5-13-92
Vol. 57 No. 93
Pages 20395-20626

federal register

Wednesday
May 13, 1992

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Boston, MA, and Chicago, IL, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 57 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	512-2235
Problems with public subscriptions	512-2303

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	512-2235
Problems with public single copies	512-2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	512-2235
Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 4, at 9:00 a.m.
WHERE: Office of the Federal Register.
First Floor Conference Room.
1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.
DIRECTIONS: North on 11th Street from Metro Center to corner of 11th and L Streets

BOSTON, MA

WHEN: May 27, at 9:00 a.m.
WHERE: Room 419
Barnes Federal Building
495 Summer Street
Boston, MA
RESERVATIONS: Call the Federal Information Center, 1-800-347-1997

CHICAGO, IL

WHEN: June 16; 9:00 a.m.
WHERE: Room 328
Ralph H. Metcalfe Federal Building
77 W. Jackson
Chicago, IL
RESERVATIONS: Call the Federal Information Center, 1-800-366-2998

Contents

Federal Register
Vol. 57, No. 93
Wednesday, May 13, 1992

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research Service
See Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
May, 20492

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Corn, etc., 20449
Rice, etc., 20450
Genetically engineered organisms for release into environment; permit applications, 20451

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Childhood lead poisoning intervention study; blood lead levels following environmental intervention, 20492

Coast Guard
RULES
Ports and waterways safety:
Atlantic Intracoastal Waterway, NC; safety zone, 20404
Regattas and marine parades:
International Bay City River Roar, 20403
PROPOSED RULES
Ports and waterways safety:
Narragansett Bay, Quonset Point, RI; safety zone, 20435

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 20458, 20459

Commodity Futures Trading Commission
RULES
Organization, functions, and authority delegations:
Economic Analysis Division, Director, et al.
Correction, 20572
Reports:
Large trader reports, reporting level changes, 20402

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research programs—
Water quality program, 20598

Customs Service
NOTICES
Petroleum products; approved public gauger:
Los Angeles Bunker Surveyors, Inc., 20569

Defense Department
See Defense Logistics Agency

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 20471

Economic Regulatory Administration
NOTICES
Remedial orders:
Chevron U.S.A., Inc., 20475

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Technology, educational media, and materials for individuals with disabilities program, 20618

Energy Department
See Economic Regulatory Administration
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Governors' Ethanol Coalition (Nebraska), 20474

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
Alabama, 20422
Toxic substances:
Significant new uses—
2-Chloro-N-methyl-N-substituted acetamide and mixed alkylphenol formaldehyde polymer, metal salt, 20423
PROPOSED RULES
Toxic substances:
Asbestos model accreditation plan additions and changes consideration, 20438
Significant new uses—
Alkylated diphenyl oxide, 20437
NOTICES
Hazardous waste:
Basel Convention on Control of Transboundary Movements of Hazardous Wastes and Disposal; potential implications for U.S. waste importers and exporters, 20602
Pesticide, food, and feed additive petitions:
Mancozeb, 20481
Pesticide registration, cancellation, etc.:
Britz Fertilizers, Inc., et al., 20485
Grace Sierra Crop Protection Co., 20488
Pesticides; emergency exemptions, etc.:
Fluazinam, 20490

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Transition areas
Correction, 20572

VOR Federal airways, 20401
PROPOSED RULES
Control zones, 20433
Correction, 20572

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 20571

Federal Election Commission
PROPOSED RULES
Administrative practice and procedure:
Administrative regulations; new subchapter added, 20430

Federal Energy Regulatory Commission
NOTICES
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Arkansas Oil and Gas Commission, 20475
Oklahoma Corporation Commission, 20475
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 20476
Arkla Energy Resources, 20476
Carnegie Natural Gas Co., 20477
Equitrans, Inc., 20477
Florida Gas Transmission Co., 20478, 20479
Great Lakes Gas Transmission Limited Partnership, 20479
Northern Natural Gas Co., 20479
Northwest Pipeline Corp., 20480
Pennzoil Exploration & Production Co., 20480
Texas Eastern Transmission Corp., 20480

Federal Reserve System
RULES
Expanded administrative enforcement authority, U.S. branches and agencies of foreign banks (Regulations B, C, E, M, Z, and AA):
Technical amendments, 20399
NOTICES
Applications, hearings, determinations, etc.:
IDC Bancorp., Inc., 20491
Pahlke, Dale Erney, et al., 20491

Financial Management Service
See Fiscal Service

Fiscal Service
PROPOSED RULES
Book-entry Treasury bonds, notes, and bills held in Treasury/Reserve Automated Debt Entry System (TRADES)
Correction, 20572

Fish and Wildlife Service
RULES
Endangered and threatened species:
Chamaesyce halemanui, etc. (six plants from Kokee Region, Kauai, HI), 20580
Hawaiian red-flowered geranium, 20589
Stenogyne kanehoana, 20592
PROPOSED RULES
Endangered Species Convention:
Appendices; amendments, 20443

Food and Drug Administration
PROPOSED RULES
Human drugs:
Oral health care products (OTC); tentative final monograph, 20434
NOTICES
Animal drugs, feeds, and related products:
Clinical investigator and monitor; guideline availability, 20495
Food additive petitions:
Diversey Corp., 20494
Mitsubishi Kasei Corp. et al., 20495
Medical devices:
Patent extension; regulatory review period determinations—
Meta II, Model 1204 Cardiac Pacing System, 20495

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
Ontonagon County, MI, 20451
Skagit County, WA, 20455
Committees; establishment, renewal, termination, etc.:
Exxon Valdez Oil Spill Public Advisory Group, 20455
Environmental statements; availability, etc.:
Eldorado National Forest et al., CA, 20456
Grand Mesa, Uncompahgre, and Gunnison National Forests, CO, 20457
Lincoln National Forest, NM, 20458

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration
See Centers for Disease Control
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Community and migrant health center activities, 20496
HIV/AIDS centered education and prevention; public housing primary health care program and minority community health coalition demonstration program, 20498
Homeless individuals; primary health and substance abuse services, 20497

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Housing for elderly and people with disabilities—
Service coordinators; regional hiring lotteries; correction, 20501
Public and Indian housing—
Public housing resident management program; correction, 20572

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
Campo Indian Reservation, CA, 20626
Tulalip Indian Reservation, WA, 20576

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Brass sheet and strip from—
Canada, 20460
Forged steel crankshafts from Germany, 20463
Countervailing duties:
Portable seismographs from Canada, 20464
Stainless steel cooking ware from Taiwan, 20468

International Trade Commission
NOTICES
Import investigations:
Carrier materials bearing ink compositions to be used in dry adhesive-free thermal transfer process and signfaces made by such process, 20503
Translucent ceramic orthodontic brackets, 20504, 20505
Woodworking accessories, 20504, 20505

Interstate Commerce Commission
PROPOSED RULES
Bills of lading, 20442
Rail carriers:
Exemption of demurrage from regulation, 20442

Justice Department
NOTICES
Agency information collection activities under OMB review, 20505

Land Management Bureau
NOTICES
Alaska Native claims selection:
Akhiok-Kaguyak, Inc., 20502
Aleut Corp., 20502
Closure of public lands:
California, 20502
Realty actions; sales, leases, etc.:
New Mexico, 20503
Recreation management restrictions, etc.:
Owyhee Resource Area, ID; competitive motorized, nonmotorized, and other recreation events involving more than 15 persons, 20503

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 20571

Minority Business Development Agency
NOTICES
Business development centers, Los Angeles, CA, clients; waiver of cost-share and written approval requirements, 20468

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Thorjussen, Nils M., 20506

National Archives and Records Administration
NOTICES
Meetings:
Presidential Libraries Advisory Committee, 20506

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institute of Standards and Technology
NOTICES
Meetings:
Advanced Technology Visiting Committee, 20470
Computer System Security and Privacy Advisory Board, 20469
Malcolm Baldrige National Quality Awards—
Panel of Judges, 20470

National Institutes of Health
NOTICES
Meetings:
Human Genome Research National Advisory Council, 20500
National Heart, Lung, and Blood Institute, 20501
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Recombinant pseudomonas exotoxin, 20501

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
South Carolina Coastal Council et al., 20470

Nuclear Regulatory Commission
PROPOSED RULES
National third-party industrial radiographer radiation safety certification program development; workshop, 20430
NOTICES
Meetings:
Nuclear Waste and Reactor Safeguards Advisory Committees, 20507
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 20507
Uranium mill facilities; byproduct material in tailings impoundments and mill feed materials other than natural ores, position and guidance, 20525
Applications, hearings, determinations, etc.:
Entergy Operations, Inc., 20533
Ketchikan General Hospital, 20535
Power Authority of State of New York, 20536
Virginia Electric & Power Co., 20537

Postal Rate Commission
RULES
Practice and procedure rules:
Domestic mail classification and rate schedules; postal rate and fee changes; and 125-piece walk-sequence discount, 20409

Postal Service
RULES
Domestic Mail Manual:
Nonidentical-weight pieces mailings paid by precanceled or meter stamps; documentation requirements, 20405

Presidential Documents
PROCLAMATIONS
Special observances:
Defense Transportation Day and Defense Transportation Week, National (Proc. 6434), 20397
Trauma Awareness Month, National (Proc. 6433), 20395

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration
See Centers for Disease Control
See Food and Drug Administration

See Health Resources and Services Administration
See National Institutes of Health

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous Materials Transportation Uniform Safety Act of 1990; implementation—
Program procedures; preemption standard definition, etc., 20424

Secret Service
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 20570

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 20538
Chicago Board Options Exchange, Inc., 20539
Depository Trust Co., 20541
New York Stock Exchange, Inc., 20543, 20544
Philadelphia Stock Exchange Inc., 20546
Applications, hearings, determinations, etc.:
BMC Fund, Inc., et al., 20550
First Variable Life Insurance Co. et al., 20548
Merrill Lynch Ready Assets Trust et al., 20553
National Value Fund, Inc., 20557
Parkway Cash Fund, Inc., 20557
Parkway Tax-Free Reserve Fund, Inc., 20558

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration

Treasury Department
See Customs Service
See Fiscal Service
See Secret Service
NOTICES
Agency information collection activities under OMB review, 20559–20569

Separate Parts In This Issue

Part II
Department of the Interior, Bureau of Indian Affairs, 20576

Part III
Department of the Interior, Fish and Wildlife Service, 20580

Part IV
Department of Agriculture, Cooperative State Research Service, 20598

Part V
Environmental Protection Agency, 20602

Part VI
Department of Education, 20618

Part VII
Department of the Interior, Bureau of Indian Affairs, 20626

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
6433 20395
6434 20397

10 CFR
Proposed Rules:
34 20430

11 CFR
Proposed Rules:
200 20430

12 CFR
202 20399
203 20399
205 20399
213 20399
226 20399
227 20399

14 CFR
71 (2 documents) 20401, 20572
Proposed Rules:
71 (2 documents) 20433, 20572

17 CFR
15 20402
140 20572

21 CFR
Proposed Rules:
356 20434

31 CFR
Proposed Rules:
357 20572

33 CFR
100 20403
165 20404
Proposed Rules:
165 20435

39 CFR
111 20405
3001 20409

40 CFR
271 20422
721 20423
Proposed Rules:
721 20437
763 20438

49 CFR
107 20424
Proposed Rules:
Ch. X 20442
1035 20442

50 CFR
17 (3 documents) 20580–20592
Proposed Rules:
23 20443

Federal Register
Vol. 57, No. 93
Wednesday, May 13, 1992

Presidential Documents

Title 3—

The President

Proclamation 6433 of May 11, 1992

National Trauma Awareness Month, 1992

By the President of the United States of America

A Proclamation

Each year traumatic injury strikes almost one in four Americans, tragically ending the lives of some 150,000 people and afflicting millions more with temporary or permanent disabilities. This devastating loss of human life and potential is all the more regrettable because it is often preventable. In most instances, traumatic injury can be avoided; and when trauma does strike, its impact on individuals can be greatly reduced through proper treatment and rehabilitation.

While each of us is a potential trauma victim, young people are particularly vulnerable. The Department of Health and Human Services reports that traumatic injuries cause more childhood deaths than all diseases combined and account for 80 percent of all deaths among adolescents. Among all age groups, young adults who are between 25 and 44 years old account for the highest number of fatal traumatic injuries—some 50,000 deaths annually.

The economic costs of traumatic injury, including health care expenses and lost productivity, total in the tens of billions of dollars each year. We cannot, however, even begin to measure the sum of personal pain and suffering that are experienced by victims and their families.

Fortunately, the threat of traumatic injury can be reduced significantly when we use common sense and apply well-established safety precautions. We have, for example, witnessed an encouraging decline in deaths due to motor vehicle collisions—the leading cause of fatal trauma—since Americans began to increase their use of safety belts and to lower their intake of alcohol. Our success in reducing fatal motor vehicle collisions is but one indication of how much we have learned about preventing traumatic injuries.

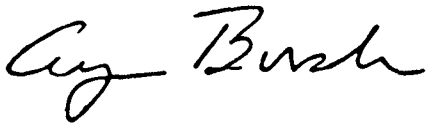
We have also learned that, when serious traumatic injuries do occur, rapid transport, prompt treatment, and early rehabilitation of the victim provide the best means of minimizing physical, emotional, and financial costs. Thus, our Nation is indebted to the thousands of professionals and volunteers who serve on the front lines of trauma care: the emergency medical personnel who stand ready to answer calls for assistance at all hours of the day and night; the rehabilitation specialists who work patiently with trauma victims so that they can recover as quickly and as fully as possible; and the physicians and scientists who are working to improve related therapies and technologies.

Our national commitment to overcoming traumatic injury has borne fruit. Further progress, of course, will require the continuing efforts of men and women in many fields—including health care, education, government, transportation, law, and engineering. By combining existing knowledge and proven health and safety measures with promising new developments in research, we can more successfully treat and prevent traumatic injury.

The Congress, by Public Law 102-208, has designated May 1992 as "National Trauma Awareness Month" and has requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of May 1992 as National Trauma Awareness Month. I urge all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of May, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 92-11451
Filed 5-11-92; 4:26 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6434 of May 11, 1992

National Defense Transportation Day and National Transportation Week, 1992

By the President of the United States of America

A Proclamation

Transportation is an essential part of America—its history, its culture, its security, and its progress. Our Nation's transportation system has not only enabled our citizens to enjoy unparalleled personal mobility but also encouraged the growth of industry and commerce, thereby strengthening our American heritage of freedom and prosperity.

The United States has always been a Nation on the move. From the sea lanes that served coastal towns and cities to the wagon trails and railroad lines forged across the frontier—our transportation network made possible the settlement and development of America.

Amidst the strife of more recent wars, transportation has carried our armed forces to far-flung regions of the world and provided them with the materiel needed to defend our national interests. In each instance, millions of civilians in the transportation industry have assisted in the mobilization of our troops despite tremendous logistical challenges. Thus, transportation has played a key role in America's military preparedness, as well as in its social and economic development.

Even as we note the high levels of mobility and security that we enjoy today, we also recognize the need for continuing investments and improvements in American transportation. Efforts to strengthen our transportation infrastructure will create jobs and economic growth while enhancing the safety and efficiency of our roads, air routes, public transit systems, and waterways. This is the mandate set forth by the Intermodal Surface Transportation Efficiency Act of 1991, which I signed into law last year, and our commitment to its goals and to other objectives of our National Transportation Policy will help move us toward a bright future.

In recognition of the importance of transportation and of the millions of Americans who work to meet our transportation needs, the Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 160), has requested that the third Friday in May of each year be designated as "National Defense Transportation Day" and, by joint resolution approved May 14, 1962 (36 U.S.C. 166), that the week in which that Friday falls be proclaimed "National Transportation Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Friday, May 15, 1992, as National Defense Transportation Day and the week of May 10 through May 16, 1992, as National Transportation Week. I urge all Americans to observe these occasions with appropriate ceremonies and activities that will give due recognition to the individuals and organizations that build, operate, safeguard, and maintain our transportation system. I ask that special recognition be extended to the men and women of the United States Department of Transportation, which celebrates its 25th anniversary this year.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of May, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 92-11452
Filed 5-11-92; 4:29 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 93
Wednesday, May 13, 1992

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.

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 203, 205, 213, 226, and 227

[Regulations B, C, E, M, Z, AA; Docket No. R-0758]

Equal Credit Opportunity, Home Mortgage Disclosure, Electronic Fund Transfers, Consumer Leasing, Truth in Lending, and Unfair or Deceptive Acts or Practices

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendments.

SUMMARY: The Board is making technical amendments to its consumer regulations to implement the Foreign Bank Supervision Enhancement Act of 1991, subtitle A of title II of the Federal Deposit Insurance Corporation Improvement Act of 1991, which designated the administrative enforcement authority of federal agencies over United States branches and agencies of foreign banks, commercial lending company subsidiaries of foreign banks, and corporations organized or operating under sections 25 and 25A of the Federal Reserve Act.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202-452-3667; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at 202-452-3544.

SUPPLEMENTARY INFORMATION: Title II, subtitle A, of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Public Law No. 102-242, 105 Stat. 2236 (1991)) designates the supervisory responsibilities of banking regulatory agencies over U.S. branches, agencies, and commercial lending company subsidiaries of foreign banks. Section 212 of the FDICIA makes conforming changes to the administrative enforcement authority of federal agencies with regard to eight consumer protection statutes. Seven of the Board's regulations implement these consumer protection statutes as they relate to these entities and to Edge and agreement corporations, that is, corporations operating under section 25 (12 U.S.C. 601 *et seq.*) and 25A (12 U.S.C. 611 *et seq.* of the Federal Reserve Act and engaged in international banking or financial activities. On January 29, 1992, the Board requested comment on proposed amendments to Regulation CC (Expedited Funds Availability), which included expanded administrative enforcement authority over U.S. branches and agencies of foreign banks (57 FR 3365).

The Board is now amending the following six regulations to implement these statutory changes. Regulations B (Equal Credit Opportunity), C (Home Mortgage Disclosure), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and AA (Unfair or Deceptive Acts or Practices) contain references to the various federal supervisory agencies responsible for the enforcement of the regulations. Enforcement responsibility for U.S. branches and agencies of foreign banks is allocated among the federal agencies according to which agency is the primary federal supervisor of the foreign bank's branch or agency. Federal branches and agencies regulated by the Office of the Comptroller of the Currency and insured state branches regulated by the Federal Deposit Insurance Corporation are presently subject to enforcement authority by these agencies in regard to the requirements of these acts. These amendments to the regulations affirm this authority. Enforcement responsibility for commercial lending company subsidiaries of foreign banks and for Edge and agreement corporations is given to the Board, which is the appropriate federal banking agency for these entities.

Amendments are hereby made to the Board's Regulations B, C, M, Z, and AA to designate administrative enforcement authority over U.S. branches, agencies, and commercial lending subsidiaries of foreign banks and Edge and agreement corporations. Appendix B of Regulation E, included in Board publications, had been omitted from the Code of Federal Regulations and is now published in its entirety.

List of Subjects

12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, sex discrimination.

12 CFR Part 203

Banks, banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 205

Consumer protection, Electronic funds transfers, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Parts 213 and 226

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 227

Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Intergovernmental relations, Trade practices.

For the reasons set forth in the preamble, 12 CFR parts 202, 203, 205, 213, 226 and 227 are amended to read as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1691f.

2. Part 202 is amended by revising the first four paragraphs and the first three center headings of appendix A to read as follows:

Appendix A to Part 202—Federal Enforcement Agencies

The following list indicates the federal agencies that enforce Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency. Terms that are not defined in the Federal Deposit

Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National banks and federal branches and federal agencies of foreign banks

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act

Federal Reserve Bank serving the district in which the institution is located.

Nonmember insured banks and insured state branches of foreign banks

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

* * * * *

PART 203—HOME MORTGAGE DISCLOSURE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Part 203 is amended by revising the introductory text and paragraphs A, B and C under paragraph VI of appendix A to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

VI. Federal Supervisory Agencies

Send your loan/application register and direct any questions to the office of your federal supervisory agency as specified below. If you are the nondepository subsidiary of a bank, savings association, or credit union, send the register to the supervisory agency for your parent institution. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

A. *National banks and their subsidiaries and federal branches and federal agencies of foreign banks.* District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

B. *State member banks of the Federal Reserve System, their subsidiaries, subsidiaries of bank holding companies, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.* Federal Reserve Bank serving the district in which the state member bank is located; for institutions other than state member banks, the Federal Reserve Bank specified by the Board of Governors.

C. *Nonmember insured banks (except for federal savings banks) and their subsidiaries and insured state branches of foreign banks.* Regional Director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

* * * * *

PART 205—ELECTRONIC FUND TRANSFERS

1. The authority citation for part 205 continues to read as follows:

Authority: Public Law 95–630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. Appendix B to part 205 is added to read as follows:

Appendix B to Part 205—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation E for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National banks, and federal branches and federal agencies of foreign banks

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act

Federal Reserve Bank serving the district in which the institution is located.

Non-member insured banks and insured state branches of foreign banks

Federal Deposit Insurance Corporation regional director for the region in which the institution is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal credit unions

Division of Consumer Affairs, National Credit Union Administration, 2025 M Street, NW., Washington DC 20456.

Air carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590.

Brokers and dealers

Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

Retail, department stores, consumer finance companies, certain other financial institutions, and all nonbank debit card issuers

Federal Trade Commission, Electronic Fund Transfers, Washington DC 20580.

PART 213—CONSUMER LEASING

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604.

2. Part 213 is amended by revising the first four paragraphs of appendix D to read as follows:

Appendix D to Part 213—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation M for particular classes of business. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National banks and federal branches and federal agencies of foreign banks: District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act: Federal Reserve Bank serving the district in which the institution is located.

Nonmember insured banks and insured state branches of foreign banks: Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

* * * * *

PART 226—TRUTH IN LENDING

1. The authority citation for part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and 1637(d)(5); Sec. 1204(c), Competitive Equality Banking Act, 12 U.S.C. 3806.

2. Part 226 is amended by revising the first four paragraphs and the first three center headings of appendix I to read as follows:

Appendix I—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation Z for particular classes of businesses. Any questions

concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National banks and federal branches and federal agencies of foreign banks

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act

Federal Reserve Bank serving the district in which the institution is located.

Non-member insured banks and insured state branches of foreign banks

Federal Deposit Insurance Corporation Regional director for the region in which the institution is located.

* * * * *

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

1. The authority citation for part 227, Subpart B—Credit Practices Rule continues to read as follows:

Authority: 15 U.S.C. 57a.

2. In § 227.11, paragraphs (c)(1) through (3) are revised and a new paragraph (d) is added to read as follows:

§ 227.11 Authority, purpose, and scope.

* * * * *

(c) * * *

(1) The Comptroller of the Currency, in the case of national banks, banks operating under the code of laws for the District of Columbia, and federal branches and federal agencies of foreign banks;

(2) The Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal Reserve System (other than banks referred to in paragraph (c)(1) of this section), branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(3) The Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section), and insured state branches of foreign banks.

(d) The terms used in paragraph (c) of this section that are not defined in the Federal Trade Commission Act or in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

Board of Governors of the Federal Reserve System, May 7, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-11198 Filed 5-12-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANM-13]

Amendment to VOR Federal Airway V-287; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment.

SUMMARY: This action amends the description of Federal Airway V-287 located in the State of Washington, which was published in the **Federal Register** on October 10, 1991 (56 FR 51166), Airspace Docket No. 91-ANM-15. During the recent flight check of V-287, the Paine, WA (PAE) 254°T (234°M) radial was changed to the Paine 256°T (236°M) radial. This action amends the description of V-287 by changing the Paine 254° radial to the Paine 256° radial.

EFFECTIVE DATE: 0901 u.t.c., June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3075.

SUPPLEMENTARY INFORMATION:

History

A final rule was published in the **Federal Register** on October 10, 1991 (56 FR 51166), with an effective date of November 14, 1991, that altered the description of Federal Airway V-287 located in the State of Washington. This alteration was due to the relocation of PAE VORTAC. During the recent flight check of V-287, the PAE 254° radial was changed to the PAE 256° radial. This action reflects that change. The airspace designation for V-287 is published in § 71.123 of Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designation for V-287 will be published subsequently in § 71.123 of the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the description of V-287 by changing the PAE 254° radial to the PAE 256° radial. Accordingly, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

Conclusion

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, Incorporated by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-287 [Revised]

From Fort Jones, CA, via INT Fort Jones 041° and Medford, OR, 157° radials; Medford; North Bend, OR; Newberg, OR; Battle Ground, WA; 20 miles, 51 miles, 45 MSL, Olympia, WA; INT Olympia 010° and Paine, WA, 256° radial; Paine; INT Paine 329° and Bellingham, WA, 191° radials; to Billingham.

* * * * *

Issued in Washington, DC, on May 7, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-11186 Filed 5-12-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

Changes in Reporting Levels for Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending, 17 CFR part 15, of its regulations to raise the reporting levels at which futures commission merchants (FCMs), clearing members, foreign brokers and traders must file large trader reports in 17 commodities. The Commission is raising these reporting levels to reduce the number of reports that these entities must file with the Commission and to better coordinate Commission and exchange reporting levels. These changes will reduce both the reporting burdens on these reporting entities and the processing workload of the Commission.

EFFECTIVE DATE: June 12, 1992.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581, Telephone (202) 254-3310.

SUPPLEMENTARY INFORMATION:

I. Background

Reporting levels are set in futures to ensure that the Commission receives adequate information to carry out its market surveillance programs. These are designed to detect and prevent market congestion and price manipulation and to enforce speculative position limits. In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures markets, use of the markets by foreign participants and other matters of public concern.

Generally, parts 17 and 18 of the regulations require reports from members of contracts markets, FCMs or foreign brokers ("firms") and traders, respectively, when a trader holds a "reportable position," *i.e.*, any open position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations.[1]

The Commission periodically reviews information concerning trading volume, open interest and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage is adequate for effective market surveillance. In this regard, the Commission also is mindful of the reporting burden associated with these requirements and reviews them with an eye to ameliorating that burden to the extent compatible with adequate market coverage. After the most recent review of reporting levels, the Commission proposed to raise reporting levels in 19 different commodities, 57 FR 6485 (February 25, 1992).

In its notice of proposed rule making, the Commission also made mention of the fact that most exchanges maintain large trader reporting systems that are similar in most respects to that operated by the Commission. The Commission noted that although the data collected by the exchanges are duplicative of those collected by the Commission, the respective systems differ somewhat in terms of levels that are set to trigger reporting from firms and that these differences apparently increase reporting burdens since firms must track when and to whom specific reports are due. In this respect the Commission questioned whether it would be less burdensome for reporting firms if Commission reporting levels remained at, or were lowered to, levels set by an exchange even though Commission staff have otherwise determined that levels could be increased. The exchanges, in particular, were invited to address this issue.

