simple matter to determine the flow through a valve at its rated pressure and comparing it against the flow through the valve closed with the resilient seating material removed and subjected to the same pressure. For those manufacturers who choose not to utilize this option, they may conduct a fire test of their valve or submit calculations verifying their product acceptance, provided the alternate method chosen is acceptable to the Commandant (G–MTH).

12. Section 56.25–20

The SNPRM modified this section to bring its wording into line with that contained in ANSI B31.1. One commenter felt that paragraph (b) of this section should be further revised to more fully comply with ANSI B16.5. Specifically, carbon steel bolts should be permitted to have either hex heads or square heads, and the maximum operating temperature for low strength carbon steel bolts should be reduced to 400 °F The final rule reduces the maximum operating temperature allowed for low strength carbon steel bolts to 400 °F This is in agreement with ANSI B16.5 and ANSI B31.1. The requirement that carbon steel bolts have heavy hexagon steel heads and nuts has been retained. Though this exceeds the requirements of ANSI B16.5, it complies with the requirements of ANSI B31.1 and retains the requirements presently contained within these regulations.

Two comments pointed out that paragraph (c), in prohibiting the use of headed alloy bolts, conflicts with ANSI B16.5 and ANSI B31.1. The final rule eliminates this prohibition. It additionally leaves the wording of the first sentence of paragraph (d) unchanged. This change brings the regulatory requirement into line with long adopted codes and standards.

One comment indicated that Class 3 threads have been the standard used by all manufacturers and felt that paragraph (d) should be revised to reflect this fact. This comment has not been included in the final rule. The present wording permits Class 3 threads as well as others and agrees with the requirements of ANSI B16.5, ANSI B31.1 and the ASME Code. No change is warranted. The Coast Guard sees no reason to restrict the choice to only one class of threads.

13. Section 56.30–5

The SNPRM proposed revisions to several of the requirements for welded joints outlined in this section.

One comment pointed out that, in paragraph (c), the references to subparagraphs § 56.30–10(b) (5) and (6) should be deleted from the first sentence of this paragraph since they are not applicable to socket welds. This suggestion has been included in the final rule.

Two comments were made regarding paragraphs (c) and (d), questioning why the requirement for a fillet weld leg size of 1.4 times the nominal pipe wall thickness (1.4T) has been retained when ANSI B31.1 has permitted this dimension to be reduced to 1.09T. The final rule has not been changed. A fillet weld leg size of 1.4T results in a fillet weld throat thickness equal to the nominal pipe wall thickness. The NPRM discussed the recent trend of reducing fillet weld leg size to 1.09T. The reduction in fillet weld size was permitted primarily for socket type pipe joints and socket weld fittings where the surface of the parts to be joined did not always allow for larger fillets. However, many experts do not consider this reduction appropriate for fillet welds which effectively serve as all or part of the hub area of a flange to a pipe joint. Our regulations already contain provisions to reduce the fillet size in Class II piping and when heavy wall pipe is used for long life in corrosive service rather than for strength. For these reasons we decided not to change our requirements for fillet weld size except to include a provision that the fillet weld need not be larger than the space available for it on the hub of the flange. No data, as specifically requested by the NPRM, was submitted to prove the 1.4T requirement is overly conservative. Therefore, the change to 1.09T will not be made.

14. Section 56.30–10

The SNPRM proposed revisions to several of the requirements for flanged joints outlined in this section.

Two comments were made about the proposed sentence added to the note to Figure 56.30–10(b). Both pointed out referencing a hub thickness of ⅛-inch is meaningless since all ANSI hubs have a thickness larger than this. These comments are agreed with. The note has been changed accordingly.

Two comments stated that in paragraph (b)(2), the size of the strength fillet welds for slip-on type flanges should be changed to coincide with ANSI B31.1, i.e., permit a leg length of 1.09 times the nominal pipe thickness. This suggestion has not been included in the final rule for the reasons discussed above.

One comment objected to the proposed wording of paragraph (b)(3) since it limits the use of slip-on flanges to a maximum nominal pipe size (NPS) of 4 for all Class I piping systems whereas the existing rules permit their use in sizes exceeding 4 NPS in relatively low pressure Class I systems. The final rule is as proposed. The changes to this section and § 56.95–10 are made to bring regulatory requirements into agreement with ANSI B31.1 and correct long-standing printing errors in 46 CFR Table 56.95–10.

One comment stated that paragraph (b)(5) should be modified to allow hubbed plate flanges in accordance with appendix 2 of section VIII of the ASME Code. This suggestion has not been included in the final rule. Hubbed plate flanges are currently permitted by § 56.25–5 which allows flanges to meet the design requirements of appendix 2 of section VIII of the ASME Code. Paragraph (b)(5) is intended only to address flat plate flanges and modifying this paragraph to include hubbed plate flanges is unnecessary.

15. Section 56.30–20

One comment stated paragraph (c) of this section, regarding restrictions on threaded joints, is too vague but offered no suggestions for clarification. The wording of this paragraph has been unchanged in the final rule. The rule is

sufficiently specific to allow designers and plan reviewers to determine where threaded joints are not permitted.

16. Section 56.35–15

The NPRM attempted to clarify and differentiate the requirements for metallic and nonmetallic expansion joints.

Four comments indicated confusion still exists and recommended the Coast Guard recognize the standards of the Expansion Joint Manufacturers Association (EJMA). This suggestion was incorporated. The SNPRM revised this section and § 56.35–10. Section 56.35–10 now contains requirements for nonmetallic expansion joints (regardless of their pressure rating) and § 56.35–15 contains requirements for metallic expansion joints. Standards of the EJMA have been added to Table 56.60–1(b) as applicable to piping systems. Expansion joints meeting adopted standards will be suitable for use within their design pressure/temperature ratings. Those not built to recognized standards must be proven suitable on a case-by-case basis in accordance with § 50.25 of this chaper.

17 Section 56.50–1

Paragraph (c) of this section was amended by including the fact that modern sluicing arrangements for tankships would be considered for approval on a case-by-case basis by the Marine Safety Center.

One comment stated that the use of sluicing systems should be allowed on vessels other than tankships. This comment has not been included in the final rules. Sluicing arrangements are only suitable for vessels dedicated to the carriage of liquid cargoes, i.e., tankships. Should, at some future date, another vessel designer propose such a system, it may be considered for acceptance under the "general equivalency" regulations of 46 CFR 50.20–30.

One comment suggested that paragraph (g)(2) be amended to include a requirement that valve position indicating systems be independent of the valve control systems. This suggestion has been incorporated into the final rules. Vessel personnel must know the status of remotely operated valves from the position of the remote valve control. The position indicating system should be independent of the control system in order that failure of the latter will not result in failure of the former. Paragraph (g)(2)(iii) has been amended by the addition of the requirement that valve position indicator systems be independent of the valve control systems. This is consistent with the requirement contained in § 62.30–5 of this subchapter.

One comment suggested that paragraph (g)(3) be revised to clarify its intent. This recommendation has been included in the final rule. Paragraph (g)(3) has been revised to clarify that the required self-indicating air cock in the actuating line to an air operated remote control valve must indicate the desired valve position, i.e., open or closed. The independent valve position indicator, required by amended paragraph (g)(2)(iii), serves to verify that the actual valve position coincides with the desired valve position.

18. Section 56.50–15

One comment pointed out that the steam heating requirements of paragraph (h) of this section should be amended to bring the regulatory requirements into line with accepted shipboard practices. This comment is agreed with. The present regulations limit steam pressure for "space heating" to 45 pounds per square inch gage (psig). The question has frequently been asked as to the meaning of "space heating. Space heating has been interpreted to mean heating for accommodation and public spaces. Non-accommodation and non-public spaces (e.g., work spaces, machinery spaces, gear lockers) are permitted to have steam heating systems in excess of 45 psig. Paragraph (h) of this section has been revised to clarify this policy.

19. Section 56.50–45

The NPRM proposed that paragraph (b) of this section be modified by specifying that the suctions for the main and emergency circulating pumps be "well separated" in addition to independent.

Two comments pointed out that the proposed change was vague and open to significant variations in interpretation. These comments are agreed with, and the proposed change has been deleted from the final rule.

20. Section 56.50–50

The proposed rules amended paragraph (c) of this section to inform designers that bilge systems other than the conventional manifold-type may be considered on a case-by-case basis by the Marine Safety Center, and to require bilge discharge valves to comply with the rapid operation requirements currently imposed upon suction valves.

One comment stated the requirements for common rail-type systems should be clearly specified and moved to a separate section. This suggestion has not been incorporated into the final rule. The present regulations adequately address common rail-type bilge systems, and the amendments to this paragraph permit any nonmanifold-type bilge system to be evaluated on a case-by-case basis.

Two comments indicated that the proposed wording could be interpreted to require stop-check manifold type valves for bilge overboard discharges. This point is agreed with. The intent of the proposed rule was that bilge overboard discharge valves comply with the location and accessibility requirements of the bilge suction valves, but the proposed rules did not intend that bilge overboard discharge valves be of the stop-check type. Therefore, the fourth sentence has been modified to indicate that bilge overboard discharge valves must meet the location and accessibility requirements of the suction manifolds.

The proposed rules amended paragraph (d)(1) of this section to correct a long-standing typographical error in the formula used to determine the diameter of the suction to each main bilge pump.

Five comments pointed out that the proposed rule was still incorrect. This observation is agreed with. The improper fix was a result of a misprint. The formula is correct in the final rule.

Paragraph (f)(3) of this section was amended by the proposed rules to clarify the emergency bilge suction requirements of paragraph (f).

One comment was made which pointed out that the proposed amendment did not accomplish its goal. This comment is agreed with. The existing text of paragraph (f)(3) will be left unchanged. Instead, the word "except" will be deleted from the first sentence of the introductory text of paragraph (f). This word is the apparent cause of the confusion over this requirement. By this deletion, vessel designers should have no problem determining when a vessel is required to have an emergency bilge suction. It should be noted that vessels engaged solely in river service are not required to have an emergency bilge suction. The requirements for emergency bilge suctions stem from the International Convention for the Safety of Life at Sea 1974, as amended (SOLAS 74/83), which is not applicable to these vessels. Additionally, the purpose of an emergency bilge suction is to "buy time" in the event of catastrophic flooding. Vessels in river service, unlike vessels with ocean, coastwise or Great Lakes routes, are usually closer to the safety of shore.

The NPRM proposed incorporating piping separation requirements

contained in various locations within 33 CFR and 46 CFR into paragraph (h) of this section.

Several comments were made in response to this proposal. These pointed out that the requirements went beyond bilge and ballast piping to which § 56.50–50 pertains, that this paragraph should be referenced in other sections, and the imposition of requirements for spaces which could contain Grade E liquids (with flashpoints below 150°F) will cause problems with diesel propelled vessels (since diesel flashpoints are at 140°F). These comments are agreed with, and the proposed change has been deleted. To clarify the ambiguity in the present text, wording has been added to indicate that these bilge piping requirements are intended to apply to drain spaces containing dry cargo (i.e., cargo holds). The first sentence of this paragraph specifies "cargo holds" instead of "cargo spaces.

The NPRM proposed modifying paragraph (k) of this section by making the requirements applicable to all tanks through which bilge and ballast piping pass rather than just deep tanks, with the specific exception of ballast piping passing through ballast tanks.

Three comments were received that related to this proposed change. One comment stated that the wording was still unclear and proposed alternate wording. Two comments stated that the restrictions were excessive and proposed allowing the use of expansion joints and dresser-type couplings in bilge and ballast lines within tanks. As a result of these comments, this paragraph was modified by the SNPRM. The requirements still apply to all tanks, rather than just deep tanks, with the exception of ballast piping passing through ballast tanks. In addition, alternates to welded pipe or enclosing piping in pipe tunnels (such as expansion joints or dresser-type couplings) could be approved by the Marine Safety Center, provided certain design verifications are submitted and found to be satisfactory.

21. Section 56.50–55

Three comments indicated that clarification was needed in paragraph (c) with respect to the requirement of a suction velocity of not less than 400 feet per minute through the bilge suction pipe. This requirement was included in the SNPRM and has been retained in the final rule. The question has been frequently raised as to whether or not this suction velocity was required in suction piping larger than that required by § 56.50–50 of this part. This would require builders to install pumps larger than that required if the minimum pipe size were provided.

The intent of the regulations regarding bilge suction velocity is to ensure that a given volume of water can be removed in a given time. The larger (or deeper) the compartment, the larger the required volumetric flow rate. Minimum pipe sizes are specified in the regulations. Since volumetric flow rate is the prime concern, if a designer opts to install larger than required piping, a pump may be installed which will produce a lesser fluid velocity through that pipe, provided the volume of fluid removed in a given time will at least equal that amount passing through the minimum required pipe size at 400 feet per minute.

Paragraph (e)(1) of this section was modified by the proposed rules to clarify the intent of the separation of bilge pump requirements and to provide an example of an acceptable alternative bilge pump arrangement.

Two comments interpreted the example to be a required pumping arrangement and took exception. Though the example was provided to illustrate one acceptable alternative pumping arrangement, rather than a required alternative, it is clear that the proposed wording could lead to confusion. To remedy this problem, the example has been deleted from the final rule. Ideally, bilge pumps should be located in separate watertight compartments. In vessels which do not have separate watertight compartments, or in which it is not practicable to locate bilge pumps in separate watertight compartments, designers may propose alternative arrangements (i.e., locating all bilge pumps within the machinery space) for consideration by the Marine Safety Center.

22. Section 56.50–60

The NPRM combined the requirements of § 56.50–5 with the requirements of this section and changed the title of this section to read: "Systems containing oil.

Three comments pointed out the new title would lead readers to believe the requirements also apply to lube oil, hydraulic oil, and thermal fluid systems. The Coast Guard agrees with these comments since this was the intent of the combination as stated in the NPRM. Unless otherwise specified, the requirements apply to all oil systems. Therefore, the proposed section heading is retained.

One comment suggested that the first sentence of paragraph (c) of this section be reworded for the sake of clarification. This has been done in the final rule by revising the first sentence to remove redundant language.

Three comments requested that paragraph (d) of this section be expanded to address acceptable valve types in specific locations (i.e., Category A valves at tanks with positive shutoff valves at the machinery space bulkhead), clarify the energy storage requirements for power operated valves, and clarify the design requirements for the power actuators for power operated valves. Paragraph (3)(i) of this section was revised by the SNPRM to clarify that the energy storage requirements are applicable only to valves actuated by hydraulic or pneumatic power. The Coast Guard reviewed the present requirements for valves at tanks and the design requirements for valve power operators and found the requirements adequate. Therefore, these requirements have not been changed in the final rule.

23. Section 56.50–75

This section was modified by the NPRM with minor editorial corrections.

One comment stated further revisions were necessary to address the use of heated fuel oil systems. The comment has not been included in the final rule. The present regulations of this section, coupled with fuel system and general requirements found elsewhere in this subchapter (e.g., §§ 56.01–1, 56.50–60, 58.01–5, etc.) are considered at this time to be adequate.

24. Section 56.50–85

Paragraph (a) of this section was modified by the NPRM to clarify that the venting requirements specified applied to independent fixed non-pressure tanks or containers as well as to integral tanks. Paragraph (a)(4) of this section was revised by the SNPRM to require all tank vents to extend above the weather deck, with certain specified exceptions.

One comment stated that the venting requirements for cofferdams, voids, duct keels, etc., should also be included. This comment has not been included in the final rule. These requirements are intended to apply to liquid-carrying tanks. Venting requirements for other spaces are found in other, more appropriate, places within the regulations.

One comment questioned the fact that paragraph (a)(7) of this section addresses flame screens on bilge slop and contaminated drain tank vents, but neglects to specify where such vents should terminate. This concern was addressed in the SNPRM and has been included in the final rule. Paragraph (a)(7) was redesignated as (a)(8) in the final rule. Paragraph (a)(4) of this section now contains requirements for

the terminus of tank vents dependent upon the fluid within the tank.

Two comments felt the proposed regulations were too lax. Allowing bilge oily-water holding tanks and bilge slop tanks to vent into the machinery space is, they indicate, an unsafe practice. These comments are not agreed with. Bilge oily-water holding tanks and bilge slop tanks contain oil/water mixtures from the machinery space bilge. Present regulations permit venting of these tanks within the machinery space. The Coast Guard is unaware of any problems that indicate this practice is unsafe. The danger of lighter, more volatile, vapors being concentrated within such tanks is minimized since they largely separate from the oil as it accumulates in the bilge and are exhausted to atmosphere through the ventilation system. Additionally, vents from these tanks are required to be fitted with flame screens. This proposed regulation clarified present regulations, agrees with present policy, and is in agreement with classification society requirements.

25. Section 56.50–95

This section was amended by the NPRM to clarify existing wording, address tank overflows used as tank vents, and establish requirements for locking of sea valves.

One comment proposed amending paragraph (a)(1) of this section to indicate that valves required by this section should be as close to the hull penetration as practicable. This comment is agreed with and is included in the final rule.

One comment stated that paragraph (b)(1) of this section should be further modified to clarify that it applies only to discharges above the waterline. This comment has not been incorporated. The requirements are sufficiently clear and have caused no confusion in the past. In their present form they are virtually identical to the requirements found in the Load Line Regulations (46 CFR 42.15–60(c)) and various classification society rules (e.g., ABS Rules, 36.25–2).

One comment stated the intent behind the proposed change to paragraph (c) of this section was unclear because the term "storage tank" is not defined. This comment is agreed with. The final rules have been changed to eliminate the term "storage tank" from the second sentence. Additional, the fourth sentence has been rewritten to clearly indicate that overflow pipes which also serve as tank vents must not be fitted with positive shutoff valves.

26. Section 56.60–1

The section heading and the note to the heading of Table 56.60–1(a) of this section were amended by the SNPRM to clarify that Table 50.60–1(a) actually replaces Table 126.1 in ANSI B31.1.

One comment stated that "eliminating Table 126.1" reduced the choice of allowable materials. It is precisely because of such misunderstandings that the wording in the heading has been changed. As stated in paragraph (a)(1) of this section, the material requirements in this subpart must be used in lieu of those in ANSI B31.1. Table 56.60–1(a) is a list of only those materials currently listed in Table 126.1 of ANSI B31.1 that are acceptable. If all the materials in Table 126.1 were acceptable; there would be no need for Table 56.60–1(a). The choice of allowable materials is not narrowed; it is the same as it was before. The proposed change has been retained in the final rule.

The SNPRM incorporated additional industry standards, in large part in conjunction with the deletion of the affidavit system. Standards will continue to be adopted as they are found suitable. This section was further amended by the NPRM and SNPRM to clarify wording, incorporate additional acceptable material standards into the regulations, and delete those which have been discontinued or found to be unsuitable for shipboard applications.

Sixteen comments suggested additional standards to be incorporated by reference. The suggested standards were reviewed. Several were found to be already incorporated by reference into the regulations. Others were found to be suitable and have been included in the final rule. Of those standards not adopted, some were found to have an unsuitable design factor of safety, lacked adequate testing criteria, or had no marking requirements. The Coast Guard is constantly looking for standards to adopt so as to reduce the regulatory burden on industry. However, certain key elements must be included in a marine engineering standard before it will be incorporated by reference. These elements include: Acceptable materials of construction, adequate design criteria, quality assurance during fabrication, final product testing, manufacturer's certification, and product marking to indicate conformance to the standard. Members of standards developing committees are strongly encouraged to include these criteria in their standards, thereby enabling them to be incorporated by reference into these regulations. Interested persons are strongly encouraged to continue to suggest standards for incorporation in these regulations.

27 Section 56.60–2

One comment stated that the restriction in footnote 5 of Table 56.60–2(a) of this section prohibiting certain brass materials from being used in salt water systems should be eliminated. This comment has not been included in the final rule. However, the second sentence of footnote 5 has been revised to explain the intent behind this restriction. The brass materials affected by this footnote all have high concentrations of zinc, and are subject to dezincification when used in a salt water environment. Copper-zinc alloys containing more than 15% zinc are susceptable to this dealloying process which weakens the alley and allows the leakage of liquids or gasses through the remaining porous mass. Most of the aluminum alloys affected by this footnote have greater than 0.6% copper and are susceptable to stress corrosion cracking unless they are solution heat treated and either naturally aged or subjected to a precipitation heat treated temper.

28. Section 56.60–10

One comment questioned whether cast iron and malleable iron conforming to standards and specifications other than those listed in Tables 56.60–1(a) and 56.60–1(b) of this part are restricted to a maximum temperature limitation of 450°F The 450°F temperature limitation applies to all components made from cast iron or malleable iron. Section 56.60–10(a) has been changed to clarify this requirement.

29. Section 56.60–15

Two comments pointed out that Appendix E no longer exists in ANSI B31.1. This comment is agreed with. This section was revised by the SNPRM. Reference to Appendix E has been deleted.