Of the three comment letters received by the Commission concerning its proposed rulemaking, one was from a futures exchange. All three commenters generally applauded the Commission's efforts to reduce reporting burdens. Two remarked on the need for the Commission and the exchanges to harmonize their reporting systems. One commentor, an exchange, reported that member firms surveyed by the exchange asserted "* * * that it would be more efficient to maintain a single reportable level file, even at the exchanges lower reporting levels, than it would be to support parallel reportable level files, one at the reporting level of the exchanges and one at the CFTC's higher reportable level." Moreover this commentor opined that "the Commission should defer to the exchanges judgment as to the appropriate reporting level because sections 5 and 5a of the Commodity Exchange Act * * * place the responsibility for market surveillance and financial surveillance squarely on the shoulders of the exchange." Separately, Commission staff met with representatives of five exchanges to discuss achieving greater uniformity in reporting levels.[2]

Generally the exchange's surveillance staff agreed that they would recommend changes to their appropriate committees to set exchange reporting levels at the Commission's proposed levels in 14 of the 19 commodities affected by the rulemaking. With respect to three of the remaining five commodities, exchange staff recommended smaller increases in reporting levels than proposed by the Commission and stated that they planned to conform their reporting levels to these more modest increases. If exchange rule changes were adopted, exchange reporting levels for these three markets would be as follows: 150 contracts for 90-day U.S. Treasury Bills; 100 contracts for One-Month Libor; and 50 contracts for the Nikkei Index. Exchange staff were reluctant to recommend increases from their current level in S&P 500 futures, and any increase above current Commission levels in U.S. Treasury bond futures.[3] In

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

[2] Exchanges participating in the meeting included the Chicago Board of Trade (CBT), the Chicago Mercantile Exchange (CME), the New York Mercantile Exchange (NYME), the Commodity Exchange, Inc. (COMEX), and the Coffee, Sugar and Cocoa Exchange (CSCE).

[3] The current exchange reporting level in S&P 500 futures is 100 contracts, and the current Commission level for U.S. Treasury bond futures is 500 contracts.

Continued

each instance, the exchanges' surveillance staffs expressed concern that the Commission's proposed level may not provide adequate data for their needs and/or for special reports on market performance.

In its notice of proposed rulemaking, the Commission estimated that adoption of the proposed amendments to its reporting levels would result in a decrease of about 18 percent in the number of daily position reports filed by firms and a proportionate decrease in the number of form 102's filed by firms and form 40's filed by traders. If the proposed reporting levels in the three commodities noted above are revised as recommended by exchange representatives and the proposal to raise reporting levels in the S&P 500 and U.S. Treasury bond futures is withdrawn, the Commission estimates that reporting burdens will still decrease by about 15 percent. This smaller reduction in burden that results from adopting revised levels, however, may be more than offset by achieving greater uniformity between exchange and Commission reporting levels. In view of this, the Commission is withdrawing its proposal to increase reporting levels in S&P 500 and U.S. Treasury bond futures, and is revising its reporting levels in the remaining 17 subject commodities in a way to maximize their harmony with those of the exchanges.

II. Related Matters

A. The Regulatory Flexibility Act

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

In that statement, the Commission concluded that large traders and futures commission merchants are not considered to be small entities for purposes of the RFA. In this regard, the amendments to reporting requirements fall mainly upon futures commission merchants. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.* large positions. Pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certified in its issuance of proposed rulemaking that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission invited comments from any firm which believed that these rules would have a significant economic impact upon its operations. No comments were received.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on March 30, 1991 and assigned OMB control number 3038–0009 to the rule. The burden associated with this entire collection, including this amended rule, is as follows:

Average Burden Hours Per Response—0.16
Number of Respondents—3,721
Frequency of Response—21.54

Persons wishing to comment on the information which would be required by these rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7304. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–3310.

List of Subjects in 17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1990), the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

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

2. Section 15.03 is revised to read as follows:

§ 15.03 Quantities fixed for reporting.

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

Commodity	Quantity
Wheat (bushels)	500,000
Corn (bushels)	750,000
Soybeans (bushels)	500,000
Oats (bushels)	300,000
Cotton (bales)	5,000
Soybean oil (contracts)	175
Soybean meal (contracts)	175
Live cattle (contracts)	100
Feeder cattle (contracts)	50
Hogs (contracts)	50
Sugar No. 11 (contracts)	300
Sugar No. 14 (contracts)	100
Cocoa (contracts)	50
Coffee (contracts)	50
Copper (contracts)	100
Gold (contracts)	200
Silver bullion (contracts)	150
Platinum (contracts)	50
No. 2 heating oil (contracts)	175
Crude oil, sweet (contracts)	300
Unleaded gasoline (contracts)	150
Long-term U.S. Treasury bonds (contracts)	500
GNMA (contracts)	100
Three-month (13 week) U.S. Treasury bills (contracts)	150
Long-term U.S. Treasury notes (contracts)	500
Medium-term U.S. Treasury notes (contracts)	300
Short-term U.S. Treasury notes (contracts)	200
Three-month Eurodollar time deposit rates (contracts)	850
Thirty-Day Interest Rates (contracts)	100
One-Month Libor Rates (contracts)	100
Foreign currencies (contracts)	200
U.S. Dollar Index (contracts)	50
Standard and Poor's 500 stock price index (contracts)	300
New York Stock Exchange composite index (contracts)	50
Amex major market index-maxi (contracts)	100
Nikkei stock index (contracts)	50
Municipal bonds (contracts)	100
Value line average index (contracts)	50
All other commodities (contracts)	25

Issued in Washington, DC, this 6th day of May 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–11117 Filed 5–12–92; 8:45 am]

BILLING CODE 6355-01-M

The Commission proposed raising reporting levels in S&P 500 futures from 300 to 500 contracts, and in U.S. Treasury bond futures from 500 to 750 contracts.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-92-02]

Special Local Regulations: International Bay City River Roar, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the International Bay City River Roar. This event will be held on the Saginaw River on the 18th, 19th, 20th, and 21st of June 1992, with an alternate date of June 22, 1992 if the weather is inclement on June 21, 1992. This event will have an estimated 70 hydroplane boats racing a closed course race on the Saginaw River which could pose hazards to navigation in the area. Special Local Regulations are necessary to ensure the safety of life and property on portions of the Saginaw River during this event.

EFFECTIVE DATE: These regulations become effective on June 18, 1992 and terminate on June 22, 1992.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Aids to Navigation & Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until April 9, 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Aids to Navigation & Waterways Management Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Bay City River Roar will be conducted on the Saginaw River between the Liberty Bridge and the Veterans Memorial Bridge on the 18th, 19th, 20th and 21st of June 1992. This event will have an estimated 70 hydroplanes which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Saginaw River, MI.).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

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.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35-T0902 to read as follows:

§ 100.35-T0902 International Bay City River Roar, Saginaw River, Bay City, MI.

(a) *Regulated Area.* That portion of the Saginaw River from the Liberty Bridge on the north to the Veterans Memorial Bridge on the south.

(b) *Special Local Regulations.* (1) The Coast Guard will be regulating vessel navigation and anchorage by all vessel traffic in the above area from 1 p.m. (e.d.s.t.) until 4 p.m. (e.d.s.t.) on 18 June 1992, from 9:30 a.m. (e.d.s.t.) until 4 p.m. (e.d.s.t.) on 19 June 1992, from 9 a.m. (e.d.s.t.) until 5:30 p.m. (e.d.s.t.) on 20 June 1992, and from 9 a.m. (e.d.s.t.) until 4:30 p.m. (e.d.s.t.) on 21 June 1992. When determined appropriate by the Coast Guard Patrol Commander, vessel traffic will periodically be permitted to transit the regulated area between race heats and during breaks. Commercial vessel traffic will have priority passage.

(2) If the weather on 12 June 1992 is inclement, the river closure will be postponed until 9 a.m. (e.d.s.t.) to 4:30 p.m. (e.d.s.t.) on 22 June 1992. If postponed, notice will be given on 21 June 1992 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: April 23, 1992.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 92-10560 Filed 5-12-92; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[COTP Wilmington, NC Regulation 92-002]

Safety Zone Regulations: Atlantic Intracoastal Waterway, Sneads Ferry, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Atlantic Intracoastal Waterway between Craig Point and Mile Hammock Bay Daybeacon 4 in Sneads Ferry, North Carolina. The safety zone is needed to protection people, vessels, and property from movement of military heavy equipment across the Atlantic Intracoastal Waterway during Joint Military Exercise. Entry into this zone is prohibited unless authorized by the Captain of the Port, Wilmington, North Carolina, or his designated representative.

EFFECTIVE DATE: This regulation is effective from 6 a.m. to 6 p.m. on May 12, 1992, and then 6 a.m. on May 14, 1992 to 6 p.m. on May 18, 1992 unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: LCDR L.R. HAMMOND, USCG, c/o U.S. Coast Guard Captain of the Port, suite 500, 272 N. Front Street, Wilmington, North Carolina 28401-3907, Phone: (919) 343-4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would not have been possible due to the classification of the military operation.

Drafting Information

The drafters of this regulation are LCDR L.R. Hammond, project officer for the Captain of the Port, Wilmington, North Carolina, and LT M.L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Joint military commands will be conducting an exercise in the Atlantic Intracoastal Waterway between Craig Point and Mile Hammock Bay Daybeacon 4 in Sneads Ferry, North Carolina. From 6 a.m. to 6 p.m. on May 12, 1992 and from 6 a.m. May 14, 1992 to 6 p.m. May 18, 1992, a number of military watercraft and amphibious vehicles will be transiting from Wards Channel across the Atlantic Intracoastal Waterway and through Mile Hammock Bay. Traffic of military equipment will not occur on May 13, 1992. The exercise is being conducted to test and train United States military forces readiness capability. A safety zone has been established to protect people, vessels, and property from the hazards involved in transporting large numbers of military equipment across a narrow waterway.

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. In part 165, a new temporary § 165.T05-12 is added, to read as follows:

§ 165.T05.-12 Safety Zone: Atlantic Intracoastal Waterway between Craig Point and Mile Hammock Bay Daybeacon 4 in Sneads Ferry, North Carolina.

(a) *Location.* The following area is a safety zone:

(1) The waters of the Atlantic Intracoastal Waterway within the following boundaries, with a line beginning at:

34°32'52" North, 077°19'36" West, then south to
34°32'49" North, 077°19'36" West, then east northeast to
34°32'44" North, 077°19'14" West, then north to
34°32'46" North, 077°19'14" West, then to the beginning.

(2) The safety zone boundary can be described as follows: starting at the north bank of Atlantic Intracoastal Waterway by Mile Hammock Bay Daybeacon 4 across the Atlantic Intracoastal Waterway to the south bank, then along the southern bank to a point across from Craig Point, then back across the Atlantic Intracoastal Waterway to Craig Point, and then along the northern bank to Mile Hammock Bay Daybeacon 4.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Wilmington, North Carolina to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina can be contacted at telephone number (919) 343-4895.

(2) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channels 16 and 81.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area with out Coast Guard escort between 6 a.m. and 6 p.m. on the designated dates. Between the hours of 6 p.m. and 6 a.m. on the designated dates, persons and vessels are allowed in the regulated area, however extreme caution should be used.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of the section, but may not block a navigable channel.

(d) *Effective Date.* This regulation is effective from 6 a.m. to 6 p.m. on May 12, 1992, and then from 6 a.m. on May 14, 1992 to 6 p.m. on May 18, 1992 unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

Dated: April 21, 1992.

C.F. Eisenbeis,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 92-11180 Filed 5-12-92; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Mailings of Nonidentical-Weight Pieces Paid by Precanceled or Meter Stamps; Documentation Requirements

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule adds Domestic Mail Manual (DMM) sections 143.134 through 143.137, and 144.114 through 144.147, to specify, generally, that if precanceled or meter stamps are affixed to mailpieces to represent an amount

other than the full and correct postage, or are used in bulk or discount mailings of nonidentical-weight pieces, or are used in mailings where pieces qualify for different discounts or rates, the mailer will be required to provide documentation that describes the mailing, the various postage groups, and the additional postage due. These requirements are necessary to allow the Postal Service to verify correct preparation and postage payment, as appropriate for the class and rate claimed, by comparison of the mail and the accompanying documentation. In practice, this will affect only mailings not already required to be accompanied by documentation under existing regulations that apply to the rate claimed or the particular postage payment system used.

EFFECTIVE DATE: The interim rule became effective March 9, 1992. The final rule is effective May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268-5199.

SUPPLEMENTARY INFORMATION: Three parties submitted comments on the proposed rule published in the **Federal Register** issue of February 26, 1992 (57 FR 6557).

Two commenters noted that, "if literally interpreted, [the interim rule] could lead to problems in the acceptance of third-class parcels," referring to the current provisions of 661.221d, DMM, which allow mailers of nonidentical-weight third-class parcels to affix postage to each piece to cover the per-piece charge and pay the per-pound charge through an advance deposit account. (Postage for the former is verified by observation, for the latter by weight; no documentation is currently required.) The commenter is concerned that these provisions would be conflicted or inhibited by the interim rule. Any impact on section 661.221d, DMM, was unintentional; the final rule is amended to ensure its provisions are not adversely affected by this rulemaking.

The third party submitted several individual comments all focusing on the impact of the interim rule on meter mailers. A general concern was "increased reporting requirements * * * for full rate mailings and * * * [when] mailpieces bear postage based on weight." The commenter added that there appears to be no restriction on the applicability of the interim rule and that it appears to affect "any metered mailing, including small full rate mailings and collection mail." In the supplementary information accompanying the interim rule, the Postal Service attempted to set that rule in context so that customers would understand the Postal Service's need for a "road map" of a mailing that was either not uniform in content and postage payment or not susceptible to verification by weight or direct observation. The intent of the interim rule was not to require documentation when these methods of verification are viable or when they would not be improved upon by such documentation. However, since comments indicate this intent was poorly conveyed, the final rule is amended—for both precanceled stamp and meter mailings—to exclude instances in which the full and exact postage is affixed to pieces in a mailing for which no discount is claimed.

The commenter also noted that existing software does not allow for the weight of a mailpiece and, as a result, modifications will be needed to produce documentation which details the number of pieces in different weight increments when necessary. Further, the commenter states that some mailers do not know the weight of a mailpiece in advance, especially when it may be composed of varying contents, and that their systems (which produce documentation in advance) cannot foresee this factor and incorporate it in the necessary documentation.

The Postal Service recognizes the consequences of the interim rule on mailer software and systems, but finds them to be justifiable and necessary if the documentation is to achieve the intended purposes of completely describing the mailing (including the various postage amounts that must be paid for its component mailpieces) and of providing a useful tool in verifying that the mailer (and the mailer's system) knowingly and correctly prepared the mailing and accounted for the postage due or paid for each piece after applicable discounts are taken. In nonidentical-weight mailings, except for those at the minimum per-piece third-class rates, the correct postage cannot be computed without determining the weight of the piece. Therefore, the Postal Service cannot accept the premise that—regardless of documentation—the mailing is correctly prepared and paid if the mailer or the mailer's system excludes the impact of mailpiece weight in determining postage. The final rule more explicitly relieves mailers from the burden of documenting mail by weight when that is not a factor in determining postage, as described below; otherwise, the final rule remaining unaltered in this regard.

The commenter noted that some existing regulations (such as DMM chapter 5) already require documentation that approximates what the interim rule requires. The commenter is correct, and the Postal Service was deliberate in this regard, designing the interim rule to impose a fundamental requirement for precanceled stamp and metered mailings that, like current rules for permit imprint mailings, prescribed basic documentation needs when other regulations (that separately imposed their own documentation requirements) did not apply. The Postal Service does not seek to mandate redundant documentation or needlessly to compound existing documentation requirements. DMM sections 143.136b and 144.116b, as set forth in the interim rule, attempted to establish this concept: "Notwithstanding the requirements of this section, the mailer must also submit the documentation required by other applicable regulations. The information that must be provided under this section may be included in documentation required by other regulations (e.g., 364, 382, 560, 628, 661)." These sections are amended in the final rule to ensure there is no misunderstanding that, under one regulation or another, documentation is required in specific circumstances, and that generation of a single printout may simultaneously satisfy them all.

The commenter also was concerned over the misinterpretation of "nonidentical-weight" to include pieces where differences in weight are insignificant to the postage amount. The term "nonidentical-weight" has long been used to described situations in which differences in mailpiece weight in the same mailing is relevant to mail preparation or the correct calculation of postage. The Postal Service believes there is sufficient general understanding of this term as to not require detailed definition in the final rule. Nonetheless, for purposes of clarity, language is added to specify that the required documentation needs to be reported by mailpiece weight only to the extent that factor is relevant to correct postage calculation.

Upon further review, the Postal Service has also determined that additional clarification is needed on three other points.

First, neither the interim nor the final rule establishes new authority for combination of rates, presort levels, or postage payment methods. Such combinations, where available, are offered only as specified by existing regulations, and are not altered by this rulemaking.

Second, the interim and final rules offer opportunities for mailers to submit summary documentation. However, other regulations that include documentation requirements may or

may not separately offer such an option. The summary option in DMM 143.136e and 144.116e of the final rule is subject to the broader provisions of 143.136b and 144.116b, as amended in the final rule, in that a summary is insufficient when other regulations that also may apply to a mailing impose more stringent requirements.

Third, to reflect recent amendments to "valued added" requirements, citation changes are made in sections 143.134b and 144.114b of the final rule.

Although exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part III

Postal service.

PART III—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Amend the Domestic Mail Manual as follows:

140 Postage

* * * * *

143 PRECANCELED STAMPS

143.1 General

* * * * *

143.13 Use of Precanceled Stamps

* * * * *

143.134 Amount of Postage

a. Exact Amount. The value of the precanceled stamps affixed to each mailpiece in a mailing must be the exact amount due for the piece, based on the applicable rate as reduced by any discounts, except as permitted by 143.134–c and 661.221d. See 382 and 661.

b. Overpayment. customers who use precanceled stamps to pay postage must not affix an amount in excess of the legal rate of postage. If that rate cannot be determined by the mailer at the time the postage is affixed (e.g., before presort, automation, or destination entry discounts can be determined), a refund for any overpayment is allowed only as provided by 147.42 and 147.43.

c. Underpayment. Subject to 382 (for First-Class Mail) and 661 (for third-class mail), customers may affix a value of precanceled stamps to each mailpiece to represent either the lowest rate in the mailing or another amount less than the full and correct rate if the mailer provides detailed documentation with the mailing as specified in 143.136 to describe the contents of the mailing and substantiate the additional postage due.

43.135 Nonidentical-Weight Mailpieces

a. General Rule. Except as provided in 143.135b, precanceled stamps may be used for payment of postage on mailings of nonidentical-weight pieces only if the mailer submits detailed documentation with the mailing as specified in 143.136 to describe the contents of the mailing and substantiate the amount of postage paid.

b. Exceptions. The documentation requirements of 143.136 do not apply to nonidentical-weight mailpieces when:

(1) All pieces in the mailing bear the full correct postage at the applicable single-piece rate;

(2) All pieces in the mailing are subject to the minimum per-piece third-class rates; or

(3) All pieces in the mailing are paid under the provisions of 661.221d.

143.136 Documentation

a. General. Unless already provided in compliance with other regulations that apply to the mailing, the documentation described in 143.136b–e must be submitted whenever all pieces in a bulk or presort rate mailing bearing precanceled postage are not of identical weight or whenever one or more pieces in the mailing bear less postage than required for that piece at the rate (including all applicable discounts) for which it is eligible at the time of mailing.

b. Documentation Required by Other Regulations. Notwithstanding the requirements of this section, the mailer must also submit the documentation required by other applicable regulations. However, to the extent that similar information requirements apply, the documentation that must be provided under this section may satisfy or be included in documentation required by other regulations (e.g., 364, 382, 560, 628, 661). If those requirements are met, duplicate documentation need not be submitted solely to satisfy identical requirements imposed by separate regulations.

c. Content of Documentation. If not provided in the documentation required by other regulations (see 143.136b), the documentation must show for each 5-digit ZIP Code (for that portion of the mailing presorted to 5-digits) and each 3-digit ZIP code prefix (for that portion of the mailing not sorted to 5-digits) the number of pieces in each rate (discount) category, the additional postage due per piece, and the total postage for that 5- or 3-digit ZIP Code entry. If all pieces in the mailing are not of identical weight, the documentation must subdivide the number of pieces reported for each ZIP Code entry by weight increment to the extent that such differences affect postage (e.g., by 1-ounce increment for First-Class Mail, and by whether subject to the minimum per-piece rate or to piece/pound rates for third-class mail). The report must summarize for the entire mailing the total number of pieces in each rate category (and, within each, as further required for mailings of nonidentical-weight pieces), and the total additional postage due for the mailing.

d. When to Submit. The required documentation must be submitted by the mailer with the corresponding mailing and mailing statement, except as provided by 143.136e.

e. Alternatives. When the mailer has submitted accurate documentation for at least five consecutive mailings, the postmaster of the post office that verifies the documentation may allow the mailer to submit only the summary information required by 143.136c in place of the complete documentation otherwise specified. Mailers may also be authorized by the postmaster to submit the required information on electronic media (e.g., diskette). Permission to use these alternatives may be withdrawn at any time the postmaster determines is necessary to ensure the proper payment of postage.

143.137 Markings and Endorsements. Whether the stamps used by the mailer are precanceled by the mailer as provided by 143.173 or by the Postal Service, each mailpiece bearing precanceled postage must bear markings and endorsements required for the rate claimed or ancillary services requested.

* * * * *

144 Postage Meters and Meter Stamps

144.1 Postage Meters

144.11 Use of Meter Stamps

* * * * *

144.114 Amount of Postage

a. Exact Amount. The value of the meter stamps affixed to each mailpiece in a mailing must be the exact amount due for the piece, based on the applicable rate as reduced by any discounts, except as permitted by 144.114b–c and 661.221d. See 382 and 661.

b. Overpayment. Customers who use meter stamps to pay postage must not affix an amount in excess of the legal

rate of postage. If that rate cannot be determined by the mailer at the time the postage is affixed (e.g., before presort, automation, or destination entry discounts can be determined), a refund for any over-payment is allowed only as provided by 147.42 and 147.43.

c. Underpayment. Subject to 382 (for First-Class Mail) and 661 (for third-class mail), customers may affix a value of meter stamps to each mailpiece to represent either the lowest rate in the mailing or another amount less than the full and correct rate if the mailer provides detailed documentation with the mailing as specified in 144.116 to describe the contents of the mailing and substantiate the additional postage due.

144.115 Nonidentical-Weight Mailpieces

a. General Rule. Except as provided in 144.115b, meter stamps may be used for payment of postage on mailings of nonidentical-weight pieces only if the mailer submits detailed documentation with the mailing as specified in 144.116 to describe the contents of the mailing and substantiate the amount of postage paid.

b. Exceptions. The documentation requirements of 144.116 do not apply to nonidentical-weight mailpieces when:

(*1*) All pieces in the mailing bear the full correct postage at the applicable single-piece rate;

(*2*) All pieces in the mailing are subject to the minimum per-piece third-class rates; or

(*3*) All pieces in the mailing are paid under the provisions of 661.221d.

144.116 Documentation

a. General. Unless already provided in compliance with other regulations that apply to the mailing, the documentation described in 144.116b–e must be submitted whenever all pieces in a bulk or presort rate mailing bearing meter postage are not of identical weight or whenever one or more pieces in the mailing bear less postage than required for that piece at the rate (including all applicable discounts) for which it is eligible at the time of mailing.

b. Documentation Required by Other Regulations. Notwithstanding the requirements of this section, the mailer must also submit the documentation required by other applicable regulations. However, to the extent that similar information requirements apply, the documentation that must be provided under this section may satisfy or be included in documentation required by other regulations (e.g., 364, 382, 560, 628, 661). If those requirements are met, duplicate documentation need not be submitted solely to satisfy identical requirements imposed by separate regulations.

c. Content of Documentation. If not provided in the documentation required by other regulations (see 144.116b), the documentation must show for each 5-digit ZIP Code (for that portion of the mailing presorted to 5-digits) and each 3-digit ZIP Code prefix (for that portion of the mailing not sorted to 5-digits) the number of pieces in each rate (discount) category, the additional postage due per piece, and the total postage for that 5- or 3-digit ZIP Code entry. If all pieces in the mailing are not of identical weight, the documentation must subdivide the number of pieces reported for each ZIP Code entry by weight increment to the extent that such differences affect postage (e.g., by 1-ounce increment for First-Class Mail, and by whether subject to the minimum per-piece rate or to piece/pound rates for third-class mail). The report must summarize for the entire mailing the total number of pieces in each rate category (and, within each, as further required for mailings of nonidentical-weight pieces), and the total additional postage due for the mailing.

d. When to Submit. The required documentation must be submitted by the mailer with the corresponding mailing and mailing statement, except as provided by 144.116e.

e. Alternatives. When the mailer has submitted accurate documentation for at least five consecutive mailings, the postmaster of the post office that verifies the documentation may allow the mailer to submit only the summary information required by 144.116c in place of the complete documentation otherwise specified. Mailers may also be authorized by the postmaster to submit the required information on electronic media (e.g., diskette). Permission to use these alternatives may be withdrawn at any time the postmaster determines is necessary to ensure the proper payment of postage.

144.117 Markings and Endorsements. Each mailpiece bearing meter postage must bear markings and endorsements required for the rate claimed or ancillary services requested.

* * * * *

380 Payment of Postage

381 Single-Piece Rates

381.1 Method of Payment. [Add to the end of the existing text:] Requirements for use of precanceled or meter stamps are set forth in 143.13 and 144.11, respectively.

* * * * *

382 Other Than Single-Piece Rates

382.1 Method of Payment. [Add to the end of the existing text:] Requirements for use of precanceled or meter stamps are set forth in 143.13 and 144.11, respectively.

382.2 Exact Postage on Each Piece

* * * * *

382.26 Precanceled or Meter Stamps. Requirements for use of precanceled or meter stamps are set forth in 143.13 and 144.11, respectively.

382.3 Postage at Lowest Rate in the Mailing Affixed to All Pieces in the Mailing

382.31 Identical Pieces

[Redesignate 382.31a–f as 382.311–382.316, respectively, and 382.31d(1)–(3) as 382.314(a)–(c), respectively]

* * * * *

382.33 Nonidentical Pieces at All ZIP + 4 Presort and ZIP + 4 Barcoded Rates

[Redesignate 382.33a–d as 382.331–382.334, respectively, and 382.33b(1)–(3) as 382.332(a)–(c), respectively]

382.34 Precanceled or Meter Stamps. Requirements for use of precanceled or meter stamps are set forth in 143.13 and 144.11, respectively.

382.4 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece

[Redesignate 382.4a–c as 382.41–382.43, respectively]

382.44 Precanceled or Meter Stamps. Requirements for use of precanceled or meter stamps are set forth in 143.13 and 144.11, respectively.

* * * * *

660 Payment of Postage

661 Method of Payment

661.1 Single-Piece Mailings. [Add to the end of the existing text:] Requirements for use of precanceled or meter stamps are set forth in 143.13 and 144.11, respectively.

661.2 Bulk Mailings at the Basic Presort, 3/5 Presort, and Carrier Route Presort Rates

661.21 Identical-Weight Pieces

* * * * *

a. Meter Stamps.

* * * * *

(4) See 144 for additional information about the use of meter stamps.

b. Precanceled Stamps or Precanceled Stamped Envelopes. [Add to the end of the existing text:] Additional

requirements for the use of precanceled stamps are set forth in 143.13.

* * * * *

661.22 Nonidentical-Weight Pieces

661.221 Pound Rates

* * * * *

b. Meter Stamps. [Add at the beginning of the first sentence:] Subject to the requirements of 144.11, * * *

c. Precanceled Stamps. [Add at the beginning of the first sentence:] Subject to the requirements of 143.13, * * *

* * * * *

661.224 Use of Precanceled or Meter Stamps. Requirements for use of precanceled or meter stamps are set forth in 143.13 and 144.11, respectively.