30. Section 56.60–20

Paragraph (a)(1) of this section was amended by the NPRM to address the low melting points of other nonferrous materials instead of just aluminum and aluminum alloys.

Two comments indicated the proposed wording was vague, especially with respect to silver brazing alloys. These comments are not agreed with. The intent of this section has not been changed. Instead it has been clarified by pointing out that the low melting point of all nonferrous materials, not only aluminum and aluminum alloys, must be

considered in certain piping applications. Requirements relating to melting points of brazing materials are contained elsewhere in the regulations.

31. Section 56.60–25

Modifications and amendments to this section were proposed by both the NPRM and SNPRM. In addition to correcting grammatical errors in the text, burning rates for glass reinforced resins and other plastics were specified, and specific test criteria for nonmetallic hoses were given.

One comment questioned the deletion of the word "valve" from the first sentence of paragraph (a)(1)(ii) of this section. This deletion was unintentional, and the word has been retained in the final rule.

Five comments requested that reinforced thermosetting resin pipe (RTRP) be given wider acceptance in the regulations, including a relaxing of the present prohibitions placed upon the material when passing through bulkheads and being installed in concealed spaces. This suggestion has not been included in the final rule. The Coast Guard has been actively involved in studying RTRP for use aboard inspected and certificated vessels. In September of 1986, Navigation and Vessel Inspection Circular NVIC 11–86, "Guidelines Governing the Use of Fiberglass Pipe (FGP) on Coast Guard Inspected Vessels" was issued. It provided the marine industry with updated guidance regarding the application of FGP aboard vessels. Through this NVIC, the accepted applications of FGP were greatly expanded. Coast Guard personnel have been working closely with industry to develop consensus-type standards for FGP through ASTM's Committee F–25 on Shipbuilding. One of these standards, ASTM F1173, has been completed and is incorporated by reference into these regulations. Internationally, the Coast Guard is leading in the development of acceptance criteria for all piping materials other than steel, which includes FGP in all shipboard systems. For FGP the requested regulatory change will be addressed in a separate regulatory action.

Two comments indicated that the burning rate to determine a self-extinguishing flammability criteria has been deleted from ASTM D635. This comment is agreed with. The SNPRM amended this paragraph to specify an acceptable burning rate. This has been included in the final rule.

Numerous comments responded to the proposed changes to paragraph (c) of this section. Comments to the changes were favorable. Most comments wanted the changes to go further, expanding the permitted reinforcing materials, allowing reuse of field attachable fittings, and modifying various test requirements. The final rule is changed only to the extent proposed by the NPRM and SNPRM. Currently the Rubber Manufacturers Association (RMA) and the Society of Automotive Engineers (SAE) are working together to develop an industry standard for hoses intended for marine applications. Accordingly, no changes are anticipated to this paragraph until this effort is finalized. At that time, it is anticipated that the standard can be incorporated by reference, thereby negating the necessity to develop additional regulations.

32. Section 56.97–5

One comment indicated the term "scuppers" should be replaced with "scupper valves" since the former is used to describe a deck drain fitting which is not normally a part of a pressure piping system. Though the comment was correct in describing a scupper, the suggestion has not been included in the final rule. Valve tests are described in other portions of the subchapter and need not be repeated here. It is more appropriate to delete the word "scuppers" from this section. This has been done in the final rule.

33. Section 61.15–12

This new section was added by the SNPRM to detail requirements for the inspection and replacement of nonmetallic expansion joints. Although not a comment on the regulations, the National Transportation Safety Board (NTSB) recommended in their marine accident reports on the Prince William Sound (NTSB/MAR–87/07) and the Ogden Willamette (NTSB/MAR–83/06) that the Coast Guard require a complete internal and external examination of nonmetallic expansion joints installed in the main seawater circulating system during drydock inspections. This rulemaking requires external inspection of all nonmetallic expansion joints at each drydock inspection. Only if the external inspection indicates the need for additional examination would the fitting be required to be removed for internal inspection. Removal of expansion joints to facilitate routine internal examinations, when no defects are suspected, may not only be cost-prohibitive, but would increase the likelihood of inadvertent damage. In addition and in accordance with the NTSB recommendation in the same reports, nonmetallic expansion joints in piping systems which penetrate a vessel's side, where both the expansion joint and the hull penetration are below the deepest load waterline, would be required to be replaced ten years after their date of manufacture.

One comment pointed out that the proposed wording of paragraph (d) of this section did not differentiate between metallic and nonmetallic expansion joints, nor did it differentiate between specific piping systems. This comment partially is agreed with. In the final rule, the section title has been changed to "Nonmetallic expansion joints" and paragraph (a) of this section has been revised to specifically require inspection of nonmetallic expansion joints. The final rule continues to apply to any piping system which penetrates the hull where both the penetration and the nonmetallic expansion joint are below the deepest load waterline.

One comment stated the required ten year replacement interval, as specified in paragraph (b) of this section, is unjustified. The comment maintained that with proper installation, and long-term care, nonmetallic expansion joints can last the life of a vessel. The comment also stated that if a replacement interval was to be required, it should be tied to the date of installation, not the date of manufacture of the joint. Another comment requested that nonmetallic expansion joints on Great Lakes and other freshwater vessels be excluded from the ten year replacement interval. While some nonmetallic expansion joints do last the life of a vessel, many do not. Flooding as a result of failure of large nonmetallic joints in seawater and freshwater systems can have catastrophic results. Basing replacement intervals on dates of installation ignores the natural deterioration which occurs to the organic materials used to fabricate nonmetallic expansion joints. Despite the fact that joints may be "properly maintained, this deterioration cannot be avoided. Also, since large joints are not normally kept in a vessel's spare parts inventory, the date of installation of a joint should be close to its date of manufacture. The final rule retains the ten year replacement interval, based on date of manufacture. However, words have been added which gives the Officer in Charge, Marine Inspection authority to grant an extension of the ten year replacement requirement to coincide with the vessel's next required drydocking.

Incorporation by Reference

The material in subpart 50.15 and § 56.01–2 has been approved for incorporation by reference by the Director of the Federal Register under 5

U.S.C. 552 and 1 CFR part 51. The material is available as indicated in § 56.01-2.

If substantive changes are made by the publisher to the materials incorporated, those changes may be considered for incorporation.

However, before taking final action, the Coast Guard will publish a separate notice in the **Federal Register** for public comment.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). A final evaluation has been prepared and placed in the public docket.

Two major issues in these regulations are the deletion of the affidavit system and the addition of the requirement to periodically replace certain nonmetallic expansion joints. A study conducted in 1980 concluded that the deletion of the affidavit system would result in an estimated annual savings in excess of $70,000 for the Coast Guard and $500,000 for vessel owners. Adjusting these figures by the Producer Price Index for Finished Goods for the years 1980 to 1987 results in an estimated annual savings (in 1987 dollars) of $84,000 for the Coast Guard and $600,000 for vessel owners. These savings are based on the elimination of the overall cost of the affidavit system, which was determined by evaluating the costs incurred by the Coast Guard to grant initial affidavit acceptances, evaluate products of affidavited manufacturers, and verify the proper use of affidavited products; by manufacturers to comply with the requirements of the affidavit system; and by vessel owners to purchase products from affidavited manufacturers.

Requiring vessel owners to periodically replace nonmetallic expansion joints in seawater piping systems would result in an estimated annual cost (in 1987 dollars) to vessel owners of approximately $2,520 for each steam propelled vessel and $1,172 for each diesel propelled vessel. In 1989, the U.S. fleet of vessels over 100 gross tons was made up of 937 diesel powered vessels and 376 steam powered vessels. The average age of the diesel and steam powered vessel fleet is approximately 10 and 15 years old, respectively. The economic burden upon the maritime industry to replace nonmetallic expansion joints within the existing fleet will be approximately $2,040,000 (in 1987 dollars) spread over the next ten years, or an average annual cost of $204,000. Considering the age of the average existing vessel and taking into the account replacement of some older nonmetallic expansion joints through routine maintenance, it is projected that the cost to the industry during the first year of implementation of these regulations will be $350,000 (in 1987 dollars). The economic benefits of periodic replacements of nonmetallic expansion joints are difficult, if not impossible, to quantify. However, when the costs of vessel replacement and the loss of vessel revenues which could result from expansion joint failures are considered, the economic benefits of periodic expansion joint replacement are substantial.

Regulatory Flexibility Act

These regulations have been evaluated in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As described in the Regulatory Policies and Procedures section above, the effect of these regulations is to reduce Coast Guard and industry costs. Most of the changes clarify technical requirements, update lists of acceptable standards or editorially correct errors and will have a minimal economic impact. There is no reason to assume that the deletion of the affidavit system as a result of proposed regulations would cause small entities to be unable to effectively compete against larger concerns. To the contrary, the elimination of the affidavit system should increase sales opportunities for new companies entering the marine market because prospective clients would be unable to require a company first to have an affidavit accepted by the Coast Guard. The regulations requiring periodic replacement of nonmetallic expansion joints would apply to owners of Coast Guard inspected and certificated vessels. Due to the cost of owning and operating a vessel, the annualized cost of replacements is not considered to have a significant impact. The cost will be less on smaller vessels than on larger ones.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain no new information or recordkeeping requirements. The information collection requirements contained in this rulemaking have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2115-0142. Section 50.25-10 eliminates the requirement for a manufacturer's affidavit, Form CG-935A, thus reducing this paperwork burden. The savings associated with this reduction have been previously discussed.

Section 56.01-10(f) reduces the number of arrangement drawings required to be submitted. Arrangement drawings are unnecessary if certain conditions are satisfied, e.g., the information is satisfactorily presented on associated diagrams.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, these regulations will have no significant environmental impact and are categorically excluded from further environmental documentation. The proposed regulations revise existing regulations to clarify technical requirements, correct errors, and substitute industry standards for existing regulatory requirements.

List of Subjects in 46 CFR Parts 50, 56, and 61

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, chapter I of title 46, parts 50, 56, and 61 of the Code of Federal Regulations are amended as follows:

PART 50—GENERAL PROVISIONS

1. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 50.01-20 also issued under the authority of 44 U.S.C. 3507

2.-3. A new § 50.10-23 is added to read as follows:

§ 50.10-23 Marine Safety Center.

The term "Marine Safety Center" refers to the Commanding Officer, U.S.

Coast Guard, Marine Safety Center, 400 7th St., SW., Washington, DC 20590.

4. Section 50.15–1 is amended by revising the section heading and paragraph (b) and removing paragraph (c) to read as follows:

§ 50.15–1 General acceptance of standard requirements.

(b) The issue of the industry specification, standard, or code described in this subchapter as incorporated by reference, is generally accepted as an alternate during plan review and approval, or for repair or replacement. The Commandant (G–MTH) may authorize the use of an issue of an earlier or later date when circumstances warrant such action.

5. Section 50.15–20 is amended by revising paragraphs (a)(1) through (a)(13) and adding new paragraph (a)(14) to read as follows:

§ 50.15–20 Additional standards.

(a)

(1) American Boat and Yacht Council, Inc. (ABYC), 305 Headquarters Drive, Suite 3, Millersville, MD 21108.

(2) American Petroleum Institute (API), 1220 L Street, NW Washington, DC 20005.

(3) American Welding Society (AWS), United Engineering Center, 345 East 47th Street, New York, NY 10017

(4) Commercial Standards, Commerce Department, National Bureau of Standards, Washington, DC 20234.

(5) Compressed Gas Association (CGA), 1235 Jefferson Davis Highway, Suite 501, Arlington, VA 22202.

(6) Expansion Joint Manufacturers Association, Inc. (EJMA), 25 North Broadway, Tarrytown, NY 10591.

(7) Fluid Controls Institute, Inc. (FCI), 31 South Street, Suite 303, Morristown, NJ 07960.

(8) Manufacturers' Standardization Society of the Value and Fittings Industry (MSS), 127 Park Street, NE., Vienna, VA 22180.

(9) Military specifications, which may be obtained from the Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, PA 19120.

(10) National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269.

(11) National Fluid Power Association (NFPA), Post Office Box 49, Theinsville, WI 53092.

(12) Society of Automotive Engineers, Inc. (SAE), 400 Commonwealth Drive, Warrendale, PA 15096.

(13) Tubular Exchanger Manufacturers' Association, Inc. (TEMA), 25 North Broadway, Tarrytown, NY 10591.

(14) Underwriters' Laboratories, Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709.

*

6. Section 50.20–5 is amended by revising paragraphs (b) and (c), removing existing paragraph (d) and redesignating paragraph (e) as paragraph (d) to read as follows:

§ 50.20–5 Procedures for submittal of plans.

(b) The plans, except as noted in paragraph (c) of this section, may be submitted in duplicate to the Officer in Charge, Marine Inspection, at or nearest the place where the vessel is to be built. Alternatively, plans may be submitted in triplicate to the Marine Safety Center.

(c) Plans for nuclear vessels should be submitted in triplicate to the Commandant (G–MTH).

7 Section 50.20–15 is amended by revising paragraph (a)(3) to read as follows:

§ 50.20–15 Previously approved plans.

(a)

(3) A copy of the approved plan is available for review by the approving office.

8. The heading of subpart 50.25 is revised to read "Acceptance of Material and Piping Components."

9. Section 50.25–1 is revised to read as follows and Table 50.25–1(a) is removed:

§ 50.25–1 General.

(a) Materials and piping components used in the construction of boilers, pressure vessels, pressure piping systems, and related components are accepted by review of manufacturer or mill certificates under § 50.25–3 of this part, product marking in accordance with an adopted industry standard, or technical information indicating their compliance with the requirements of this subchapter.

(b) Plate, bar stock, pipe, tube, pipe joining fittings (tees, elbows, reducers, etc.), bolting, castings, forgings, and flanges, are accepted by review of manufacturer or mill certificates under §§ 50.25–3, 50.25–5, and 50.25–7 of this part.

(c) Valves, fluid conditioner fittings, and special purpose fittings complying with an adopted industry standard and marked in accordance with the standard are accepted through review of the marking indicating compliance with the adopted industry standard.

(d) Valves, fluid conditioner fittings, special purpose fittings, and pipe joining fittings not complying with an adopted industry standard are accepted for use on a case-by-case basis. Acceptance is granted by the Marine Safety Center or the Officer in Charge, Marine Inspection, having cognizance over the installation of the product. To obtain acceptance of a product, the manufacturer must submit, via the vessel owner or representative, the information described in § 50.25–10 of this part to the Marine Safety Center or the cognizant Officer in Charge, Marine Inspection.

(e) Components designed for hydraulic service which require shock testing under § 58.30–15(f) of this chapter and nonmetallic flexible hose assemblies must be accepted by the Commandant (G–MTH). Manufacturers desiring acceptance of these products must submit information necessary to show compliance with §§ 56.60–25(c) or 58.30–17 of this chapter, as applicable. Acceptance of specific installations of acceptable nonmetallic flexible hose assemblies and shock tested hydraulic components is granted by the Marine Safety Center or the cognizant Officer in Charge, Marine Inspection, as described in paragraph (d) of this section.

(f) The vessel owner or representative shall make available to the Officer in Charge, Marine Inspection, the manufacturer or mill certificates, specific letters of acceptance, or approved plans necessary to verify that piping components comply with the requirements of this subchapter.

10. In § 50.25–3, paragraph (a) is revised to read as follows:

§ 50.25–3 Manufacturer or mill certification.

(a) A manufacturer or mill producing materials used in certain products for installation on inspected vessels, shall issue a certificate or mill test report which shall report the results of chemical analysis and mechanical properties required by the ASTM specification.

11. Section § 50.25–5 is amended by revising paragraphs (a) and (d)(3) to read as follows:

§ 50.25–5 Products requiring manufacturer or mill certification.

(a) Products required to be certified by a manufacturer or by mill certificate shall be fabricated and tested in accordance with the applicable specifications. Such products will not normally be subject to mill inspection by the Coast Guard except as required by § 50.25–7

*

(d)

(3) In the opinion of the Officer in Charge, Marine Inspection, the application of the product does not require knowledge of the exact chemical analysis or mechanical properties enumerated on the manufacturer or mill certificate.

12. Section 50.25–7 is amended by revising paragraph (a) to read as follows:

§ 50.25–7 Testing of products required to be certified in presence of marine inspector.

(a) Certified products are not normally tested in the presence of a marine inspector. The Commandant may, however, assign a marine inspector to witness tests required by the applicable specifications to satisfy himself that the requirements are met.

13. Section 50.25–10 is revised to read as follows:

§ 50.25–10 Acceptance of piping components by specific letter or approved plan.

(a) A manufacturer of a piping component which does not comply with an adopted industry standard and requires acceptance by specific letter or approved plan must do the following:

(1) Submit an engineering type catalog or representative drawings of the component which includes the pressure and temperature ratings of the component and identify the service for which it is intended.

(2) Identify materials used to fabricate the component. Materials must meet the requirements of subpart 56.60 of this chapter. If the component is not manufactured to accepted material specifications, the manufacturer must prove equivalency to accepted material specifications by comparing details of the materials' chemical composition, mechanical properties, method of manufacture, and complete chemical and mechanical test results with an accepted material specification.

(3) Identify the industry standard, if any, to which the component is manufactured.

(4) Submit a description of nondestructive testing performed on the component.

(5) Submit a description of the marking applied to the component.

(6) Submit information showing compliance with the requirements of part 56, subparts 56.15, 56.20, 56.25, 56.30, or 56.35 of this chapter, as applicable.

(7) Submit any additional information necessary to evaluate the component's acceptability for its intended application.

(b) If the component is found to comply with the requirements of this subchapter, the component is designated as acceptable for its intended installation. This acceptance is in the form of a specific letter relating directly to the particular component or in the form of an approved piping system plan in which the component is identified as an integral part.

§§ 50.25–15, 50.25–20, 50.25–25, 50.25–30, 50.25–35 and 50.25–40 [Removed]

14. Sections 50.25–15, 50.25–20, 50.25–25, 50.25–30, 50.25–35, and 50.25–40 are removed.

PART 56—PIPING SYSTEMS AND APPURTENANCES [AMENDED]

15. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277· 49 CFR 1.46.

16. In the note to subpart 56.01 preceding § 56.01–1, "USAS–B31.1" is revised to read ANSI B31.1"

17 A new § 56.01–2 is added to read as follows:

§ 56.01–2 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW Washington, DC, and is available from the sources indicated in paragraph (b).