* * * * *

661.3 Bulk Mailings at the Basic ZIP + 4, 3/5 ZIP + 4, and ZIP + 4 Barcoded Rates

* * * * *

661.33 Precanceled Stamps or Precanceled Stamped Envelopes.

[Revise the first two sentences as follows:]

The requirements described in 661.32 are also generally applicable to mailings paid by precanceled stamp postage. Additional requirements for the use of precanceled stamps are set forth in 143.13. * * *

* * * * *

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 C.F.R. 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-11223 Filed 5-12-92; 8:45 am]

BILLING CODE 7710-12-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM92-1, R90-1 and MC91-2; Order No. 924]

Amendment to Domestic Mail Classification Schedule; Postal Rate and Fee Changes, 1990 and 125-Piece Walk-Sequence Discount, 1991

Issued May 5, 1992.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with January 22, 1991, and January 7, 1992, decisions by the Governors of the Postal Service on the Commission's Docket No. R90-1 recommended decisions, the Commission is publishing the changes made in the Domestic Mail Classification Schedule (DMCS). The Commission is also publishing the changes in the DMCS made as a result of the Governors' decision approving the Commission's November 22, 1991, recommended decision in Docket No. MC91-2. This decision by the Governors was also issued on January 7, 1992. The DMCS is found as appendix A to subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.68). In addition to the changes in rates and fees made as a result of Docket Nos. R90-1 and MC91-2, a number of changes, both editorial and substantive, were made in the classification provisions for postal services.

DATES: Effective February 3, 1991, for Docket No. R90-1 changes; March 15, 1992, for Docket No. MC91-2 changes.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., suite 300, Washington, DC 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION:

Docket No. R90-1

On March 6, 1990, the Postal Service initiated a proceeding, pursuant to 39 U.S.C. 3622-23, requesting rate changes, as well as changes in some of the provisions in the DMCS. The Commission invited interested parties to comment and participate in the proceeding. 55 FR 9792. Many comments were filed; additionally, 77 intervenors and the Commission's Office of the Consumer Advocate participated. The Commission held three sets of formal, on-the-record hearings, receiving testimony from 130 witnesses. In addition to oral argument, interested parties submitted briefs and reply briefs.

In addition to the changes in rates, Docket No. R90-1 resulted in a number of changes in the classification system governing the provision of postal services. Many of these changes are not substantive but rather reflect changes in editorial style or modify references which had become obsolete. A number of the classification changes are substantive. Among the substantive classification changes are: Changes in the makeup requirements for First-Class pre-barcoded ZIP + 4 mail; addition of a discount for ZIP + 4 pre-barcoded post cards; extension of pickup service to Priority Mail and parcel post; addition of a discount for presorted Priority Mail; addition of a discount for second class entered at the destination delivery office; addition of a discount for automation compatible ZIP + 4 coded or ZIP + 4 pre-barcoded second class; addition of discounts for walk sequenced and saturation mailings in second class; bifurcation of third class into letter and flat size for rate purposes; addition of ZIP + 4 pre-barcoded, saturation preparation and destination entry discounts in third class; addition of a destination-BMC discount for parcel post; deletion of the prohibition against books with no advertising in bound printed matter; and addition of on-site meter examination service.

Docket No. MC91-2

On August 22, 1991, the Postal Service initiated a proceeding, pursuant to 39 U.S.C. 3622-23, proposing the establishment of rate categories and discounts for third-class flat (nonletter-size) mail prepared in 125-piece walk sequence mailings. The Commission invited interested parties to comment and participate in the proceeding. 55 FR 4336. Fifteen parties filed notices of intervention. The parties, with the Commission's Consumer Advocate co-ordinating the effort, were able to agree on a Stipulation and Agreement settling the issues in the case. The Commission issued its recommended decision accepting the settlement on November 22, 1991. The Governors approved the Commission's decision on January 6, 1992.

The Amendments to the DMCS which are published in this order reflect the Governors' decision of January 22, 1991, and its two January 7, 1992, decisions. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85-1) which led to the publication of the DMCS in the **Federal Register**, this addition is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURES

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat.759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

Appendix A to Subpart C—[Amended]

2. The following changes in the Domestic Mail Classification Schedule published as appendix A to subpart C (39 CFR 3001.61 through 3001.68) or the Commission's rules of practice and procedure are adopted:

Revise 100.020 to read as follows:

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class regular rates, weighing 11 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.0203, 100.0204, 100.021, 100.0211, or 100.023.

Renumber current 100.0202 to become 100.0203 and revise new 100.0203 to read as follows:

100.0203 Presorted First-Class Mail

Presorted First-Class Mail is First-Class Mail other than Priority Mail which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

Renumber current 100.0203 to become 100.0204 and revise new 100.0204 to read as follows:

100.0204 Pre-barcoded ZIP+4 Presorted Mail

Pre-barcoded ZIP+4 presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to three- or five-digit ZIP Codes or both, which meets the specifications of the Postal Service and which meets the preparation requirements in section 100.047.

Revise 100.021c to read as follows:

c. To be eligible to be mailed as a First-Class post card, a card may not exceed any of the following dimensions:

i. Length not greater than 6 inches;

ii. Width not greater than 4¼ inches; or,

iii. Thickness not greater than 0.0095 inch and uniform.

Add a new 100.0214 to read as follows:

100.0214 ZIP+4 Pre-barcode Rate Category Post Cards

A ZIP+4 pre-barcode rate category post card is a privately printed mailing card for the transmission of messages which meets the eligibility and preparation requirements in sections 100.0211b, 100.043, and 100.047.

a. Double post cards may be mailed at the ZIP+4 pre-barcode rate category for post cards. A double post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single post card.

b. ZIP+4 pre-barcode rate category post cards must:

i. Bear a proper ZIP+4 barcode.

ii. Be presented in mailings of 500 or more pieces.

iii. Meet machinability criteria as prescribed by the Postal Service but may not exceed any of the following dimensions:

(1) Length not greater than 6 inches;

(2) Width not greater than 4¼ inches; or,

(3) Thickness not greater than 0.0095 inch and uniform.

iv. Meet address readability specifications for applicable mail processing equipment as prescribed by the Postal Service.

v. Meet barcoding specifications as prescribed by the Postal Service.

vi. Have postage paid in a manner not requiring cancellation.

Revise 100.023 to read as follows:

100.023 Priority Mail

Priority Mail consists of (1) First-Class Mail weighing more than the maximum weight established for regular First-Class Mail and (2) other mail matter (including First-Class Mail) which, at the option of the mailer, is mailed for expeditious mailing and transportation. Priority Mail may weigh up to and including 70 pounds.

Add new 100.0231 and 100.0232 to read as follows:

100.0231 Pickup service is available for Priority Mail under terms and conditions as prescribed by the Postal Service.

100.0232 Presorted Priority Mail

Presorted Priority Mail is Priority Mail which is presented in a single mailing of 300 or more pieces, properly prepared and presorted.

Revise 100.031 to read as follows:

100.031 Cards exceeding the maximum post card dimensions set forth in section 100.021c or 100.0211b or section 100.0214 for ZIP+4 and ZIP+4 pre-barcode rate category cards may be mailed only under sections 100.020, 100.0201, 100.0203, and 100.0204, as appropriate.

Revise 100.041 and 100.042 to read as follows:

100.041 First-Class Mail mailed under sections 100.0203, 100.0204, 100.0214 and 100.0232 must be presorted in accordance with regulations prescribed by the Postal Service.

100.042 First-Class Mail mailed under sections 100.0203, 100.0204, 100.0214 and 100.0232 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.

b. All pieces in a mailing must bear markings identifying them as presorted First-Class Mail, as required by the Postal Service.

Revise 100.043 to read as follows:

100.043 Postal and post cards, including ZIP+4 and pre-barcoded ZIP+4 rate category post cards, with any of the following four characteristics are not mailable unless prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing on the address side of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

Revise 100.047 to read as follows:

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, 100.0204, 100.0211, and 100.023 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates must be properly prepared and presorted as prescribed by the Postal Service.

Revise 100.080e to read as follows:

e. COD—SS–6.

Revise 100.080i to read as follows:

i. Return receipt (Merchandise only)—SS–16.

Revise 200.0212g to read as follows:

g. veterans'.

Revise 200.0216 to read as follows:

200.0216 Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year up to 10 percent of the total number of copies mailed to

subscribers during the calendar year are preferred mail, provided that the nonsubscriber copies would have been preferred mail if mailed to subscribers. See section 200.093 for mailings in excess of the 10 percent limitation.

Revise 200.042 to read as follows:

200.042 First-or third-class mail may be attached to or enclosed with second-class mail if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When First-or third-class mail is enclosed with or attached to second-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

Revise 200.094 to read as follows:

200.094 Copies of any second-class mail which are destined for delivery within the destination sectional center area or the destination delivery office area in which they are entered, as defined by the Postal Service, qualify for the applicable discount as set forth in Rate Schedules 200, 201, 202, and 203.

Add new 200.095, 200.096 and 200. 097 to read as follows:

200.095 Copies of any automation compatible second-class mail which bear a proper ZIP+4 code or ZIP+4 barcode and which meet machinability, address readability and barcoding specifications as precribed by the Postal Service qualify for the applicable ZIP+4 or pre-barcoding discounts as set forth in Rate Schedules 200, 201, 202, and 203.

200.096 Second-class pieces presented in mailings which are walk sequenced and contain a minimum of 125 pieces per carrier route and which meet the preparation requirements prescribed by the Postal Service are eligible for the applicable discount set forth in Rate Schedules 200, 201, 202 and 203.

200.097 Saturation Second-class mail presented in mailings which are walk sequenced and which meet the saturation and preparation requirements prescribed by the Postal Service qualifies for the applicable discount set forth in Rate Schedules 200, 201, 202 and 203.

Revise 300.010a to read as follows:

a. Matter mailed or required to be mailed as First-Class Mail;

Revise the first paragraph of 300.02121 to read as follows:

300.02121 Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth before for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans' and fraternal. The Standard of primary purpose requires that each type of organization or association be both organized and operated for the primary purpose.

Revise 300.023 to read as follows:

300.023 Bulk Rate Presort Categories

Bulk rate mail sent under section 300.021 must meet the conditions of sections 300.0231, 300.0232, 300.0233, 300.0234, 300.0235, 330.0236, 300.0237, 300.0239 or 300.02311 to be eligible for the applicable presort level rate.

Revise 300.0230 and 300.0231 to read as follows:

300.0230 Basic Sortation

Mailers must sort third-class bulk mail as prescribed by the Postal Service. Mail which is not presorted to 3-digit or 5-digit ZIP Code areas or to carrier routes qualifies for the basic rates in Rate Schedules 301 and 302.

300.0231 Basic Sortation, ZIP+4 Coded Mail

Basic sortation, ZIP+4 coded mail is mail mailed under section 300.0230 which bears a proper ZIP+4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

Renumber current 300.0232 to become 300.0233 and add a new 300.0232 to read as follows:

300.0232 Basic Sortation, ZIP+4 Pre-barcoded Mail

Basic sortation ZIP+4 Pre-barcoded mail is mail mailed under section 300.0230 which bears a proper ZIP+4 barcode and which meets the machinability, address readability, and barcoding specifications and other preparation requirements prescribed by the Postal Service.

Revise the renumbered 300.0233 to read as follows:

300.0233 Three- and Five-Digit Presort Level

Three- and five-digit presort level mailings must contain at least 200 pieces or 50 pounds of mail prepared in accordance with USPS regulations.

Renumber current 300.0233 to become 300.0234 and revise renumbered 300.0234 to read as follows:

300.0234 Three- and Five-Digit Presort Level, ZIP+4 Coded Mail

Three- and five-digit presort level, ZIP+4 coded mail is mail mailed under section 300.0233 which bears a proper ZIP+4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

Add a new 300.0235 to read as follows:

300.0235 Three-Digit Presort Level, ZIP+4 Pre-barcoded Mail

Three-digit presort level, ZIP+4 pre-barcoded mail is mail mailed under section 300.0233 which is presorted to three digits, is ZIP+4 pre-barcoded, and meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

Renumber current 300.0234 to become 300.0236 and revise renumbered 300.0236 to read as follows:

300.0236 Five-Digit Presort Level, ZIP+4 Pre-barcoded Mail

Five-digit presort level, ZIP+4 pre-barcoded mail is mail mailed under section 300.0233 which is presorted to five digits, is ZIP+4 pre-barcoded, and meets the machinability, address readability and barcode specifications, and other preparation requirements prescribed by the Postal Service.

Renumber current 300.0235 to become 300.0237.

Add new 300.0239, 300.02310 and 300.02311 to read as follows:

300.0239 Saturation Mail

Saturation mail is mail presented in a mailing which is walk sequenced and which meets the saturation and preparation requirements prescribed by the Postal Service.

300.02310 125-Piece Walk Sequence Mail

Bulk third-class mail presented in a carrier-route mailing which is walk sequenced and contains a minimum of 125 pieces per carrier route, and which meets the preparation requirements prescribed by the Postal Service, is eligible for the applicable discounts set forth in Rate Schedules 301 and 302.

300.02311 Destination Entry Mail

Destination mail is third-class bulk mail which is destined for delivery within the service area of the BMC or auxiliary service facility, sectional center facility, or delivery office, as defined by the Postal Service, at which it is entered.

Revise 300.045 to read as follows:

300.045 First-Class Mail may be attached to or enclosed in third-class books, catalogs, and merchandise if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-Class rate, the third-class piece is subject to the higher First-Class rate. When First-Class Mail is enclosed with or attached to third-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

Revise 300.070 to read as follows:

300.070 Undeliverable-as-addressed third-class mail will be returned on request of the mailer, or forwarded and returned on request of the mailer. Undeliverable-as-addressed combined First-Class and third-class pieces will be returned as prescribed by the Postal Service. The single-piece third-class rate is charged for each piece receiving return only service. Charges for forwarding-and-return service are assessed only on those pieces which cannot be forwarded and are returned. The charge for those returned pieces is the appropriate single-piece third-class rate for the piece plus that rate multiplied by a factor equal to the number of third-class pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.

Revise 300.080c to read as follows:

c. COD—SS–6.

Revise 400.010 to read as follows:

400.010 Fourth-class mail is mailable matter weighing 16 ounces or more, except:

a. Matter mailed or required to be mailed as First-Class Mail;

b. Matter entered as second-class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former transient rate;

c. That the 16-ounce minimum weight does not apply to matter mailed under sections 400.021 or 400.022.

Add new 400.0204 and 400.0205 to read as follows:

400.0204 Pickup service is available under terms and conditions as prescribed by the Postal Service.

400.0205 Destination BMC parcel post mail.

Parcel post mail is eligible for the bulk destination BMC rates described in rate schedule 401 if a mailing of 50 pieces or more is deposited at the destination BMC, auxiliary service facility, or other equivalent facility, as authorized by the Postal Service.

In 400.023, delete current 400.023e and 400.023f and renumber current 400.023g to become 400.023e.

Revise 400.044 to read as follows:

400.044 First-Class Mail or third-class mail other than specified in section 400.043 may be attached to or enclosed in fourth-class parcels if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-Class or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When First-Class or third-class mail is attached to or enclosed with fourth-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

Revise 400.070 to read as follows:

400.070 Undeliverable-as-addressed fourth-class mail will be forwarded on request of the addressee, returned on request of the mailer, or forwarded and returned on request of the mailer; undeliverable-as-addressed combined First-Class and fourth-class pieces, or third-class and fourth-class pieces, will be forwarded, and undeliverable combined First-Class and fourth-class pieces, or third-class and fourth-class pieces, will be returned as prescribed by the Postal Service. Additional charges when fourth-class mail is forwarded or returned from one post office to another will be based on the appropriate single-piece fourth-class rate.

Revise 400.080g to read as follows:

g. Return receipts (merchandise only)—SS–16.

Revise 400.081 to read as follows:

400.081 Insurance, special delivery, special handling and COD services may not be used selectively for individual pieces mailed under section 400.020, unless the provisions of section 400.046 apply.

Revise 400.090 to read as follows:

400.090 The rates and fees for fourth-class mail are set forth as follows:

	Rate schedule
a. Single-piece parcel post mail	400
b. Bulk parcel post mail	400
c. Destination-BMC mail	401
d. Single-piece special fourth-class mail	402
e. Special fourth-class presorted mail	402
f. Library mail	402
g. Single-piece bound printed matter	405
h. Bulk bound printed matter	406
i. Fees	1000

Revise 500.02 to read as follows:

500.02 Description of Services

Delete all of 500.082.

Revise 500.090c to read as follows:

c. COD ..... SS 6

Revise 2.010 to read as follows:

2.010 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

Rivise 3.020 to read as follows:

3.020 Caller service uses post office box numbers as the address medium but does not actually use a post office box.

Revise 3.022 to read as follows:

3.022 Caller service is provided to customers on the basis of mail volume received, and number of post office boxes rented at any one facility.

Revise 6.01 through 6.07 to read as follows:

6.01 Definition

6.010 Collect on Delivery (COD) service is a service which allows a mailer to mail an article for which he has not been paid and have the price, the cost of postage and fees, and anticipated or past due charges collected by the Postal Service from the addressee when the article is delivered.

6.02 Description of Service

6.020 COD service is available for collection of $600 or less upon the delivery of postage prepaid mail sent under the following classification schedules:

	Classification schedule
a. First-Class Mail	100
b. Third class (single piece only)	300
c. Fourth-class mail	400
d. Express Mail	500

6.0201 Service under this schedule is *not* available for:

a. Collection agency purposes;

b. Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return;

c. Sending only bills or statements of indebtedness, even through the sender may establish that the addressee has agreed to collection in this manner; however, when the legitimate COD shipment consisting of merchandise or bill of lading, is being mailed, the balance due on a past or anticipated transaction may be included in the charges on a COD article, provided the addressee has consented in advance to such action;

d. Parcels containing moving-picture films mailed by exhibitors to moving-

picture manufacturers, distributors, or exchanges;

e. Goods which have not been ordered by the addressee.

6.021 COD service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee. This provision insures only the receipt of the instrument issued to the mailer after payment of COD charges, and is not to be construed to make the Postal Service liable upon any such instrument other than a Postal Service money order.

6.022 A receipt is issued to the mailer for each piece of COD mail. Additional copies of the original mailing receipt may be obtained by the mailer.

6.023 Delivery of COD mail will be made in a manner specified by the Postal Service. If a delivery to the mailing address is not attempted or if a delivery attempt is unsuccessful, a notice of arrival will be left at the mailing address.

6.024 The mailer may receive a notice of nondelivery if the piece mailed is endorsed appropriately.

6.025 The mailer may designate a new addressee or alter the COD charges by submitting the appropriate form and by paying the appropriate fee as set forth in Rate Schedule SS–6.

6.026 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

6.027 COD indemnity claims must be filed within a specified period of time from the date the article was mailed.

6.03 Requirements of the Mailer

6.030 COD mail must be idenitifed as COD mail.

6.04 Deposit of Mail

6.040 COD mail must be deposited in a manner specified by the Postal Service.

6.05 Forwarding and Return

6.050 A mailer of COD mail guarantees to pay any return postage, unless otherwise specified on the piece mailed.

6.051 For COD mail sent as third- or fourth-class mail, postage at the applicable rate will be charged to the addressee:

a. When an addressee, entitled to delivery to the mailing address under Postal Service regulations, requests delivery of COD mail which was refused when first offered for delivery;

b. For each delivery attempt, to an addressee entitled to delivery to the mailing address under Postal Service regulations, after the second such attempt.

6.06 Other Services

6.060 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fee:

	Classification schedule
a. Registered mail, if sent as First Class	SS–14
b. Restricted delivery	SS–15
c. Special delivery	SS–17
d. Special handling	SS–18

6.07 Fees

6.070 Fees for COD service are set forth in Rate Schedule SS–6.

Revise 9.020 to read as follows:

9.020 The maximum liability of the Postal Service under this schedule is $600.

Revise 9.012a to read as follows:

a. First-Class Mail, if containing matter which may be mailed as third- or fourth-class mail—100.

Revise 9.023 and 9.024 to read as follows:

9.023 The mailer is issued a receipt for each item mailed. For items insured for more than $50, a receipt of delivery is obtained by the Postal Service.

9.024 For items insured for more than $50, a notice of arrival is left at the mailing address when the first attempt at delivery is unsuccessful.

Revise 9.050 to read as follows:

9.050 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Parcel Airlift	SS–13
b. Restricted delivery (for items insured for more than $50)	SS–15
c. Return receipt (for items insured for more than $50)	SS–16
d. Special delivery	SS–17
e. Special handling	SS–18
f. Merchandise return (shippers only)	SS–20

Revise 12.01 through 12.03 to read as follows:

12.01 Definition

12.010 On-site meter setting or examination service is a service whereby the Postal Service will service a postage meter at the mailer's or meter manufacturer's premises.

12.02 Description of Service

12.020 On-site meter setting or examination service is available on a scheduled basis, and meter setting may be done on an emergency basis for those customers enrolled in the scheduled on-site meter setting or examination program.

12.03 Fees

12.030 The fees for on-site meter setting or examination service are set forth in Rate Schedule SS–12.

Revise 14.023b to read as follows:

b. Mail of any class sent in combination with First-Class Mail;

Revise 15.010 to read as follows:

15.010 Restricted delivery service is a service that provides a means by which a mailer may direct that delivery will be made only to the addressee or to someone authorized by the addressee to receive such mail.

Revise 15.020 to read as follows:

15.020 This service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS–5
b. COD mail	SS–6
c. Insured mail (if insured for more than $50)	SS–9
d. Registered mail	SS–14

Revised 16.020 to read as follows:

16.020 Return receipt service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS–5
b. COD mail	SS–6
c. Insured mail (if insured for more than $50)	SS–9
d. Registered mail	SS–14
e. Express Mail	500
f. First Class (merchandise only)	100
g. Third class (merchandise only)	300
h. Fourth class (merchandise only)	400
Revise 17.020a to read as follows:	
a. First-Class Mail	100
Revise 17.060c to read as follows:	
c. COD mail	SS–6
Revise 18.020a to read as follows:	
a. First-Class Mail	100
Revise 18.060a to read as follows:	
a. COD mail	SS–6

Revise 19.020 to read as follows:

19.020 Stamped envelopes are available for:

a. First Class within the first rate increment.

b. Third-class bulk mail mailed at the minimum per-piece rate.

Revise 20.021a to read as follows:

a. First-Class Mail—100.

Revise 1000.010 to read as follows:

1000.010 The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in Rate Schedule SS–10.

b. Carrier delivery service.

c. General delivery.

d. Post office box service. The fees for post office box service are set forth in Rate Schedule SS–10.

Revise 1000.021 to read as follows:

1000.021 The addressee may control delivery of his mail. The addressee may refuse to accept a piece of mail at the time it is offered for delivery or after delivery by returning it unopened to the Postal Service except as provided below. The addressee or his representative may read and copy the name of the sender of registered, insured, certified and COD mail prior to accepting delivery. Upon signing the delivery receipt the piece may not be returned to the Postal Service without the applicable postage and fees affixed.

Revise 1000.026c to read as follows:

I is registered, COD, insured, or certified for which the normal retention period expires before the end of the specified holding period.

Revise 3000.022 to read as follows:

3000.022 Matter authorized for mailing without prepayment of postage must bear markings identifying the class of mail service. Matter so marked will be billed at the applicable rate of postage set forth in this Schedule. Matter not so marked will be billed at the applicable First-Class rate of postage.

Revise 3000.0301 to read as follows:

3000.0301 There shall be no refund for registered, COD, and insured fees when the article is later withdrawn by the mailer.

Revise the first paragraph of 4000.010 to read as follows:

4000.010 In the determination of postal zones, the earth is considered to be divided into units of area thirty minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. The distance between these units of area is the basis of the postal zones which are defined as follows:

Revise 5000.010 and 5000.011 to read as follows:

5000.010 Matter not paid at First-Class Mail or Express Mail rates must be wrapped or secured in the manner prescribed by the Postal Service so that the contents may be examined. Mailing of sealed items as other than First-Class Mail or Express Mail is considered consent by the sender to the postal inspection of the contents.

5000.011 Matter mailed as First-Class Mail or Express Mail shall be treated as mail which is sealed against postal inspection and shall not be opened except as authorized by law.

Revise rate schedule 100 to read as follows:

RATE SCHEDULE 100—FIRST-CLASS MAIL

Mail type and postage rate unit	Rate [1] (cents)
Letters:	
Nonpresort:	
First ounce:	
Basic	
ZIP + 4 [2, 3]	
Nonstandard surcharge	
Additional ounce [4]	

RATE SCHEDULE 100—FIRST-CLASS MAIL—Continued

Mail type and postage rate unit	Rate [1] (cents)
Presort: [5]	
First ounce	
3 and 5 digit [6]	
Basic	
ZIP + 4 [3]	
Pre-barcode—3 Digit	
Pre-Barcode—5 Digit	
Carrier route [7]	
Nonstandard surcharge	
Additional ounces [4]	
Cards:	
Nonpresort:	
Basic	
ZIP + 4 [2, 3]	
Pre-barcode [8]	
Presort:	
3 and 5 Digit [6]	
Basic	
ZIP + 4 [3]	
Pre-barcode—3 Digit	
Pre-Barcode—5 Digit	
Carrier route [7]	

[1] The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-Digit ZIP Code or each piece of a group of 50 or more pieces destined for the same 3-Digit ZIP Code. The lower carrier route rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of must be paid once each year at each office of mailing by any person who mails presorted First-Class Mail. The fee for mailers allows usage of either or both of these rates.

[2] Nonpresorted ZIP + 4 mail must be properly prepared and submitted in mailings of at least 250 pieces.

[3] ZIP + 4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP + 4 rates are not available for carrier route presort mail.

[4] Rate applies through 11 ounces. Heavier pieces are subject to Priority Mail rates.

[5] For presorted mailings weighing more than 2 ounces, subtract 4.2 cents per piece.

[6] Mail presorted to ZIP Code and prepared in mailings of 500 pieces or more as prescribed by the Postal Service.

[7] Mail presorted to carrier route and prepared in mailings of 500 pieces or more as prescribed by the Postal Service.

[8] Nonpresorted and pre-barcoded cards must be properly prepared and submitted in mailings of at least 250 pieces.

Revise rate schedule 103 to read as follows:

RATE SCHEDULE 103—PRIORITY MAIL

Weight not exceeding (pounds)	L.1.2.3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						

RATE SCHEDULE 103—PRIORITY MAIL—Continued

Weight not exceeding (pounds)	L.1.2.3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
24						
25						
26						
27						
28						
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
41						
42						
43						
44						
45						
46						
47						
48						
49						
50						
51						
52						
53						
54						
55						
56						
57						
58						
59						
60						
61						
62						
63						
64						
65						
66						
67						
68						
69						
70						

[1] The 2-pound rate is charged for matter sent in a "flat rate" envelope provided by the Postal Service.
[2] Add $4.50 for each pickup stop.
[3] Pieces presented in mailings of at least 300 pieces and meeting applicable Postal Service regulations for presorted Priority Mail received a 10-cent per piece discount.
[4] EXCEPTION: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

Revise rate schedule 200 to read as follows:

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTRY[1,2]

	Postage *rate unit*	*Rate*[3] (cents)
Per Pound:		
Nonadvertising portion.	Pound	
Advertising portion:		
Delivery office[4].	Pound	
SCF[5]	Pound	
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTRY[1,2]—Continued

	Postage *rate unit*	*Rate*[3] (cents)
Science of Agriculture		
Delivery office	Pound	
SCF	Pound	
1 and 2	Pound	
Per piece: Less editorial factor of.	Per each 1% of editorial content.[6].	
A–Required preparation[7].	Piece	
B–Presorted to 3-digit city/5-digit.	Piece	
C–Presorted to carrier route.	Piece	
Discount:		
Prepared to delivery office[4].	Piece	

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTRY[1,2]—Continued

	Postage *rate unit*	*Rate*[3] (cents)
Prepared to SCF[5].	Piece	
125-Piece walk sequence[8].	Piece	
Saturation[9]	Piece	
Automation Discounts for Automation Compatible Mail[10]		
From required:		
ZIP+4	Piece	
Pre-barcode	Piece	
From 3/5 digit:		
ZIP+4	Piece	
3-Digit Pre-barcode.	Piece	
5-Digit Pre-barcode.	Piece	

[1] The rates in this schedule also apply to commingled nonsubscriber, non-requester, complimentary, and sample copies in excess of 10 percent allowance in regular-rate, nonprofit, and classroom second-class mail.