(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected are:

American National Standards Institute (ANSI); 1430 Broadway, New York, NY 10018:	
ANSI B1.1–82 Unified Inch Screw Threads (UN and UNR Thread Form).	56.60–1; 56.25–20
ANSI B1.20.1–83 Pipe Threads, General Purpose (Inch).	56.60–1
ANSI B1.20.3–76 (reaffirmed 1982) Dryseal Pipe Threads (Inch).	56.60–1
ANSI B16.1–75 Cast Iron Pipe Flanges and Flanged Fittings, Class 25, 125, 250 and 800.	56.60–1; 56.60–10
ANSI B16.3–85 Malleable Iron Threaded Fittings, Classes 150 and 300.	56.60–1
ANSI B16.4–85 Cast Iron Threaded Fittings, Classes 125 and 250.	56.60–1
ANSI B16.5–81 Pipe Flanges and Flanged Fittings.	56.25–20; 56.30–10; 56.60–1
ANSI B16.9–86 Factory-Made Wrought Steel Buttwelding Fittings.	56.60–1
ANSI B16.10–86 Face-to-Face and End-to-End Dimensions of Valves.	56.60–1
ANSI B16.11–80 Forged Steel Fittings, Socket-Welding and Threaded.	56.30–5; 56.60–1
ANSI B16.14–83 Ferrous Pipe Plugs, Bushings, and Locknuts with Pipe Threads.	56.60–1
ANSI B16.15–85 Cast Bronze Threaded Fittings, Classes 125 and 250.	56.60–1
ANSI B16.18–84 Cast Copper Alloy Solder Joint Pressure Fittings.	56.60–1
ANSI B16.20–73 Ring-Joint Gaskets and Grooves for Steel Pipe Flanges.	56.60–1
ANSI B16.21–78 Nonmetallic Flat Gaskets for Pipe Flanges.	56.60–1
ANSI B16.22–80 Wrought Copper and Copper Alloy Solder Joint Pressure Fittings.	56.60–1
ANSI B16.23–84 Cast Copper Alloy Solder Joint Drainage Fittings—DWV.	56.60–1
ANSI B16.24–79 Bronze Pipe Flanges and Flanged Fittings, Class 150 and 300.	56.60–1
ANSI B16.25–86 Buttwelding Ends.	56.60–1; 56.30–5; 56.70–10
ANSI B16.28–86 Wrought Steel Buttwelding Short Radius Elbows and Returns.	56.60–1
ANSI B16.29–86 Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings—DWV.	56.60–1
ANSI B16.34–88 Valves-Flanged, Threaded and Welding End.	56.20–1; 56.60–1
ANSI B16.42–87 Ductile Iron Pipe Flanges and Flanged Fittings, Classes 150 and 300.	56.60–1
ANSI B18.2.1–81 Square and Hex Bolts and Screws, Inch Series.	56.25–20; 56.60–1
ANSI B18.2.2–87 Square and Hex Nuts (Inch Series).	56.25–20; 56.60–1
ANSI B31.1–86 Power Piping.	56.01–5
ANSI B36.10M–85 Welded and Seamless Wrought Steel Pipe.	56.07–5; 56.30–20; 56.60–1
ANSI B36.19M–85 Stainless Steel Pipe.	56.07–5; 56.60–1

American Society of Mechanical Engineers (ASME): United Engineering Center, 345 East 47th Street, New York, NY 10017:

Boiler and Pressure Vessel Code:

Section I, Power Boilers, 1986 with addenda.	56.15-5; 56.15-10; 56.60-1; 56.60-1; 56.70-15; 56.95-10 56.15-1
Section III, Rules for the Construction of Nuclear Power Plant Components, 1986 with addenda.	56.60-1
Section VIII, Division 1, Pressure Vessels, 1986 with addenda.	56.15-1; 56.15-5; 56.15-10; 56.25-5; 56.30-10; 56.30-30; 56.60-15; 56.60-1; 56.95-10
Section IX, Welding and Brazing Qualifications, 1986 with addenda.	56.70-5; 56.70-20; 56.75-20; 56.85-10

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:

ASTM A 36-84a Structural Steel.	56.30-10
ASTM A 47-84 Malleable Iron Castings.	56.60-1
ASTM A 53-84a Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.	56.10-5 56.60-1
ASTM A 106-84a Seamless Carbon Steel Pipe for High-Temperature Service.	56.60-1
ASTM A 126-84 Gray Iron Castings for Valves, Flanges, and Pipe Fittings.	56.60-1
ASTM A 134-80 Pipe, Steel, Electric-Fusion (ARC)-Welded (Sizes NPS 16 and Over.	56.60-1
ASTM A 135-84 Electric-Resistance-Welded Steel Pipe.	56.60-1
ASTM A 139-84 Electric-Fusion (Arc)-Welded Steel Pipe (Sizes 4 in. and over).	56.60-1
ASTM A 178-84a Electric-Resistance-Welded Carbon Steel Boiler Tubes.	56.60-1
ASTM A 179-84 Seamless Cold-Drawn Low-Carbon Steel Heat-Exchanger and Condenser Tubes.	56.60-1
ASTM A 182-84c Forged or Rolled Alloy-Steel Pipe Flanges, Forged Fittings, and Valves and Parts for High-Temperature Service.	56.50-105
ASTM A 192-84a Seamless Carbon Steel Boiler Tubes for High-Pressure Service.	56.60-1
ASTM A 194-84a Carbon and Alloy Steel Nuts for Bolts for High-Pressure and High-Temperature Service.	56.50-105
ASTM A 197-79 Cupola Malleable Iron.	56.60-1
ASTM A 199-84 Seamless Cold-Drawn Intermediate Alloy-Steel Heat-Exchanger and Condenser Tubes.	56.60-1
ASTM A 210-84a Seamless Medium-Carbon Steel Boiler and Superheater Tubes.	56.60-1
ASTM A 213-84b Seamless Ferritic and Austenitic Alloy-Steel Boiler, Superheater, and Heat-Exchanger Tubes.	56.60-1
ASTM A 214-84a Electric-Resistance-Welded Carbon Steel Heat-Exchanger and Condenser Tubes.	56.60-1
ASTM A 226-84a Electric-Resistance-Welded Carbon Steel Boiler and Superheater Tubes for High-Pressure Service.	56.60-1
ASTM A 234-84a Piping Fittings of Wrought Carbon Steel and Alloy Steel for Moderate and Elevated Temperatures.	56.60-1
ASTM A 249-84b Welded Austenitic Steel Boiler, Superheater, Heat-Exchanger, and Condenser Tubes.	56.60-1
ASTM A 268-84a Seamless and Welded Ferritic Stainless Steel Tubing for General Service.	56.60-1
ASTM A 276-84a Stainless and Heat-Resisting Steel Bars and Shapes.	56.60-2
ASTM A 307-84 Carbon Steel Externally Threaded Standard Fasteners.	56.25-20
ASTM A 312-84c Seamless and Welded Austenitic Stainless Steel Pipe.	56.50-105; 56.60-1
ASTM A 320-84a Alloy-Steel Bolting Materials for Low-Temperature Service.	56.50-105
ASTM A 333-84b Seamless and Welded Steel Pipe for Low-Temperature Service.	56.50-105; 56.60-1
ASTM A 334-84b Seamless and Welded Carbon and Alloy-Steel Tubes for Low Temperature Service.	56.50-105; 56.60-1
ASTM A 335-84a Seamless Ferritic Alloy Steel Pipe for High-Temperature Service.	56.60-1
ASTM A 350-84a Forgings, Carbon and Low-Alloy Steel, Requiring Notch Toughness Testing for Piping Components.	56.50-105
ASTM A 351-84a Steel Castings, Austenitic, for High-Temperature Service.	56.50-105
ASTM A 352-84a Steel Castings, Ferritic and Martensitic, for Pressure-Containing Parts Suitable for Low-Temperature Service.	56.50-105
ASTM A 358-84b Electric-Fusion-Welded Austenitic Chromium-Nickel Alloy Steel Pipe for High-Temperature Service.	56.60-1
ASTM A 369-84 Carbon and Ferric Alloy Steel Forged and Bored Pipe for High Temperature Service.	56.60-1
ASTM A 376-84 Seamless Austenitic Steel Pipe for High-Temperature Central-Station Service.	56.07-10; 56.60-1; 56.60-2
ASTM A 395-80 Ferritic Ductile Iron Pressure-Retaining Castings for Use at Elevated Temperatures.	56.60-1; 56.50-60; 56.60-15
ASTM A 403-84a Wrought Austenitic Stainless Steel Piping Fittings.	56.60-1
ASTM A 420-84 Piping Fittings of Wrought Carbon Steel and Alloy Steel for Low-Temperature Service.	56.50-105; 56.60-1
ASTM A 430-84a Austenitic Steel, Forged and Bored Pipe for High-Temperature Service.	56.60-1
ASTM A 520-72 Supplementary Requirements for Seamless and Electrical-Resistance-Welded Carbon Steel Tubular Products for High-Temperature Service Conforming to ISO Recommendations for Boiler Construction.	56.60-1
ASTM A 522-81 Forged or Rolled 8 and 9% Nickel Alloy Steel Flanges, Fittings, Valves, and Parts for Low-Temperature Service.	56.50-105
ASTM A 575-81 Steel Bars, Carbon, Merchant Quality, M-Grades.	56.60-2
ASTM A 576-81 Steel Bars, Carbon, Hot-Wrought, Special Quality.	56.60-2
ASTM B 16-85 Free-Cutting Brass Road, Bar, and Shapes for Use in Shapes for Use in Screw Machines.	56.60-2
ASTM B 21-83b Naval Brass Rod, Bar, and Shapes.	56.60-2
ASTM B 26-84 Aluminum-Alloy Sand Castings.	56.60-2
ASTM B 42-84 Seamless Copper Pipe, Standard Sizes.	56.60-1
ASTM B 43-84 Seamless Red Brass Pipe, Standard Sizes.	56.60-1

ASTM B 68-83 Seamless Copper Tubes, Bright Annealed. 56.60-1
ASTM B 75-84 Seamless Copper Tube. 56.60-1
ASTM B 85-84 Aluminum-Alloy Die Castings. 56.60-2
ASTM B 88-83a Seamless Copper Water Tube. 56.60-1
ASTM B 96-84a Copper Silicon Alloy Plate and Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels. 56.60-2
ASTM B 111-85 Copper and Copper-Alloy Seamless Condenser Tubes and Ferrule Stock. 56.60-1
ASTM B 124-84 Copper and Copper-Alloy Forging Rod, Bar, and Shapes. 56.60-2
ASTM B 154-82 Mercurous Nitrate Test for Copper and Copper Alloys. 56.60-2
ASTM B 161-81 Nickel Seamless Pipe and Tube. 56.60-1
ASTM B 165-81 Nickel-Copper Alloy (UNS N04400) Seamless Pipe and Tube. 56.60-1
ASTM B 167-80 Nickel-Chromium-Iron Alloy (UNS N06600-N06690) Seamless Pipe and Tube. 56.60-1
ASTM B 171-85a Copper-Alloy Condenser Tube Plates. 56.60-2
ASTM B 210-82a Aluminum-Alloy Drawn Seamless Tubes. 56.60-1
ASTM B 234-85 Aluminum-Alloy Drawn Seamless Tubes for Condensers and Heat Exchangers. 56.60-1
ASTM B 241-83a Aluminum-Alloy Seamless Pipe and Seamless Extruded Tube. 56.60-1
ASTM B 280-83 Seamless Copper Tube for Air Conditioning and Refrigeration Field Service. 56.60-1
ASTM B 283-83b Copper and Copper-Alloy Die Forgings (Hot-Pressed). 56.60-2
ASTM B 315-85 Seamless Copper-Alloy Pipe and Tube. 56.60-1
ASTM B 361-81 Factory-Made Wrought Aluminum and Aluminum-Alloy Welding Fittings. 56.60-1
ASTM D 635-81 Rate of Burning and/or Extent and Time of Burning of Self-Supporting Plastics in Horizontal Position. 56.60-25
ASTM D 1785-83 Poly(Vinyl Chloride)(PVC) Plastic Pipe, Schedules 40, 80, and 120. 56.60-25
ASTM D 2241-84 Poly(Vinyl Chloride) (PVC) Pressure-Rated Pipe (SDR-Series). 56.60-25
ASTM D 2464-76 Threaded Poly(Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80. 56.60-25
ASTM D 2466-78 Poly(Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 40. 56.60-25
ASTM D 2467-76a Socket-Type Poly(Vinyl Chloride)(PVC) Plastic Pipe Fittings, Schedule 80. 56.60-25
ASTM D 2665-82 Poly(Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings. 56.60-25
ASTM D 2863-77 Measuring the Minimum Oxygen Concentration to Support Candle-Like Combustion of Plastic (Oxygen Index). 56.60-25
ASTM E 23-82 Notched Bar Impact Testing of Metallic Materials. 56.50-105
ASTM F 682-82a Wrought Carbon Steel Sleeve-Type Pipe Couplings. 56.60-1
ASTM F 1006-86 Entrainment Separators for Use in Marine Piping Applications. 56.60-1
ASTM F 1007-86 Pipe-Line Expansion Joints of the Packed Slip Type for Marine Application. 56.60-1
ASTM F 1020-86 Line-Blind Valves for Marine Applications. 56.60-1
ASTM F 1120-87 Circular Metallic Bellows Type Expansion Joints for Piping. 56.60-1
ASTM F 1123-87 Non-Metallic Expansion Joints. 56.60-1
ASTM F 1139-88 Steam Traps and Drains. 56.60-1
ASTM F 1172-88 Fuel Oil Meters of the Volumetric Positive Displacement Type. 56.60-1
ASTM F 1173-88 Epoxy Resin Fiberglass Pipe and Fittings to be Used for Marine Applications. 56.60-1; 56.60-25
ASTM F 1199-88 Cast (All Temperatures and Pressures) and Welded Pipe Line Strainers (150 psig and 150°F Maximum. 56.60-1
ASTM F 1200-88 Fabricated (Welded) (Pipe Line Strainers (Above 150 psig and 150°F). 56.60-1
ASTM F 1201-88 Fluid Conditioner Fittings in Piping Applications Above 0°F. 56.60-1

Expansion Joint Manufacturers Association Inc. (EJMA) 25 North Broadway, Tarrytown, NY 10591:
Standards of the Expansion Joint Manufacturers Association, 1980. 56.60-1

Fluid Controls Institute Inc. (FCI) 31 South Street, Suite 303, Morristown, NY 07960:
FCI 69-1 Pressure Rating Standard for Steam Traps. 56.60-1

Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS) 127 Park Street NE, Vienna, VA 22180:
SP-6-85 Standard Finishes for Contact Faces of Pipe Flanges and Connecting-End Flanges of Valves and Fittings. 56.25-10; 56.60-1
SP-9-87 Spot Facing for Bronze, Iron and Steel Flanges. 56.60-1
SP-25-88 Standard Marking System for Valves, Fittings, Flanges and Unions. 56.15-1; 56.20-5; 56.60-1
SP-44-85 Steel Pipe Line Flanges. 56.60-1
SP-45-87 Bypass and Drain Connection Standard. 56.20-20; 56.60-1
SP-51-86 Class 150LW Corrosion Resistant Cast Flanges and Flanged Fittings. 56.60-1
SP-53-85 Quality Standard for Steel Castings and Forgings for Valves, Flanges and Fittings and Other Piping Components—Magnetic Particle Examination Method. 56.60-1
SP-55-85 Quality Standard for Steel Castings for Valves, Flanges and Fittings and Other Piping Components—Visual Method. 56.60-1
SP-58-83 Pipe Hangers and Supports—Materials, Design and Manufacture. 56.60-1
SP-61-85 Pressure Testing of Steel Valves. 56.60-1
SP-67-83 Butterfly Valves. 56.60-1
SP-69-83 Pipe Hangers and Supports—Selection and Application. 56.60-1
SP-72-87 Ball Valves with Flanged or Butt-Welding Ends for General Service. 56.60-1
SP-73-86 Brazing Joints for Wrought and Cast Copper Alloy Solder Joint Pressure Fittings. 56.60-1
SP-83-87 Steel Pipe Unions, Socket-Welding and Threaded. 56.60-1

Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, Pa 15096:
J343-80 Tests and Procedures for SAE 100R Series Hydraulic Hose and Hose Assemblies. 56.60-25

J1475-84 Hydraulic Hose Fittings for Marine Applications. 56.60-25

18. Section 56.01-3 is revised to read as follows:

§ 56.01-3 Power boiler external piping (Replaces 100.1.1, 100.1.2, 111.6, 122.1, 132 and 133).

(a) Power boiler external piping and components must meet the requirements of this part and §§ 52.01-105, 52.01-110, 52.01-115, and 52.01-120 of this chapter.

(b) Specific requirements for power boiler external piping and appurtenances, as defined in §§ 100.1.1 and 100.1.2, appearing in the various paragraphs of ANSI B31.1, are not adopted unless specifically indicated elsewhere in this part.

19. In Table 56.01-5(a), the entry "Table 126.1 modified by 56.30-5(c)(3), 56.60-1. is revised to read "Table 126.1 replaced by 56.60-1.

§ 56.01-6 [Removed]

20. Section 56.01-6 is removed.

21. Section 56.01-10 is amended by revising paragraphs (c)(1)(vii) and (c)(1)(xiii), removing paragraph (c)(1)(xviii), and adding a new paragraph (f) to read as follows:

§ 56.01-10 Plan approval.

(c)(1)

(vii) Tank cleaning piping.

(xiii) Hot water heating systems if the temperature is greater than 121°C(250°F).

(xviii) [Removed]

(f) Arrangement drawings specified in paragraph (c)(2) of this section are not required if—

(1) The location of each component for which there is a location requirement (i.e., shell penetration, fire station, foam monitor, etc.) is indicated on the piping diagram;

(2) The diagram includes, or is accompanied by and makes reference to, a material schedule which describes components in sufficient detail to substantiate their compliance with the regulations of this subchapter;

(3) A thermal stress analysis is not required; and

(4) A dynamic analysis is neither required nor elected in lieu of allowable stress reduction.

22. In Table 56.04-1 of § 56.04-1, remove the number "5" after the word "subchapter"

23. Section 56.04-10 is revised to read as follows:

§ 56.04-10 Other systems.

Piping systems and appurtenances not requiring plan approval may be accepted by the marine inspector if:

(a) The system is suitable for the service intended,

(b) There are guards, shields, insulation and similar devices where needed for protection of personnel,

(c) Failure of the systems would not hazard the vessel, personnel or vital systems, and

(d) The system is not manifestly unsafe.

24. Section 56.07-5 is amended by revising paragraph (e) and adding paragraphs (f) and (g) to read as follows:

§ 56.07-5 Definitions (modifies 100.2).

(e) *Nonstandard fittings.* "Nonstandard fitting" means a component of a piping system which is not fabricated under an adopted industry standard.

(f) *Vital system.* A "vital system" is one which is essential to the safety of the vessel, its passengers and crew.

(g) *Plate flange.* The term "plate flange, as used in this Subchapter, means a flange made from plate material, and may have a raised face and/or a raised hub.

25. Section 56.07-10 is amended by revising paragraphs (c), (d)(1) and (d)(2), and the first sentence of paragraph (e) to read as follows:

§ 56.07-10 Design conditions and criteria (modifies 101-104.7).

(c) *Ship motion dynamic effects (replaces 101.5.3).* (1) In Class I, I-L, and II-L systems, the full allowable stress permitted by these regulations may be used only if:

(i) The effects of ship motion and flexure, including collision, weight, yaw, sway, roll, pitch, heave and vibration, are taken into account by either calculations or model testing acceptable to the Coast Guard; and

(ii) Additional nondestructive testing that provides complete volumetric examination of the material (e.g., Supplemental Requirement S6.1 to ASTM A376 for ultrasonics or other forms of nondestructive examination acceptable to the Coast Guard) is performed.

(2) Otherwise, 80% or less of the allowable stress permitted must be used in Class I, I-L and II-L systems. This reduction in allowable stress is not intended to take into account impact loading inside the piping system, such as water or steam hammer and hydraulic shock.

(3) For Class II systems the full allowable stress may be used without the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(d)

(1) The details of components not having specific ratings as described in 102.2.2 of ANSI B31.1 must be furnished to the Marine Safety Center for approval.

(2) Boiler blowoff piping must be designed in accordance with § 56.50-40 of this part.

(e) Materials for use in piping systems must be selected as described in § 56.60-1(a) of this part.

26. Section 56.10-5 is amended by revising paragraph (b) to read as follows:

§ 56.10-5 Pipe.

(b) *Ferrous pipe.* ASTM Specification A53 furnace welded pipe shall not be used for combustible or flammable liquids within machinery spaces. (See §§ 30.10-15 and 30.10-22 of this chapter.)

27 Subpart 56.15 is revised to read as follows:

Subpart 56.15—Fittings

§ 56.15-1 Pipe joining fittings.

(a) Pipe joining fittings certified in accordance with Subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Threaded, flanged, socket-welding, buttwelding, and socket-brazing pipe joining fittings, made in accordance with the applicable standards in Tables 56.60-1(a) and 56.60-1(b) of this part and of materials complying with Subpart 56.60 of this part, may be used in piping systems within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter. Fittings must be designed for the maximum pressure to which they may be subjected, but in no case less than 50 pounds per square inch gage.

(c) Pipe joining fittings not accepted for use in piping systems in accordance with paragraph (b) of this section must meet the following:

(1) All pressure-containing materials must be accepted in accordance with § 56.60-1 of this part.

(2) Fittings must be designed so that the maximum allowable working pressure does not exceed one-fourth of the burst pressure or produce a primary stress greater than one-fourth of the ultimate tensile strength of the material for Class II systems and for all Class I,

I-L, and II-L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I-L, or II-L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07-10(c) of this part, the maximum allowable working pressure must not exceed one-fifth of the burst pressure or produce a primary stress greater than one-fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(i) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code;

(ii) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A-22 of Section I of the ASME Code; or

(iii) Other means specifically accepted by the Marine Safety Center.

(3) Fittings must be tested in accordance with § 56.97-5 of this part.

(4) If welded, fittings must be welded in accordance with Subpart 56.70 of this part and Part 57 of this chapter or by other processes specifically approved by the Marine Safety Center. In addition, for fittings to be accepted for use in piping systems in accordance with this paragraph, the following requirements must be met:

(i) For fittings sized three inches and below—

(A) The longitudinal joints must be fabricated by either gas or arc welding;

(B) One fitting of each size from each lot of 100 or fraction thereof must be flattened cold until the opposite walls meet without the weld developing any cracks;

(C) One fitting of each size from each lot of 100 or fraction thereof must be hydrostatically tested to the pressure required for a seamless drawn pipe of the same size and thickness produced from equivalent strength material, as determined by the applicable pipe material specification; and

(D) If a fitting fails to meet the test in paragraph (c)(4)(i)(B) or (c)(4)(i)(C) of this section, no fitting in the lot from which the test fitting was chosen is acceptable.

(ii) For fittings sized above three inches—

(A) The longitudinal joints must be fabricated by arc welding;

(B) For pressures exceeding 150 pounds per square inch, each fitting must be radiographically examined as specified in Section VIII of the ASME Code;

(C) For pressures not exceeding 150 pounds per square inch, the first fitting from each size in each lot of 20 or fraction thereof must be examined by radiography to ensure that the welds are of acceptable quality;

(D) One fitting of each size from each lot of 100 or fraction thereof must be hydrostatically tested to the pressure required for a seamless drawn pipe of the same size and thickness produced from equivalent strength material, as determined by the applicable pipe material specification; and

(E) If a fitting fails to meet the test in paragraph (c)(4)(ii)(C) or (c)(4)(ii)(D) of this section, no fitting in the lot from which the test fitting was chosen is acceptable.

(d) Single welded butt joints without the use of backing strips may be employed in the fabrication of pipe joining fittings of welded construction provided radiographic examination indicates that complete penetration is obtained.

(e) Each pipe joining fitting must be marked in accordance with MSS Standard SP-25.

§ 56.15-5 Fluid conditioner fittings.

(a) Fluid conditioner fittings certified in accordance with subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Fluid conditioner fittings, not containing hazardous materials as defined in § 150.115 of this chapter, which are made in accordance with the applicable standards listed in Table 56.60-1(b) of this part and of materials complying with subpart 56.60 of this part, may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter.

(c) The following requirements apply to nonstandard fluid conditioner fittings which do not contain hazardous materials as defined in § 150.115 of this chapter:

(1) The following nonstandard fluid conditioner fittings must meet the applicable requirements in § 54.01-5 (c)(3), (c)(4), and (d) of this chapter or the remaining provisions in Part 54 of this chapter, except that Coast Guard shop inspection is not required:

(i) Nonstandard fluid conditioner fittings that have a net internal volume greater than 0.04 cubic meters (1.5 cubic feet) and that are rated for temperatures and pressures exceeding those specified as minimums for Class I piping systems.

(ii) Nonstandard fluid conditioner fittings that have an internal diameter exceeding 15 centimeters (inches) and that are rated for temperatures and pressures exceeding those specified as minimums for Class I piping systems.

(2) All other nonstandard fluid conditioner fittings must meet the following:

(i) All pressure-containing materials must be accepted in accordance with § 56.60-1 of this part.

(ii) Nonstandard fluid conditioner fittings must be designed so that the maximum allowable working pressure does not exceed one-fourth of the burst pressure or produce a primary stress greater than one-fourth of the ultimate tensile strength of the material for Class II systems and for all Class I, I-L, and II-L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I-L, or II-L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07-10(c) of this part, the maximum allowable working pressure must not exceed one-fifth of the burst pressure or produce a primary stress greater than one-fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(A) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code;

(B) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A-22 of Section I of the ASME Code; or

(C) Other means specifically accepted by the Marine Safety Center.

(iii) Nonstandard fluid conditioner fittings must be tested in accordance with § 56.97-5 of this part.

(iv) If welded, nonstandard fluid conditioner fittings must be welded in accordance with Subpart 56.70 of this part and Part 57 of this chapter or by other processes specifically approved by the Marine Safety Center.

(d) All fluid conditioner fittings that contain hazardous materials as defined in § 150.115 of this chapter must meet the applicable requirements of part 54 of this chapter, except subpart 54.10.

(e) Heat exchangers having headers and tubes and brazed boiler steam air heaters are not considered fluid conditioner fittings and must meet the requirements in part 54 of this chapter regardless of size. For brazed boiler steam air heaters, see also § 56.30-30(b)(1) of this part.

§ 56.15-10 Special purpose fittings.

(a) Special purpose fittings certified in accordance with Subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Special purpose fittings made in accordance with the applicable standards listed in Table 56.60-1(b) of this part and of materials complying

with subpart 56.60 of this part, may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter.

(c) Nonstandard special purpose fittings must meet the requirements of §§ 56.30–25, 56.30–40, 56.35–10, 56.35–15, or 56.35–35 of this part, as applicable.

28. Section 56.20–1 is revised to read as follows:

§ 56.20–1 General.

(a) Valves certified in accordance with subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Non-welded valves complying with the standards listed in § 56.60–1 of this part may be used within the specified pressure and temperature ratings of those standards, provided the limitations of § 56.07–10(c) of this part are applied. Materials must comply with subpart 56.60 of this part. Welded valves complying with the standards and specifications listed in § 56.60–1 of this part may be used in Class II systems only unless they meet paragraph (c) of this section.

(c) All other valves must meet the following:

(1) All pressure-containing materials must be accepted in accordance with § 56.60–1 of this part.

2. Valves must be designed so that the maximum allowable working pressure does not exceed one-fourth of the burst pressure or produce a primary stress greater than one-fourth of the ultimate tensile strength of the material for Class II systems and for all Class I, I–L, and II–L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I–L, or II–L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07–10(c) of this part, the maximum allowable working pressure must not exceed one-fifth of the burst pressure or produce a primary stress greater than one-fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(i) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code, if the valve shape permits this;

(ii) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A–22 of Section I of the ASME Code; or

(iii) Other means specifically accepted by the Marine Safety Center.

(3) Valves must be tested in accordance with § 56.97–5 of this part.

(4) If welded, valves must be welded in accordance with subpart 56.70 of this part and part 57 of this chapter or by other processes specifically approved by the Marine Safety Center.

(d) Where liquid trapped in any closed valve can be heated and an uncontrollable rise in pressure can result, means must be provided in the design, installation, and operation of the valve to ensure that the pressure in the valve does not exceed that allowed by this part for the attained temperature. (For example, if a flexible wedge gate valve with the stem installed horizontally is closed, liquid from testing, cleaning, or condensation can be trapped in the bonnet section of the closed valve.) Any resulting penetration of the pressure wall of the valve must meet the requirements of this part and those for threaded and welded auxiliary connections in ANSI B16.34.

29. Section 56.20–9 is amended by revising paragraph (a), (b) and (c) to read as follows:

§ 56.20–9 Valve construction.

(a) All valves must close with a right-hand (clockwise) motion of the handwheel or operating lever when facing the end of the valve stem. Gate, globe and angle valves must generally be of the rising-stem type, preferably with the stem threads external to the valve body. Where operating conditions will not permit such installations, the use of nonrising-stem valves will be permitted. Nonrising-stem valves, lever operated valves, and any other valve where, due to design, the position of the disc or closure mechanism is not obvious shall be fitted with indicators to show whether the valve is opened or closed. Such indicators are not required for valves located in tanks or similar inaccessible spaces where indication is provided at the remote valve operator. Operating levers of the quarter-turn (rotary) valves must be parallel to the fluid flow in the open position and perpendicular to the fluid flow in the closed position.

(b) Valves of Class I piping systems (for restrictions in other classes refer to sections on nuclear and low temperature service), having diameters exceeding 2 inches must have bolted, pressure seal, or breech lock bonnets and flanged or welding ends, except that socket type welding ends shall not be used where prohibited by § 56.30–5(c) of this part, § 56.30–10(b)(4) of this part for the same pressure class, or elsewhere in this part. For diameters not exceeding 2 inches, screwed union bonnet or bolted bonnet, or bonnetless valves of a type which will positively prevent the stem from screwing out of the body may be employed. Outside screw and yoke design must be used for valves inches and larger for pressures above 600 pounds per square inch gage. Cast iron valves with screwed-in or screwed-over bonnets are prohibited. Union bonnet type cast iron valves must have the bonnet ring made of steel, bronze, or malleable iron.

(c) Valves must be designed for the maximum pressure to which they may be subjected, but in no case shall the design pressure be less than 50 pounds per square inch gage. The use of wafer type resilient seated valves is not permitted for shell connections unless they are so arranged that the piping immediately inboard of the valve can be removed without affecting the watertight integrity of the shell connection. Refer also to § 56.20–15(b)(2)(ii) of this part. Large fabricated ballast manifold connecting lines exceeding 8 inches nominal pipe size must be designed for a pressure of not less than 25 pounds per square inch gage.

30. Section 56.20–15 is amended by revising the introductory sentence to paragraph (b) and paragraph (b)(2)(ii) and adding a new paragraph (c) to read as follows:

§ 56.20–15 Valves employing resilient material.

(b) Valves employing resilient material shall be divided into three categories: Category A, Category B, and positive shut-off.

(2)

(ii) Category B valves may be used in any piping system, except: In any location in a fixed fire extinguishing system or bilge system; as the positive closure for any opening in the shell of a vessel; in a position in which the valve serves as the positive shutoff valve required by § 56.50–60(d) of this part for systems subject to internal head pressure from tanks containing flammable, combustible, or hazardous materials; or as otherwise prohibited under this subchapter.

(c) Valves employing resilient material will be determined to be qualified as Category A, Category B, or positive shut-off as follows:

(1) Category A—The closed valve must pass less than the greater of five percent or 15%/ $\sqrt{(NPS)}$ of its fully open flow rate through the line after complete removal of all resilient seating material or equivalent and testing at full rated pressure. (Note.—"NPS" is nominal pipe size.)

(2) Positive shutoff—The closed valve must pass less than 10 ml/hour (0.34 fluid oz/hour) of liquid or 3 liters/hour

(0.11 standard cubic feet/hour) of gas per inch nominal size through the line after removal of all resilient seating material or equivalent and testing at full rated pressure. Packing material must be fire resistant. This valve type will be considered suitable for internal head pressure from tanks (positive shutoff) as well as a Category A valve.

(3) If a valve designer elects to use either calculations or actual fire testing in lieu of material removal and pressure testing, the proposed calculation method or test plan must be accepted by the Commandant (G-MTH).

(4) Category B—Valves containing resilient seating or packing material, nonmetallic composition discs, or similar components and which have not passed one of the above tests are considered Category B valves.

31. Section 56.25-5 is revised to read as follows:

§ 56.25-5 Flanges.

Flanges must conform to the design requirements of the applicable standards of Table 56.60-1(b) of this part of Appendix 2 of section VIII of the ASME Code. Plate flanges must meet the requirements of § 56.30-10(b)(5) of this part and the material requirements of § 56.60-1(a) of this part. Flanges may be integral or may be attached to pipe by threading, welding, brazing, or other means within the applicable standards specified in Table 56.60-1(b) of this part and the requirements of this subpart. For flange facing gasket combinations other than those specified above, calculations must be submitted indicating that the gaskets will not result in a higher bolt loading or flange moment than for the acceptable configurations.

32. Section 56.25-10 is amended by revising paragraph (b) to read as follows:

§ 56.25-10 Flange facings.

(b) When bolting class 150 standard steel flanges to flat face cast iron flanges, the steel flange must be furnished with a flat face, and bolting must be in accordance with § 56.25-20 of this part. Class 300 raised face steel flanges may be bolted to class 250 raised face cast iron flanges with bolting in accordance with § 56.25-20(b) of this part.

33. Section 56.25-20 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 56.25-20 Bolting.

(a) *General.* (1) Bolts, studs, nuts, and washers must comply with applicable standards and specifications listed in § 56.60-1 of this part. Unless otherwise specified, bolting must be in accordance with ANSI B16.5.

(2) Bolts and studs must extend completely through the nuts.

(3) See § 58.30-15(c) of this chapter for exceptions on bolting used in fluid power and control systems.

(b) Carbon steel bolts or bolt studs may be used if expected normal operating pressure does not exceed 300 pounds per square inch gage and the expected normal operating temperature does not exceed 400 °F Carbon steel bolts must have heavy hexagon heads in accordance with ANSI B18.2.1 and must have heavy semifinished hexagonal nuts in accordance with ANSI B18.2.2, unless the bolts are tightly fitted to the holes and flange stress calculations taking the bolt bending stresses into account are submitted. When class 250 cast iron flanges are used or when class 125 cast iron flanges are used with ring gaskets, the bolting material must be carbon steel conforming to ASTM Specification A307 Grade B.

(c) Alloy steel stud bolts must be threaded full length or, if desired, may have reduced shanks of a diameter not less than that at the root of the threads. They must have heavy semifinished hexagonal nuts in accordance with ANSI B18.2.2.

(d) All alloy bolts or bolt studs and accompanying nuts are recommended to be threaded in accordance with ANSI B1.1, Class 2A external threads, and Class 2B internal threads (8-thread series 8UN for 1 inch and larger).

34. Section 56.30-5 is amended by revising paragraphs (b)(3), (c), and (d) to read as follows:

§ 56.30-5 Welded joints.

(b) ***

(3) Consumable insert rings must be used. Commonly used types of butt welding end preparations are shown in ANSI B16.25.

(c) *Socket welds (modifies 127.3.3A).* (1) Socket welds must conform to ANSI B16.11, applicable standards listed in Table 56.60-1(b) of this part, and Figure 127.4.4C in ANSI B31.1 as modified by § 56.30-10(b)(4) of this part. A gap of approximately one-sixteenth inch between the end of the pipe and the bottom of the socket must be provided before welding. This may best be provided by bottoming the pipe and backing off slightly before tacking.

(2) Socket welds must not be used where severe erosion or crevice corrosion is expected to occur. Restrictions on the use of socket welds appear in § 56.70-15(d)(3) of this part for Class I service and in § 56.50-105 of this part for low temperature service. These sections should be checked when designing for these systems. See § 56.70-15(d)(4) of this part for Class II service.

(3) (Reproduces 111.3.4.) Drains and bypasses may be attached to a valve of fitting by socket welding provided the socket depth, bore diameter, and shoulder thickness conform to ANSI B16.11.

(d) *Fillet welds.* Fillet welds may vary from convex to concave. The size of a fillet weld is determined as shown in Figure 127.4.4A of ANSI B31.1. Fillet weld details for socket-welding components must meet § 56.30-5(c) of this part. Fillet weld details for flanges must meet § 56.30-10 of this part. See also § 56.70-15(d)(3) and (d)(4) of this part for applications of fillet welds.

35. Section 56.30-10 is amended by adding the sentence "Fillet weld leg size need not exceed the thickness of the applicable ANSI hub. to the end of the Note in Figure 56.30-10(b), and revising paragraphs (a), (b), and (b)(1) through (b)(5) to read as follows:

§ 56.30-10 Flanged joints (modifies 104.5.1(a)).

(a) Flanged or butt-welded joints are required for Classes I and I-L piping for nominal diameters exceeding 2 inches, except as otherwise specified in this subchapter.

(b) Flanges may be attached by any method shown in Figure 56.30-10(b) or by any additional means that may be approved by the Marine Safety Center. Pressure temperature ratings of the appropriate ANSI standard must not be exceeded.

(1) *Figure 56.30-10(b), Method 1.* Flanges with screw threads may be used in accordance with Table 56.30-20(c) of this part.

(2) *Figure 56.30-10(b), Method 2.* ANSI B16.5 class 150 and class 300 low-hubbed flanges with screw threads, plus the addition of a strength fillet weld of the size as shown, may be used in Class I systems not exceeding 750 °F or 4 NPS, in Class II systems without diameter limitations, and in Class II-L systems not exceeding 1 NPS. If 100 percent radiography is required by § 56.95-10 of this part for the class, diameter, wall thickness, and material of pipe being joined, the use of the threaded flanges is not permitted and buttwelding flanges must be provided. For Class II piping systems, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T.

(3) *Figure 56.30–10(b), Method 3.* ANSI B16.5 slip-on flanges may be used in Class I, Class II, or Class II–L systems not to exceed the service pressure-temperature ratings for the class 300 and lower class flanges, within the temperature limitations of the material selected for use, and not to exceed 4 NPS in Class I and Class II–L systems. If 100 percent radiography is required by § 56.95–10 of this part for the class, diameter, wall thickness, and material of the pipe being joined, the use of slip-on flanges is not permitted and a butt welding flange must be provided. The configuration in Figure 127.4.4B(b) of ANSI B31.1. utilizing a face and backweld may be preferable in those applications where it is desirable to eliminate void spaces. For Class II piping systems, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T and the distance from the face of the flange to the end of the pipe may be a maximum of three-eighths inch. Restrictions on the use of slip-on flanges appear in § 56.50–105 of this part for low temperature piping systems.

(4) *Figure 56.30–10(b), Method 4.* ANSI B16.5 socket welding flanges may be used in Class I or II–L systems not exceeding 3 NPS for class 600 and lower class flanges and 2½ NPS for class 900 and class 1500 flanges within the service pressure-temperature ratings of the standard. Whenever full radiography is required by § 56.95–10 for the class, diameter, and wall thickness of the pipe being joined, the use of socket welding flanges in not permitted and a butt weld type connection must be provided. For Class II piping, socket welding flanges may be used without diameter limitation, and the size of the fillet weld may be limited to a maximum of 0.525 inch instead of 1.4T. Restrictions on the use of socket welds appear in § 56.50–105 for low temperature piping systems.

(5) *Figure 56.30–10(b), Method 5.* Flanges fabricated from steel plate meeting the requirements of Part 54 of this chapter may be used for Class II piping for pressures not exceeding 150 pounds per square inch and temperatures not exceeding 450 °F Plate material listed in UCS–6(b) Section VIII of the ASME Code may not be used in this application, except that material meeting ASTM Specification A36 may be used. The fabricated flanges must conform at least to the American National Standard class 150 flange dimensions. The size of the strength fillet weld may be limited to a maximum of 0.525 inches instead of 1.4T and the distance from the face of the flange to the end of the pipe may be a maximum of three-eighths inch.

36. Section 56.30–20 is amended by revising the heading, paragraphs (a), (b), (c), and (d), footnotes 1 and 2 of Table 56.30–20(c), and relocating Table 56.30–20(c) to follow paragraph (c), to read as follows:

§ 56.30–20 Threaded joints.

(a) Threaded joints may be used within the limitations specified in subpart 56.15 of this chapter and within other limitations specified in this section.

(b) (Reproduces 114.1.) All threads on piping components must be taper pipe threads in accordance with the applicable standard listed in Table 56.60–1(b). Threads other than taper pipe threads may be used for piping components where tightness of the joint depends on a seal weld or a seating surface other than the threads, and where experience or test has demonstrated that such threads are suitable.

(c) Threaded joints may not be used where severe erosion, crevice corrosion, shock, or vibration is expected to occur; or at temperatures over 925 °F Size limitations are given in Table 56.30–20(c) of this section.

Further restrictions on the use of threaded joints appear in the low temperature piping section.

[2] Threaded joints in hydraulic systems are permitted above the pressures indicated for the nominal sizes shown when commercially available components such as pumps, valves and strainers may only be obtained with threaded connections.

(d) Pipe with a wall thickness less than that of standard weight of ANSI B36.10 steel pipe must not be threaded regardless of service. For additional threading limitations for pipe used in steam service over 250 pounds per square inch or water service over 100 pounds per square inch and 200 °F see part 104.1.2(c)(1) of ANSI B31.1. Restrictions as to the use of threaded joints appear for low temperature piping and should be checked when designing for these systems.

37 Section 56.30–25 is amended by revising paragraphs (a), (d), and (f)(2) to read as follows:

§ 56.30–25 Flared, flareless, and compression joints.

(a) Flared, flareless, and compression type tubing fittings may be used for tube sizes not exceeding 2-inch outside diameter within the limitations of applicable standards and specifications listed in § 56.60–1 of this part and as specified in this section.

(d) Threads must be either American National Standard taper pipe threads or Dryseal American National Standard taper pipe threads. Threads other than taper pipe threads may be used for piping components where tightness of the joint depends on a seating surface other than the threads and where experience or testing has demonstrated that the threads are suitable.

(f)

(2) Grip-type fittings that are tightened in accordance with the manufacturers' instructions need not be disassembled for checking. For fluid services (other than hydraulic systems) using a combustible fluid as defined in § 30.10–15 of this chapter and for fluid services using a flammable fluid as defined in § 30.10–22 of this chapter, flared fittings must be used; except that flareless fittings of the nonbite type may be used when the tubing system is of steel, nickel copper, or copper nickel alloy. When using copper or copper zinc alloys, flared fittings are required. See also § 56.50–70 of this part for gasoline fuel systems and § 56.50–75 of this part for diesel fuel systems. In the case of hydraulic systems, flareless fittings of the bite type may be used where experience or testing has demonstrated that the fittings are suitable.

38. Section 56.30–27 is revised to read as follows:

§ 56.30–27 Caulked joints.

Caulked joints may not be used in marine installations.

39. Section 56.30–40 is amended by revising paragraphs (a), (b), (e), and (f) to read as follows:

§ 56.30–40 Flexible pipe couplings of the compression or slip-on type.

(a) Flexible pipe couplings of the compression or slip-on type must not be used as expansion joints. To ensure that the maximum axial displacement (approximately ⅜ maximum) of each coupling is not exceeded, positive restraints must be included in each installation.

(b) Positive means must also be provided to prevent the coupling from "creeping" on the pipe and uncovering the joint. Bite type devices do not provide positive protection against creeping and are not generally accepted for this purpose unless other means are also incorporated. Machined grooves or centering pins are considered positive

means, and other positive means will be considered

(e) Flexible couplings made in accordance with the applicable standards listed in Table 56.60–1(b) of this part and of materials complying with subpart 56.60 of this part may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter. Flexible couplings fabricated by welding must also comply with part 57 of this chapter.