[2] Rates do not apply to otherwise regular rate mail that qualifies for the In-County rates in Schedule 201.

[3] Charges are computed by adding the appropriate per piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[4] Applies to carrier route (including 125-piece walk sequence and saturation) mail delivered within the delivery area of the originating post office.

[5] Applies to mail delivered within the SCF area of the originating SCF office.

[6] For postage calculations, multiply the editorial percent content by this factor and subtract from the applicable piece rate.

[7] Mail presorted to 3-digit (other than 3-digit city), SCF, states, or mixed states.

[8] For walk sequenced mail in batches of 125 pieces or more from carrier route presorted mail.

[9] Applicable to saturation mail from carrier route presorted mail.

[10] For automation compatible mail meeting applicable Postal Service Regulations.

Revise rate schedule 201 to read as follows:

RATE SCHEDULE 201—FULL RATES—SECOND-CLASS MAIL: IN-COUNTY

	Rate (cents)
Pound rates:	
General	
Delivery office [1]	
Piece rates:	
Required presort	
Carrier route presort	
Piece Discounts:	
Delivery office [2]	
125-Piece walk sequence [3]	
Saturation	
Automation discounts for automation compatible mail [4]	
From Required:	
ZIP + 4	
5-Digit Pre-barcode	

[1] Applicable only to the pound charge of carrier route (including 125-piece walk sequence and saturation) presorted pieces to be delivered within the delivery area of the originating post office.

[2] Applicable only to carrier presorted pieces to be delivered within the delivery area of the originating post office.

[3] Applicable only to batches of 125 or more pieces from carrier presorted pieces.

[4] For automation compatible pieces meeting applicable Postal Service regulations.

Revise rate schedule 202 to read as follows:

RATE SCHEDULE 202—FULL RATES—PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS, OUTSIDE COUNTY

	Postage rate unit	Rate [1] (cents)
Per pound:		
Non-advertising portion.	Pound	
Advertising portion:		
Delivery Office [2].	Pound	
SCF [3]	Pound	
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per Piece: Less editorial factor of.	Cents per each 1% of editorial content.[4].	
A—Required Preparation [5].	Piece	
B—Presorted to 3-digit city/5-digit.	Piece	
C—Presorted to Carrier Route.	Piece	
Discounts:		
Prepared to delivery office [2].	Piece	
Prepared to SCF.	Piece	
125-Piece walk sequence [6].	Piece	
Saturation [7]	Piece	
Automation discounts for automation compatible mail [8] from required:		
ZIP+4	Piece	
Pre-barcode	Piece	
From 3/5 Digit:		
ZIP+4	Piece	
3-digit Pre-barcode.	Piece	
5-Digit Pre-barcode.	Piece	

[1] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[2] Applies to carrier route (including 125-piece walk sequence and saturation) presort mail delivered within the delivery area of the originating post office.

[3] Applies to mail delivered within the SCF area of the originating SCF office.

[4] For postage calculation, multiply the editorial percent content by the factor and subtract from the applicable piece charge.

[5] Mail presorted to 3-digit (other than 3-digit city), SCF, states, or mixed states.

[6] For walk sequenced mail in batches of 125 pieces or more from carrier route presorted mail.

[7] Applicable to saturation mail from carrier route presorted mail.

[8] For automation compatible mail meeting applicable Postal Service regulations.

Revise rate schedule 203 to read as follows:

RATE SCHEDULE 203—FULL RATES—SECOND-CLASS MAIL: CLASSROOM PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Rate [1] (cents)
Per pound:		
Non-advertising portion.	Pound	
Advertising portion:		
Delivery office [2].	Pound	
SCF [3]	Pound	
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece: Less editorial factor of.	Cents per each 1% of Editorial Content [4].	
A—Required preparation [5].	Piece	
B—Presorted to 3-digit city/5-digit.	Piece	
C—Presorted to carrier route.	Piece	
Discounts:		
Prepared to delivery office [2].	Piece	
Prepared to SCF [3].	Piece	
125-Piece walk sequence [6].	Piece	
Saturation [7]	Piece	
Automation discounts for automation compatible mail [8] from required:		
ZIP+4	Piece	
Pre-barcode	Piece	
From 3/5 Digit:		
ZIP+4	Piece	
3-digit Pre-barcode.	Piece	
5-Digit Pre-barcode.	Piece	

[1] Charges are computed by adding the appropriate per piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[2] Applies to mail delivered within the delivery area of the originating post office.

[3] Applies to mail delivered within the SCF area of the originating SCF office.

[4] For postage calculation, multiply the editorial percent content by this factor and subtract from the applicable piece rate.

[5] Mail presorted to 3-digit (other than 3-digit city), SCF, states, or mixed states.

[6] For walk sequenced mail in batches of 125 pieces or more from carrier route presorted mail

[7] Applicable to saturation mail from carrier route presorted mail

[8] For automation compatible mail meeting applicable Postal Service regulations.

Revise rate schedule 300 to read as follows:

RATE SCHEDULE 300—THIRD-CLASS MAIL: SINGLE PIECE

	Rate [1] (cents)
Single piece:	
One ounce	

RATE SCHEDULE 302—FULL RATES—THIRD-CLASS: NONPROFIT-BULK MAIL [1]—Continued

	Piece rates (cents)
Two ounces	
Three ounces	
Four ounces	
Six ounces	
Eight ounces	
Ten ounces	
Twelve ounces	
Fourteen ounces	
Sixteen ounces	
Nonstandard Surcharge [2]	
Keys and identification devices:	
First 2 ounces	
Each additional 2 ounces	

[1] When the postage rate computed at the single piece third-class rate is higher than the rate prescribed in the corresponding fourth-class category for which the piece qualifies, the applicable lower fourth-class rate is charged.
[2] Applies only to pieces weighing one ounce or less.

Revise rate schedule 301 to read as follows:

RATE SCHEDULE 301—THIRD-CLASS MAIL: REGULAR BULK [1]

	Piece rates (cents)
Letter size:	
Piece rate:	
Discounts (per piece)	
Destination entry:	
BMC	
SCF	
Delivery Office [2]	
Presort Level:	
3/5 Digit	
Carrier Route	
Saturation	
Automation: [3]	
ZIP + 4: [4]	
Basic	
3/5 Digit [5]	
Barcode: [4]	
Basic	
3-Digit [5]	
6-Digit	

RATE SCHEDULE 301—THIRD-CLASS MAIL: REGULAR BULK [1]—Continued

	Piece rates (cents)
Non-letter size:	
Piece rate: [6]	
Discounts (per piece):	
Destination entry:	
BMC	
SCF	
Delivery office [2]	
Presort level:	
3/5 Digit	
Carrier Route	
125-Piece walk sequence	
Saturation	
Pound rate: [6]	
Pound rate plus per piece rate	
Discounts:	
Destination entry (per pound):	
BMC	
SCF	
Delivery office [2]	
Presort Level (per piece):	
3/5 Digit	
Carrier Route	
125-Piece Walk Sequence	
Saturation	

[1] A fee of $_____ must be paid once each 12-month period for each bulk mailing permit.
[2] Applies only to carrier route presort, 125-piece walk sequence and saturation mail.
[3] For letter-size pieces meeting applicable Postal Service regulations.
[4] Among ZIP+4 and barcode discounts, only one discount may be applied.
[5] Deducted from otherwise applicable 3/5-digit rate.
[6] Mailer pays either the piece or the pound rate, whichever is higher.

Revise rate schedule 302 to read as follows:

RATE SCHEDULE 302—FULL RATES—THIRD-CLASS: NONPROFIT-BULK MAIL [1]

	Piece rates (cents)
Letter size:	
Piece rate	
Discounts (per piece)	
Destination entry	

RATE SCHEDULE 302—FULL RATES—THIRD-CLASS: NONPROFIT-BULK MAIL [1]—Continued

	Piece rates (cents)
BMC	
SCF	
Delivery office [2]	
Presort level:	
3/5 Digit	
Carrier route	
Saturation	
Automation: [3]	
ZIP+4[4]	
Basic	
3/5 Digit [5]	
Barcode: [4]	
Basic	
3-Digit [5]	
5-Digit [5]	
Non-letter size:	
Piece rate [6]	
Discounts (per piece)	
Destination entry:	
BMC	
SCF	
Delivery office [2]	
Presort level	
3/5 Digit	
Carrier route	
125-Piece walk sequence	
Saturation	
Pound rate: [6]	
Pound rate plus Per piece rate	
Discounts	
Destination Entry (per pound):	
BMC	
SCF	
Delivery Office [2]	
Presort Level (per piece)	
3/5 Digit	
Carrier Route	
125-Piece Walk Sequence	
Saturation	

[1] A fee of $ must be paid once each 12-month period for each bulk mailing permit.
[2] Applies only to carrier route presort and saturation mail.
[3] For letter-size pieces meeting applicable Postal Service regulations.
[4] Among ZIP+4 and barcode discounts, only one discount may be applied.
[5] Deducted from otherwise applicable 3/5-digit rate.
[6] Mailer pays either the piece or the pound rate, whichever is higher.

Revise rate schedule 400 to read as follows:

RATE SCHEDULE 400—PARCEL POST RATES

Weight not exceeding (pounds)	Zone local	Zone 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								

RATE SCHEDULE 400—PARCEL POST RATES—Continued

Weight not exceeding (pounds)	Zone local	Zone 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
23								
24								
25								
26								
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44								
45								
46								
47								
48								
49								
50								
51								
52								
53								
54								
55								
56								
57								
58								
59								
60								
61								
62								
63								
64								
65								
66								
67								
68								
69								
70								

Notes: 1. For intra-BMC parcels, deduct. 2. For nonmachinable inter-BMC parcels, add. 3. For each pickup stop, add.

Add a new rate schedule 401 to read as follows:

RATE SCHEDULE 401—PARCEL POST: DESTINATION BMC/ASF SERVICE [1]

Weight not exceeding (pounds)	Zone 1, 2	Zone 3	Zone 4	Zone 5
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				

RATE SCHEDULE 401—PARCEL POST: DESTINATION BMC/ASF SERVICE [1]—Continued

Weight not exceeding (pounds)	Zone 1, 2	Zone 3	Zone 4	Zone 5
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58				
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				

[1] A fee of $ must be paid each year.

Revise rate schedule 402 to read as follows:

RATE SCHEDULE 402—SPECIAL AND LIBRARY RATES

	Rates (cents)
Special:	
First pound	
Not presorted	
Presorted to 5-digits [1, 2]	
Presorted to BMC [1, 3]	
Each additional pound through 7 pounds	
Each additional pound over 7 pounds	
	Appropriation rates (cents)
Library:	
First pound	
Each additional pound through 7 pounds	
Each additional pound over 7 pounds	

[1] A fee of $ must be paid once each 12-month period for each permit.
[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.
[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.

Revise rate schedule 405 to read as follows:

RATE SCHEDULE 405—FOURTH-CLASS MAIL: SINGLE PIECE BOUND PRINTED MATTER [1]

[Dollars]

Weight not exceeding (pounds)	Zones							
	Local	1 & 2	3	4	5	6	7	8
1.5								
2								
2.5								
3								
3.5								
4								
4.5								
5								
6								
7								
8								
9								
10								
Per piece rate (dollars)								
Per pound rate (dollars)								

[1] Includes both catalogs and similar bound printed matter.

Revise rate schedules 500 through 503 to read as follows:

RATE SCHEDULES 500, 501, 502, AND 503 EXPRESS MAIL RATES* [1] [2] [3]

[Dollars]

Weight not exceeding (Pounds)	Schedule 500 same day airport service	Schedule 501 custom designed	Schedule 502 next day and second day PO to PO	Schedule 503 next day and second day PO to addressee
0.5				
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58				
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				

NOTES: 1. The applicable 2-pound rate is charged for matter sent in a 'flat rate' envelope provided by the Postal Service.
2. Add: $ for each pickup stop.
3. Add: $ for each Custom Designed delivery stop.

Revise rate schedule SS-1 to read as follows:

SCHEDULE SS-1—SPECIAL SERVICES: ADDRESS CORRECTIONS

Description	Fee
Per manual correction	$3
Per automated correction	

Revise rate schedule SS-2 to read as follows:

SCHEDULE SS-2—SPECIAL SERVICES: BUSINESS REPLY MAIL

Description	Fee
Active business reply advance deposit account:	
Per piece:	
Pre-barcoded	$
Other	
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	
Annual license and accounting fees:	
Accounting fee for advance deposit account	
Permit fee (with or without advance deposit account)	

Revise rate schedule SS-4 to read as follows:

SCHEDULE SS-4—SPECIAL SERVICES: CERTIFICATES OF MAILING

Description	Fee (in addition to postage)
Individual pieces:	
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece)	$
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and COD mail (each copy)	
Bulk pieces:	
Identical pieces of first- and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:	
Up to 1,000 pieces (1 certificate for total number)	
Each additional 1,000 pieces or fraction	
Duplicate copy	

Revise rate schedule SS-6 to read as follows:

SCHEDULE SS-6—SPECIAL SERVICES: COLLECT ON DELIVERY

Amount to be collected or insurance coverage desired	Fee (in addition to postage)
$0.01 to $ 50	
50.01 to 100	
100.01 to 200	
200.01 to 300	$
300.01 to 400	
400.01 to 500	
500.01 to 600	
Notice of nondelivery of COD alteration of COD charges or designation of new addressee registered COD	

Revise rate schedule SS-8 to read as follows:

SCHEDULE SS-8—SPECIAL SERVICES: MONEY ORDERS

Amount	Fee
Domestic:	
$0.01 to $700	
APO-FPO	
$0.01 to $700	$
Inquiry Fee, which includes the issuance of copy of a paid money order	

Revise rate schedule SS-9 to read as follows:

SCHEDULE SS-9—SPECIAL SERVICES: INSURED MAIL

Liability	Fee (in addition to postage)
$0.01 to $50	
50.01 to 100	$
100.01 to 200	
200.01 to 300	
300.01 to 400	
400.01 to 500	
500.01 to 600	

Revise rate schedule SS-10 to read as follows:

SCHEDULE SS-10—SPECIAL SERVICES: POST OFFICE BOXES AND CALLER SERVICE

Box Size	Box capacity (cubic inches)	(Semi-annual Fee)		
		IA	IB	IC
A. Semi-Annual Rental Rates for Post Office Boxes				
Group I—Offices With City Carrier Service				
1	Under 296	$	$	$
2	296-499			
3	500-999			
4	1000-1999			
5	2000 and over			
Group II—Offices Without City Carrier Service				
		(Annual Fee)		
1		$		
2				
3				
4				
5				
Group III—Offices Without Rural Carrier Service				
1-5	(annual)	$		
B. Caller Service				
For caller service (semi-annual)		$	$	$
For each reserved call number (annual)		$		

Revise rate schedule SS-19 to read as follows:

SCHEDULE SS-19—SPECIAL SERVICES: STAMPED ENVELOPES

Type	Fee
Single sale	$
Bulk (500) #6¾ size:	
Regular	
Window	
Bulk (500) size #6¾ through #10:	
Regular	
Window	
Multi-Color Printing (500)	
#6¾ size	
#10 size	
Printing charge per 500 envelopes (for each type of printed envelope)	
Minimum order (500 envelopes)	
Order for 1,000 or more envelopes	
Double window (500) size #6¾ through #10 household (50) #6¾:	
Regular	
Window	
Size #6-¾ through #10	
Regular	
Window	

Revise rate schedule 1000 to read as follows:

SCHEDULE 1000—FEES

Description
First-Class Presorted Mailing Fee
Second-Class Mailing Fees
A. Original Entry
B. Additional Entry (per office)
Second-Class Re-entry Fee
Second-Class Registration for News Agents
Third-Class Bulk Mailing Fee
Parcel Post: Destination BMC/ASF
Fourth-Class Special Mail Presorted Mailing Fee
Authorization to Use Permit Imprint
Merchandise Return (per facility receiving merchandise return labels)
Business Reply Mail Permit

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 92-10955 Filed 5-12-92; 8:45 am]

BILLING CODE 7710-FW-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-4132-8]

Alabama; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Alabama has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Alabama's revisions consist of the provisions contained in Non-HSWA Cluster IV, and State Availability of Information, a HSWA requirement. These requirements are listed in section B of this notice. The Environmental Protection Agency (EPA) has reviewed Alabama's applications and has made a decision, subject to public review and comment, that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Alabama's hazardous waste program revisions. Alabama's applications for program revisions are available for public review and comment.

DATES: Final authorization for Alabama's program revisions shall be effective July 12, 1992, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Alabama's program revision applications must be received by the close of business, June 12, 1992.

ADDRESSES: Copies of Alabama's program revision applications are available during 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36130: (205) 271-7737; U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347-4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-268 and 124 and 270.

B. Alabama

Alabama initially received final authorization for its base, RCRA program effective on December 22, 1987. Alabama received authorization for revisions to its program on January 28, 1992. On March 1, 1990, and August 21, 1990, Alabama submitted program revision applications for additional program approvals. Today, Alabama is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Alabama's applications and has made an immediate final decision that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Alabama. The public may submit written comments on EPA's immediate final decision up until June 12, 1992. Copies of Alabama's applications for these program revisions are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Alabama's program revisions shall become effective July 12, 1992, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is

being authorized on the effective date of this authorization.

Alabama is today seeking authority to administer the following Federal requirements promulgated on July 1, 1987–June 30, 1988, and HSWA section 3006(f) State Availability of Information promulgated on November 8, 1984.

Federal requirement	FR reference	Federal promulgation date	State authority
List (Phase I) of Hazardous Constituents for Ground Water Monitoring.	52 FR 25942	07/09/87	335-14-5.06(9) (h)2, (h)3, (h)4(i), 335-14-5-.06(10)(f), 335-14-5-Appendix IX, 335-14-8-.02(5)(c)4(ii).
Identification and Listing of Hazardous Waste	52 FR 26012	07/10/87	335-14-2-.04(4)(c).
Listing of Spent Pickle Liquor; Clarification	52 FR 28697	08/03/87	335-14-2-.04(3).
Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities; Corrections.	52 FR 33936	09/09/87	335-14-8-.02(5)(c)7 and (c)8(v).
Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee.	52 FR 44314	11/18/87	335-14-5-.08(8)(g)2.(i), (g)2.(ii), 335-14-5-.08(12)(h)2, 335-14-6-.08(8)(g)2. (i) and (g)2.(ii).
Hazardous Waste Misc. Units	52 FR 46946	12/10/87	335-14-1-.02(1), 335-14-5-.02(1)(b), 335-14-5-.02(6)(b)4, 335-14-5-.02(9)(b) 1.(ii).
HSWA 3006(f) State Availability of Information	40 CFR Part 2, Subpart A, 5 U.S.C. 552.	11/8/84	Code of AL., Sec. 22-30-18, Sec. 41-22-20, Sec. 22-22A-7, 335-1-1-.06, 335-2-1.14.

Alabama is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Alabama's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted final authorization to operate its hazardous waste program as revised.

Alabama now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Alabama also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Alabama's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92-11246 Filed 5-12-92; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 721

[OPPTS-50583B; FRL-3948-2]

2-Chloro-N-methyl-N-substituted Acetamide and Mixed Alkylphenol Formaldehyde Polymer, Metal Salt; Modification of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for two chemical substances based on receipt of additional data. The data indicate that the original terms of the SNURs for these substances should be modified.

EFFECTIVE DATE: The effective date of this rule is July 13, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Assistance Office (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 9, 1990 (55 FR 32406), EPA issued SNURs establishing significant new uses for metalated alkylphenol copolymer (P-87-723) and 2-chloro-*N*-methyl-*N*-substituted acetamide (P-84-393). Because of additional toxicity data EPA has received for these substances, EPA proposed to modify these SNURs in the Federal Register of May 23, 1991 (56 FR 23667).

I. Rulemaking record

The record for the rule was established at OPPTS-50583B. This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this rule.

II. Background

The Agency proposed a modification to the SNUR for these substances which was published in the Federal Register of May 23, 1991 (56 FR 23667). The background of each PMN and the reasons for proposing the modification to the SNUR are set forth in the preamble to the proposed rule. The Agency received no public comment concerning the proposed rule. As a

result EPA will promulgate the modification to the SNURs as in the proposed rule. For P-84-393 EPA is eliminating notification requirements for respiratory protection, a material safety data sheet (MSDS) and labeling language concerning respiratory protection, and a specified production volume limit. For P-87-723 EPA is eliminating notification requirements for a specified production volume limit and a limit on the amount of the substance released to water.

III. Objectives and Rationale of Modification of the Rules

During review of the PMNs submitted for the chemical substances that are the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substances, and EPA identified the tests considered necessary to evaluate the risks of the substances. The basis for such findings is referenced in the preamble of the proposed modification. Based on these findings, section 5(e) consent orders were negotiated with the PMN submitters and SNURs were promulgated.

EPA reviewed the toxicity testing conducted by the PMN submitters for the substances and determined that the section 5(e) consent orders negotiated with the PMN submitters should be modified in light of the new data. The proposed modification of SNUR provisions for these substances designated herein is consistent with the modifications of the section 5(e) orders.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: February 4, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.224 by revising paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (b)(1) to read as follows:

§ 721.224 2-Chloro-N-methyl-N-substituted acetamide.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(2)(i), and (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDSs are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified § 721.80(g).

(b) * * *

(1) *Recordkeeping.* The recordkeeping requirements as specified in § 721.125(a) through (g) and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

3. In § 721.1272 by revising paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (b)(1) to read as follows and by deleting (b)(3):

§ 721.1272 Mixed alkylphenol formaldehyde polymer, metal salt.

(a) * * *

(2) * * *

(i) *Hazard communication program.* Requirements as specified in § 721.72 (b)(1)(i)(C), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(2), (c)(1), (f), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (industrial coating material).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(3), (b)(1), (b)(3), (c)(1), and (c)(3).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(3), (b)(3), and (c)(3).

(b) * * *

(1) *Recordkeeping.* The recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

[FR Doc. 92-11235 Filed 5-12-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket HM-207A; Amdt. No. 107-25]

RIN 2137-AC06

Amendments to the Hazardous Materials Program Procedures

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), enacted November 16, 1990, amended the Hazardous Material Transportation Act (HMTA) to establish a new preemption standard for State, political subdivision, and Indian tribe requirements that concern certain covered subjects. RSPA is amending its regulations to define the preemption standard. RSPA is also streamlining its preemption determination and waiver of preemption processes. The intended effect of these changes is to clarify the regulations and shorten the process for obtaining determinations.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Special Counsel, Office of the Chief Counsel (DCC-3), Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel. 202-366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. L. 101-615) was enacted on November 16, 1990. The HMTUSA amended the Hazardous Materials Transportation Act (HMTA; 49 App. U.S.C. 1801 *et seq.*) in many significant respects. Section 4 of the HMTUSA amended section 105 of the HMTA by adding new subsections (a)(4)(A) and (B) to preempt any requirement of a State, political subdivision, or Indian tribe concerning the following subjects if the non-Federal requirement is not substantively the same as any provision of the HMTA or any Federal regulation issued under the HMTA:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the

number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B).

RSPA issued a final rule, published on February 28, 1991 (56 FR 8616; Correction Notice published April 17, 1991, 56 FR 15510), to conform its regulations with certain provisions of the HMTUSA amendments. In its February 28, 1991 final rule, RSPA added this new preemption standard to 49 CFR 107.202 to mirror the statute, but did not define the term "substantively the same."

II. Notice of Proposed Rulemaking

On August 1, 1991, RSPA published a notice of proposed rulemaking (NPRM) under Docket No. HM-207A, Notice No. 91-2 (56 FR 36992), to solicit comments on a proposal to define "substantively the same," the preemption standard for State, political subdivision, and Indian tribe requirements that concern covered subjects. RSPA also proposed to streamline its procedures for preemption determinations and waiver of preemption determinations. The comment period closed on September 3, 1991, and RSPA received 13 comments from shippers, industry associations, States, and a Federal agency.

III. Definition of Substantively the Same

In the NPRM, RSPA proposed to define "substantively the same" as "conforming in every significant respect." RSPA proposed, therefore, that any State, political subdivision, or Indian tribe law, regulation, order, ruling provision, or other requirement concerning a covered subject would be considered "substantively the same" as the Federal provision on that subject if the non-Federal requirement conforms to it in every significant respect. RSPA also offered examples of non-Federal requirements that, although not identical to the Federal requirements, would nonetheless be considered substantively the same. Such requirements would include, for example, editorial changes that do not change the meaning of a Federal provision.

Most commenters supported the proposed definition of "substantively the same," although several suggested modifications. One commenter stated that the definition should mean that the non-Federal requirement is "identical" to the Federal requirement, because the legislative history supports such a conclusion. RSPA disagrees. As noted in the preamble to the NPRM, the House Committee on Public Works and Transportation stated:

> There is some concern that this mandate may mean that the state law must mirror the Federal statute verbatim. It does not mean that. It means the state law must have the same effect as the Federal law.

H.R. Rep. No. 444; Pt. 2, 101st Cong., 2d Sess. 24 (1990).

One commenter recommended that RSPA amend the definition to insert the word "similar" before *de minimis* in the last sentence, so that the sentence would read: "Editorial and other similar *de minimis* changes are permitted." The commenter expressed concern that the words *de minimis* would invite State and local jurisdictions to adopt substantive changes that they would characterize as minor. RSPA agrees with the commenter and has adopted the suggestion.

The commenter also suggested that RSPA clarify in the preamble that Congress has preempted the field of hazardous materials regulation in each of the five covered subjects, and that a State or local government is therefore preempted from any type of regulation concerning these subjects, unless it adopts and enforces a rule that is "substantively the same" as the Federal rules. The commenter suggested that RSPA provide a comprehensive list of examples of typical types of non-Federal regulations that are in the covered subject areas. Finally, the commenter stated that RSPA should clarify that any State or local requirement in a covered area that is inconsistent with the HMTA or the regulations (i.e., conflicts with or is an obstacle to compliance with the Hazardous Materials Regulations (HMR) could not be substantively the same and is therefore preempted.