(f) Flexible couplings must not be used in cargo holds or in any other space where leakage, undetected flooding, or impingement of liquid on vital equipment may disable the ship, or in tanks where the liquid conveyed in the piping system is not compatible with the liquid in the tank. Where flexible couplings are not allowed by this subpart, joints may be threaded, flanged and bolted, or welded.

40. Section 56.35–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 56.35–1 Pipe stress calculations (replaces 119.7).

(a) A summary of the results of pipe stress calculations for the main and auxiliary steam piping where the design temperatures exceed 800 °F shall be submitted for approval. Calculations shall be made in accordance with one of the recognized methods of stress analysis acceptable to the Marine Safety Center to determine the magnitude and direction of the forces and movements at all terminal connections, anchor and junction points, as well as the resultant bending stress, longitudinal pressure stress, torsional stress, and combined expansion stress at all such points. The location of the maximum combined stress shall be indicated in each run of pipe between anchor points.

(b) Special consideration will be given to the use of the full tabulated value of S in computing S_h and S_c where all material used in the system is subjected to additional nondestructive testing as specified by the Marine Safety Center, and where the calculations prescribed in 119.6.4 and 102.3.2 of ANSI–B31.1 and § 56.07–10 are performed. The nondestructive testing procedures and method of stress analysis shall be approved by the Marine Safety Center prior to the submission of computations and drawings for approval.

41. Section 56.35–10 is revised to read as follows:

§ 56.35–10 Nonmetallic expansion joints (replaces 119.5.1).

(a) Nonmetallic expansion joints certified in accordance with subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Nonmetallic expansion joints must conform to the standards listed in Table 56.60–1(b) of this part. Nonmetallic expansion joints may be used within their specified pressure and temperature rating in vital and nonvital machinery sea connections inboard of the skin valve. These joints must not be used to correct for improper piping workmanship or misalignment. Joint movements must not exceed the limits set by the joint manufacturer.

42. Section 56.35–15 is revised to read as follows:

§ 56.35–15 Metallic expansion joints (replaces 119.5.1).

(a) Metallic expansion joints certified in accordance with subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Metallic expansion joints must conform to the standards listed in Table 56.60–1(b) of this part and may be used within their specified pressure and temperature rating.

43. Section 56.50–1 is amended by revising paragraphs (c), (g)(1), (g)(2)(iii), (g)(3), and (l) to read as follows:

§ 56.50–1 General (Replaces 122.6 through 122.10).

(c) Valves and cocks not forming part of a piping system are not permitted in watertight subdivision bulkheads, however, sluice valves or gates in oiltight bulkheads of tankships may be used if approved by the Marine Safety Center.

(g)(1) Power actuated valves in systems other than as specified in § 56.50–60 of this part may be used if approved for the system by the Marine Safety Center. All power actuated valves required in an emergency to operate the vessel's machinery, to maintain its stability, and to operate the bilge and firemain systems must have a manual means of operation.

(2)

(iii) Remote valve controls, except reach rods, must be fitted with indicators that show whether the valves they control are open or closed. Valve position indicating systems must be independent of valve control systems.

(3) Air operated remote control valves must be provided with self-indicating lines at the control boards which indicate the desired valve positions, i.e., open or closed.

(l) Where pipes are run through dry cargo spaces they must be protected from mechanical injury by a suitable enclosure or other means.

§ 56.50–5 [Removed]

44. Section 56.50–5 is removed.

45. Section 56.50–15 is amended by revising paragraph (h) to read as follows:

§ 56.50–15 Steam and exhaust piping.

(h)(1) Steam piping, with the exception of the steam heating system, must not be led through passageways, accommodation spaces, or public spaces unless the arrangement is specifically approved by the Marine Safety Center.

(2) Steam pressure in steam heating systems must not exceed 150 pounds per square inch gage, except that steam pressure for accommodation and public space heating must not exceed 45 pounds per square inch gage.

(3) Steam lines and registers in non-accommodation and non-public spaces must be suitably lcoated and/or shielded to minimize hazards to any personnel within the space. Where hazards in a space cannot be sufficiently minimized, the pressure in the steam line to that space must be reduced to a maximum of 45 pounds per square inch gage.

(4) High temperature hot water for heating systems may not exceed 375 °F

46. Section 56.50–20 is amended by revising paragraphs (a) and (c) to read as follows:

§ 56.50–20 Pressure relief piping.

(a) *General.* There must be no intervening stop valves between the vessel or piping system being protected and its protective device or devices, except as specifically provided for in other regulations or as specifically authorized by the Marine Safety Center.

(c) *Stop valves.* Stop valves between the safety or relief valve and the point of discharge are not permitted, except as specifically provided for in other regulations or as specificallv approved by the Marine Safety Center.

47 Section 56.50–25 is amended by adding a sentence at the end of paragraph (d) to read as follows:

§ 56.50-25 Safety and relief valve escape piping.

(d) Back pressure must be calculated with all relief valves which discharge to a common escape pipe relieving simultaneously at full capacity.

48. Section 56.50-50 is amended by revising paragraphs (c)(1), (d)(1), Note 1 of paragraph (d)(2), the introductory text of paragraph (f), and paragraphs (f)(3), (h), and (k) to read as follows:

§ 56.50-50 Bilge and ballast piping.

(c)(1) Bilge suctions must be led from manifolds except as otherwise approved by the Marine Safety Center. Insofar as practicable, manifolds must be located in, or be capable of remote operation from, the same space as the bilge pump which normally takes suction on that manifold. In either case, the manifolds must be capable of being locally controlled from above the floorplates, and be easily accessible at all times. Bilge overboard discharge valves must comply with the location and accessibility requirements for suction manifolds insofar as practicable. Except as otherwise permitted by paragraph (h) of this section for Great Lakes cargo vessels employing a common bilge and ballast system for the cargo spaces, bilge manifold valves controlling bilge suctions from various compartments must be of the stop-check type.

(d)

(1) For suctions to each main bilge pump:

$$d=1+\sqrt{L(B+D)/2500}\ (1)(4)(5)$$

(2)

Note 1. For tank vessels, "L may be reduced by the combined length of the cargo oil tanks.

(f) *Emergency bilge suctions.* In addition to the independent bilge suction(s) required by paragraph (e) of this section, an emergency bilge suction must be provided in the machinery space for all self-propelled vessels as described in the following subparagraphs. Emergency suctions must be provided from pumps other than those required by § 56.50-55(a) of this part. Such suctions must have nonreturn valves, and must meet the following criteria as appropriate:

(3) Vessels over 180 feet in length which are not passenger vessels and which operate on international voyages or in ocean, coastwise, or Great Lakes service, must be provided with a direct emergency bilge suction from any pump in the machinery space, except that a required bilge pump may not be used. The discharge capacity of the pump selected must exceed the capacity of the required main bilge pump and the area of the suction inlet is to be equal to the full suction inlet of the pump.

(h) Pipes for draining cargo holds or machinery spaces must be separate from pipes which are used for filling or emptying tanks where water or oil is carried. Bilge and ballast piping systems must be so arranged as to prevent oil or water from the sea or ballast spaces from passing into cargo holds or machinery spaces, or from passing from one compartment to another, whether from the sea, water ballast, or oil tanks, by the appropriate installation of stop and non-return valves. The bilge and ballast mains must be fitted with separate control valves at the pumps. The requirements of this paragraph do not apply to bilge and ballast systems on Great Lakes cargo vessels which may employ a common line for the bilge and ballast system for the cargo spaces.

(k) Where bilge and ballast piping is led through tanks, except ballast piping in ballast tanks, means must be provided to minimize the risk of flooding of other spaces due to pipe failure within the tanks. In this regard, such piping may be in an oiltight or watertight pipe tunnel, or the piping may be of Schedule 80 pipe wall thickness, fitted with expansion bends, and all joints within the tanks are welded. Alternated designs may be installed as approved by the Marine Safety Center. Where a pipe tunnel is installed, the watertight integrity of the bulkheads must be maintained. No valve or fitting may be located within the tunnel if the pipe tunnel is not of sufficient size to afford easy access. These requirements need not be met provided the contents of the tank and piping system are chemically compatible and strength and stability calculations are submitted showing that crossflooding resulting from a pipe, the tank, and the spaces through which the piping passes will not seriously affect the safety of the ship, including the launching of lifeboats due to the ship's listing. Bilge lines led through tanks without a pipe tunnel must be fitted with nonreturn valves at the bilge suctions.

49. Section 56.50-55 is amended by revising Table 56.50-55(b)(1) and paragraphs (c) and (e)(1) to read as follows:

§ 56.50-55 Bilge pumps.

TABLE 56.50-55(b)(1)—Bilge Pumps Required for Nonself-Propelled Vessels

Type of vessel	Waters navigated	Power pumps (1)	Hand pumps
Sailing	Ocean and coastwise	Two	(2)
Manned barges	do	Two	(2)
Manned barges	Other than ocean and coastwise	(3)	(3)
Unmanned barges	All waters	(3)	(3)
Mobile offshore drilling units	All waters	Two	None.

Where power is always available, independent power bilge pumps shall be installed as required and shall be connected to the bilge main.

Efficient hand pumps connected to the bilge main may be substituted for the power pumps. Where there is no common bilge main, one hand pump will be required for each compartment.

Suitable hand or power pumps or siphons, portable or fixed, carried either on board the barge or on the towing vessel shall be provided.

(c) *Capacity of independent power bilge pump.* Each power bilge pump must have the capacity to develop a suction velocity of not less than 400 feet per minute through the size of bilge main piping required by § 56.50-50(d)(1) of this part under ordinary conditions; except that, for vessels of less than 65 feet in length not engaged on international voyages, the pump must have a minimum capacity of 25 gallons per minute and need not meet the velocity requirement of this paragraph.

(e) *Location.* (1) For self-propelled vessels, if the engines and boilers are in two or more watertight compartments,

the bilge pumps must be distributed throughout these compartments. On other self-propelled vessels and mobile offshore drilling units, the bilge pumps must be in separate compartments to the extent practicable. When the location of bilge pumps in separate watertight compartments is not practical, alternative arrangements may be submitted for consideration by the Marine Safety Center.

50. Section 56.50–60 is amended by revising the section heading, paragraphs (a), (c), (d) introductory text, (d)(1), (d)(2), (d)(3) introductory text, (d)(3)(i), and (d)(4), and adding new paragraphs (h), (i), (j), (k) and (l) to read as follows:

§ 56.50–60 Systems containing oil.

(a)(1) Oil-Piping systems for the transfer or discharge of cargo or fuel oil must be separate from other piping systems as far as practicable, and positive means shall be provided to prevent interconnection in service.

(2) Fuel oil and cargo oil systems may be combined if the cargo oil systems contain only Grade E oils and have no connection to cargo systems containing grades of oil with lower flash points or hazardous substances.

(3) Pumps used to transfer oil must have no discharge connections to fire mains, boiler feed systems, or condensers unless approved positive means are provided to prevent oil from being accidentally discharged into any of the aforementioned systems.

(c) Filling pipes may be led directly from the deck into the tanks or to a manifold in an accessible location permanently marked to indicate the tanks to which they are connected. A shutoff valve must be fitted at each filling end. Oil piping must not be led through accommodation spaces, except that low pressure fill piping not normally used at sea may pass through accommodation spaces if it is of steel construction, all welded, and not concealed.

(d) Piping subject to internal head pressure from oil in the tank must be fitted with positive shutoff valves located at the tank.

(1) Valves installed on the outside of the oil tanks must be made of steel, ductile cast iron ASTM A395, or a ductile nonferrous alloy having a melting point above 1,700 °F and must be arranged with a means of manual control locally at the valve and remotely from a readily accessible and safe location outside of the compartment in which the valves are located.

(2) If valves are installed on the inside of the tank, they may be made of cast iron and arranged for remote control only. Additional valves for local control must be located in the space where the system exits from the tank or adjacent tanks. Valves for local control outside the tanks must be made of steel, ductile cast iron ASTM A395, or a ductile nonferrous alloy having a melting point above 1,700 °F

(3) Power operated valves installed to comply with the requirements of this section must meet the following requirements:

(i) Valve actuators must be capable of closing the valves under all conditions, except during physical interruption of the power system (e.g., cable breakage or tube rupture). Fluid power actuated valves, other than those opened against spring pressure, must be provided with an energy storage system which is protected, as far as practicable, from fire and collision. The storage system must be used for no other purpose and must have sufficient capacity to cycle all connected valves from the initial valve position to the opposite position and return. The cross connection of this system to an alternate power supply will be given special consideration by the Marine Safety Center.

(4) Remote operation for shutoff valves on small independent oil tanks will be specially considered in each case where the size of tanks and their location may warrant the omission of remote operating rods.

(h) Oil piping must not run through feed or potable water tanks. Feed or potable water piping must not pass through oil tanks.

(i) Where flooding equalizing cross-connections between fuel or cargo tanks are required for stability considerations, the arrangement must be approved by the Marine Safety Center.

(j) Piping conveying oil must be run well away from hot surfaces wherever possible. Where such leads are unavoidable, only welded joints are to be used, or alternatively, suitable shields are to be fitted in the way of flanged or mechanical pipe joints when welded joints are not practicale. Piping that conveys fuel oil or lubricating oil to equipment and is in the proximity of equipment or lines having an open flame or having parts operating above 500 °F must be of seamless steel. (See § 56.50–65 of this part.)

(k) Oil piping drains, strainers and other equipment subject to normal oil leakage must be fitted with drip pans or other means to prevent oil draining into the bilge.

(l) Where oil piping passes through a non-oil tank and stop valves complying with paragraph (d) of this section are not provided at all penetrations, the piping must comply with § 56.50(k) of this part.

51. Section 56.50–65 is amended by revising the section heading and paragraphs (a), (b), and (d) to read as follows:

§ 56.50–65 Burner fuel oil service systems.

(a) All discharge piping from the fuel oil service pumps to burners must be seamless steel with a thickness of at least Schedule 80. If required by § 56.07–10(e) of this part or paragraph 104.1.2 of ANSI B31.1, the thickness must be greater than Schedule 80. Short lengths of steel, or annealed copper nickel, nickel copper, or copper pipe and tubing may be used between the fuel oil burner front header manifold and the atomizer head to provide flexibility. All material used must meet the requirements of subpart 56.60 of this part. The use of non-metallic materials is prohibited. The thickness of the short lengths must not be less than the larger of 0.9 mm (0.35 inch) or that required by § 56.07–10(e) of this part. Flexible metallic tubing for this application may be used when approved by the Marine Safety Center. Tubing fittings must be of the flared type except that flareless fittings of the nonbite type may be used when the tubing is steel, nickel copper or copper nickel.

(b)(1) All vessels having oil fired boilers must have at least two fuel service pumps, each of sufficient capacity to supply all the boilers at full power, and arranged so that one may be overhauled while the other is in service. At least two fuel oil heaters of approximately equal capacity must be installed and so arranged that any heater may be overhauled while the other(s) is (are) in service. Suction and discharge strainers must be of the duplex or other type capable of being cleaned without interrupting the oil supply.

(2) All auxiliary boilers, except those furnishing steam for vital equipment and fire extinguishing purposes other than duplicate installations, may be equipped with a single fuel oil service pump and a single fuel oil heater. Such pumps need not be fitted with discharge strainers.

(3) Strainers must be located so as to preclude the possibility of spraying oil on the burner or boiler casing, or be provided with spray shields. Coamings, drip pans, etc., must be fitted under fuel oil service pumps, heaters, etc., where

necessary to prevent oil drainage to the bilge.

(4) Boilers burning fuel oils of low viscosity need not be equipped with fuel oil heaters, provided acceptable evidence is furnished to indicate that satisfactory combustion will be obtained without the use of heaters.

(d) If threaded-bonnet valves are employed, they shall be of the union-bonnet type capable of being packed under pressure.

52. Section 56.50–75 is amended by revising the last sentence in paragraph (a)(1) to read as follows:

§ 56.50–75 Diesel fuel systems.

(a)

(1) Fuel oil service or unit pumps shall be equipped with controls to comply with § 58.01–25 of this subchapter.

53. Section 56.50–85 is amended by revising the introductory text of paragraph (a), removing paragraph (a)(4–a), revising paragraphs (a)(4) and (a)(5), redesignating existing paragraphs (a)(6) through (a)(12) as paragraphs (a)(7) through (a)(13), adding a new paragraph (a)(6), revising paragraphs (a)(8) and (a)(10), as redesignated, and adding a new paragraph (b) to read as follows:

§ 56.50–85 Tank vent piping.

(a) This section applies to vents for all independent, fixed, non-pressure tanks or containers or for spaces in which liquids, such as fuel, ship's stores, cargo, or ballast, are carried.

(4) Tank vents must extend above the weather deck, except vents from fresh water tanks, bilge oily-water holding tanks, bilge slop tanks, and tanks containing Grade E combustible liquids, such as lubricating oil, may terminate in the machinery space, provided—

(i) The vents are arranged to prevent overflow on machinery, electrical equipment, and hot surfaces;

(ii) Tanks containing combustible liquids are not heated; and

(iii) The vents terminate above the deep load waterline if the tanks have boundaries in common with the hull.

(5) Vents from oil tanks must terminate not less than three feet from any opening into living quarters.

(6) Vents extending above the freeboard deck or superstructure deck from fuel oil and other tanks must be at least Schedule 40 in wall thickness. Except for barges in inland service and for Great Lakes vessels, the height from the deck to any point where water may gain access through the vent to below deck must be at least 30 inches (760mm) on the freeboard deck and 17½ inches (450mm) on the superstructure deck. On Great Lakes vessels, the height from the deck to any point where water may gain access through the vent to below deck must be at least 30 inches (760mm) on the freeboard deck, 24 inches (610mm) on the raised quarterdeck, and 12 inches (305mm) on other superstructure decks. Where the height of vents on Great Lakes vessels may interfere with the working of the vessel, a lower height may be approved by the Marine Safety Center provided the vent cap is properly protected from mechanical damage. For barges in inland service, the vents must extend at least six inches above the deck. A lesser amount may be approved by the Marine Safety Center if evidence is provided that a particular vent has proven satisfactory in service.

*

(8) Vent outlets from all tanks which may emit flammable or combustible vapors, such as bilge slop tanks and contaminated drain tanks, must be fitted with a single screen of corrosion-resistant wire of at least 30 by 30 mesh, or two screens of at least 20 by 20 mesh spaced not less than one-half inch (13mm) nor more than 1½ inches (38mm) apart. The clear area through the mesh must not be less than the internal unobstructed area of the required pipe.

(10) The diameter of each vent pipe must not be less than 1½ inches nominal pipe size for fresh water tanks, 2 inches nominal pipe size for water ballast tanks, and 2½ inches nominal pipe size for fuel oil tanks, except that small independent tanks need not have a vent more than 25% greater in cross-sectional area than the fill line.

(b) Tank vents must remain within the watertight subdivision boundaries in which the tanks they vent are located. Where the structural configuration of a vessel makes meeting this requirement impracticable, the Marine Safety Center may permit a tank vent to penetrate a watertight subdivision bulkhead. All tank vents which penetrate watertight subdivision bulkheads must terminate above the weather deck.

54. Section 56.50–95 is amended by revising paragraphs (a)(1), (b)(1), (c) and (e)(3), and adding a new paragraph (i) to read as follows:

§ 56.50–95 Overboard discharges and shell connections.

(a)(1) All inlets and discharges led through the vessel's side shall be fitted with efficient and accessible means, located as close to the hull penetrations as is practicable, for preventing the accidental admission of water into the vessel either through such pipes or in the event of fracture of such pipes.

(b)(1) Scuppers and discharge pipes originating at any level and pentrating the shell either more than 17½ inches (450mm) below the freeboard deck or less than 23½ inches (600mm) above the summer load waterline must be provided with an automatic nonreturn valve at the shell. This valve, unless required by paragraph (b)(2) of this section, may be omitted if the piping is not less than Schedule 80 in wall thickness for nominal pipe sizes through 8 inches, Schedule 60 for nominal pipe sizes above 8 inches and below 16 inches, and Schedule 40 for nominal pipe sizes 16 inches and above.

(c) Overflow pipes which discharge through the vessel's side must be located as far above the deepest load line as practicable and fitted with valves as required by paragraph (b) of this section. Two automatic nonreturn valves must be used unless it is impracticable to locate the inboard valve in an accessible position, in which case a nonreturn valve with a positive means of closure from a position above the freeboard deck will be acceptable. Overflows which extend at least 30 inches above the freeboard deck before discharging overboard may be fitted with a single automatic nonreturn valve at the vessel's side. Overflow pipes which serve as tank vents must not be fitted with positive means of closure without the specific approval of the Marine Safety Center. Overflow pipes may be vented to the weather.

(e)

(3) The thickness of inlet and discharge connections outboard of the shutoff valves, and exclusive of seachests, must be not less than that of Schedule 80 for nominal pipe sizes through 8 inches, Schedule 60 for nominal pipe sizes above 8 inches and below 16 inches, and Schedule 40 for nominal pipe sizes 16 inches and above.

(i) Except as provided for in § 58.20–20(c) of this chapter, sea valves must not be held open with locks. Where it is necessary to hold a discharge or intake closed with a lock, either a locking valve may be located inboard of the sea valve, or the design must be such that there is sufficient freedom of motion to fully close the locked sea valve after an

event, such as fire damage to the seat, causes significant leakage through the valve. Valves which must be opened in and emergency, such as bilge discharges or fire pump suctions must not be locked closed, whether they are sea valves or not.

55. Section 56.50-96 is amended by revising paragraphs (a)(2)(ii) and (a)(2)(iv) to read as follows:

§ 56.50-96 Keel cooler installations.

(a)

(2)

(ii) The flexible connections and all openings internal to the vessel, such as expansion tank vents and fills, in the installation are above the deepest load line and all piping components are Schedule 80 or thicker below the deepest load line.

(iv) The forward end of the structure must be faired to the hull such that the horizontal length of the fairing is no less than four times the height of the structure, or be in a protected location such as inside a bow thruster trunk.

56. Section 56.50-102 is revised to read as follows:

§ 56.50-102 Liquefied petroleum gas for domestic services.

Requirements for liquefied petroleum gas systems for domestic services are in subpart 58.16 of this chapter.

57 Section 56.50-105 is amended by revising paragraph (a)(1)(iii), revising the title and heading of Table 56.50-105, and adding new footnotes 3 and 4 to Table 56.50-105 to read as follows:

§ 56.50-105 Low temperature piping.

(a)

(1)

(iii) Steels equivalent to those listed in Table 56.50-105 of this part, but not produced according to a particular ASTM specification, may be used only with the prior consent of the Marine Safety Center. Steels differing in chemical composition, mechanical properties or heat treatments from those specified may be specially approved by the Marine Safety Center. Similarly, aluminum alloys and other nonferrous materials not covered in Table 56.50-105 of this part may be specifically approved by the Marine Safety Center for service at any low temperature. There are restrictions on the use of certain materials in this part and in subchapter O of this chapter.

TABLE 56.50-105—ACCEPTABLE MATERIALS AND TOUGHNESS TEST CRITERIA [2]

Product form	ASTM specification	Grade	Minimum service temperature	Minimum avg Charpy V notch energy

[3] Any repair method must be acceptable to the Commandant (G-MTH), and welding repairs as well as fabrication welding must be in accordance with part 57 of this chapter.

[4] The acceptability of several alloys for low temperature service is not intended to suggest acceptable resistance to marine corrosion. The selection of alloys for any particular shipboard location must take corrosion resistance into account and be approved by the Marine Safety Center.

58. Section 56.60-1 is amended by revising the section heading and paragraphs (a)(2) and (b) to read as follows:

§ 56.60-1 Acceptable materials and specifications (replaces 123 and Table 126.1 in ANSI B31.1).

(a) (1)

(2) Materials used in piping systems must be selected from the specifications which appear in Table 56.60-1(a) of this section or Table 56.60-2(a) of this part, or they may be selected from the material specifications of section I, III, or VIII of the ASME Code if not prohibited by a regulation of this subchapter dealing with the particular section of the ASME Code. Table 56.60-1(a) of this section contains only pipe, tubing, and fitting specifications. Determination of acceptability of plate, forgings, bolting, nuts, and castings may be made by reference to the ASME Code as previously described. Additionally, accepted materials for use as piping system components appear in Table 56.60-2(a) of this part. Materials conforming to specifications not described in this subparagraph must receive the specific approval of the Marine Safety Center before being used. Materials listed in Table 126.1 of ANSI B31.1 are not accepted unless specifically permitted by this paragraph.

(b) Components made in accordance with the commercial standards listed in Table 56.60-1(b) of this section and made of materials complying with paragraph (a) this section may be used in piping systems within the limitations of the standards and within any further limitations specified in this subchapter.

§ 56.60-1 [Amended]

59. In § 56.60-1, Table 56.60-1(a) is amended by revising the table heading, the table headnote, the line entry for "Pipe, centrifugally cast," and note 16, removing the entries for ASTM standards A72, A155 and A445, and adding footnote 19 to read as follows:

TABLE 56.60-(a)—ADOPTED SPECIFICATIONS AND STANDARD (REPLACES TABLE 126.1)

NOTE: Table 56.60-1(a) identifies the acceptable pipe, tubing, and fitting specifications intended for piping system use and replaces Table 126.1 in ANSI B31.1. Piping system applications will be considered if certification of mechanical properties is furnished. Without this certification, use is limited to applications inside heat exchangers that insure containment of the material inside a pressure shell.

Pipe, centrifugally cast:	(None applicable).....	([19])

[16] Copper pipe must not be used for hot oil systems except for short flexible connections at burners. Copper pipe must be annealed before installation in Class I piping systems. See also §§ 56.10-5(c) and 56.60-20.

[19] Centrifugally cast pipe must be specifically approved by the Marine Safety Center.

60. In § 56.60-1, Table 56.60-1(b) is amended by revising the heading, table entries, and footnote 2, removing and reserving footnote 1, ANSI standard B2.2 and B18.2, and MSS standards SP-37 SP-42, and SP-66, and adding ANSI standards B1.20.1, B1.20.3, B16.34, B16.42, B18.2.1, B18.2.2, ASTM standards F682, F1006, F1007 F1020, F1123, F1139, F1172, F1173, F1199, F1200, and F1201, EJMA standards, MSS standard SP-83, and footnotes 3 and 4 to read as follows:

TABLE 56.60-1(b)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS (REPLACES TABLE 126.1)

ANSI Standards (American National Standards Institute), 1430 Broadway, New York, NY 10018.

B1.20.1—Pipe Threads, General Purpose.
B1.20.3—Dryseal Pipe Threads.

TABLE 56.60-1(b)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS (REPLACES TABLE 126.1)—Continued

B16.1—C.I. Flanges and Fittings—Classes 125 and 250 Only.
B16.3—M.I. Threaded Fittings—Classes 150 and 300.
B16.4—C.I. Threaded Fittings—Classes 125 and 250.
B16.5—Steel Pipe Flanges and Flanged Fittings.
B16.9—Steel Buttwelding Fittings.

B16.14—Ferrous-Threaded Plugs, Bushings and Locknuts.
B16.15—Cast Bronze Threaded Fittings—Classes 125 & 250.[4]
B16.18—Cast Brass Solder Joints.

B16.22—Wrought Copper and Bronze Solder Joint Fittings.
B16.23—Cast Bronze Solder-Joint Drainage Fittings.
B16.24—Bronze Pipe Flanges and Flanged Fittings—Class 150 and 300.

B16.28—Wrought Steel Buttwelding Short Radius Elbows and Returns.
B16.29—Wrought Copper and Wrought-Copper Alloy Solder Joint Drainage Fittings.[4]
B16.34—Valves—Flanged, Threaded and Welding end.
B16.42—Ductile Iron Pipe Flanges and Fittings.
B18.2.1—Square and Hex Bolts and Screws, Inch series.
B18.2.2—Square and Hex Nuts.

ASTM Standards (American Society for Testing and Materials), 1916 Race St., Philadelphia, PA 19103.

F682—Wrought Carbon Steel Sleeve-Type Couplings.
F1006—Entrainment Separators for Use in Marine Piping Applications.
F1007—Pipe Line Expansion Joints of the Packed Slip Type for Marine Applications.
F1020—Line Blind Valves for Marine Applications.
F1120—Circular Metallic Bellows Type Expansion Joints.
F1123—Non-Metallic Expansion Joints.
F1139—Steam Traps and Drains.
F1172—Fuel Oil Meters of the Volumetric Positive Displacement Type.
F1173—Epoxy Resin Fiberglass Pipe and Fittings to be Used for Marine Applications.
F1199—Cast and Welded Pipe Line Strainers.
F1200—Fabricated (Welded) Pipe Line Strainers.
F1201—Fluid Conditioner Fittings in Piping Applications Above 0 °F

EJMA Standards (Expansion Joint Manufacturers Association, Inc.), 25 North Broadway, Tarrytown, NY 10591

Standards of the Expansion Joint Manufacturers Association, Inc.

FCI Standards (Fluid Controls Institute, Inc.), 31 South Street, Suite 303, Morristown, NJ 07960.

FCI 69-1—Pressure Rating Standard for Steam Traps.

MSS Standards (Manufacturers' Standardization Society of the Valve and Fittings Industry), 127 Park Street NE, Vienna, VA 22180.

SP-25—Standard Marking System for Valves, Fittings, Flanges and Unions.
SP-44—Steel Pipe Line Flanges.

TABLE 56.60-1(b)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS (REPLACES TABLE 126.1)—Continued

SP-51—Class 150LW Corrosion Resistant Cast Flanges and Flanged Fittings.

SP-67—Butterfly Valves.

SP-72—Ball Valves with Flanged or Butt-Welding Ends for General Service.

SP-83—Carbon Steel Pipe Unions Socket-Welding and Threaded.

[Removed and Reserved]

In addition, for bronze valves, adequacy of body shell thickness shall be satisfactory to the Marine Safety Center. Refer to § 56.60-10 of this part for cast iron valves.

Mill or manufacturer's certification is not required, except where a needed portion of the required marking is deleted due to size or is absent due to age of existing stocks.

Because this standard offers the option of several materials, some of which are not generally acceptable to the Coast Guard, compliance with the standard does not necessarily indicate compliance with these regulations. The marking on the component or the manufacturer or mill certificate must indicate the material specification and/or grade as necessary to fully identify the materials used. The material used must comply with the requirements in this subchapter relating to the particular application.

61. In § 56.60-2, table 56.60-2(a) is amended by revising footnotes (2), (3), (5), (9), and (14) to read as follows:

§ 56.60-2 Limitations on materials.

Allowable stresses shall be the same as those listed in UCS23 of section VIII of the ASME Code for SA-675 material of equivalent tensile strength.

[3] Physical testing shall be performed as for material manufactured to ASME Specification SA-675, except that the bend test shall not be required.

[5] Limited to air and hydraulic service with a maximum design temperature of 150 °F The material must not be used for salt water service or other fluids that may cause dezincification or stress corrosion cracking.

[9] A mercurous nitrate test, in accordance with ASTM B154, shall be performed on a representative model for each finished product design. Tension tests shall be performed to determine tensile strength, yield strength, and elongation. Minimum values shall be those listed in table 3 of ASTM B283.

[14] Tension tests shall be performed to determine tensile strength, yield strength, and elongation. Minimum values shall be those listed in table X-2 of ASTM B85.

62. Section 56.60-10 is amended by revising paragraphs (a) and (c) to read as follows:

§ 56.60-10 Cast iron and malleable iron.

(a) The low ductility of cast iron and malleable iron should be recognized and the use of these metals where shock loading may occur should be avoided. Cast iron and malleable iron components shall not be used at temperatures above 450 °F Cast iron and malleable iron fittings conforming to the specifications of Table 56.60-1(a) of this part may be used at pressures not exceeding the limits of the applicable standards of Table 56.60-1(b) of this part at temperatures not exceeding 450 °F Valves of either of these materials may be used if they conform to the standards for class 125 and class 250 flanges and flanged fittings in ANSI B16.1 and if their service does not exceed the rating as marked on the valve.

(c) Malleable iron and cast iron valves and fittings, designed and marked for Class 300 refrigeration service, may be used for such service provided the pressure limitation of 300 pounds per square inch is not exceeded. Malleable iron flanges of this class may also be used in sizes 4 inches and smaller (oval and square design).

63. Section 56.60-15 is revised to read as follows:

§ 56.60-15 Ductile iron.

(a) Ductile cast iron components made of material conforming to ASTM A395 may be used within the service restrictions and pressure-temperature limitations of UCD-3 of section VIII of the ASME Code.

(b) Ductile iron castings may be used in hydraulic systems at pressures in excess of 1000 pounds per square inch gage, provided:

(1) The castings receive a ferritizing anneal when the as-cast thickness does not exceed one inch;

(2) Large castings for components, such as hydraulic cylinders, are examined as specified for a casting quality factor of 90 percent in accordance with UG-24 of section VIII of the ASME Code; and

(3) The castings are not welded, brazed, plugged, or otherwise repaired.

(c) After machining, ductile iron castings must be hydrostatically tested to twice their maximum allowable working pressure and must show no leaks.

64. Section 56.60-20 is amended by revising paragraphs (a)(1), (a)(4), and (b) and removing footnote 2 to read as follows:

§ 56.60-20 Nonferrous materials.

(a)

(1) The low melting points of many nonferrous metals and alloys, such as aluminum and aluminum alloys, must be recognized. These types of heat sensitive materials must not be used to conduct flammable, combustible, or dangerous fluids, or for vital systems

unless approved by the Marine Safety Center.

Note: For definitions of flammable or combustible fluids, see §§ 30.10–15 and 30.10–22 or parts 151–154 of this chapter. Dangerous fluids are those covered by regulations in part 98 of this chapter.

(4) The corrosion resistance of copper bearing aluminum alloys in a marine atmosphere is poor and alloys with copper contents exceeding 0.6 percent should not be used. Refer to Table 56.60–2(a) of this part for further guidance.

(b) An additional requirement for cast aluminum alloys in hydraulic fluid power systems is described in § 58.30–15(f) of this chapter.

65. Section 56.60–25 is amended by revising the introductory text of paragraph (a), the first sentence of (a)(1)(ii), paragraphs (a)(7)(i)(A), (a)(7)(i)(B), (a)(8), (a)(10), the first sentence of paragraph (b)(1), Table 56.60–25(c), paragraphs (c)(2) and (c)(5); adding new paragraphs (c)(7), (c)(8), (c)(9) and (c)(10); and, removing paragraph (e) and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 56.60–25 Nonmetallic materials.

(a) *Plastic pipe-nonvital service.* Plastic pipe may be used for nonvital fresh and salt water service, including drains for waste and sewage services not involving treatment chemicals incompatible with the pipe, or flammable vapors from degenerating waste or other sources, subject to the following limitations:

(1)

(ii) An acceptable metallic shutoff valve is installed adjacent to the spool piece.

(7)

(i)

(A) *Pipe (PVC).*

ASTM D1785 (Schedule 40, 80, 120).
ASTM D2241 (Standard Dimension Ratio).
ASTM D2665.

(B) *Fittings (PVC).*

ASTM D2464 (Schedule 80 threaded).
ASTM D2466 (Schedule 40 socket).
ASTM D2467 (Schedule 80 socket).
ASTM D2665.

(8) In using PCV pipe, a schedule or Standard Dimension Ratio must be chosen so that the maximum value of hoop stress in service will not be more than 20 percent of the specified minimum burst stress as listed in the applicable specification. Pipe and fittings meeting ASTM D2665 are limited to drain, waste, and associated vent services.

(10) Materials, such as glass reinforced resins not meeting ASTM F1173 or other plastics, may be authorized by the Commandant (G–MTH) if full mechanical and physical properties and chemical description are furnished. Flammability of the material must be determined by the standard test methods ASTM D635 and ASTM D2863. The average extent of burning must be less than 0.394 inches (10mm), the average time of burning must be less than 50 seconds, and the limiting oxygen index must be greater than 21.

(b)

(1) Vital machinery served by plastic pipe must be duplicated by equivalent machinery units served entirely by conventional metallic pipe, however, when such machines are in separate watertight compartments, or they are located or insulated such that damage to both a single localized fire is unlikely, both may be fitted with plastic pipe.

(c)

(1)

TABLE 56.60–25(c)—INSTALLATION REQUIREMENTS FOR NONMETALLIC FLEXIBLE HOSE

Type of service	Maximum service pressure (psi)	Type cover required	Required hose reinforcement	Where permitted
Vital fresh and salt water	150	Flame resistant	Wire or polyester	(23)
Nonvital fresh and salt water	150	do	do	(4)
Nonvital water and pneumatic	50	do	None	(4)
Do	150	do	Fiber	(4)
Lube oil and fuel systems		do 15	Wire	For flexibility only.
Fluid power systems		do	Wire or polyester	(7)

The hose must be judged flame-resistant as detailed in § 56.60–25(c)(7) of this section.
May be used in duplicate installations in accordance with § 56.60–25(b) of this section for plastic pipe or in reasonable lengths where flexibility is required at pressures not exceeding manufacturer's rating subject to the limitations of § 56.60–25(a) (1) through (6) for plastic pipe.
Casualty control systems, such as firefighting and bilge systems, may utilize a flexibile connection only if the pump is flexibly supported and the flexible connection is located directly at the pump.
May be used subject to the limitations of §§ 56.60–25(a) (1) through (6) of this section for plastic pipe.
The hose assembly must be capable of withstanding the fire test detailed in § 56.60–25(c)(8) of this section.
May only be used in reasonable lengths for the purpose of flexibility at pressures not exceeding manufacturer's rating.
See § 58.30–20 of this chapter for installations permitted.

(2) Reinforced nonmetallic flexible hose must be fabricated with an inner tube and a cover of synthetic rubber or other suitable material and reinforced with wire or polyester braid, or an even number of oppositely laid layers of closely-packed spirally wound wire.

(5) Nonmetallic hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, except that field attachable type fittings may be used. Hose end fittings must comply with SAE J1475, (Hydraulic Hose Fittings For Marine Applications). Field attachable fittings must be installed following the manufacturer's recommended practice (method). If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. A hydrostatic test of each hose assembly must be conducted in accordance with § 56.97–5 of this part.

(7) Nonmetallic hose must pass the flame resistance test and be marked as required by 30 CFR 18.65 of this chapter.

(8) Nonmetallic hose for lube oil or fuel service must not leak during or after a 2½ minute exposure to a N-heptane fire under the following conditions.

(i) The hose must be pressurized to the maximum allowable working pressure during the test. (The use of water as the pressurizing medium is strongly recommended for safety purposes).

(ii) No fluid flow may occur in the hose during the test.

(iii) The hose length must be between 18 inches (46cm) and 24 inches (61cm).

(iv) The hose must be positioned 9 inches (23cm) above an open pan of N-heptane.

(v) At least one end fitting of the hose assembly must be engulfed in the fire.

(vi) The test must be witnessed by a Coast Guard inspector or performed by an independent testing laboratory accepted by the Commandant (G–MTH).

(vii) The hose must be burst at the end of the test after cool-down.

(viii) The results of testing must be submitted to the Commandant (G–MTH).

(9) Nonmetallic hose used in fluid power systems must be impulse tested at 125% of maximum allowable working pressure, using the fluid to be used in service, at a temperature of 93 °C (200 °F), for a minimum of 150,000 cycles in accordance with the test method in SAE J343, Tests and Procedures for SAE 100R Series Hydraulic Hose and Hose Assemblies. If acceptance for higher temperature service is desired, the test must be performed at the higher temperature.

(10) After hose assemblies have been impulse tested, fire tested, or tested for flame resistance, duplicate hose assemblies of the same materials, design, construction and size need not be so tested, but must be given a hydrostatic test as required in paragraph (c)(5) of this section.

66. Section 56.70–1 is revised to read as follows:

§ 56.70–1 General.

(a) The following generally applies to all types of welding, such as stud welding, casting repair welding and all processes of fabrication welding. Where the detailed requirements are not appropriate to a particular process, alternatives must be approved by the Marine Safety Center.

67 Section 56.70–10 is amended by revising the heading and paragraph (b) to read as follows:

§ 56.70–10 Preparation (modifies 127.3).

(b) *Fillet welds (modifies 127.3.2).* In making fillet welds, the weld metal must be deposited in such a way as to obtain adequate penetration into the base metal at the root of the weld. Piping components which are to be joined utilizing fillet welds must be prepared in accordance with applicable provisions and requirements of this section. For typical details, see Figures 127.4.4A and 127.4.4C of ANSI B31.1 and Figure 56.30–10(b) of this part. See § 56.30–5(d) of this part for additional requirements.

68. Section 56.70–15 is amended by revising paragraphs (b)(2), the heading of (b)(5), (b)(7), the first sentence of paragraph (c) and (d), removing detail A from Figure 56.70–15(g) and redesignating the remaining details A through "E" and revising the heading of Table 56.70–15 to read as follows:

§ 56.70–15 Procedure.