RSPA believes that section 105(a)(4) preempts the field of hazardous materials transportation in the five covered subject areas. The concept of preempting certain specified subject areas of hazardous materials regulation originated with legislative proposals that the Department of Transportation submitted to Congress to reauthorize the HMTA. The most recent proposal, included with a July 11, 1989 letter from Samuel K. Skinner, former Secretary of Transportation, to the Honorable Dan Quayle, President of the Senate, was introduced as H.R. 3229. The Department's proposal delineated these subject areas as "critical areas of hazardous materials regulation" that should be Federally preempted. The Department's proposal was principally based upon its experience in issuing advisory inconsistency rulings under the HMTA, and was intended to codify that experience.

Congress agreed that these subject areas should be Federally preempted. The HMTUSA amended section 105 of the HMTA to explicitly extend the Secretary's jurisdiction to cover all intrastate commerce to "encourage the safe transportation of hazardous materials in all areas." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33 (1990). As the House Committee on Energy and Commerce stated:

> To achieve this primary goal, this section defines the critical areas in which Federal regulations will * * * preempt non-Federal laws or regulations on the same subject * * *. The Committee believes that there is a compelling need for standardized requirements relating to certain areas of the transportation of hazardous materials. Conflicting Federal, State, and local requirements pose potentially serious threats to the safe transportation of hazardous materials. Requiring State and local governments to conform their laws to the HMTA and regulations thereunder, with respect to the specific subjects listed in section 105(a)(4)(B), will enhance the safe and efficient transportation of hazardous materials, while better defining the appropriate roles of Federal, State, and local jurisdictions.

H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33-34 (1990).

As reported by the House Committee on Public Works and Transportation, H.R. 3520 contained a provision (section 105(b)(3)), entitled "State Authority to Regulate in Nonfederally Regulated Areas." This provision would have allowed State regulation in a covered subject area "only where the Federal government does not address a specific aspect of the covered areas and the Federal government permits it." H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. 24 (1990). This provision did not survive in S. 2936, which was the compromise bill enacted as Pub. L. 101-615. Although the omission of this provision from the HMTUSA is not, by itself, dispositive, RSPA believes that it is an indication that Congress intended to preempt the entire field of hazardous materials transportation in the five covered subject areas.

RSPA believes that in the five covered subject areas, national uniformity is critical. Therefore, in those areas, the Department of Transportation has determined what requirements are necessary for the safe transportation of hazardous materials. Any additional requirements, in excess of the Federal requirements, would not be

"substantively the same," and would be preempted.

In a recent decision by the United States Court of Appeals for the Tenth Circuit, the Court discussed the "substantively the same" standard. The Court noted that although the term had not yet been defined, it clearly mandates a higher preemption standard than the dual compliance/obstacle standard defined in 49 App. U.S.C. 1811(a). *Colorado Public Utilities Commission* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991). The Court stated that "the term itself denotes that state regulations must contain the same substance as the federal regulations," and it, therefore, preempted a state regulation because it imposes "different requirements than the federal regulation." *Id.*, at 1578.

One commenter stated that the language of the proposed definition should be amended to consider not only the text of the non-Federal requirement, but how it is intended to be or actually is enforced. RSPA believes that the preemption standard in section 105(a)(4) requires a comparison of the non-Federal requirement with the Federal requirement on that covered subject. Such a comparison would necessarily involve a determination of whether the non-Federal requirement would have the same effect as the Federal requirement, particularly where the language of the two requirements is not identical. However, where the non-Federal requirement is determined to be substantively the same, it would be appropriate to consider actual or hypothetical situations where the non-Federal requirement might be enforced differently than the Federal requirement. If a non-Federal requirement is determined to be "substantively the same" as a Federal requirement, and therefore not preempted under section 105(a)(4), it may nevertheless be subject to the separate preemption provisions of section 112(a)(2). Section 112(a)(2) provides that a non-Federal requirement is preempted if, as applied or enforced, it creates an obstacle to the accomplishment and execution of the HMTA or the HMR.

One commenter suggested that the definition did not provide enough information concerning the nature of the preemption standard. The commenter asked whether a State which had no provision on a covered subject would be required to adopt one; whether State exceptions from the HMR (such as for intrastate transportation) would be preempted; and whether a State which experiences significant delay in adopting new Federal regulations would have its existing State-adopted HMR preempted.

As discussed above, RSPA believes that State requirements that differ from or exceed the Federal requirements are not "substantively the same" and are therefore preempted. States are encouraged to adopt the HMR in their entirety, but are not required by the HMTA to do so. As a general rule, a State which has no provision on a particular covered subject would not be required to adopt one. However, if the absence of a provision changes the effect of State regulations in a covered area, the State regulations may be preempted. RSPA does not anticipate that reasonable delays in adopting new Federal requirements will result in preemption of current State-adopted HMR's. In its inconsistency rulings (IRs), RSPA determined that State and local requirements that incorporate by reference specific superseded Federal regulations are inconsistent. IR-8, IR-18, (All of RSPA's Inconsistency Rulings have been published in the Federal Register and are available for review in the RSPA Dockets Unit.) However, State and local governments may incorporate by reference specific volumes of the Code of Federal Regulations which include the HMR for a reasonable time (up to two years) after their publication, although a later-published HMR rule would control over an inconsistent State or local requirement. IR-19. As required by the HMTA, RSPA will be proposing to extend its jurisdiction to regulate intrastate carriers. Issues concerning State exceptions for intrastate carriers will be addressed during that rulemaking.

This commenter also suggested that RSPA address specific hypothetical requirements, such as whether a State requirement for an inspection sticker to certify an annual inspection of a bulk packaging or vehicle would be preempted as conflicting with the Federal marking or labeling requirements.

Any such non-Federal requirement will require analysis on a case-by-case basis to determine if the requirement is in a covered area, and then if the requirement is substantively the same. The IRs that RSPA has issued offer numerous examples of the types of requirements that fall within a covered subject area and that RSPA determined were preempted under the dual compliance/obstacle tests.

Courts have also addressed State and local requirements that fall within a covered subject area. For example, State and local hazard class and hazardous materials definitions and classifications differing from those in the HMR and used to regulate hazardous materials transportation are inconsistent because the Federal role is exclusive. IR-18, IR-19, IR-20, IR-21, IR-26, IR-28, IR-29, IR-30, IR-31, IR-32, and *Missouri Pacific R.R. Co.* v. *Railroad Commission of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989). Placarding and other hazard warning requirements are inconsistent if they are in addition to or different from Federal placarding requirements. IR-2, IR-3, IR-24, IR-30. In *Colorado Public Utilities Commission* v. *Harmon, supra*, the Court found that a requirement to carry the State Patrol telephone number with the shipping papers is not "substantively the same" and is preempted. Although these examples are not exhaustive, they are indicative of the types of requirements that RSPA believes fall within the covered subject areas, and which would be preempted if they are not substantively the same.

IV. Preemption Determination and Waiver of Preemption Processes

In the NPRM, RSPA stated that it would exercise the authority to issue preemption and waiver of preemption determinations under the HMTA, with the exception of matters concerning highway routing of hazardous materials. The NPRM stated that matters concerning highway routing, including radioactive materials routing, would now be the responsibility of the Federal Highway Administration (FHWA).

Several commenters opposed splitting preemption determinations between two agencies of the Department of Transportation. Commenters were concerned that with two different agencies issuing preemption determinations, the possibility for different preemption standards exists. Commenters stated that to require an applicant to file two different applications would be burdensome. One commenter stated that the term "highway routing" is unclear, and several commenters stated that highway routing cannot be cleanly separated from other issues, such as time-of-day restrictions, permits, inspections, fees, shipment bans, prenotification, and related issues.

Because of the modal-specific nature of highway routing, the Secretary of Transportation has determined that FHWA should have the responsibility for matters concerning highway routing under the HMTA. FHWA will be conducting further rulemaking on the issue of highway routing standards. Section 105(b)(2) of the HMTA speaks

broadly to the issuance of Federal standards for States and Indian tribes to use in establishing, maintaining, and enforcing specific highway routes over which hazardous materials may and may not be transported by motor vehicles, and "limitations and requirements with respect to highway routing." Definition of what constitutes highway routing matters is an issue in FHWA's rulemaking on this topic. RSPA and FHWA are working together to address this issue and to coordinate on matters where there may be overlapping concerns.

RSPA proposed to shorten the preemption determination and waiver of preemption processes by eliminating the right to appeal the decision of the Associate Administrator for Hazardous Materials Safety to the Administrator of RSPA. Congress was well aware of RSPA's inconsistency ruling process, and the process was extensively discussed during the development of the HMTUSA. Congress elevated RSPA's advisory process to the statute by providing for preemption determinations that are subject to judicial review, but was clearly concerned about the timeliness of the process. Section 112(c)(1) of the HMTA provides that no applicant for a preemption determination may seek relief with respect to the same issue in any court until the Secretary has taken final action on the application or until 180 days after filing the application, whichever occurs first. For this reason, RSPA proposed to shorten both the preemption determination and waiver of preemption processes.

Although some commenters supported streamlining the two processes, several commenters objected to complete elimination of the administrative appeal process. These commenters suggested various alternatives, including a discretionary process that would be more a reconsideration rather than a full-blown appeal process. These commenters noted that now that RSPA's preemption determinations will be binding and subject to judicial review, it is even more critical to have an administrative review of the initial decision. The commenters stated that there should be some opportunity for RSPA to correct an error of fact or law or consider new information that was not available to the initial decisionmaker. Several of these commenters suggested that RSPA establish a specific time period for reconsideration, and if the Administrator fails to act within that time, the petition for reconsideration would be deemed denied.

Several of the commenters critical of splitting the preemption determination process between RSPA and FHWA suggested that some type of appeal be retained, either in the Office of General Counsel or in the Office of the Secretary.

RSPA agrees with those commenters who suggested that there should be some opportunity for RSPA to review its decisions prior to judicial review. Accordingly, RSPA is adopting a streamlined administrative review procedure for both preemption determinations and waiver of preemption determinations that will allow for a petition for reconsideration to be filed with the Associate Administrator for Hazardous Materials Safety. As suggested by the commenters, RSPA will require that a petition for reconsideration of a decision of the Associate Administrator include a statement alleging the specific factual or legal error in the Associate Administrator's determination, or the new information sought to be introduced, with an explanation of why it was not raised in the earlier proceeding.

The procedure will provide that any petition for reconsideration must be received no later than 20 days after service of the Associate Administrator's determination. The petitioner will be required to mail a copy of the petition to each person who participated in the earlier proceeding, with a statement that the person may file comments on the petition within 20 days. The petitioner must include with the petition a certification that the petitioner has complied with the requirement to notify other persons and include the names and addresses of all persons to whom a copy of the petition was sent. The Associate Administrator's decision on the petition shall constitute final agency action and shall be considered an exhaustion of administrative remedies.

With respect to both RSPA and FHWA making preemption determinations, as discussed above, the Secretary has determined that because of the modal-specific nature of highway routing, FHWA should be responsible for those matters, including preemption determinations. Therefore, there will be two different forums for preemption determinations. However, commenters may wish to express their views directly to the FHWA when it conducts its rulemaking on highway routing, including its proposed preemption determination process, as to where the line should be drawn regarding highway routing matters. Although having two different forums will, in some instances, require the submission of two applications, RSPA does not believe this requirement will be unduly burdensome for applicants. An applicant would not be required to submit the same information twice. Instead, an applicant seeking a determination with respect to both highway routing and other matters would have to divide the application and supporting information into two parts. As indicated above, RSPA and FHWA are working together to minimize any burden on applicants.

V. Editorial Corrections

This final rule also makes editorial corrections to §§ 107.205 and 107.217 to ensure that all references to non-Federal governmental entities include Indian tribes wherever appropriate.

Rulemaking Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979.) This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted.

Administrative Procedure Act

RSPA finds that there is good cause for not publishing this rule at least 30 days before its effective date as is ordinarily required by the Administrative Procedure Act, 5 U.S.C. 553(d). This rule is being made effective today in order to ensure the right of all parties to any pending preemption matter to seek immediate judicial review, in Federal court, of a decision without the need to appeal the decision to the Administrator.

Executive Order 12612

The HMTA provides that State, political subdivision, or Indian tribe requirements concerning certain covered subjects are preempted. This notice merely proposes to implement the specific statutory mandate at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism assessment is not warranted.

Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic

impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements contained in this rule.

National Environmental Policy Act

RSPA has concluded that this rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 107 of title 49, Code of Federal Regulations, is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1804, 1806, 1808–1811; App. A of part 1 Public Law, 89–670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53.

Subpart C—Preemption

2. In § 107.201, paragraphs (a) and (c) are revised to read as follows:

§ 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act (49 App. U.S.C. 1804 and 1811), or regulations issued thereunder; and

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act, or regulations issued thereunder, or that has been determined by a court of competent jurisdiction to be so preempted.

* * * * *

(c) For purposes of this subpart, "regulations issued under the Act" means the regulations contained in this subchapter and subchapter C of this chapter.

* * * * *

3. Section 107.202 is amended by adding a new paragraph (d) to read as follows:

§ 107.202 Standards for determining preemption.

* * * *

(d) For purposes of this section, "substantively the same" means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis*, changes are permitted.

4. In § 107.203, paragraph (a) is revised to read as follows:

§ 107.203 Application.

(a) With the exception of highway routing matters covered under section 105(b) of the Act (49 App. U.S.C. 1804(b)), any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Associate Administrator for Hazardous Materials Safety for a determination of whether that requirement is preempted by 49 CFR 107.202(a) or (b).

* * * * *

5. In § 107.205, paragraph (a) is revised to read as follows:

§ 107.205 Notice.

(a) If the applicant is other than a State, political subdivision, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision, or Indian tribe concerned accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the application to the Associate Administrator for Hazardous Materials Safety within 45 days. The application filed with the Associate Administrator for Hazardous Materials Safety must include a certification that the applicant has complied with this paragraph and must include the names and addresses of each State, political subdivision, or Indian tribe official to whom a copy of the application was sent.

* * * * *

6. In § 107.209, paragraph (c) is revised to read as follows:

§ 107.209 Determination.

* * * * *

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved thereby may file a petition for reconsideration with the Associate Administrator for Hazardous Materials Safety.

* * * * *

7. Section 107.211 is revised to read as follows:

§ 107.211

Petition for reconsideration.

(a) Any person aggrieved by a determination issued under § 107.209 may file a petition for reconsideration with the Associate Administrator for Hazardous Materials Safety. The petition must be filed within 20 days of service of the determination.

(b) The petition must contain a concise statement of the basis for seeking review, including any specific factual or legal error alleged. If the petition requests consideration of information that was not previously made available to the Associate Administrator, the petition must include the reasons why such information was not previously made available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or commenter, in the preemption determination proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Associate Administrator within 20 days. The petition filed with the Associate Administrator must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent.

(d) The Associate Administrator's decision constitutes final agency action.

8. In § 107.215, paragraph (a) introductory text is revised to read as follows:

§ 107.215 Application.

(a) With the exception of requirements preempted under section 105(b) of the Act (49 App. U.S.C. 1804(b)), any State, political subdivision, or Indian tribe may apply to the Associate Administrator for Hazardous Materials Safety for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted under the Act or the regulations issued under the Act, or that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

* * * * *

9. In § 107.217, paragraphs (a) and (c) are revised to read as follows:

§ 107.217 Notice.

(a) The applicant shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person who is reasonably ascertainable by the applicant as a person who will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application to the Associate Administrator for Hazardous Materials Safety within 45 days. The application filed with the Associate Administrator for Hazardous Materials Safety must include a certification that the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

* * * * *

(c) The Associate Administrator for Hazardous Materials Safety may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of the section is not impracticable, or that notice should be published in the **Federal Register**.

* * * * *

10. In § 107.221, paragraph (c) is revised to read as follows:

§ 107.221 Determination and order.

* * * * *

(c) The order includes a written statement setting forth the relevant facts and the legal basis for the determination. The order provides that any person aggrieved by the order may file a petition for reconsideration with the Associate Administrator for Hazardous Materials Safety.

* * * * *

§ 107.223 [Removed]

11. Section 107.223 is removed.

12. Section 107.225 is redesignated as new § 107.223 and revised to read as follows:

§ 107.223 Petition for reconsideration.

(a) Any person aggrieved by an order issued under § 107.221 may file a petition for reconsideration with the Associate Administrator for Hazardous Materials Safety. The petition must be filed within 20 days of service of the order.

(b) The petition must contain a concise statement of the basis for seeking review, including any specific factual or legal error alleged. If the petition requests consideration of information that was not previously made available to the Associate Administrator, the petition must include the reasons why such information was not previously made available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or commenter, in the waiver of preemption proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Associate Administrator within 20 days. The petition filed with the Associate Administrator must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent.

(d) The Associate Administrator's decision constitutes final agency action.

Issued in Washington, DC, on May 4, 1992, under authority delegated in 49 CFR 1.53.

Douglas B. Ham,

Deputy Administrator.

[FR Doc. 92-11005 Filed 5-12-92; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 57, No. 93
Wednesday, May 13, 1992

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Third-Party Certification of Industrial Radiographers; Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) has planned a public workshop with representatives of the Agreement States and the American Society for Nondestructive Testing, Inc. (ASNT) to discuss the development of a national third-party industrial radiographer radiation safety certification program. NRC plans to discuss its efforts at developing a rule to require third-party certification of radiographers at the meetintg. NRC is currently considering publishing a proposed rule covering this topic in the near future.

DATES: The workshop will be held Wednesday afternoon, May 27, 1992, and Thursday morning, May 28, 1992. The workshop will begin at 1 p.m. and recess at 5 p.m. on Wednesday, and will begin at 8 a.m. and end at 12 noon on Thursday.

ADDRESSES: The workshop will be held at the Mobile Hilton, 3101 Airport Boulevard, Mobile, Alabama 36606. Phone (205) 476–6400. The workshop room location will be posted in the hotel lobby.

FOR FURTHER INFORMATION CONTACT: J. Bruce Carrico, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504–2634; or, Vandy L. Miller, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504–2326.

SUPPLEMENTARY INFORMATION: The NRC is considering proposing an amendment to its regulations pertaining to industrial radiography. The amendment would require licenses to ensure that individuals acting as industrial radiographers, in addition to meeting the existing training and qualification requirements, be certified through a radiation safety certification program by an NRC approved third-party.

On November 9, 1989 (54 FR 47089), the NRC published for comment a proposed rule that would permit certification of industrial radiographers under the ASNT program in lieu of an existing requirement applicable to radiographer license applicants. The proposed rule on voluntary certification of radiographers also specifically solicited comments on the costs and benefits of third-party radiation safety certification for use by the Commission in its consideration of a planned subsequent rulemaking that would require radiographer certification. A majority of the commenters directed their comments to the issue involving mandatory third-party certification. The final rulemaking on voluntary certification was published on March 19, 1991 (56 FR 11504). In the final rule, the NRC indicated that it would consider these comments in any future rulemaking that would mandate third-party radiographer certification.

Several States commented on mandatory certification in the voluntary certification rulemaking. The purpose of this workshop is to attempt to resolve any issues that any principals may have regarding third-party radiographer certification and to seek cooperation in developing a conceptional framework for a proposed rule mandating certification.

Conduct of the Meeting

The workshop will be co-chaired by Dr. John E. Glenn, Chief, Medical, Academic, and Commercial Use Safety Branch, Office of Nuclear Material Safety and Safeguards, and Mr. Vandy L. Miller, Assistant Director for State Agreements Program, Office of State Programs. The meeting will be conducted in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting:

1. At the meeting, questions or statements from attendees other than participants (i.e., State representatives, ASNT representatives, and NRC staff) will be entertained as time permits.

2. Seating for the public will be on a first come-first served basis.

Dated at Rockville, MD, this 6th day of May 1992.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Acting Director, Office of Nuclear Material Safety and Safeguards.

Vandy L. Miller,

Acting Director, Office of State Programs.

[FR Doc. 92–11219 Filed 5–12–92; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL ELECTION COMMISSION

11 CFR Part 200

[Notice 1992–8]

Administrative Regulations

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to create a new subchapter B in Chapter I of 11 CFR titled "Administrative Regulations." This subchapter would contain Commission regulations concerning administrative practice and procedure. The Commission requests comments on the proposed regulations on petitions for rulemaking, the first part in subchapter B, to be found in 11 CFR part 200. The proposed regulations would provide the public with easy access to the procedures for filing rulemaking petitions with the Commission. In addition, the proposed regulations would delineate the process and agency considerations used for the disposition of petitions filed with the Commission. Finally, the proposed regulations would define what constitutes the agency record for the petition process. Further information is provided in the supplemental information which follows.

DATES: Comments must be in writing and received on or before June 12, 1992.

ADDRESSES: Comments should be addressed to Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 553(e) of the Administrative Procedure

provides: "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. 553(e). Although the APA does not prescribe procedures for petitions made pursuant to section 553(e), the Attorney General's Manual on the APA states that every agency with rulemaking powers "should establish * * * procedural rules governing the receipt, consideration, and disposition of petitions filed." U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act at 38 (1947).

The Commission endorsed a procedure for consideration of rulemaking petitions in April 1980 upon receipt of its first petition, filed by the Democratic National Committee and the Democratic Senatorial Campaign Committee. In response to that petition the Commission adopted internal guidelines to govern the petition process. See, Democratic National Committee and Democratic Senatorial Campaign Committee Petition for Rulemaking (Commission Memorandum No. 845 (4/9/80)).

Since the adoption of its procedures for the receipt and consideration of petitions, the Commission has received periodic requests for a description of those procedures. The Commission is therefore considering making the proposed regulations part of title 11 of the Code of Federal Regulations, in an effort to make the petition process more readily available to the regulated public. The Commission's main purpose in proposing these regulations is to aid the public by advising prospective petitioners what is necessary to activate Commission consideration of a petition for rulemaking and what the process would be upon receipt. The proposed regulations, by prescribing uniform format guidelines for the submission of petitions, would also help ensure that the Commission obtains from the outset the type of information needed for an informed decision on the petition.

Section 200.2, "Procedural requirements," would contain format and content requirements for the submission of petitions to the Commission pursuant to any of the Commission's governing statutes. This section would also state that the Commission may institute a rulemaking *sua sponte* with respect to suggestions contained in an advisory opinion request, a complaint or any other document that does not qualify as a rulemaking petition, without following the procedures of this part. However, the Commission's failure to initiate a rulemaking under this provision does not constitute a decision to deny a rulemaking petition on any issue.

The Commission is interested in suggestions on what other information, if any, should be included in rulemaking petitions. The section would offer the petitioner the opportunity to submit his or her proposal in draft regulatory form, but would not require this.

Section 200.3, "Processing of petitions," would reflect the Commission's current procedures with respect to consideration of rulemaking petitions. The Commission has followed these basic procedures for each petition it has considered.

Under the proposed regulations, the Commission, upon the recommendation of the Office of General Counsel, would publish a notice of availability in the **Federal Register**. The notice of availability would state that a petition has been filed with the Commission, that it is available for public inspection, and that comments are being solicited. The notice of availability would not take any position on the merits of the petition. The merits of the petition itself would not be considered until at least the expiration of the comment period on the notice of availability.

Depending upon the nature of the petition, the Commission has in the past determined that additional procedures may contribute to its determination whether to commence a rulemaking proceeding. The proposed regulations would retain this practice of initiating a notice of inquiry, an advance notice of proposed rulemaking, a public hearing or other procedures when the Commission deems it appropriate. The flexibility of initiating additional procedures would permit the Commission to receive comments and additional information on other issues related to or raised by the petition.

Section 200.4, "Disposition of petitions," describes the Commission's actions after a decision whether to initiate a rulemaking has been made. The Commission seeks comments on whether a notice of disposition is necessary if the agency decides to proceed with a rulemaking based on the petition. The proposed regulations would also contain a procedure for reconsideration of a petition. This procedure is similar to that currently used for reconsideration of advisory opinions. See, 11 CFR 112.6. The Commission seeks additional suggestions with respect to the reconsideration process.

Section 200.5, "Agency considerations," would list several factors that the Commission could take into consideration for its decision on whether to initiate a rulemaking proceeding. The list is not meant to be exhaustive, but only a suggestion of what could be taken into account in a particular case. The Commission welcomes comments on what additional considerations, if any, should be listed.

Section 200.6, "Administrative record," would define the exclusive agency record upon which the Commission would base its decision on the petition. The proposed regulations on the administrative record would explain to the public what is to be contained in the official agency file on a rulemaking petition. It could also identify the documents upon which the Commission relied in reaching its decision on the petition, for purposes of judicial review. The Commission seeks comments on what other documents, if any, should be part of the decision making record.

The intention of this proposal is to help clarify what documents will be part of the formal agency record. The Commission is considering whether to include whether to include in the administrative record only comments received within the prescribed comment period. Under this proposal, anyone wishing to submit comments after the comment period would have to request an extension for good cause from the Commission. If granted, the comment period would be formally extended for all prospective commentators, and a notice to that effect would be published in the **Federal Register**. The Commission is seeking suggestions on this possible addition to the regulations.

The Commission welcomes any comments on the foregoing proposed regulations to be added at 11 CFR part 200, and suggestions on other ways the Commission could effectively achieve its purposes.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the proposed regulations concern only internal agency procedures.

List of Subjects in 11 CFR Part 200

Adminstrative practice and procedure.

For the reasons set out in the preamble, it is proposed to amend chapter I of title 11 of the Code of Federal Regulations as follows:

1. By adding the heading "Administrative Regulations." to reserved subchapter B.

2. By adding new part 200 to subchapter B as follows:

SUBCHAPTER B—ADMINISTRATIVE REGULATIONS

PART 200—PETITIONS FOR RULEMAKING

Sec.

200.1 Purpose and scope.
200.2 Procedural requirements.
200.3 Processing of petitions.
200.4 Disposition of petitions.
200.5 Agency considerations.
200.6 Administrative record.

Authority: 2 U.S.C. 437d(a)(8), 2 U.S.C. 438(a)(8), 5 U.S.C. 553(e).

§ 200.1 Purpose and scope.

This part prescribes the procedures for the submission, consideration, and disposition of petitions for rulemaking filed with the Federal Election Commission. It establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

§ 200.2 Procedural requirements.

(a) Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of a rule implementing any of the following statutes:

(1) The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.;*

(2) The Presidential Election Campaign Fund Act, as amended, 26 U.S.C. 9001 *et seq.;*

(3) The Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. 9031 *et seq.;*

(4) The Freedom of Information Act, 5 U.S.C. 552; or

(5) Any other law that the Commission is required to implement and administer.

(b) The petition shall—

(1) Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identifty of his or her principal;

(2) Identify itself as a petition for the issuance, amendment, or repeal of a rule;

(3) Be limited to seeking rulemaking, and shall not request any other action by the Commission;

(4) Identify the specific section(s) of the regulations to be affected;

(5) Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and

(6) Be addressed and submitted to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463

(c) The petition may include draft regulatory language that would effectuate the petitioner's proposal.

(d) The Commission may, in its discretion, treat a document that fails to conform to the format requirements of paragraph (b) of this section as a basis for a sua sponte rulemaking. For example, the Commission may consider whether to initiate a rulemaking project addressing issues raised in an advisory opinion request submitted under 11 CFR 112.1 or in a complaint filed under 11 CFR 111.4. However, the Commission need not follow the procedure of 11 CFR 200.3 in these instances.

§ 200.3 Processing of petitions.

(a) If a document qualified as a petition under 11 CFR 200.2, the Commission, upon the recommendation of the Office of General Counsel, will—

(1) Publish a notice of availability in the **Federal Register**, stating that the petition is available for public inspection in the Commission's Public Records Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the notice;

(2) Send a letter to the Commissioner of Internal Revenue, pursuant to 2 U.S.C. 438(f), seeking the IRS's comments on the petition; and

(3) Send a letter to the petitioner, acknowledging receipt of the petition and informing the petitioner of the above actions.