(b)

(2) Girth butt welds in Class I, I–L, and II–L piping systems shall be double welded butt joints or equivalent single welded butt joints for pipe diameters exceeding three-fourth inch nominal pipe size. The use of a single welded butt joint employing a backing ring (note restrictions in paragraph (b)(3)(iv) of this section) on the inside of the pipe is an acceptable equivalent for Class I and Class II–L applications, but not permitted for Class I–L applications. Single welded butt joints employing either an inert gas for first pass backup or a consumable insert ring may be considered the equivalent of a double welded butt joint for all classes of piping and is preferable for Class I–L and II–L systems where double butt welds cannot be used. Appropriate welding procedure qualification tests shall be conducted as specified in part 57 of this subchapter. A first pass inert gas backup is intended to mean that the inside of the pipe is purged with inert gas and that the root is welded with the inert gas metal arc (mig) or inert gas tungsten arc (tig) processes. Classes I, I–L, and II–L piping are required to have the inside of the pipe machined for good fit up if the misalignment exceeds that specified in § 56.70–10(a)(3). In the case of Class II piping the machining of the inside of the pipe may be omitted. For single welded joints, where possible, the inside of the joint shall be examined visually to assure full penetration. Radiographic examination of at least 20 percent of single welded joints to check for penetration is required for all Class I and Class I–L systems regardless of size following the requirements of § 56.95–10. Ultrasonic testing may be utilized in lieu of radiographic examination if the procedures are approved.

(5) (Reproduces 127.2(c)).

(7) The type and extent of examination required for girth butt welds is specified in § 56.95–10.

(c) *Longitudinal butt welds.* Longitudinal butt welds in piping components not made in accordance with the standards and specifications listed in 56.60–1 (a) and (b) must meet the requirements of paragraph 104.7 of ANSI–B31.1 and may be examined nondestructively by an acceptable method.

(d) *Fillet welds.* (1) Fillet welds may vary from convex to concave. The size of a fillet weld is determined as shown in Figure 127.4.4A in ANSI B31.1. Fillet weld details for socket-welding components must meet § 56.30–5(c) of this part. Fillet weld details for flanges must meet § 56.30–10(c) of this part. Fillet weld details for flanges must meet § 56.30–10 of this part.

(2) The limitations on cracks and undercutting set forth in paragraph (b)(8) of this section for girth welds are also applicable to fillet welds.

(3) Class I piping not exceeding 3 inches nominal pipe size and not subject to full radiography by § 56.95–10 of this part may be joined by sleeves fitted over pipe ends or by socket type joints. Where full radiography is required, only butt type joints may be used. The inside diameter of the sleeve must not exceed the outside diameter of the pipe or tube by more than 0.080 inch. Fit between socket and pipe must conform to applicable standards for socket weld fittings. Depth of insertion of pipe or tube within the socket or sleeve must not be less than three-eighths inch. The fillet weld must be deposited in a minimum of two passes, unless specifically approved otherwise in a special procedure qualification. Requirements for joints employing socket weld and slip-on flanges are in § 56.30–10 of this part.

(4) Sleeve and socket type joints may be used in Class II piping systems without restriction as to size of pipe or tubing joined. Applicable standards must be followed on fit. The fillet welds must be deposited in a minimum of two passes, unless specifically approved otherwise in a special procedure qualification. Requirements for joints employing socket weld and slip-on flanges are in § 56.30–10 of this part.

TABLE 56.70-15 REINFORCEMENT OF GIRTH AND LONGITUDINAL BUTT WELDS

Thickness (in inches) of base metal	Maximum thickness (in inches of reinforcement for design temperature		
	Below 0 °F or above 750 °F	350° to 750 °F	0 °F and above but less than 350 °F

69. Section 56.75-5 is amended by revising paragraph (a) to read as follows:

§ 56.75-5 Filler metal.

(a) The filler metal used in brazing must be a nonferrous metal or alloy having a melting point above 1,000 °F and below that of the metal being joined. The filler metal must meet and flow freely within the desired temperature range and, in conjunction with a suitable flux or controlled atmosphere, must wet and adhere to the surfaces to be joined. Prior to using a particular brazing material in a piping system, the requirements of § 56.60-20 of this part should be considered.

§ 56.85-10 [Amended]

70. In § 56.85-10, Table 56.85-10 is amended by removing the word "minimum" wherever it appears in the column under the heading "Minimum Temperature" and adding the word "inclusive" after the words "up to ¾ in. in the "Minimum Wall" column opposite "P-5(15) (less than 5 cr.)"

71. Section 56.95-10 is amended by removing Table 56.95-10 and revising paragraphs (a) and (c)(2) to read as follows:

§ 56.95-10 Type and extent of examination required.

(a) *General.* The types and extent of nondestructive examinations required for piping must be in accordance with this section and Table 136.4 of ANSI-B31.1. In addition, a visual examination shall be made.

(1) 100 percent radiography [1] is required for all Class I, I-L and II-L piping equal to or greater than 4 inches nominal diameter or 0.375 inches nominal wall thickness.

(2) Nondestructive examination is required for all Class II piping equal to or greater than 18 inches nominal diameter regardless or wall thickness. Any test method acceptable to the Officer in Charge, Marine Inspection may be used.

(3) Appropriate nondestructive examinations of other piping systems are required only when deemed necessary by the Officer in Charge, Marine Inspection. In such cases a method of testing satisfactory to the Officer in Charge, Marine Inspection must be selected from those described in this section.

(c)

(2) *Random radiography.* Where random radiography [1] is required, one or more welds may be completely or partially radiographed. Random radiography is considered to be a desirable means of spot checking welder performance, particularly in field welding where conditions such as position, ambient temperatures, and cleanliness are not as readily controlled as in shop welding. It is to be employed whenever an Officer in Charge, Marine Inspection questions a pipe weld not otherwise required to be tested. The standards of acceptance are the same as for 100 percent radiography.

72. Section 56.97-5 is amended by revising paragraph (a) to read as follows:

§ 56.97-5 Pressure testing of nonstandard piping system components.

(a) All nonstandard piping system components such as welded valves and fittings, nonstandard fittings, manifolds, seacocks, and other appurtenances must be hydrostatically tested to twice the rated pressure stamped thereon, except that no component should be tested at a pressure causing stresses in excess of 90 percent of its yield strength.

PART 61—PERIODIC TESTS AND INSPECTIONS [AMENDED]

73. The authority citation for Part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227· 49 CFR 1.46.

74. Subpart 61.15 is amended by adding a new § 61.15-2 to read as follows:

§ 61.15-12 Nonmetallic expansion joints.

(a) Nonmetallic expansion joints must be examined externally at each inspection for certification for signs of excessive wear, fatigue, deterioration, physical damage, misalignment, improper flange-to-flange spacing, and leakage. A complete internal examination must be conducted when an external examination reveals excessive wear or other signs of deterioration or damage.

(b) A nonmetallic expansion joint must be replaced ten years after its date of manufacture if it is located in a system which penetrates the vessel's side and both the penetration and the nonmetallic expansion joint are located below the deepest load waterline. The Officer in Charge, Marine Inspection may grant an extension of the ten year replacement to coincide with the vessel's next drydocking.

Dated: May 3, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Topically Applied Hormone-Containing Drug Products for Over-the-Counter Human Use; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0144]

RIN 0905-AA06

Topically Applied Hormone-Containing Drug Products for Over-the-Counter Human Use; Proposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would establish that topically applied hormone-containing drug products for over-the-counter (OTC) human use are not generally recognized as safe and effective and are misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and the public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 1, 1989. New data by October 2, 1990. Comments on the new data by December 3, 1990. Written comments on the agency's economic impact determination by January 30, 1990.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1982 (47 FR 430), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify topically applied hormone-containing drug products for OTC human use as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (address above). In response to the advance notice of proposed rulemaking, one drug manufacturers' association, one law firm, and two manufacturers submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In this proposed rule to amend part 310 by adding to subpart E new § 310.530 (21 CFR 310.530), FDA states for the first time its position on OTC topically applied hormone-containing drug products. Final agency action on this matter will occur with the publication at a future date of a final rule for OTC topically applied hormone-containing drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC topically applied hormone-containing drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final rule stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the proposed rule stage.

In the advance notice of proposed rulemaking, the agency stated that if it proposed to adopt the Panel's recommendation it would propose that topically applied hormone-containing drug products be eliminated from the OTC market effective 6 months after the date of publication of a final rule in the **Federal Register**, regardless of whether further testing was undertaken to justify their future use. Based on all information available to date, the agency is proposing that OTC topically applied hormone-containing drug products be found not to be generally recognized as safe and effective. If the proposed finding is adopted in the final rule, the agency advises that the conditions under which the drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions) will be effective 6 months after the date of publication of the final rule in the **Federal Register**. On or after that date, no OTC drug products that are subject to the rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application (NDA). Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the proposed rule at the earliest possible date.

I. The Agency's Tentative Conclusions on the Comments

A. General Comments on Topically Applied Hormone-Containing Drug Products

1. One comment urged that § 310.530 be amended to limit it to the kind and type of hormone ingredients and products considered by the Panel in this rulemaking proceeding, i.e., skin creams and skin oils containing estrogens and progesterone that are marketed for topical use with claims for the improvement to or enhancement of the condition of the skin. Noting that estradiol was considered separately by the Panel under two dockets, hair grower and hair loss prevention drug products and hormone-containing drug products, the comment maintained that "the agency should separate the subject matter in the proposed monographs and new regulations.

The term "hormone" broadly describes a chemical substance formed in some organ of the body, such as the adrenal glands or the pituitary, and carried to another organ or tissue, where it has a specific effect (ref. 1). There are many types of hormones (ref. 2). Standard reference texts, such as "Dorland's Illustrated Medical Dictionary, AMA Drug Evaluations, and "The Pharmacological Basis of Therapeutics, use a number of similar terms to describe the various types of hormones. The terms "estrogens" and

"progestins" are generally used to describe the types of ingredients reviewed by the Panel (refs. 3 and 4). Estrogens include steroidal estrogens such as estradiol, estrone, conjugated estrogens, esterified estrogens, and ethinyl estradiol, and nonsteroidal estrogens such as dienestrol and diethylstilbestrol (ref. 5). Progestins include progesterone, esthisterone, and medroxyprogesterone acetate (refs. 6 and 7). Pregnenolone is a steriod closely related to progesterone in chemical structure, but it exerts an estrogen-like action on the skin when applied topically (ref. 8).

One of the call-for-data notices that listed ingredients in hormone creams for which data should be submitted to the Panel listed the ingredients estradiol, estrogen, estrogenic hormones, estrone, natural estrogens, pregnenolone acetate, and progesterone. (See the **Federal Register** of August 27 1975; 40 FR 38179.) This list was intended to be a representative, but not all-inclusive, list of the types of hormones to be reviewed. Likewise, the list of hormones in this document is intended to be representative, but not all-inclusive.

Examples of other general types of hormones are adrenal corticosteroids and synthetic analogs, androgens, and anabolic steroids (ref. 9). Hydrocortisone is an adrenal corticosteroid. The synthetic analogs include dexamethasone, prednisone, prednisolone, and triamcinolone. Androgens include testosterone and methyltestosterone. Anabolic steroids include ethylestrenol, methandrostenolone, and oxymetholone.

The Panel discussed topically applied hormone-containing drug products as a therapeutic class with emphasis on the two groups of active ingredients, the estrogens and progesterone, that are generally used in these products (47 FR 430 at 432). The Panel concluded that none of these ingredients is generally recognized as safe and effective for OTC drug use. The Panel also stated that it was not aware of any data demonstrating the safety and effectiveness of any other ingredient used in topically applied hormone-containing drug products for OTC use (47 FR 432). The agency is not aware of any estrogens, progestins, androgens, anabolic steroids, or adrenal corticosteroids that are currently generally recognized or proposed for general recognition as safe and effective for OTC topical drug use, except hydrocortisone preparations for topical use for the temporary relief of itching associated with minor skin irritations, inflammation, and rashes. (See the **Federal Register** of February 8, 1983; 48 FR 5852.)

As the comment pointed out, estradiol was also reviewed by the Panel in its report on hair grower and hair loss prevention drug products for OTC human use, published in the **Federal Register** of November 7 1980 (45 FR 73955). The Panel concluded that there was a lack of evidence to establish effectiveness of estradiol and hormone constituents as hair growers or hair loss prevention OTC drug products and recommended that they be classified in Category II (45 FR 73959). The agency concurred with the Panel's recommendations in the proposed rule for these products that was published in the **Federal Register** of January 15, 1985 (50 FR 2190). More recently, in the **Federal Register** of July 7 1989 (54 FR 28772), the agency concluded that estradiol is not generally recognized as safe and effective for claims of hair growth and hair loss prevention.

For the reasons stated above, the agency has determined that the title of the regulation that is the subject of this document should remain "topically applied hormone-containing drug products for OTC human use, as stated in the advance notice of proposed rulemaking. However, FDA has revised § 310.530(a) to state the scope of the regulation. Also, the agency is adding a new paragraph (e) in which it will list any hormone ingredients that are not covered by the regulation. This paragraph will include any hormone that is currently generally recognized or proposed for general recognition as safe and effective for OTC topical drug use. At the present time, the only hormones that are included in paragraph (e) are hydrocortisone and hydrocortisone acetate, which were proposed as Category I ingredients for the temporary relief of itching associated with minor skin irritations, inflammation, and rashes in the notice of proposed rulemaking for external analgesic drug products for OTC human use, published in the **Federal Register** of February 8, 1983 (48 FR 5852).

References

(1) "Webster's New World Dictionary, College Ed., Cleveland and New York, 1968, s.v. "hormone.

(2) "Dorland's Illustrated Medical Dictionary, 26th Ed., W.B. Saunders Co., Philadelphia, 1985, s.v. "hormone.

(3) "The Pharmacological Basis of Therapeutics, 7th Ed., edited by A.G. Gilman, L.S. Goodman, T.W. Rall, and F. Murad, Macmillan Publishing Co., Inc., New York, p. 1412, 1985.

(4) "Drug Evaluations, 6th Ed., American Medical Association, W.B. Saunders Company, Philadelphia, p. 689, 1986.

(5) "Drug Evaluations, 6th Ed., American Medical Association, W.B. Saunders Company, Philadelphia, pp. 703–705, 1986.

(6) "Drug Evaluations, 6th Ed., American Medical Association, W.B. Saunders Company, Philadelphia, pp. 705–706, 1986.

(7) "The Pharmacological Basis of Therapeutics, 7th Ed., edited by A.G. Gilman, L.S. Goodman, T.W. Rall, and F Murad, Macmillan Publishing Co., Inc., New York, p. 1425, 1985.

(8) Silson, J.E., "Pregnenolone Acetate—A Dermatologically Active Steroid, *Journal of the Society of Cosmetic Chemists*, 8:129–137 1962.

(9) "Drug Evaluations, 6th Ed., American Medical Association, W.B. Saunders Company, Philadelphia, pp. 661–687 1986.

2. Two comments stated that the Panel's proper function was to evaluate the safety and effectiveness of hormone-containing products intended for OTC drug use, and not those intended for cosmetic use. One comment from a manufacturer pointed out that the drug/cosmetic status of a product presents legal rather than scientific questions, that the labeling of its products contains only cosmetic claims, and therefore that the products are not drugs. The comments maintained that it is the intended use of a product, rather than its physical properties, that determines whether the product is a drug or a cosmetic. To support this contention, one comment cited several court cases, including *National Nutritional Foods Association* v. *Mathews*, 557 F.2d 325 (2d Cir. 1977); *National Nutritional Foods Association* v. *FDA*, 504 F.2d 761 (2d Cir. 1974); *United States* v. *"Sudden Change*, 409 F.2d 734 (2d Cir. 1969). The comments added that "FDA's own regulations explicitly recognize that articles represented as hormone skin care products are cosmetics" and cited 21 CFR 720.4(c)(12)(v). One comment concluded that FDA acted properly in not incorporating into § 310.530 the Panel's discussion concerning the cosmetic use of hormone ingredients. The comments requested that the agency clarify that any regulation adopted as part of the OTC drug review applies to OTC drug products and not to cosmetic products for which no drug claims are made. One specific suggestion was that the agency revise the title for proposed § 310.530 to read "Topically Applied Hormone-Containing Products for Over-the-Counter (OTC) Human Drug Use.

The agency agrees that this regulation applies only to topically applied hormone-containing drug products that fall within the statutory definition of a drug. A "drug" is principally defined in the act as an article "intended for use in the diagnosis, cure, mitigation,

treatment, or prevention of disease" or "intended to affect the structure or any function of the body (See 21 U.S.C. 321(g)(1)(B), (C).) A "cosmetic, on the other hand, is defined primarily as an article intended to be applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance (See 21 U.S.C. 321(i).) The intended use of a product, therefore, determines whether it is a "drug, a "cosmetic, or both. This intended use may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor. See, e.g., *National Nutritional Foods Ass'n* v. *Mathews*, 557 F.2d 325, 334 (2d Cir. 1977). A manufacturers' subjective claims of intent may be pierced to find its actual intent on the basis of objective evidence. *National Nutritional Foods Ass'n* v. *FDA, supra*, 504 F.2d at 789.

The agency believes that the title of § 310.530 clearly states that the regulation covers drug products. However, paragraph (a) has been changed to clarify that this regulation pertains only to products that are intended for use as drugs.

The agency has reviewed the labeling in current NDAs for skin care products that contain estrogen, progesterone, and pregnenolone acetate (refs. 1, 2, and 3). One product with labeling submitted by the comment contains estrogen and progesterone and makes the following labeling claim: "This cream (or oil) is scientifically prepared with natural estrogen and progesterone. Contains lubricants and moisturizers to help counteract dryness. Gives the skin a softer, smoother, more supple look. The other product identifies itself as a cosmetic cream. Although it does not explicitly make any claims that would be considered drug claims, its labeling does identify the hormone ingredient as "pregnenolone acetate.

Skin care products that contain hormones are solely cosmetics if the claims in the labeling, promotional material, advertising, and other relevant materials are only cosmetic in nature (e.g., to promote attractiveness), and no actual or implied therapeutic claims, or claims that the product will affect the structure or function of the body, are made. The agency considers the use of the word "hormone" in the text of the labeling (e.g., "This cream (or oil) is scientifically formulated to contain a hormone") or in the ingredient statement to be an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling that "hormones" are present in the product will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or function of the body, and will consequently cause the product to be a drug.

If a manufacturer includes a hormone in its product, it may denominate this ingredient in the labeling by any appropriate name. However, use of the chemical name is preferable. For example, for progesterone, the chemical name is "pregn-4-ene-3,20-dione;" and for pregnenolone acetate, the chemical name is "3-hydroxypregn-5-ene-20-one acetate. Nevertheless, the agency cautions that any statement on the label of a cosmetic product of the presence of a hormone ingredient, e.g., "contains natural estrogen and progesterone, must be consistent with 21 CFR 701.1 and must not be given undue prominence.

While § 720.4(c)(12)(v) does list hormone skin care preparations as a cosmetic product category, such recognition does not preclude regulation of such products as drugs. See also 36 FR 16934; August 26, 1971. A product that contains hormone ingredients can be either a cosmetic or a drug, or both, depending on the intended use of the product. If the skin care products that contain estrogen, progesterone, and pregnenolone acetate, which are currently subject to new drug applications (refs. 1, 2, and 3), were to be relabeled as discussed above (i.e., no reference to the term "hormone"), the products could properly be regulated as cosmetics alone. Upon promulgation of a final regulation for OTC hormone-containing drug products, the agency will publish a notice of opportunity for a hearing on a proposal to withdraw approval of the NDAs for those products that presently have NDAs but that are determined not to be safe and effective or that are no longer marketed as drugs.

References

(1) FDA-approved labeling from NDA 10-766, copy in OTC Volume 16GTFM, Docket No. 81N-0144, Dockets Management Branch.

(2) FDA-approved labeling from NDA 11-539, copy in OTC Volume 16GTFM.

(3) FDA-approved labeling from NDA 12-603, copy in OTC Volume 16GTFM.

B. Comments on Hormone Ingredients

3. Two comments disagreed with the Panel's conclusions on the safety of estrogen and progesterone when applied to the skin and objected to the Panel apparently basing its conclusions on the safety of topically applied estrogen on its judgment that the safety data are "relatively old" (47 FR 430 at 433). One comment claimed that there is no evidence showing that the studies to which the Panel referred are less valid now than when they were completed, adding that its products, which contain 10,000 International Units per ounce (I.U./oz) of estrogen, have been marketed OTC under effective new drug applications for approximately 24 years with an extremely low incidence of adverse reactions. Noting that such proof of safety is included as part of the standards for the safety of an OTC drug in 21 CFR 330.10(a)(4)(i), the comment stated that it appears that the Panel ignored these standards in reaching its conclusions about the safety of topically applied estrogens at a level of 10,000 I.U./oz. The comment added that its products were reviewed by the National Academy of Science/National Research Council (NAS/NRC) as part of the FDA Drug Efficacy Study Implementation (DESI) review, and that this group of experts did not raise any questions regarding the safety of these products.