(b) If the petition does not comply with the requirements of 11 CFR 200.2(b), the Office of General Counsel may notify the petitioner of the nature of any discrepancies.

(c) If the Commission decides that a notice of inquiry, advance notice of proposed rulemaking, or a public hearing on the petition would contribute to its determination whether to commence a rulemaking proceeding, it will publish an appropriate notice in the **Federal Register**, to advise interested persons and to invite their participation.

(d) The Commission will not consider the merits of the petition before the expiration of the comment period on the notice of availability.

(e)(1) Comments filed with the Commission will only be considered if filed within the comment period prescribed in the relevant **Federal Register** notice.

(2) Anyone wishing to submit comments after the close of the comment period must request an extension from the Commission and must demonstrate good cause for the request.

§ 200.4 Disposition of petitions.

(a) After considering the comments that have been filed within the comment period(s) and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate a rulemaking based on the filed petition.

(b) The Commission will give notice of its action on the petition, including publishing a notice of disposition in the **Federal Register** and sending a letter to the petitioner.

(c) If the Commission decides not to initiate a rulemaking based on the petition, the notice will be accompanied by a brief statement of the grounds for the Commission's decision, except in an action affirming a prior denial.

(d) The Commission may reconsider a petition for rulemaking previously denied if the petitioner submits a written request for reconsideration within 30 calendar days and if, upon the motion of a Commissioner who voted with the majority that originally denied the petition, the Commission adopts the motion to reconsider by affirmative vote of four members.

§ 200.5 Agency considerations.

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations—

(a) The Commission's statutory authority;

(b) Policy considerations;

(c) The desirability of proceeding on a case-by-case basis;

(d) The necessity or desirability of statutory revision;

(e) Available agency resources.

§ 200.6 Administrative record.

(a) The agency record for the petition process consists of the following:

(1) The petition, including all attachments on which it relies, filed by the petitioner.

(2) Written comments on the petition, received within the prescribed comment period, which have been circulated to the considered by the Commission, including attachments submitted as a part of the comments.

(3) Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process.

(4) All notices published in the **Federal Register**, including the notice of availability and notice of disposition. If a Notice of Inquiry or Advance notice of

proposed rulemaking was published it will also be included.

(5) The transcripts or audio tapes of the testimony of witnesses during any public hearing(s) on the petition.

(6) All correspondence between the Commission and the petitioner, other commentators and state or federal agencies pertaining to Commission consideration of the petition.

(7) The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.

(b) The administrative record specified in paragraph (a) of this section is the exclusive record for the Commission's decision.

Dated: May 8, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-11189 Filed 5-12-92; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 92-ASO-5]

Proposed Establishment of Control Zone, Greenville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a control zone at the Pitt-Greenville Airport, Greenville, NC. This action is being initiated at the request of the Pitt County—City of Greenville Airport Authority. Communications capability and weather reporting service are available to support the control zone during hours of operation. If promulgated, this action would lower the floor of controlled airspace from 700 feet above the surface to the surface in vicinity of the airport to provide additional controlled airspace for Instrument Flight Rules (IFR) aeronautical operations.

DATES: Comments must be received on or before: June 29, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92-ASO-5, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking 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 regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-5." 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 rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone at the Pitt-Greenville Airport, Greenville, NC. This action is deemed necessary to provide controlled airspace for IFR aircraft while operating in instrument meteorological conditions. If approved, the floor of controlled airspace will be lowered to the surface in vicinity of the Pitt-Greenville Airport. A description of the control zone would be published in § 71.171 of FAA Order 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control Zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71 [AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348 (a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1919-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Control Zones

ASO NC CZ Greenville, NC [NEW]

Pitt-Greenville Airport, NC (lat. 35°38'04" N, long. 77°23'09" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.4-mile radius of the Pitt-Greenville Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in East Point, Georgia, on April 30, 1992.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 92-11187 Filed 5-12-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-0033]

RIN 0905-AA06

Oral Health Care Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph

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 to amend the tentative final monograph for over-the-counter (OTC) oral health care drug products by adding a new section that will exempt oral health care drug products containing menthol in a lozenge dosage form from that part of the accidental overdose warning required by § 330.1(g) (21 CFR 330.1(g)) that states: "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The exemption from the warning is being provided because OTC oral health care drug products containing menthol in a lozenge dosage form have been determined to have a low potential for acute toxicity resulting from accidental ingestion. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by July 13, 1992; written comments on the agency's economic impact determination by July 13, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., 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: Under § 330.1(g), the following general warning statements are required on all orally administered OTC drug products: "Keep this and all drugs out of the reach of children. In case of accidental overdose, seek professional assistance or contact a poison control center immediately." Section 330.1(g) also states that FDA will grant an exemption from these general warnings where appropriate upon petition.

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 provides for menthol to be used as an antitussive in a lozenge dosage form at a dose of 5 to 10 milligrams (mg) every hour as needed (52 FR 30042 at 30055 to 30056).

Subsequently, based on data submitted in two citizen petitions, the agency proposed to provide for an exemption for menthol-containing antitussive cough drops from the required general warning statements in § 330.1(g) in the **Federal Register** of July 6, 1989 (54 FR 28442). The agency concluded that accidental ingestion of menthol lozenges marketed in the monograph dosage (5 to 10 mg) is highly unlikely to present any degree of acute oral toxicity. Because of this low potential for acute toxicity, the agency proposed to add a new section to the monograph for OTC antitussive drug products and to provide an exemption for OTC antitussive drug products and to provide an exemption from the second part of the accidental overdose warning required by § 330.1(g) for antitussive drug products containing menthol in a lozenge dosage form. The second part of this warning states: "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." However, the agency concluded that products containing menthol should continue to bear the first part of the general warning, which states: "Keep this and all drugs out of the reach of children." The agency considered this part of the warning necessary to reinforce and ensure that all drugs, regardless of potential toxicity, are treated by consumers as drugs and kept out of the reach of all children.

Final agency action on this proposal occurred with the publication of an amendment to the final monograph for OTC antitussive drug products in the **Federal Register** of July 6, 1990 (55 FR 27806). The agency provided an exemption for menthol lozenges (marketed in accordance with the monograph) from the second part of the accidental overdose warning required by § 330.1(g), which states: "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." However, the labeling must continue to bear the first part of the general warning in § 330.1(g), which states: "Keep this and all drugs out of the reach of children." (See § 341.74(f) (21 CFR 341.74(f)), 55 FR 27806 to 27808.)

In the **Federal Register** of May 25, 1982 (47 FR 22760), FDA published an advance notice of proposed rulemaking for OTC oral health care drug products. The Advisory Review Panel on OTC Oral Cavity Drug Products (the Panel) recommended that menthol be generally recognized as safe and effective (Category I) as an OTC anesthetic/analgesic in lozenges containing 2 to 20 mg menthol to be taken every 2 hours, if necessary (47 FR 22760 at 22813 to 22814). In the tentative final monographs for OTC oral health care drug products published in the **Federal Register** of January 27, 1988 (53 FR 2436 at 2458 to 2459) and September 24, 1991 (56 FR 48302 at 48344), the agency concurred with the Panel's Category I recommendation and dosage for menthol in a lozenge dosage form and proposed that it be included in the monograph for OTC oral health care drug products.

Subsequent to the publication of the September 24, 1991 tentative final monograph for OTC oral health care drug products, the agency received a comment requesting that the tentative final monograph be amended by adding a new section that would exempt oral health care drug products containing 2 to 20 mg menthol in a lozenge dosage form from that part of the accidental overdose warning required by § 330.1(g) which states: "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The comment did not request an exemption from the portion of the warning that states "Keep this and all drugs out of the reach of children."

As noted above, the agency has previously considered this type of exemption for OTC lozenge products containing menthol for antitussive use. The agency believes that it is highly unlikely that OTC lozenge products containing menthol for oral health care

anesthetic/analgesic use would present any degree of acute oral toxicity. Accordingly, the agency is proposing to amend the tentative final monograph for OTC oral health care drug products to include the same type of exemption that currently exists in the monograph for OTC antitussive drug products.

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 oral health care 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 oral health care 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 oral health care drug products. Types of impact may include, but are not limited to, costs associated with relabeling. There should be no adverse impact on costs because this labeling change can be implemented at the same time as any other labeling changes that become necessary when the final rule for OTC oral health care drug products is issued. Comments regarding the impact of this rulemaking on OTC oral health care drug products should be accompanied by appropriate documentation. 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 July 13, 1992, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before July 13, 1992. 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 356

Labeling, Oral health care drug products, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 356 (as proposed in the **Federal Register** of September 24, 1991 (56 FR 48302)) be amended as follows:

PART 356—ORAL HEALTH CARE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 356 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 356.52 is amended by adding new paragraph (e) to read as follows:

§ 356.52 Labeling of anesthetic/analgesic drug products.

* * * * *

(e) *Exemption from the general accidental overdose warning.* The labeling for oral health care anesthetic/analgesic drug products containing the active ingredient identified in § 356.12(f) marketed in accordance with § 356.52(d)(6)(ii) is exempt from the requirement in § 330.1(g) of this chapter that the labeling bear the general warning statement "In case of accidental overdose, seek professional assistance or contact a poison center immediately." The labeling must continue to bear the first part of the general warning in § 330.1(g) of this chapter, which states: "Keep this and all drugs out of the reach of children."

Dated: March 18, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-11177 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORATION

Coast Guard

33 CFR Part 165

[CGD1 92-025]

Safety Zone: Narragansett Bay, Quonset Point, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on June 5, 6 and 7, 1992, at Quonset Point, North Kingstown, RI, while aerial demonstrations, including those by the USAF Thunderbirds, are performed in preparation of, and during, the "Rhode Island National Guard Open House." This action is necessary to protect spectator/pleasure craft, as well as other vessels in the vicinity, from the risks of low flying aircraft and aerial demonstrations. The USAF Thunderbirds will practice between the hours of 12 p.m. and 1 p.m. on June 5, 1992, and aerial demonstrations, including those by the USAF Thunderbirds, will be performed between the hours of 11 a.m. and 4 p.m. on June 6 and 7, 1992.

DATES: Comments must be received on or before May 28, 1992.

ADDRESSES: Comments should be mailed to the Commanding Officer, Marine Safety Office Providence, John O'Pastore Federal Building, Providence, Rhode Island, 02903-1790, or may be delivered to Room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 528-5335. The Marine Safety Office Providence maintains a public docket for the rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG T. Burke at (401) 528-5335.

SUPPLEMENTARY INFORMATION: .

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting

comments should include their name and address, identify this rulemaking (CGD1 92-025) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledge of receipt of comments should enclosed a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LTJG T. Burke, Project Office, Marine Safety Office Providence, and LCDR J. Astley, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

The purpose of this rulemaking is to protect spectators and pleasure craft, as well as other vessels, from potential hazards, such as damage or personal injury, associated with low level flight demonstrations by several aircraft, including the USAF Thunderbirds. These aerial practices and demonstrations will take place between the hours of 12 p.m. and 1 p.m. on June 5, 1992, and between the hours of 11 a.m. and 4 p.m. on June 6 and 7, 1992. The flights will take place in the airspace over the Quonset State Airport, North Kingstown, RI, a portion of the Naval Construction Battalion Center in Davisville, RI, as well as a small area of Narragansett Bay that is adjacent to the Quonset State Airport.

The Coast Guard proposes to establish a temporary safety zone around the area of water over which the Thunderbirds will fly in order to protect maritime interests from the inherent risks involved in aerial demonstrations. In addition, the USAF Thunderbirds require for safety purposes that a safety zone be established underneath their demonstrations. The safety zone will be the area of water enclosed in a line from the end of Quonset Point Jetty, extending southeast to Quonset Channel buoy #7, northeast to (41-35-07N, 71-23-21W), and northwest through Quonset Channel buoy #11 to the south corner of Pier #1, Davisville Depot. The safety zone will be in effect on June 5, 1992, between the hours of 12 p.m. and 1 p.m. and on June 6, and 7, 1992, between the hours of 11 a.m. and 4 p.m., during the flight demonstrations.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact to be minimal on all entities. The proposed regulation will affect pleasure craft, small fishing vessels, and to an extent large commercial vessels in or outbound from the Davisville depot, that would normally use the waters contained in the safety zone. The impact is expected to be minimal because the area to be restricted is no heavily trafficked by large commercial vessels or commercial fishing vessels. Approximately one to two large commercial freight ships transit the Quonset Channel, a portion of the area to be restricted, per week. Because of the infrequent visits of these type vessels, they will not be heavily impacted by the proposed safety zone. Commercial fishing vessels are able to conduct operations outside the Quonset Channel because they are not constrained by their draft. They have alternate areas available outside of the proposed safety zone where they may fish and conduct normal operations. Therefore, restricting access to the area as proposed will not cause undue hardship to any entity.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the REGULATORY EVALUATION, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "ADDRESSES") explaining why you think your business qualifies and in what way, and to what degree, this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal will have no significant impact and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-6, and 160.5.

2. A new § 165.T0125 is added to read as follows.

§ 165.T0125 Safety Zone: Narragansett Bay, Quonset Point, RI.

(a) *Location.* The safety zone is the area of water enclosed in a line from the end of the Quonset Point Jetty (41-35-10N, 071-24-29W), extending southeast to Quonset Channel buoy #7 (41-34-54N, 071-23-50.5W), northeast to (41-35-07N, 071-23-21W), and northwest to the south corner of Pier #1, Davisville Depot (41-36-42N, 071-24-17W).

(b) *Effective Date.* This regulation becomes effective from 12:00 p.m. to 1:00 p.m. on June 5, 1992, and from 11:00 a.m. to 4:00 p.m. on June 6 and 7, 1992, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: April 27, 1992.

H. D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92-11179 Filed 5-12-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50577E; FRL-3949-5]

Alkylated Diphenyl Oxide; Proposed Modification of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on a modification to the 5(e) consent order regulating that substance.

DATES: Written comments must be submitted to EPA by June 12, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate with additional sanitized copies if confidential business information is involved to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, room E-105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50577E. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Assistance Office (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 26, 1990 (55 FR 26102), EPA issued a SNUR establishing significant new uses for alkylated diphenyl oxide (P-84-1079). Because of the modification to the consent order for this substance, EPA is proposing to modify this SNUR.

I. Rulemaking record

The record for the rule which EPA is proposing to modify was established at OPPTS-50577E. This record includes information considered by the Agency in developing this proposed rule and includes the modification to the consent order to which the Agency has responded with this proposal.

II. Background

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P-84-1079

Chemical name: (generic) Alkylated diphenyl oxide.
CAS number: Not available.
Effective date of modification of section 5(e) consent order: July 25, 1991.
Basis for modification of section 5(e) consent order: The original section 5(e) consent order reflects the use stated by the Company in the premanufacture notice (to manufacture and use on site or sell as an intermediate for making sulfonated surfactants). In light of the exposure control requirements in the section 5(e) order and this SNUR, the Company petitioned and EPA determined that this restriction was not necessary to prevent an unreasonable risk to human health and the environment. The modification to the section 5(e) consent order drops the limitation that the use occur on the same site as manufacture for the Company. This SNUR is being modified to drop the parallel limitation as well. The modification does not eliminate the requirements for protection against human exposure and environmental release.
CFR citation: 40 CFR 721.853.

III. Objectives and Rationale of Proposing Modification of the Rule

During review of the PMN submitted for the chemical substance that was the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of the exposure control requirements in the section 5(e) order and this SNUR, the PMN submitter petitioned and EPA determined that this restriction was not necessary to protect human health and the environment. The section 5(e) modification drops the limitation that the use occur on the same site as manufacture for the Company. The proposed modification of SNUR provisions for this substance designated herein is consistent with the modification of the section 5(e) order.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: February 4, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.853 by revising paragraph (a)(2)(iii) to read as follows:

§ 721.853 Alkylated diphenyl oxide.

(a) * * *

(2) * * *

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g). The term intermediate as used in § 721.80(g) is

defined as an intermediate for making sulfonated surfactants.

* * * * *

[FR Doc. 92-11234 Filed 5-12-92; 8:45 am]

BILLING CODE 6560-50-F

---

40 CFR Parts 763

[OPPTS-62107; FRL-4054-1]

Model Accreditation Plan; Additions and Changes under Consideration; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting and comment opportunity.

SUMMARY: Pursuant to section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, and section 15(a)(3) of the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), (Public Law 101-637), notice is hereby given that a public meeting will be held on Monday, June 8, 1992, to receive public comments on a number of potential changes to the asbestos Model Accreditation Plan (MAP) now being considered by EPA. Section 206 of TSCA, which authorizes EPA to develop the MAP after consultation with affected organizations, was amended by ASHARA. ASHARA mandates that the MAP be revised to provide for the extension of accreditation requirements to include certain persons performing asbestos-related work in public and commercial buildings and to increase the minimum number of training hours, including additional hours of hands-on health and safety training, required for accreditation. EPA may also make other changes to the Model Plan as are necessary to implement ASHARA.

DATES: The public meeting will be held on Monday, June 8, 1992, from 9 a.m. until noon. Because of space limitations, those persons interested in attending are requested to notify the Agency in advance by calling 202/554-1404. In the event that the meeting space cannot accomodate all those persons registering, a second meeting from 1 p.m. to 4 p.m. on the same date, at the same location, will be held for those unable to attend the morning session. Those attending will be given the opportunity to present oral comments for the record. Written comments should be received by June 29, 1992.

ADDRESSES: The public meeting will be held in the Auditorium of the EPA Education Center at the EPA Headquarters Offices located at 401 M St., SW., in Washington, DC. Written comments should be sent to: Technical Assistance Section (TS-799), Office of Pollution Prevention and Toxics (formerly the Office of Toxic Substances), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

The original MAP was developed by EPA pursuant to a provision of the Asbestos Hazard Emergency Response Act (AHERA), section 206 of TSCA. AHERA requires accreditation for all persons who inspect school buildings for the presence of asbestos, develop school asbestos management plans, or design or conduct response actions with respect to friable asbestos in schools. As required by AHERA, EPA consulted with affected organizations, and then issued the current MAP which specifies minimum initial training requirements for those required to obtain accreditation to conduct asbestos related work in schools. The MAP contains separate accreditation requirements for inspectors, management planners, and persons who design and carry out response actions. The latter group is further subdivided into project designers, contractor/supervisors and workers.

ASHARA requires EPA to modify the MAP and extend the current training and accreditation requirements to persons who inspect for asbestos-containing material, and who design or carry out response actions with respect to such material in public or commercial buildings. ASHARA, however, does not require persons who prepare management plans in public or commercial buildings to obtain accreditation. In compliance with the ASHARA mandate, EPA will extend the current MAP training and accreditation requirements to inspectors in public and commercial buildings, and to persons who design or carry out response actions including project designers, contractor/supervisors and workers. ASHARA also requires EPA to increase the minimum number of hours of health and safety training, including additional "hands-on" training, and make other necessary modifications.

EPA is presently considering a limited number of other changes to the MAP. These changes are outlined below. Public comment is invited, through this notice, on whether or not these changes are appropriate for incorporation into a revised MAP. To select these potential changes, EPA consulted with affected organizations, and applied a variety of screening factors. The factors used related to: (1) Whether the change would yield a public health benefit, (2) whether the change would fall within the statutory mandate of ASHARA, (3) what impact the change would have on EPA-approved State accreditation programs, (4) whether the change related specifically to training and accreditation issues, (5) whether the change was directly relevant to extending accreditation to public and commercial buildings, (6) the resource implications of the change, (7) whether the change would enhance the compliance and enforcement aspects of the program, and (8) whether the change would be consistent with current Agency policy regarding asbestos. EPA expects to publish a revised MAP in the **Federal Register** later this year. Once published, the MAP would be subject to further public comment, and, if warranted, may be modified at a subsequent date.

II. Changes under Consideration

A. Definitions

EPA is considering including several definitions in the revised MAP for purposes of delineating the scope and applicability of the extended accreditation coverage mandated under ASHARA. These definitions will establish when and where, and to whom the increased and expanded training standards will apply. The relevant terms include: (1) Public and commercial buildings, (2) inspection, (3) response action, and (4) small-scale, short-duration activities. A definition or range of possible definitions is presented for each below.

A "public and commercial building" is defined in section 202 of TSCA to mean "... any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units." EPA plans to incorporate this statutory definition into the MAP and also clarify how it is to be interpreted. EPA interprets this definition to exclude single family homes and other residential buildings of fewer than 10 units. EPA also interprets this definition to include all industrial buildings. Consistent with its AHERA interpretation for schools, EPA also considers the ASHARA training and accreditation mandate to apply "in" public and commercial buildings, that is

within the interior spaces of such buildings and not to exteriors.

EPA is considering clarifying the term "inspection" because of the wide range of activities that may be encompassed by this term, and the absence of any one comprehensive regulation that specifically defines the term in the context of public or commercial buildings. EPA is considering a range of alternative approaches to determine when a person is conducting an "inspection" in a public or commercial building, and thus must be accredited. These alternatives include requiring accreditation when the person is engaged in one or more of the following activities in a public or commercial building:

1. Determining the presence or location of asbestos containing material (ACM) or suspected ACM whether by visual or physical examination or by collecting samples of such material.

2. Assessing the condition of ACM or suspected ACM whether by visual or physical examination or by collecting samples of such material.

3. Undertaking one or more of the activities described in 1 and 2 above: (a) To determine whether a response action should be undertaken, (b) in preparation for a response action, or (c) as a part of a response action.

4. Undertaking one or more of the activities described in 1 and 2 above in those instances where ACM-disturbing activity may ensue.

5. Engaging in the activities that constitute an inspection under the AHERA regulations governing schools (see 40 CFR 763.85 and 763.88).

6. Performing an asbestos inspection pursuant to the National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR 61.145).

7. Performing an environmental assessment of a school or public or commercial building for insurance purposes or as a part of a real estate transaction.

8. Performing an asbestos inspection with respect to work governed by the asbestos construction standard (29 CFR 1926.58) promulgated under the Occupational Safety and Health Act (OSH Act); asbestos standards adopted by a State and approved under the OSH Act, or in the EPA Worker Protection Rule (40 CFR part 763 subpart G).

Because ASHARA does not require inspections for public and commercial buildings, EPA is only considering revisions to the MAP which would address the types of inspections to be conducted by accredited persons, not whether such inspections should be conducted in the first place.

EPA is also considering revising the MAP to clarify when a person is engaged in designing or conducting a "response action" in a public or commercial building. TSCA defines a response action to mean ". . . methods that protect human health and the environment from asbestos-containing material, including methods described in chapters 3 and 5 of the Environmental Protection Agency's 'Guidance for Controlling Asbestos-Containing Materials in Buildings'" (15 U.S.C. 202 (11)). Pursuant to the rule governing asbestos in schools, "response action" means the "removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable asbestos-containing building materials" (40 CFR 763.83). That rule requires MAP accreditation for persons who perform certain response actions in schools, but excludes small-scale, short-duration activities (40 CFR 763.90(g)). As one option, EPA is considering using the AHERA rule's definition of "response action" for public and commercial buildings, or expanding that definition to include ACM. Alternatively, EPA is considering referencing similar thresholds and exemptions which exist in other asbestos regulations. EPA might define "response action" to include activities in public or commercial buildings that also constitute renovation and demolition activities under NESHAP (40 CFR 61.145), construction work under the OSH Act asbestos construction standard (29 CFR 1926.58) or asbestos standards adopted by a State and approved under the OSH Act, or asbestos activities covered by EPA's Worker Protection Rule (40 CFR part 763 subpart G).

The rule governing schools generally uses the term "small-scale, short-duration" to refer to a variety of emergency or routine operations, maintenance and repair activities (40 CFR part 763, Appendix B to Subpart E). Persons engaged in small-scale, short-duration activities in schools are not subject to the MAP accreditation requirements. Because persons performing these tasks can effectively reduce asbestos exposures by employing various specified engineering controls and work practices, EPA is considering incorporating this concept into its revised MAP and thereby extending it to the public and commercial buildings sector. Alternatively, EPA is considering utilizing variations of this exemption that exist in other asbestos regulations (e.g., NESHAP; the OSH Act asbestos standard and proposed changes to that standard, standards adopted by a State and approved under the OSH Act, and the EPA Worker Protection Rule).

EPA welcomes public comment on the appropriateness and effect of incorporating any of the definitions described above into its revised MAP.

B. Phased Implementation

EPA believes that it is necessary to gradually phase-in the MAP revisions to achieve an orderly transition to the revised plan. Additional time will be needed after EPA issues the revised plan so that States may adopt an accreditation plan at least as stringent as the revised plan, so that training course providers may modify their training courses, and so individuals may obtain additional training.

TSCA contains a provision that governs when States must adopt MAP revisions developed by EPA. Section 206 of TSCA, as amended by ASHARA, requires States to adopt an accreditation plan that is at least as stringent as the MAP developed by EPA for persons who perform asbestos-related work in schools and public and commercial buildings (15 U.S.C. 2646(b)). TSCA further provides that States must adopt such a plan "within 180 days after the commencement of the first regular session of the legislature of such State which is convened following the date on which the Administrator (of EPA) completes development of the model plan" (15 U.S.C. 2646(2)).

EPA is considering implementing the MAP revisions that govern training providers and persons who must be accredited to work in schools and public and commercial buildings as follows:

1. Requiring approved training providers to self-certify that they have upgraded their training courses to comply with the requirements of the revised MAP, within 6 months of the date upon which the revised MAP takes effect.

2. Grandfathering all those persons who possess valid accreditation as of the date upon which the revised MAP takes effect (the requirement that all accredited individuals take annual refresher courses would not be affected by this action).

3. Requiring all persons who are not accredited when the revised MAP takes effect to comply with the upgraded training requirements within 6 months of the effective date of the MAP. This would have the effect of allowing persons to obtain accreditation and perform work during the first 6 months after the plan takes effect (the period when upgraded courses may not generally be available). However, by the end of the 6-month phase-in period,

these persons would have had to complete an upgraded training program in order to continue working in an accredited capacity.

EPA's objective in this regard is to achieve full implementation of ASHARA at the earliest practicable time without posing an undue compliance burden on the regulated community. EPA welcomes comment on the advisability of the timeframes suggested in this notice for individual and training provider compliance with the ASHARA mandate.

C. Distinct Training Disciplines

EPA is considering a variety of MAP changes aimed at improving training for persons who perform asbestos-related work in schools and public and commercial buildings. Each of the accredited disciplines reflects a distinctive job function and role, and proficiency in each of these roles requires a different mix of knowledge, skill and ability. Even where training programs cover common subjects, these same subjects should be given a different priority and emphasis depending upon the particular discipline being trained. To insure that each discipline receives appropriate training, EPA is considering including the following requirements:

1. Requiring that each initial and refresher training course be specific to a single discipline, and not combined with training for any other discipline.

2. Ending the practice whereby workers are permitted to upgrade their worker accreditation to that of contractor/supervisor by completing one additional day of training. Separate and complete contractor/supervisor training would be required.

3. Allowing accredited contractor/supervisors to perform as workers without obtaining separate worker accreditation.

4. Deleting the provision of the existing MAP which permits persons to become accredited project designers by completing contractor/supervisor training.

Comments are invited regarding the appropriateness of these requirements.