The other comment maintained that the Category III classification is inappropriate in view of the evidence cited by the Panel that estrogen does not produce systemic effects and has a low incidence or irritation and allergic effect when used at a concentration of 10,000 I.U./oz. The comment also objected to the Panel's failure to recognize the safety of progesterone at a concentration of 5 milligrams per ounce (mg/oz). Citing the Panel's statements on the safety of progesterone at this concentration (47 FR 430 at 433), the comment asked that the agency recognize the safety of progesterone in a concentration of 5 mg/oz in the next FDA **Federal Register** publication on this subject.

The comment added that the regulation should be revised to specify that high level estrogen and progesterone concentrations (exceeding 10,000 I.U./oz estrogen and 5 mg/oz progesterone) have not been shown to be generally recognized as safe and effective for OTC drug use, and that such concentrations of hormone ingredients in a product intended for topical OTC drug use would require an effective NDA. The comment asserted that such action would protect the public without depriving manufacturers and consumers of effective products.

The Panel concluded that inadequate data were submitted to establish the safety of topically applied estrogens in concentrations up to 10,000 I.U./oz when used in amounts not to exceed 2 oz per month (47 FR 430 at 433). It also pointed out that the lack of systemic effects of

concentrations up to 10,000 I.U./oz is well documented in studies, and that these estrogen concentrations have a low incidence of irritation or allergic local effects. The agency has reviewed all of the data submitted to the Panel, considered the data for these products evaluated as part of the DESI review, considered the OTC marketing history of these products for over 25 years, and evaluated the adverse reaction reports submitted for these products for the last 16 years (ref. 1). The agency concludes that estrogens in concentrations up to 10,000 I.U./oz are safe for topical application to the skin when used in amounts not to exceed 2 oz per month.

The Panel recognized the safety of progesterone at a concentration of 5 mg/oz when used in amounts not to exceed 2 oz per month, but concluded "that there was no evidence that using a hormone-containing drug product at the levels which are safe for OTC use will do anything more than using the cream vehicle alone" (47 FR 430 at 433). The agency concurs with this conclusion. The comments did not submit sufficient data to establish the effectiveness of either ingredient for OTC drug use. While the agency concurs with the comments that up to 10,000 I.U./oz estrogen and 5 mg/oz progesterone are safe for OTC use, these ingredients are classified in Category II because of a lack of effectiveness for drug use at these concentrations.

Reference

(1) Department of Health Human Services, Food and Drug Administration, Adverse Reaction Summary Listings, pertinent pages for the years 1969–1985, copy in OTC Volume 16GTFM, Docket No. 81N–0144, Dockets Management Branch.

4. One comment objected to the Panel's statement that it could not locate, nor was it aware of, any data demonstrating the safety and effectiveness of pregnenolone acetate used in topically applied hormone-containing drug products for OTC use (47 FR 430 at 432). According to the comment, safety data on this ingredient are included in an NDA, and the Panel could have reviewed these data. The comment added that annual reports on adverse reactions filed with FDA show a low incidence of adverse reactions to pregnenolone acetate. The comment requested that FDA's preamble and record in this rulemaking proceeding note the existence of an effective NDA for a product containing this ingredient. The comment also requested that § 310.530(b) be revised to clarify that drug products containing hormones are misbranded unless they are covered by NDAs.

There is an effective NDA (12–603) for a product containing pregnenolone acetate. However, NDAs were not available to the Panel for review unless the holder of the NDA specifically submitted the data it contained to the Panel for evaluation in the OTC drug review. NDA 12–603 became effective before 1962. Thus, it was approved for safety only and not for effectiveness. The product covered by the NDA contains 0.5 percent pregnenolone acetate and was reviewed by the NAS/NRC as part of the FDA DESI review (ref. 1). The agency published the NAS/NRC findings in the **Federal Register** of October 2, 1969 (34 FR 15389), stating that the products were possibly effective for their labeled indications. The agency considers concentrations up to 0.5 percent pregnenolone acetate as safe for OTC use, but that there is a lack of evidence that this ingredient is effective at these concentrations. The agency is revising § 310.530(b) to clarify that a product covered by the regulation is a new drug under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314) is required for marketing, and in the absence of an approved NDA the product would be in violation of section 505 and also would be misbranded under section 502 of the act (21 U.S.C. 352). With respect to NDA 12–603, if the product covered by the NDA is relabeled as discussed above, the product could be regulated as a cosmetic and the NDA withdrawan. (See comment 2 above.)

Reference

(1) National Academy of Sciences/National Research Council, Drug Efficacy Study, ACC 1907 copy in OTC Volume 16GTFM, Docket No. 81N–0144, Dockets Management Branch.

II. The Agency's Tentative Adoption of the Panel's Report

As discussed above, the agency has clarified that the scope of this rulemaking applies to all topically applied hormone-containing drug products for OTC human use, to include, but not limited to, estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids and synthetic analogs. The regulation also covers pregnenolone and pregnenolone acetate, steroids that are closely related to progesterone in chemical structure and that exert an estrogen-like action on the skin when applied topically. With the exception of hydrocortisone and hydrocortisone acetate used in external analgesic drug products, the agency is not aware of any hormone that is generally recognized or proposed for general recognition as safe and effective for OTC topical drug use. FDA is revising § 310.530(a) to clarify the scope of the regulation and is adding a new § 310.530(e) to identify hormones that are not covered by the regulation.

The agency is also revising § 310.530(b) to clarify that a product covered by the regulation is a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314) is required for marketing, and in the absence of an approved NDA the product would be in violation of section 505 and also would be misbranded under section 502 of the act (21 U.S.C. 352). As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to establish a monograph. (See 21 CFR 10.30.)

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC topically applied hormone-containing drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC topically applied hormone-containing drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that

this rulemaking would have on OTC topically applied hormone-containing drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by January 30, 1990. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 1, 1989, submit to the Dockets Management Branch written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before January 30, 1990. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before October 2, 1990, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before December 2, 1990. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final rule, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on December 2, 1990. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final rule is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 52 Stat. 1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.530 is added to subpart E to read as follows:

§ 310.530 Topically applied hormone-containing drug products for over-the-counter (OTC) human use.

(a) The term "hormone" is used broadly to describe a chemical substance formed in some organ of the body, such as the adrenal glands or the pituitary, and carried to another organ or tissue, where it has a specific effect. Hormones include, for example, estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids and synthetic analogs. Estrogens, progesterone, pregnenolone, and pregnenolone acetate have been present as ingredients in OTC drug products marketed for topical use as hormone creams. However, there is a lack of adequate data to establish effectiveness for any OTC drug use of these ingredients. Therefore, with the exception of those hormones identified in paragraph (e) of this section, any OTC drug product containing an ingredient offered for use as a topically applied hormone cannot be considered generally recognized as safe and effective for its intended use. The intended use of the product may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor. The use of the word "hormone" in the text of the labeling or in the ingredient statement is an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling that "hormones are present in the product will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or function of the body, and will consequently cause the product to be a drug.

(b) Any OTC drug product that is labeled, represented, or promoted as a topically applied hormone-containing product for drug use, with the exception of those hormones identified in paragraph (e) of this section, is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act, for which an approved new drug application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as a topically applied hormone-containing drug product is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After the effective date of the final regulation, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(e) This section does not apply to hydrocortisone and hydrocortisone acetate labeled, represented, or promoted for OTC topical use in accordance with Part 348 of this chapter.

Dated: August 26, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-23140 Filed 9-29-89; 8:45 am]

BILLING CODE 4160-01-M

federal register

Monday
October 2, 1989

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Restriction on Certain Flights From the United States To the Republic of the Philippines (SFAR No. 57); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26027; SFAR No. 57]

Restriction on Certain Flights From the United States To the Republic of the Philippines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action prohibits the transportation by aircraft of the remains of Ferdinand Marcos from the territory of the United States to the Republic of the Philippines or to any intermediate destination on a trip whose ultimate destination is the Republic of the Philippines. This action is taken to prevent an undue hazard to the aircraft that would be engaged in such transportation, as well as to persons involved in the flight, in consideration of measures taken by the Government of the Republic of the Philippines to prevent the landing of the aircraft in the Republic of the Philippines.

DATE: *Effective date:* September 28, 1989.

Expiration date: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Gregory S. Walden, Chief Counsel, Office of the Chief Counsel, AGC-1, Federal Aviation Administration, 800 Independence Avenue SW Washington, DC 20591. Telephone: (202) 267-3222.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft throughout the world. Under section 103 of the Federal Aviation Act of 1958, as amended, the FAA is charged with the regulation of air commerce in a manner to best promote safety and fulfill the requirements of the national security.

On June 3, 1989, Robert M. Kimmitt, Undersecretary of State for Political Affairs, U.S. Department of State (DOS), sent a letter to Robert E. Whittington, Acting Administrator, Federal Aviation Administration, requesting that the FAA act to prohibit the return by transportation of the remains of former Philippine President Ferdinand Marcos to the Republic of the Philippines. The DOS letter noted that in a May 20, 1989, diplomatic note to the U.S. Embassy in Manila, the Government of the Republic of the Philippines stated its policy of opposition of the return of Mr. Marcos to the Philippines and stated that this policy applied in the event of Mr. Marcos' death. In a May 22 note to the U.S. Embassy in Manila, the Government of the Philippines stated that it has taken action to prevent the return of the Marcos remains, by instructing all Philippine ports and aeronautical authorities not to give entry or landing clearance to vessels or aircraft bearing those remains. In a Memorandum Circular to commercial airlines and private aircraft operators dated May 26, the Philippine Government served notice of its prohibition on the entry of the Marcos remains into the Philippines. The contents of the May 22 note and the May 26 Memorandum Circular were consolidated in a revised Memorandum Circular issued by the Philippine Government on June 8. Copies of these documents have been placed in the docket for this rulemaking.

Ferdinand Marcos lived in exile in the United States from 1986 to 1989. At all times during that period, the Philippine Government refused Marcos' request to return to the Philippines, in consideration of the potential for political unrest and destabilization of the current democratic government. That concern extends to the remains of Ferdinand Marcos after his death, in that the return of his remains to the Philippines could lead to civil unrest and potentially to violence given the respective support and opposition to his former rule by various political factions in the Philippines. It is the conclusion of DOS, as stated in its letter of June 3, that return of the Marcos remains to the Philippines would be contrary to U.S. strategic and foreign policy interests and would create a danger to the aircraft and persons involved in the flight.

It is the State Department's own assessment that the concerns of the Philippine Government are well-founded. However, the DOS is also concerned for the safety of any aircraft and crew involved in the return of the Marcos remains, as well as others who might be present at the actual or expected destination. The safety of these persons, who might include U.S. citizens, in the Philippines could be threatened by civil unrest in that country if the remains of Ferdinand Marcos were returned to the Philippines.

The safety of the aircraft that carried the Marcos remains could be jeopardized as a result of the reaction to carriage of the remains. The aircraft, crew, and any passengers could be directly threatened by any civil unrest attendant on arrival of the aircraft in the Philippines, if the time and place of arrival were known in advance. Also, an aircraft on a flight to the Philippines that was prevented from landing in the Republic of the Philippines could have insufficient fuel to reach an alternate airport after a trans-Pacific flight, in that the closest suitable alternate landing field is approximately 500 to 600 nautical miles away. Fuel exhaustion would result in crash landing or ditching of the aircraft in the open ocean. For both reasons, a flight to the Philippines carrying the remains of Ferdinand Marcos, at this time, could present serious hazards to the aircraft crew and passengers, including hazards that may not be apparent to the aircraft owner or the aircrew at the time the aircraft departed the United States.

Temporary Restrictions on Flights Leaving the United States

On the basis of the above, I find that the circumstances existing in the Republic of the Philippines, including the possibility of civil unrest if the remains of former President Ferdinand Marcos are returned to that country, represent a hazard to any aircraft used for that purpose, and, accordingly, that these circumstances require immediate action by the FAA in order to maintain the safety of flight and promote the national security interests of the United States. In order to prevent operation of an aircraft for the purpose of returning the Marcos remains to the Philippines, it is necessary for the FAA to issue a special regulation prohibiting the carriage of the remains from points in U.S. territory, where the remains are now located, to the Republic of the Philippines.

Effective Date of Final Rule

Because the potential hazard to flight currently exists, immediate action is required to maintain safety of flight by prohibiting any flight which would expose the flight crew, passengers, and aircraft to that hazard. For this reason, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable

and contrary to the public interest. For the same reason, I find that good cause exists for making this rule effective immediately upon issuance.

The rule contains an expiration date of October 1, 1990, but may be extended if circumstances in effect at that time warrant.

Regulatory Evaluation

The cost of this regulation is limited to the net revenue of a single flight between the United States—specifically Hawaii—and the Republic of the Philippines. However, such a flight would not necessarily be conducted for compensation by a commercial operator, or by an operator certificated by the United States. Benefits in the form of potential prevention of injury to persons and damage to property are not quantifiable and would occur outside the United States. For these reasons, the costs and benefits of the regulation considered under DOT Regulatory Policies and Procedures are minimal, and a further regulatory evaluation will not be conducted.

Conclusion

The FAA has determined that this action is not a "major rule" under Executive Order 12291 and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 73

Aviation safety, Republic of the Philippines.

The Special Federal Aviation Regulation

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*, E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 57 to read as follows:

SFAR No. 57—Restriction on Certain Flights From the United States To the Republic of the Philippines

1. *Applicability.* This rule applies to all operations in the United States.

2. *Special flight restrictions.* No person may operate an aircraft or initiate a flight carrying the remains of Ferdinand Marcos from the Hawaiian Islands or any other point in the United States to any point in the Republic of the Philippines or to any intermediate destination on a flight the ultimate destination of which is the Republic of the Philippines.

3. *Expiration.* This special rule expires October 1, 1990.

Issued in Washington, DC on September 28, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–23287 Filed 9–28–89; 1:05 pm]

BILLING CODE 4910–13–M

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Federal Register

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Monday, October 2, 1989

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 29, 1989

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.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1-699	15.00	Jan. 1, 1989
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§§ 1.170-1.300	17.00	Apr. 1, 1988
*§§ 1.301-1.400	15.00	Apr. 1, 1989
*§§ 1.401-1.500	28.00	Apr. 1, 1989
§§ 1.501-1.640	16.00	Apr. 1, 1989
§§ 1.641-1.850	19.00	Apr. 1, 1989
§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	17.00	Apr. 1, 1989
§§ 1.1401-End	23.00	Apr. 1, 1989
2-29	20.00	Apr. 1, 1989
30-39	14.00	Apr. 1, 1989
40-49	13.00	Apr. 1, 1989
50-299	16.00	Apr. 1, 1989
*300-499	16.00	Apr. 1, 1989
500-599	7.00	Apr. 1, 1989
600-End	6.50	Apr. 1, 1989
27 Parts:		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	17.00	July 1, 1988
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	21.00	July 1, 1988
190–399	27.00	July 1, 1988
400–629	21.00	July 1, 1988
630–699	13.00	July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	23.00	July 1, 1988
52	27.00	July 1, 1988
53–60	28.00	July 1, 1988
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1988
100–149	25.00	July 1,1988
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	8.50	July 1,1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1988
101	25.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988
42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
4000–End	11.00	Oct. 1, 1988
44	20.00	Oct. 1, 1988
45 Parts:		
1–199	17.00	Oct. 1, 1988
200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	17.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
90–139	12.00	Oct. 1, 1988
140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
0–19	18.00	Oct. 1, 1988
20–39	18.00	Oct. 1, 1988
40–69	9.00	Oct. 1, 1988
70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	18.00	Oct. 1, 1988
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
1–99	13.00	Oct. 1, 1988
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
1200–End	18.00	Oct. 1, 1988
50 Parts:		
1–199	17.00	Oct. 1, 1988
200–599	13.00	Oct. 1, 1988
600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989
Individual copies	2.00	1989

[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, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, 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, 1988. 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.

CFR ISSUANCES 1989
January—July 1989 Editions and Projected October, 1989 Editions

This list sets out the CFR issuances for the January—July 1989 editions and projects the publication plans for the **October, 1989** quarter. A projected schedule that will include the **January, 1990** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1988—1989 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1989:

Title

CFR Index

1—2 (Revised as of April 1, 1989)

3 (Compilation)

4

5 Parts:
1—699
700—1199
1200—End

6 [Reserved]

7 Parts:
0—26
27—45
46—51
52 (Cover only)
53—209
210—299
300—399
400—699
700—899
900—999
1000—1059
1060—1119
1120—1199
1200—1499
1500—1899
1900—1939
1940—1949
1950—1999
2000—End

8

9 Parts:
1—199
200—End

10 Parts:
0—50
51—199
200—399 (Cover only)
400—499
500—End

11 (Cover only)

12 Parts:
1—199
200—219
220—299
300—499
500—599
600—End

13

14 Parts:
1—59
60—139
140—199
200—1199
1200—End

15 Parts:
0—299
300—799
800—End

16 Parts:
0—149
150—999
1000—End

Titles revised as of April 1, 1989:

Title

17 Parts:
1—199
200—239
240—End

18 Parts:
1—149
150—279
280—399
400—End

19 Parts:
1—199*
200—End

20 Parts:
1—399
400—499
500—End

21 Parts:
1—99
100—169
170—199
200—299
300—499
500—599
600—799
800—1299
1300—End

22 Parts:
1—299
300—End

23

24 Parts:
0—199*
200—499
500—699
700—1699*
1700—End

25

26 Parts:
1 (§§ 1.0-1—1.60)
1 (§§ 1.61—1.169)
1 (§§ 1.170—1.300)
1 (§§ 1.301—1.400)
1 (§§ 1.401—1.500)
1 (§§ 1.501—1.640)
1 (§§ 1.641—1.850)
1 (§§ 1.851—1.1000)*
1 (§§ 1.1001—1.1400)
1 (§§ 1.1401—End)
2—29
30—39
40—49
50—299
300—499
500—599
600—End

27 Parts:
1—199
200—End

Titles revised as of July 1, 1989:

Title

28*

29 Parts:
0—99*
100—499*
500—899*
900—1899*
1900—1910 (§§ 1901.1—1910.441)*
1910 (§ 1910.1000 to End)*
1911—1925
1926*
1927—End*

30 Parts:
1—199*
200—699*
700—End*

31 Parts:
0—199*
200—End*

32 Parts:
1—189*
190—399*
400—629*
630—699*
700—799*
800—End*

33 Parts:
1—199*
200—End*

34 Parts:
(Revised as of November 1, 1989)
1—299*
300—399*
400—End*

35*

36 Parts:
1—199*
200—End*

37

38 Parts:
(Revised as of September 1, 1989)
0—17*
18—End*

39

40 Parts:
1—51*
52*
53—60*
61—80
81—85*
86—99*
100—149*
150—189*
190—299*
300—399*
400—424*

425—699*
700—789*
790—End*

41 Parts:

Chs. 1—100*
Ch. 101*
Chs. 102—200*
Ch. 201—End*

Projected October 1, 1989 editions:

Title

42 Parts:
1—60
61—399
400—429
430—End

43 Parts:
1—999
1000—3999
4000—End

44

45 Parts:
1—199
200—499
500—1199
1200—End

46 Parts:
1—40
41—69
70—89
90—139
140—155
156—165
166—199
200—499
500—End

47 Parts:
0—19
20—39
40—69
70—79
80—End

48 Parts:
Ch. 1 (1—51)
Ch. 1 (52—99)
Ch. 2 (201—251)
Ch. 2 (252—299)
Chs. 3—6
Chs. 7—14
Ch. 15—End

49 Parts:
1—99
100—177
178—199
200—399
400—999
1000—1199
1200—End

50 Parts:
1—199
200—599
600—End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 2	October 17	November 1	November 16	December 1	January 2
October 3	October 18	November 2	November 17	December 4	January 2
October 4	October 19	November 3	November 20	December 4	January 2
October 5	October 20	November 6	November 20	December 4	January 3
October 6	October 23	November 6	November 20	December 5	January 4
October 10	October 25	November 9	November 24	December 11	January 8
October 11	October 26	November 13	November 27	December 11	January 9
October 12	October 27	November 13	November 27	December 11	January 10
October 13	October 30	November 13	November 27	December 12	January 11
October 16	October 31	November 15	November 30	December 15	January 16
October 17	November 1	November 16	December 1	December 18	January 16
October 18	November 2	November 17	December 4	December 18	January 16
October 19	November 3	November 20	December 4	December 18	January 17
October 20	November 6	November 20	December 4	December 19	January 18
October 23	November 7	November 22	December 7	December 22	January 22
October 24	November 8	November 24	December 8	December 26	January 22
October 25	November 9	November 24	December 11	December 26	January 23
October 26	November 13	November 27	December 11	December 26	January 24
October 27	November 13	November 27	December 11	December 26	January 25
October 30	November 14	November 29	December 14	December 29	January 29
October 31	November 15	November 30	December 15	January 2	January 29