D. Increased Training Requirements

Section 15(a)(3) of ASHARA mandated that EPA, as a part of revising its MAP, increase the minimum number of training hours, including additional hours of hands-on health and safety training, required for the accreditation of asbestos abatement workers in schools and in public and commercial buildings. The statute, however, did not specify the additional increment of training hours needed, nor how those hours were to be apportioned.

EPA considers the need for additional hands-on training to be greatest among those actually performing abatement work, including both workers and contractor/supervisors, who must directly oversee and carry out the work. Worker accreditation now requires 3 days of training with a total of 6 hours of hands-on activity. Contractor/supervisor accreditation presently requires 4 days, also with 6 hours of hands-on activity. EPA is considering increasing the minimum length of the worker course from 3 to 4 days, and the contractor/supervisor course from 4 days to 5 days. In each case, the additional day of training would be dedicated entirely to additional hands-on activity beyond the 6 hours already required.

EPA welcomes comment on the appropriateness of increasing training hour requirements for these two disciplines, and of adding a day of hands-on training to each. In particular, comment is invited on how the training hours comprising the additional day might best be apportioned among various hands-on activities such as donning personal protective equipment, erecting and dismantling containment barriers, state-of-the-art work practices, decontamination procedures, etc.

E. Expanded Project Designer Curriculum

EPA is considering several possible additions to its project designer training curriculum. These are aimed at clarifying and improving the effectiveness of the project designer's functional role. Because of concern that some abatement project designs may sometimes be inadequately prepared and/or performed, EPA is seeking appropriate ways to enhance its training in this area. Possible course additions would include: (1) The need for, and methods of preparing a written project design, (2) techniques for completing an initial cleaning of the work area, (3) increased emphasis on the rationale behind establishment of functional spaces, (4) the need for written diagrams and methods of diagraming all containment barriers, (5) the need for a written sampling rationale for air clearance, and (6) clarification of what constitutes a complete visual inspection. EPA is interested in obtaining public comment on the suitability of enhancing its project designer course outline in this manner.

F. Withdrawal of Accreditation and Course Approval

EPA is considering two significant MAP changes in this respect; (1) Establishing criteria and procedures for the deaccreditation of persons, and (2) establishing criteria and procedures for revoking approval of accredited training courses.

AHERA and the MAP require each State to adopt an accreditation program that includes both conditions and procedures for deaccrediting individuals. Some States, however, have not complied with this mandate because they have failed to adopt accreditation programs. Moreover, varying deaccreditation standards and practices in States that do now have programs has resulted in inconsistent enforcement. Consequently, EPA is considering changes aimed at: (1) Promoting greater enforcement consistency and predictability nationwide, and (2) clarifying the manner by which EPA may directly deaccredit individuals without reliance upon State enforcement authority or activity.

EPA is examining the possibility of revising the MAP to include specific criteria for the decertification of accredited persons. These criteria would focus on fraud in connection with accreditation and/or reaccreditation. They would address circumstances of persons fraudulently obtaining or providing accreditation, and also situations involving the fraudulent use of accreditation.

EPA also is considering applying the procedures specified at 40 CFR part 22 (Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits) to deaccreditation actions undertaken by the Agency. The use of this, or another established EPA administrative procedure, is advantageous because it would promote greater process uniformity. EPA, however, believes that States should be required to apply their own State administrative procedures.

With respect to training course approvals, EPA is considering MAP changes which would delineate specific criteria for suspending or revoking approval of courses. These changes would be aimed at addressing the following kinds of problems: (1) Misrepresentation of a course, (2) failure to submit required information or notifications in a timely manner, (3) failure to maintain requisite records, (4) falsification of accreditation records, instructor qualifications or other accreditation information, (5) failure to

adhere to the training standards and requirements of the MAP, and (6) failure on the part of an approved training course instructor or other person with managerial authority over the delivery of training, to comply with relevant Federal, State or local asbestos statutes or regulations (by being found in violation, or by signing a consent decree). These changes, if implemented, would result in greater enforcement consistency and predictability. The final criteria would then constitute the minimum required criteria that States would have to adopt as a condition of obtaining EPA approval. The States would, however, be free to adopt more stringent criteria of their own.

EPA also is considering adopting the procedures specified at 40 CFR part 22 to govern EPA actions to withdraw course approval. The procedures would be binding only upon EPA. The States would remain subject to their own administrative procedures.

EPA seeks comment on whether the suggested criteria and procedures should be established in the MAP for the deaccreditation of persons and the withdrawal of training course approvals. Comment is also invited on appropriate modifications to either the criteria or procedures to make them more responsive to these specific accreditation issues.

G. Recordkeeping Requirements for Training Providers

EPA is considering new recordkeeping requirements applicable to training providers as a part of its MAP revision. If adopted, such requirements would complement the deaccreditation and course revocation provisions discussed elsewhere in this notice. They would provide a basis for determining whether the standards had been violated and whether a need for corrective action existed. Their purpose would be to strengthen compliance with MAP standards and to enable more vigorous enforcement on the part of both EPA and the States. These benefits will translate directly into improved public health protection, by ensuring that only trained and qualified personnel are involved in work which, if not done properly, may result in asbestos fiber release episodes.

Changes are contemplated regarding four different types of records to be maintained by the providers of accredited training courses. These categories include: (1) Records pertaining to training course materials, (2) records dealing with the qualifications of training course instructors, (3) records relating to examinations, and (4) records about accreditation certificates. In addition, EPA also plans to address the companion issues of record retention times and access to records.

EPA believes that most approved training course providers are already keeping the kinds of records under consideration here. For these parties, such change should have little net effect. However, where a training entity does not maintain these records, it can be difficult if not impossible to verify compliance with the training and accreditation requirements of the MAP. EPA is therefore seeking to end this problem by ensuring that a viable compliance monitoring system is instituted.

With respect to records of training course materials, such records would include copies of all instructional materials used in the delivery of the classroom training (student manuals, instructor notebooks, handouts, etc.). These records would enable EPA and the States to verify that the type and amount of instruction provided in a given course satisfies the training standards prescribed in the MAP, and that the actual course being offered is the same training program which had been reviewed and granted approval.

In regards to instructor qualifications, the existing MAP requires those persons who teach accredited training courses to have academic credentials and/or field experience in asbestos abatement. The existing MAP also requires that training providers submit proposed instructor resumes to EPA for review and approval before allowing such persons to teach accredited courses. However, it is EPA policy which now prescribes advance notification whenever a provider changes the instructor(s) for a particular course. The contemplated change would elevate this policy to a requirement by prescribing it directly in the MAP. This change would also require training providers to keep records of instructor resumes and approvals. It would further require that records be kept of which instructors were used for each training course administered. These new requirements would enable EPA to better monitor the use of approved instructors and ensure compliance with MAP standards. Absent these requirements, EPA's ability to enforce these standards would continue to be compromised.

In the case of examinations, the existing MAP requires each initial training course to have a multiple-choice examination containing a prescribed number of questions. A person must both attend the prescribed training program and pass the examination with a minimum passing score of 70 percent in order to become accredited. At present, however, there are no explicit requirements that records be kept about what exams have been administered, or when. Absent such records, it may be difficult to ensure that MAP examination standards are complied with.

The fourth category of records deals with accreditation certificates. EPA's 5 years of experience with administering its nationwide accreditation program has uncovered a number and variety of cases involving the fraudulent use of accreditation certificates. In some instances, persons have forged certificates for the purpose of performing regulated work in schools. In other instances, persons have fraudulently claimed accreditation to obtain admittance to refresher training for reaccreditation. These and other related problems have stemmed from the lack of an explicit requirement that adequate records be maintained. Where a training provider issues a certificate, but keeps no record of to whom it was conferred or when, positive verification of the individual's accreditation status can be virtually impossible. Verification is necessary in order to: (1) Protect public health by preventing unqualified persons from performing improper asbestos abatement, (2) enable EPA and the States to ensure compliance with applicable accreditation standards, (3) help building owners and contractors protect themselves from potential liabilities under ASHARA, and (4) enable training providers to confirm that students seeking admission to their courses have satisfied all necessary training prerequisites.

Changes being considered in this respect would require that each provider of an accredited training course keep records documenting who had been awarded a certificate and for which discipline(s), the effective dates of the person's accreditation, and the training dates and location. The existence of these records would make it possible to readily verify an individual's accreditation history and status. EPA is also considering whether training course providers should confirm, through this mechanism, that students enrolling in their various courses have met all applicable accreditation prerequisites as a condition for granting them admission.

In order for these records to meet the needs outlined above, they would also have to be accessible and available throughout their useful life. EPA is therefore considering a new requirement to provide for reasonable public access to these records and another requirement that all such records be

maintained for a minimum 3-year period. In the event that a training provider stops training or goes out of business, the approving government body (EPA or the State) would be notified and given the opportunity to take possession of that provider's records.

Concerning the general topic of recordkeeping requirements, EPA seeks public comment on the need to maintain training and accreditation records, the kinds of records that should be kept, how they should be kept and by whom, the appropriate length of time for retaining such records and the means by which public access to this information should be provided for, and whether training providers should verify the accreditation status of students enrolling in their courses.

H. Accreditation Certificates

The existing MAP stipulates that accreditation certificates must contain certain types of information. They must be numbered, they must provide the name of the student and the course completed, the dates of the course and the examination, and a statement indicating that the student passed the examination. In addition, an expiration date, 1 year after the date on which the student completed the course and examination, must be clearly shown.

The existing MAP, however, does not require that certificates show the name, address or telephone number of the training providers who issue them. This shortcoming has caused difficulties for persons seeking to verify accreditation through this primary information source.

Because the inclusion of provider identification information on certificates would represent an effective means of enabling quick accreditation verification, especially in conjunction with the proposed certificate recordkeeping requirement discussed above, EPA is now considering making this additional change to the MAP. Comments are invited on the need for this change and the type of identification information which might be required.

Through this notice, EPA invites public comment on the possible changes to the Model Accreditation Plan discussed herein. Following the close of the comment period on June 29, 1992, EPA will review all comments received and consider this information in the preparation of a revised plan.

III. Public Record

The original Model Plan (40 CFR part 763, appendix C to subpart E); a March 29, 1991, **Federal Register** notice announcing the Agency's intent to revise the Model Plan; a January 16, 1992, **Federal Register** notice announcing an extended effective date for the ASHARA Training Amendments; this Federal Register notice and all additional information and comments received from interested persons will be available for inspection in the public record. The record, designated Office of Prevention, Pesticides and Toxic Substances (OPPTS) Docket-62107, is located at the TSCA Public Docket Office at the following address: Environmental Protection Agency, Northeast Mall, Rm. G004, 401 M St., SW., Washington, DC 20460. The record will be available for review and copying from 8 a.m. to noon and 1 to 4 p.m., Monday through Friday, excluding legal holidays.

Dated: April 27, 1992.

Linda J. Fisher,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 92-11109 Filed 5-12-92; 8:45 am]

BILLING CODE 6560-50-F

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

[Ex Parte No. 462]

Exemption of Demurrage From Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served April 21, 1992, (57 FR 14688, April 22, 1992) the Commission prescribed a comment due date of May 22, 1992. By letter filed May 1, 1992, National Grain and Feed Association (NGFA) requests a 90-day extension to file comments. NGFA states additional time is necessary to prepare a number of verified statements of affected grain shippers, along with a full analysis of the relevant legal and policy considerations. Also, NGFA's lead counsel is unavailable for personal reasons and will not have adequate time to prepare comments. In view of the Commission's interest in expediting review of deregulatory proposals a 60-day extension will be permitted.

DATES: Initial comments are due on July 21, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 462 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder: (202) 927-5610. (TDD for the hearing impaired: (202) 927-5721).

Decided: May 7, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-11230 Filed 5-12-92; 8:45 am]

BILLING CODE 7035-01-M

---

49 CFR Part 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served April 16, 1992, (57 FR 13688, April 17, 1992) the comment due date was extended to May 18, 1992. By letter filed April 30, 1992, National Grain and Feed Association (NGFA) requests an additional 30-day extension to June 18, 1992, to file comments. NGFA states additional time would permit representatives of NGFA, the Association of American Railroads (AAR), and the rail industry's ad hoc bill of lading focus group to attempt to formulate a joint proposal for presentation to the Commission. Also, NGFA's counsel is unavailable for personal reasons and will not have adequate time to prepare comments on behalf of NGFA in the event a joint proposal or agreement is not reached or is delayed. According to NGFA, AAR has been informed of the extension request and knows of no present objection. The request is reasonable and will be granted.

DATES: Initial comments are due on June 18, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 495 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610 (TDD for the hearing impaired: (202) 927-5721).

Decided: May 7, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-11231 Filed 5-12-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR part 23

RIN 1018-AB30

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in appendices I, II, and III to the Convention.

This document announces decisions by the Conference of the Parties to CITES on amendments to appendices I and II, and invites comments on whether the United States should enter reservations on any of the amendments. The effect of a reservation would be to exempt this country from implementing the Convention for a particular species. However, even if a reservation were taken, many importing countries would require comparable documents, and many importers to the United States would be required, under the Lacey Act Amendments of 1981, to obtain permits issued by foreign countries. The CITES amendments to appendices I and II described in this document will enter into effect on June 11, 1992.

DATES: The Service will consider all comments received by June 5, 1992, in determining whether the United States should enter any reservations.

ADDRESSES: Please send correspondence concerning this document to the office of Scientific Authority; Mail Stop; Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (FAX number 703-358-2276). Express and messenger-delivered mail should be addressed to the office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia, 22203. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m, Monday through Friday, at the Arlington, Virginia, address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party may propose amendments to appendices I and II for consideration at meetings of the Conference of Parties. The text of any proposal must be communicated to the Convention's Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting.

Recent Decisions

The eighth meeting of the Conference of Parties to CITES was held on March 2-13, 1992, in Kyoto, Japan. At the meeting, the Parties considered 81 different animal proposals and 27 different plant proposals to amend the Appendices. These were described in the **Federal Register** on March 4, 1992, for proposals submitted by the United States (57 FR 7713), and on the same day for proposals by other Parties (57 FR 7719). All proposed amendments were discussed and decided on by Committee I during the Conference with each accredited attending Party having one vote. Amendments were adopted by a two-thirds majority of the Parties present and voting or by consensus. Action by Committee I was accepted by the Plenary Session unless one-third of the Parties voting expressed the desire to reopen discussion on a specific species proposal. Debate was reopened on the proposal by Denmark to list *Ursus americana* on appendix II under provisions of Article II, paragraph 2(b), i.e., for similarity of appearance reasons, after the proposals was not accepted by a two-thirds of the Parties in Committee I. Results of actions by the Conference of Parties on the proposed amendments are given in the following table.

Species	Proposed amendment	Proponent	Final decision of the parties
Mammals			
Order Primates			
Tarsius syrichta (Philippine tarsier)	Transfer from II to I	Philippines	Withdrawn.
Order Edentata			
Tamandua tetradactyla chapadensis (Tamandua, Collared anteater).	Remove from II (Ten Year Review)	Germany	Approved.
Order Pholidota			
Manis temminckii (Common African ground pangolin).	Remove from I	Botswana, Malawi, Namibia, and Zimbabwe.	Withdrawn.

Species	Proposed amendment	Proponent	Final decision of the parties
Order Carnivora			
Acinonyx jubatus (Cheetah).	Transfer from I to II (Botswana, Malawi, Namibia, Zambia, and Zimbabwe populations with quotas).	Namibia, Zimbabwe	Redrafted as a resolution that was adopted with quotas (for trophies and skins: 2 per person) as follows: Namibia 100; Botswana 5; Zimbabwe 50.
Dusicyon (= *Cerdocyon*) *thous* (Crab-eating fox).	Add to II	Argentina	Approved.
Conepatus spp. (Hog-nosed skunks).	.....do	.....do	Withdrawn.
Felis geoffroyi (Geoffroy's cat).	Transfer from II to I	Brazil	Approved.
Felis rufa escuinapae (Mexican bobcat).	Transfer from I to II	United States	Approved.
Hyaena brunnea (Brown hyaena).	Remove from I	Botswana, Malawi, Namibia, and Zimbabwe.	Rejected, as was a transfer from Appendix I to II.
Panthera pardus (Leopard).	Transfer from I to II (Sub-Sahara population with quotas).	Botswana, Malawi, Namibia, Zambia, and Zimbabwe.	Redrafted as revision of resolution Conf. 7.7 with increased quotas for South Africa (75) Malawi (50) and new quota for Namibia (100) for trophies and skins: 2 per person and adopted.
Panthera tigris altaica (Siberian tiger).	Transfer from I to II (captive breeding)	China	Withdrawn.
Ursidae spp. (Bear spp.).	Add to II (USSR and Baltic States populations) [for look-alike reasons - Article II, 2(b)].	Denmark	Approved.
Ursus arctos	Add to I (populations of Bhutan, China and Mongolia).	.....do	Approved.
Ursus americanus (American black bear).	Add to II [for look-alike reasons—Article II, 2(b)].	.....do	Approved.
Order Pinnipedia			
Mirounga angustirostris (Northern elephant seal).	Remove from II	United States	Approved.
Order Tubulidentata			
Orycteropus afer (Aardvark).	Remove from II	Botswana, Malawi, Namibia, and Zimbabwe.	Approved.
Order Proboscidea			
Loxodonta africana (African elephant).	Transfer from I to II (Botswana Malawi, Namibia, Zambia, and Zimbabwe populations).	Botswana, Malawi, Namibia, and Zimbabwe.	Withdrawn.
Loxodonta africana (African elephant).	Transfer from I to II (Botswana population).	Botswana	Withdrawn.
Loxodonta africana (African elephant).	Transfer from I to II (South Africa population).	South Africa	Withdrawn.
Order Perissodactyla			
Ceratotherium simum simum (Southern white rhino).	Transfer from I to II	South Africa	Rejected.
Ceratotherium simum (Southern white rhino).	Transfer from I to II (Zimbabwe population).	Zimbabwe	Withdrawn.
Diceros Bicornis (Black rhino)	Transfer from I to II (Zimbabwe population.	.....do	Rejected.
Diceros bicornis (Black rhino)	Transfer from I to II (captive breeding)	.....do	Withdrawn or included in other black rhino proposal.
Order Artiodactyla			
Antilocapra americana (Pronghorn)	Inclusion in Appendix I (Mexican population) in lieu of *A. a. peninsularis* and *A. a. sonoriensis*.	United States	Approved.
Antilocapra americana mexicana (Mexican pronghorn).	Transfer from II to I (Mexican population).	.....do	Approved.
Antilocapra americana mexicana (Mexican pronghorn).	Remove from II (U.S. population)	.....do	Approved.
Antilocapra americana sonoriensis (Sonoran pronghorn).	Remove from I (U.S. population)	United States	Approved.
Capra falconeri falconeri (Astor markhor).	Transfer from II to I	United Kingdom	Approved.
Capra falconeri heptnen (Bukhara markhor).	.....do	.....do	Approved.
Hippotragus equinus (Roan antelope)	Remove from II	Botswana, Malawi, Namibia, Zambia, and Zimbabwe.	Approved.

Species	Proposed amendment	Proponent	Final decision of the parties
Birds			
Order Rheiformes			
Rhea americana (Greater rhea)	Add to II	Argentina	Approved.
Order Ciconiiformes			
Mycteria leucocephala (Painted stork)	Add to II [for look-alike reasons; Article II, 2(b)].	United States	Withdrawn
Order Anseriformes			
Anas formosa (Baikal teal)	Add to II	United Kingdom	Approved.
Cygnus columbianus jankowskii (Jankowski's swan).	Remove from II (Ten Year Review)	Germany	Approved.
Order Galliformes			
Cyrtonyx montezumae mearnsi (Harlequin quail).	Remove from II (Ten Year Review)	United States	Approved.
Cyrtonyx montezumae montezumae (Harlequin quail).	do	do	Approved.
Polyplectron emphanum (Palawan peacock).	Transfer from I to II (captive breeding)	Philippines	Withdrawn.
Order Columbiformes			
Caloenus nicobarica (Nicobar pigeon-both subspecies).	Transfer from I to II (captive breeding)	Philippines	Withdrawn.
Goura spp. (Crowned pigeons)	Transfer from II to I	Netherlands	Withdrawn.
Order Psittachiformes			
Amazon aestiva (blue fronted amazon)	Transfer from II to I	United States	Withdrawn because Argentina had established export ban.
Amazona leucocephala (Cuban amazon).	Transfer from I to II (captive breeding)	Germany	Withdrawn.
Amazona leucocephala (Cuban amazon).	Transfer from I to II (captive breeding)	Philippines	Withdrawn.
Anodorhynchus hyacinthinus (Hyacinth macaw).	do	do	Withdrawn.
Ara ambiqua (Buffon's macaw)	do	do	Withdrawn.
Ara macao (Scarlet macaw)	do	do	Withdrawn.
Ara maracana (Illiger's macaw)	do	do	Withdrawn.
Ara militaris (Military macaw)	do	do	Withdrawn.
Ara rubrogenys (Red-fronted macaw)	do	do	Withdrawn.
Cacatua goffini (Goffins' cockatoo)	Transfer from II to I	United States	Approved.
Cacatua haematuropygia (Red-vented cackatoo).	Transfer from II to I	Philippines	Approved.
Cacatua moluccensis (Moluccan cockatoo).	Transfer from I to II (captive breeding)	do	Withdrawn.
Eos reticulata (blue-streaked lory)	Transfer from II to I	United States	Withdrawn.
Probosiger aterrimus (Palm-cockatoo)	Transfer from II to I (captive breeding)	Philippines	Withdrawn.
Order Coraciiformes			
Aceros spp. (Hornbills)	Add to II (8 spp.)	Netherlands	Approved.
Aceros (=Berenicornis) comatus (Hornbill).	Add to I	Thailand	Withdrawn.
Aceros corrugatus (Hornbill)	do	do	Withdrawn.
Aceros nipalensis (Rufous-necked hornbill).	do	do	Approved.
Aceros subruficollis (Hornbill)	do	do	Approved.
Aceros undulatus (Hornbill)	Add to II	do	Withdrawn as redundant.
Anorrhinus spp. (Hornbills)	do	Netherlands	Approved.
Anorrhinus austeni (Hornbill)	do	Thailand	Withdrawn as redundant.
Anorrhinus galeritus (Hornbill)	do	do	Withdrawn as redundant.
Anthracoceros spp. (Hornbills)	Netherlands	do	Approved.
Anthracoceros albirostris (=malabaricus) (Malabar pied hornbill).	do	Thailand	Withdrawn as redundant.
Anthracoceros coronatus connexus (Oriental pied hornbill).	do	do	Withdrawn as redundant.
Anthracoceros malayanus (black hornbill).	Add to I	do	Withdrawn.
Buceros spp. (Giant hornbills)	Add to II	Netherlands	Approved.
Buceros bicornis (Great Indian hornbill)	Transfer from II to I	Thailand	Approved.
Buceros bicornis homrai (Great pied hornbill).	Transfer from I to II	Netherlands	Withdrawn.
Buceros rhinoceros (Rhinoceros hornbill).	Transfer from II to I	Thailand	Withdrawn.
Penelopides spp. (Hornbills)	Add to II	Netherlands	Approved.
Ptilolaemus spp. (Hornbills)	do	do	Approved.
Order Piciformes			
Pteroglossus spp. (Toucan)	Add to II	Paraguay	Revised and only *P. aracari* and *P. viridis* approved.
Ramphastos spp. (Toucan)	do	do	Revised and only *R. sulphuratus, R. toco, R. tucanus* and *R. vitellinus* approved.

Species	Proposed amendment	Proponent	Final decision of the parties
Order Passeriformes			
Pittidae spp. (Pittas)	.....do (24-26 spp.)	Malaysia	Withdrawn.
REPTILES			
Order Crocodylia			
Alligator sinensis (Chinese alligator)	Transfer from I to II (captive breeding)	China	Approved.
Crocodylus cataphractus (African slender-snouted crocodile.	Transfer from II to I (Congo population)	Switzerland	Approved.
Crocodylus niloticus (Nile crocodile)	Transfer Ethiopia population from I to II, pursuant to Resolution Conf. 3.15 on ranching.	Ethiopia	Approved with reduced 1992 quota to 4,500 skins.
Crocodylus niloticus (Nile crocodile)	.....do Kenya population	Kenya	Approved.
Crocodylus niloticus (Nile crocodile)	.....do Madagascar population	Madagascar	Approved after changed to population subject to an export quota. [1]
Crocodylus niloticus (Nile crocodile)	.....do Tanzania population	Tanzania	Approved after export of wild specimens reduced. [2]
Crocodylus niloticus (Nile crocodile)	Maintain Sudanese population in II, subject to an export quota.	Sudan	Rejected, although export of 8,000 skins presently inventoried can be exported for 120 days after COP8 with conditions.
Crocodylus niloticus (Nile crocodile)	Transfer from I to II (South Africa population).	South Africa	Approved after changed to population subject to an export quota. [3]
Crocodlus niloticus (Nile crocodile)	Transfer from I to II (Uganda population subject to an export quota pursuant to resolution Conf. 7.14).	Uganda and Zimbabwe	Approved with quota of 2,500 skins in each year for 1992-94.
Crocodlus niloticus (Nile crocodile)	Transfer from II to I (Cameroon, Congo, Kenya, Madagascar, Sudan, and Tanzania populations).	Switzerland	Approved for Cameroon, Congo, and Sudan populations (the latter with a 30-day delay in effective date).
Crocodylus niloticus (Nile crocodile)	Maintain Somalia population in II	Somalia did not submit a proposal for renewal of its quota.	Adopted with zero quota.
Crocodylus porosus (Saltwater crocodile).	Transfer Indonesia population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Indonesia	Approved after changed to population subject to an export quota.[4]
Crocodylus porosus (Saltwater crocodile).	Transfer from II to I (Indonesia population).	Switzerland	Withdrawn.
Osteolaemus tetraspis (Dwarf crocodile).	Transfer from II to I (Congo population)	.....do	Approved.
Order Testudinata			
Clemmys insculpta (Wood turtle)	Add to II	United States	Approved.
Clemmys muhlenbergii (Bog turtle)	Transfer from II to I	United States	Approved.
Order Squamata			
Corucia zebrata (Prehensile-tailed skink).	Add to II	Germany	Approved.
Phrynosoma coronatum (Coastal horned lizard).	Add to II in lieu of *P. c. blasinvillii*	United States	Approved.
Vipera wagneri (Wagner's viper)	Add to II	Sweden	Approved.
Amphibians			
Conraura goliath (goliath frog)	.....do	United States	Withdrawn.
Rana arfaki (Frog)	Add to II	Germany	Withdrawn.
Rana blythii (Frog)	.....do	.....do	Withdrawn.
Rana cancrivora (Frog)	.....do	.....do	Withdrawn.
Rana crassa (Frog)	.....do	.....do	Withdrawn.
Rana cyanophlyctis (Frog)	.....do	.....do	Withdrawn.
Rana grunniens (*Frog*)	.....do	.....do	Withdrawn.
Rana ibanorum (Frog)	.....do	.....do	Withdrawn.
Rana ingeri (Frog)	.....do	.....do	Withdrawn.
Rana kuhlii (Frog)	.....do	.....do	Withdrawn.
Rana limnocharis (Frog)	.....do	.....do	Withdrawn.
Rana macrodon (including *R. Microtympanun* (Frog).	.....do	.....do	Withdrawn.
Rana magna (*Frog*)	.....do	.....do	Withdrawn.
Rana malesiana (Frog)	.....do	.....do	Withdrawn.
Rana modesta (Frog)	.....do	.....do	Withdrawn.
Rana paramacrodon (Frog)	.....do	.....do	Withdrawn.
Rana Rana rugulosa (Frog)	.....do	.....do	Withdrawn.
Bony Fishes			
Order Acipenseriformes			
Polyodon spathula (*Paddlefish*)	Add to II	United States	Approved.
Order Osteoglossiformses			
Scleropages formosa	Remain on Appendix II with export quota.	No supporting statement required	Approved with zero quota for wild-caught specimens. Only captive-bred specimens (under Article VII para 5) authorized for export.
Order clupeiformes			
Clupea harenqus (Herring)	Add to I	Botswana, Malawi, Namibia, and Zimbabwe.	Withdrawn.

Species	Proposed amendment	Proponent	Final decision of the parties
Order Cypriniformes			
Gymnochsaracinus bergi (Characin)	....do	Argentina	Withdrawn.
Orde Atheriniformes			
Cynolebius constanciae (Killifish)	Remove from II (Ten Year Review)	Switzerland	Approved.
Cynolebius marmoratus (*Killifish*)	....do	....do	Approved.
Cynolebius minimus (Killifish)	....do	....do	Approved.
Cynolebius opalescens (Killifish)	....do	....do	Approved.
Cynolebius splendens (Killifish)	....do	....do	Approved.
Order Perciformes			
Thunnus thynnus (Bluefin tuna)	Add to I (Western Atlantic population)	Sweden	Withdrawn.
Thunnus thynnus (Bluefin tuna)	Add to II (Eastern Atlantic population	....do	Withdrawn.
Phylum Mollusca			
Class Gastropoda			
Strombus gigas (Queen conch)	Add to II	United States	Approved.
Plants			
Family Anacardiaceae			
Schinopsis spp. (quebrachos)	Add to II 4 (3–7) spp.	Argentina	Withdrawn.
Family Araceae			
Alocasia sanderiana (Sander's alocasia).	Remove from I (Ten Year Review)	Philippines; Switzerland	Transfer to Appendix II approved.
Family Bromeliaceae			
Tillandsia spp. (tillandsias)	Add to II [400–500+ supp.]	Austria; Germany	Revised and only *Tillandsia harrisii, T. kammii, T. kautskyi, T. mauryana, T. sprengeliana T. sucrei,* and *T. xerographica* approved.
Family Cactaceae			
Ariocarpus spp. (living-rock cacti)	Transfer from II to I (3+ spp. not already in I).	Netherlands	Approved.
Discocactus spp. (discocacti)	Transfer from II to I (8+ spp.)	Brazil	Approved.
Melocactus conoideus (conelike Turk's-cap cactus).	Transfer from II to I	....do	Approved.
Melocactus deinacanthus (wonderfully bristled Turk's-cap cactus).	....do	....do	Approved.
Melocactus glaucescens (grayish blue-green, wooly Turk's-cap cactus).	....do	....do	Approved.
Melocactus paucispinus (few-spined Turk's-cap cactus).	....do	....do	Approved.
Turbinicarpus spp. (turbinicacti)	Transfer from II to I (14+ spp. not already in I).	United States	Approved.
Uebelmannia spp. (Uebelmann cacti)	Transfer from II to I (4+ spp.)	Brazil	Approved.
Family Caryocaracese			
Caryocar costaricense (ajo; garlic tree)	p990X Remove from II (Ten Year Review).	Switzerland	Withdrawn.
Family Droseraceae			
Dionaea muscipula (Venus flytrap)	Add to II	United States	Approved.
Family Fagaceae			
Quercus copeyensis (copey oak)	Remove from II (Ten Year Review)	Switzerland	Approved.
Family Humiriaceae			
Vantanea barbourii (ira chiricana)	....do	....do	Approved.
Family Juglandaceae			
Oreomunnea pterocarpa (gavilan)	Remove from I (Ten Year Review)	....do	Transfer to Appendix II approved.
Family Leguminosae (=Fabaceae)			
Cynometra hemitomophylla (guapinol negro).	Remove from II (Ten Year Review)	Switzerland	Approved.
Dalbergia nigra (Brazilian rosewood)	Add to I	Brazil	Approved.
Intsia spp. (merbau)	Add to II (3 spp.)	Denmark & Netherlands	Withdrawn
Pericopsis elata (afrormosia)	Add to II	Denmark & United Kingdom	Approved including logs, sawn wood, and veneer, but no other parts or derivatives (i.e., products).
Platymiscium pleiostachyum (cristobal, granadillo).	Remove from II (Ten Year Review)	Switzerland	Withdrawn.
Tachigali versicolor (cana fistula)	....do	Switzerland	Approved.
Family Meliaceae			
Swietenia spp. (American mahoganies)	Add to II (spp. and natural hybrid)	Costa Rica; United States	*S. macrophylla* and its natural hybrid were withdrawn. *S. mahagoni* approved, including logs, sawn wood, and veneer but no other parts or derivatives (i.e., products).
Family Moraceae			
Batcarpus costaricehsis (ojoche macho).	Remove from II (Ten Year Review)	Switzerland	Approved.
Family Orchidaceae			
Didiciea cunninghamii (didiciea)	Remove from I (Ten Year Review)	....do	Withdrawn.

Species	Proposed amendment	Proponent	Final decision of the parties
Family Palmae (=Arecaceae)			
Areca ipot	Remove from II (Ten Year Review)	do	Approved.
Family Thymelaeaceae			
Gonystylus bancanus (ramin)	Add to II	Denmark & Netherlands	Withdrawn.
Family Zingiberaceae			
Hedychium philippinense (Philippine garland flower).	Remove from I	Switzerland	Transfer to Appendix II approved.
Family Zygophyllaceae			
Guaiacum officinale (commoner lignum vitae).	Add to II	United States	Approved.

[1] in 1992 3,000 ranched specimens and 100 wild-caught specimens, in 1993 4,000 ranched specimens and 100 wild-caught. in 1994 4,300 ranched specimens and 100 wild-caught.
[2] in 1992 400 wild-caught specimens and 100 trophies, in 1993 200 wild-caught specimens and 100 trophies, in 1994 200 wild-caught specimens and 100 trophies, in 1995 100 wild-caught specimens and 100 trophies.
[3] 1000 ranched specimens, plus those from registered bred-in-captivity facilities.
[4] in 1992 7000 captive bred, 2750 wild; in 1993 7000 captive bred, 1500 wild; in 1994 7000 captive bred, 1500 wild.

All proposals in the preceding table that were approved by the Conference of the Parties will enter into effect 90 days after the meeting (i.e., June 11, 1992) under terms of the Convention.

Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species if it enters a reservation with respect to that species. In the case of a country that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days after the meeting at which the Parties voted to place the species in Appendix I or II. If the United States decides to enter any reservation, this action must be transmitted to the Depositary Government (Switzerland) by June 11, 1992, and would be announced in the **Federal Register**.

Reservations, if exercised, may do little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign country has enacted the Convention as part of its positive law, and that country has not taken a reservation with regard to the animal or plant, or its parts or derivatives, the United States, even if it had taken a reservation on a species, would continue to require Convention documents as a condition of import. Any reservation by the United States would probably provide exporters in this country with little relief from the need for U.S. export documents. Receiving countries that are party to the Convention would generally require Convention-equivalent documentation from the United States, even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all of the information required in Convention permits or certificates. In addition, if a reservation is taken on a species listed in appendix I, the species should still be treated by the reserving Party as in appendix II according to resolution Conf. 4.25, thereby still requiring Convention documents for export of these species.

The Service requests comments on whether it should be recommended that the United States enter a reservation on any of the recent CITES amendments to appendix I and II. At present, the Service proposes not to recommend any reservations. It would do so only if evidence is presented to show that implementation of the amendment would be contrary to the interests or law of the United States.

Note: The Department has determined that amendments to Convention Appendices, which result from action of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). The Department also has determined that the Appendices changes made by the Parties is not an "agency" action, and similarly, not a rule for purposes of Executive Order 12291, and that the Regulatory Flexibility Act (5 U.S.C. 601) does not apply to this listing process. The proposed adjustments to the list in 50 CFR 23.23 are solely informational to provide the public with accurate data on the species covered by CITES. The listing changes adopted by the Parties will take effect on June 11, 1992, under the terms of CITES. This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The Service finds that good cause exists to shorten the comment period for a period of less than 30 days in order to provide the necessary time to review and, if appropriate, act on any comments requesting the entering of reservations. Any such reservations must be submitted to the CITES Secretariat by June 11, 1992.

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.* and 87 Stat. 884, as amended). It was prepared by Drs. Charles W. Dane, Richard Mitchell, and Bruce MacBryde, Office of Scientific Authority.

Proposed Regulation Promulgation

The Service proposes to amend the list of species contained in § 23.23 of title 50 of the Code of Federal Regulations by incorporating all changes in CITES Appendices I and II that were approved by the Conference of the Parties, as set forth in the supporting statement of the present notice.

Dated: April 20, 1992.

Bruce Blanchard,

Acting Director.

[FR Doc. 92-11185 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 93
Wednesday, May 13, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-063-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that seven environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Enviromental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
91-343-01	Crop Genetics International	04-06-92	Corn plants containing *Clavibacter xyli* subsp. *cynodontis* genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strain HD-73 delta-endotoxin protein for resistance to European corn borer (*Ostrinia nubilalise*)..	Queen Anne's County, Maryland; Clay County, Nebraska.
91-343-02	Pioneer Hi-Bred International, Incorporated.	04-08-92	Alfalfa plants genetically engineered to express coat proteins of the alfalfa mosaic virus (AMV) and the cauliflower mosaic virus (CaMV) for resistance to AMV..	Yolo County, California; Polk County, Iowa; Lancaster County, Pennsylvania; Franklin County, Washington; Columbia County, Wisconsin.
92-027-01, renewal of permit 90-365-02, issued on 04-02-91	Upjohn Company	04-09-92	Cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus (CMV), papaya ringspot virus (PRV), watermelon mosaic virus 2 (WMV2), and zucchini yellow mosaic virus (ZYMV) for resistance to these viruses..	Kern and San Benito Counties, California; Worth County, Georgia; Kalamazoo County, Michigan.

Permit No.	Permittee	Date issued	Organisms	Field test location
92-027-02, renewal of permit 90-365-03, issued on 04-02-91.	Upjohn Company	04-09-92	Cataloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus (CMV), papaya ringspot virus (PRV), watermelon mosaic virus 2 (WMV2), and zucchini yellow mosaic virus (ZYMV) for resistance to these viruses.	Tift County, Georgia.
91-358-01	DuPont Agricultural Products	04-10-92	Cotton plants genetically engineered to express acetolactate synthase (ALS) genes to confer tolerance to the herbicide sulfonylurea.	Lee County, Arkansas; Bolivar and Washington Counties, Mississippi; Hidalgo and Lubbock Counties, Texas.
91-352-01	Calgene, Incorporated	04-13-92	Repeseed plants genetically engineered to express an anti-sense desaturase gene to modify the fatty acid composition of the seeds.	Presque Isle and Kalkaska Counties, Michigan.
91-347-03	Monsanto Agricultural Company.	04-14-92	Cotton plants genetically engineered to express a *B÷cillus thuringiensis* subsp. *kurstake* strains HD-1 and HD-73 delta-endotoxin protein for lepidopteran insect resistance.	Onslow and Chowan Counties, North Carolina.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 R 52172-51274, August 31, 1979).

Done in Washington, DC, this 7th day of May 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-11208 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-057-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-010-01, renewal of permit 91-043-01, issued on 05-10-91.	Louisiana State University	03-31-92	Rice plants genetically engineered to contain a hygromycin marker along with one of the following genes: a rice storage protein gene, a bean storage protein gene, a pea storage protein gene, or a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *sotto*.	East Baton Rouge Parish, Louisiana.
92-022-02	Pioneer Hi-Bred International, Incorporated.	04-01-92	Corn plants genetically engineered to express transcriptional activators that act as dominant negative inhibitors of gene expression.	Polk County, Iowa.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 7th day of May 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-11216 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-058-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-097-01.	ICI Seeds	04-06-92	Soybean plants genetically engineered to express genes from a non-pathogenic source organism.	Dallas County, Iowa.

Done in Washington, DC, this 7th day of May 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-11207 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Establishment of Four Purchase Units, Michigan

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of purchase units.

SUMMARY: The Secretary of Agriculture has created the Military Hill Purchase Unit, Paynesville Purchase Unit, North Ewen Purchase Unit, and South Ewen Purchase Unit. These purchase units comprise 9,801 acres, more or less, within Ontonagon County, Michigan. A copy of the Secretary's establishment document which includes the legal description of the lands within the

purchase units appears at the end of this notice.

DATES: The effective date of these purchase units was March 20, 1992.

ADDRESSES: A copy of the map showing the purchase units is on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Secretary of Agriculture under section 17, National Forest Management Act of 1976, Public Law 94–588 (90 Stat. 2949), the Secretary has created these four purchase units.

Dated: April 30, 1992.

George M. Leonard,

Associate Chief.

Establishment of Four Purchase Units Ontonagon County, Michigan

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) four purchase units to be known as Military Hill Purchase Unit, Paynesville Purchase Unit, North Ewen Purchase Unit and South Ewen Purchase Unit are being established as described in Exhibit A attached hereto. Totally, these purchase units comprise 9,801 acres more or less and are adjacent to the Ottawa National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: March 20, 1992.

James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

EXHIBIT A.—DESCRIPTIONS AND ACRES OF LAND WITHIN THE PROPOSED PURCHASE UNITS

Subdivision	Section	Township north	Range west	Acreage
Paynesville Purchase Unit—Interior Township—Ontonagon County				
NE-NE	5	47	38	40
SE-NE	5	47	38	40
NE-SE	5	47	38	40
SW-SE	5	47	38	40
SE-SE	5	47	38	40
NE-NE	8	47	38	40
NW-NE	8	47	38	40
SW-NE	8	47	38	40
SE-NE	8	47	38	40
NE-NW	8	47	38	40
NW-NW	8	47	38	40
SE-NW	8	47	38	40
NW-SE	8	47	38	40
SW-SW	8	47	38	40
SE-SW	8	47	38	40
NW-SW	8	47	38	40
NE-SW	8	47	38	40
SW-NW	8	47	38	40
SE-SE	8	47	38	40
NE-SE	8	47	38	40
SW-SE	8	47	38	40
Stannard Township—Ontonagon County				
NW-NW	6	48	38	34.20
SW-NW	6	48	38	32.76
NW-SW	6	48	38	32.93
NE-SW	6	48	38	40
SE-SW	6	48	38	40
NW-SE	6	48	38	40
SW-SE	6	48	38	40
SE-SE	6	48	38	40
NE-NE	6	48	38	42.02
NW-NE	6	48	38	41.99
SW-NE	6	48	38	40
SE-NE	6	48	38	40
NE-SE	6	48	38	40
NE-NW	6	48	38	41.96
SE-NW	6	48	38	40
NE-NE	7	48	38	40
NW-NE	7	48	38	40
SE-NE	7	48	38	40
NE-NW	7	48	38	40
NE-SE	7	48	38	40
SE-SE	7	48	38	40
NE-NE	18	48	38	40
SW-NE	20	48	38	40
NE-NW	20	48	38	40
SE-NW	20	48	38	40
NE-SE	20	48	38	40
NW-SE	20	48	38	40
NE-NE	20	48	38	40
NW-NE	20	48	38	40
SE-NE	20	48	38	40
SE-SE	20	48	38	40

EXHIBIT A.—DESCRIPTIONS AND ACRES OF LAND WITHIN THE PROPOSED PURCHASE UNITS—Continued

Subdivision	Section	Township north	Range west	Acreage
SW-SE	20	48	38	40
NE-NE	29	48	38	40
Part of NW ¼ of NE ¼ described as follows: Beginning at a pont on the north line 100 feet west of the west bank of the Middle Branch of the Ontonagon River; thence in a southerly direction along said river and parallel to said river 100 feet west of the west bank of said river on its entire course through said forty meaning to convey all that portion east of said line	29	48	38	10
SE-NE	29	48	38	40
NE-SE	29	48	38	40
SW-NE	29	48	38	40
Pt. of NW-NE	29	48	38	30
NE-NE	1	48	39	42.04
NW-NE	1	48	39	42.17
SW-NE	1	48	39	40
SE-NE	1	48	39	40

Total Acres Within Purchase Unit: 2470.09
Total Acres To Be Acquired in Purchase Unit: 1594.12
Total Other Private Lands Within Purchase Unit: 875.97

South Ewen Purchase Unit—McMillan Township—Ontonagon County

SW-NW	2	47	40	40
SE-NW	2	47	40	40
NE-SW	2	47	40	40
NW-SW	2	47	40	40
SW-SW	2	47	40	40
SE-SW	2	47	40	40
SW-SE	2	47	40	40
SE-SE	2	47	40	40
NW-NW	2	47	40	36.95
NE-NW	2	47	40	37.02
NW-NE	2	47	40	37.16
NE-NE	2	47	40	37.09
SE-NE	2	47	40	40
SW-NE	2	47	40	40
NE-SE	2	47	40	40
NW-SE	2	47	40	40
NE-NE	3	47	40	36.83
NW-NE	3	47	40	36.66
SW-NE	3	47	40	40
SE-NE	3	47	40	40
NW-SE	3	47	40	40
NE-SE	3	47	40	40
SW-SE	3	47	40	40
SE-SE	3	47	40	40
NW-NW	3	47	40	36.32
NE-NW	3	47	40	36.49
SW-NW	3	47	40	40
SE-NW	3	47	40	40
SW-SW	3	47	40	40
SE-SW	3	47	40	40
NW-SW	3	47	40	40
NE-SW	3	47	40	40
NE-NE	10	47	40	40
NW-NE	10	47	40	40
SW-NE	10	47	40	40
SE-NE	10	47	40	40
NE-NW	10	47	40	40
NW-NW	10	47	40	40
SW-NW	10	47	40	40
SE-NW	10	47	40	40
NE-SW	10	47	40	40
NW-SW	10	47	40	40
SW-SW	10	47	40	40
SE-SW	10	47	40	40
NE-SE	10	47	40	40
NW-SE	10	47	40	40
SW-SE	10	47	40	40
SE-SE	10	47	40	40
NE-NW	11	47	40	40
NW-NW	11	47	40	40
SW-NW	11	47	40	40
SE-NW	11	47	40	40
NE-SW	11	47	40	40
NW-SW	11	47	40	40
SW-SW	11	47	40	40
SE-SW	11	47	40	40
NE-NE	11	47	40	40
NW-NE	11	47	40	40

EXHIBIT A.—DESCRIPTIONS AND ACRES OF LAND WITHIN THE PROPOSED PURCHASE UNITS—Continued

Subdivision	Section	Township north	Range west	Acreage
SW-NE	11	47	40	40
SE-NE	11	47	40	40
NE-SE	11	47	40	40
NW-SE	11	47	40	40
SW-SE	11	47	40	40
SE-SE	11	47	40	40

Total Acres Within Purchase Unit: 2534.52
Total Acres To Be Acquired in Purchase Unit: 1593.49
Total Other Private Lands Within Purchase Unit: 941.03

North Ewen Purchase Unit—McMillan Township—Ontonagon County

SW-SW	2	48	40	40
SW-NE	3	48	40	40
SE-NE	3	48	40	40
NW-NW	3	48	40	43.07
SW-NW	3	48	40	40
SE-NW	3	48	40	40
NE-SW	3	48	40	40
NW-SW	3	48	40	40
SW-SW	3	48	40	40
SE-SW	3	48	40	40
NE-SE	3	48	40	40
NW-SE	3	48	40	40
SW-SE	3	48	40	40
SE-SE	3	48	40	40
NE-NE	3	48	40	43.44
NW-NE	3	48	40	43.31
NE-NW	3	48	40	43.19
NE-NE	4	48	40	42.89
SE-NE	4	48	40	40
NE-SE	4	48	40	40
NW-SE	4	48	40	40
SW-SE	4	48	40	40
SE-SE	4	48	40	40
SW-NE	4	48	40	40
NW-NE	4	48	40	42.68
NE-NE	10	48	40	40
NW-NE	10	48	40	40
SE-NE	10	48	40	40
NW-NW	10	48	40	40
NE-NW	10	48	40	40
SW-NW	10	48	40	40
SE-NW	10	48	40	40
SW-NE	10	48	40	40

Total Acres Within Purchase Unit. 1338.58
Total Acres To Be Acquired in Purchase Unit: 925.96
Total Other Private Lands Within Purchase Unit: 412.62

Military Hill Purchase Unit—Rockland Township—Ontonagon County

Lot 5	17	50	39	30.55
Lot 1	20	50	39	62.55
Lot 2	20	50	39	34.90
Lot 3	20	50	39	54.80
Lot 4	20	50	39	30.65
Lot 5	20	50	39	39.70
Lot 6	20	50	39	18.80
Lot 8	20	50	39	27.10
Lot 9	20	50	39	6.65
Lot 10	20	50	39	37.10
NE-SW	20	50	39	40
NW-SW	20	50	39	40
NW-SE	20	50	39	40
SW-SE	20	50	39	40
SW-SW	20	50	39	40
SE-SW	20	50	39	40
Lot 7	20	50	39	49.70
Lot 1	21	50	39	39.80
Lot 2	21	50	39	27.75
Lot 3	21	50	39	36.30
Lot 4	21	50	39	5.42
NE-SW	21	50	39	40
NW-SE	21	50	39	40
SW-SE	21	50	39	40
NE-SE	21	50	39	40
SE-SE	21	50	39	40
ALL	25	50	39	640

EXHIBIT A.—DESCRIPTIONS AND ACRES OF LAND WITHIN THE PROPOSED PURCHASE UNITS—Continued

Subdivision	Section	Township north	Range west	Acreage
ALL	26	50	39	640
Lot 1	27	50	39	2.50
Lot 2	27	50	39	44.60
Lot 3	27	50	39	51.60
Lot 4	27	50	39	20.55
Lot 5	27	50	39	48.00
Lot 6	27	50	39	24.30
Lot 7	27	50	39	52.05
Lot 8	27	50	39	21.60
Lot 9	27	50	39	21.40
N½	27	50	39	319.20
Lot 2	28	50	39	20.30
Lot 3	28	50	39	52.35
Lot 4	28	50	39	42.50
NW-NW	28	50	39	40
SE-NW	28	50	39	40
NE-SW	28	50	39	40
NW-SW	28	50	39	40
SW-SW	28	50	39	40
SE-SW	28	50	39	40
NE-SE	28	50	39	40
NW-SE	28	50	39	40
N½-SW-SE	28	50	39	20
N½-SE-SE	28	50	39	20
S½-SE-SE	28	50	39	20
S½-SW-SE	28	50	39	20
SW-NW	28	50	39	40
Lot 5	28	50	39	44.8
Lot 1	28	50	39	30.8

Total Acres Within Purchase Unit: 3458.02
Total Acres To Be Acquired in Purchase Unit: 1493.52
Total Other Private Lands Within Purchase Unit: 1964.50

[FR Doc. 92-11133 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-11-M

Establishment of Brazier Purchase Unit, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of purchase unit.

SUMMARY: The Secretary of Agriculture has created the Brazier Purchase Unit to include 320 acres, more or less, in Skagit County, Washington. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

DATE: The effective date of this purchase unit was April 15, 1992.

ADDRESS: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1248.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Secretary of Agriculture under section 17, National Forest Management Act of 1976, Public Law 94-588 (90 Stat. 2949), the Secretary has created the Brazier Purchase Unit.

Dated: April 30, 1992.

George M. Leonard,

Associate Chief.

Establishment of Brazier Purchase Unit, Skagit County, Washington

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94-588 (90 Stat. 2949) a purchase unit is being established and is described as follows:

Skagit County, Washington, Willamette Meridian

T.35N., R.9E.,
Sec. 26, NE¼, E½NW¼, NW¼NW¼;
Sec. 27, NE¼NE¼.

The area described aggregate 320 acres, more or less, and is adjacent to the Mt. Baker National Forest boundary.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: April 15, 1992.

John H. Beuter for James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 92-11132 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-11-M

Exxon Valdez Oil Spill Public Advisory Group; Nominations Solicitation

AGENCY: Forest Service, USDA.

ACTION: *Exxon Valdez* Oil Spill Public Advisory Group; Nomination Solicitation.

SUMMARY: The *Exxon Valdez* oil spill Trustee Council is soliciting nominations for the Public Advisory Group which will advise the Trustee Council on decisions relating to the planning, evaluation, and conduct of injury assessment and restoration activities using funds obtained for purposes of restoration as part of the civil settlement. Formation of a Public Advisory Group was managed by the October 1991 Memorandum of Agreement and Consent Decree between the State and Federal governments.

DATES: All nominations should be received on or before June 8, 1992.

ADDRESSES: Nominations should be sent to the Trustee Council, 645 G Street, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: L.J. Evans (907) 278-8008, *Exxon Valdez* Oil Spill Restoration Office, 645 G Street, Anchorage, Alaska 99501. A copy of the draft charter for this Public

Advisory Group is available upon request.

SUPPLEMENTARY INFORMATION: The October 1991 Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91-081 CV, requires the establishment of a Public Advisory Group to advise the Trustees, through the Trustee Council, on matters relating to decisions on injury assessment, restoration activities or other use of natural resource damage recoveries obtained by the governments. On the State side, the Trustees are made up of the State Attorney General, Commissioner of Fish and Game, and Commissioner of Department of Environmental Conservation. On the Federal side, the Trustees are made up of the Secretaries of the United States Departments of the Interior and Agriculture and the Administrator of the National Oceanic and Atmospheric Administration, Department of Commerce. The Alaska-based Trustee Council is made up of the State Trustees and the Regional Forester, USDA Forest Service; Special Assistant to the Secretary, U.S. Department of the Interior; and the Alaska Regional Director, National Marine Fisheries Service. Appointment to the Public Advisory Group will be made by the Secretary of the Interior with unanimous approval of the Trustees.

The Trustee Council has decided that the Public Advisory Group shall consist of 15 members and reflect balanced representation from the public at large and the following principal interest: Aquaculture, commercial fishing, commercial tourism, environmental, conservation, forest products, local government, Native landowners, recreation users, sport hunting and fishing, subsistence, and science/academic. Two additional ex-officio, non-voting seats on the Public Advisory Group will be held by representatives from the Alaska House of Representatives and Senate. Nominees need to provide the following information to the Trustee Council:

1. A biographical sketch (education, experience, address, phone);
2. Information about the nominee's knowledge of the region, peoples, or principal economic and social activities of the area affected by the *Exxon Valdez* oil spill, or expertise in public lands and resource management;
3. Information about the nominee's relationship/involvement, if any, with one or more of the identified principal interests;
4. Identification of group(s), if any, recommending this appointment. Provide the point of contact and phone number for the group(s).
5. A statement explaining any unique contributions the nominee will make to the Public Advisory Group and why the nominee should be appointed to the advisory group; and,
6. Additional relevant information that would assist the Trustee Council in making a recommendation.

Dated: May 1, 1992.

M.E. Chelstad,

Acting Regional Forester

[FR Doc. 92-11147 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-01-M

Eldorado National Forest, CA; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service is preparing an environmental impact statement (EIS) to analyze revision of management guidelines for the Desolation Wilderness on the Pacific and Placerville Ranger Districts of the Eldorado National Forest, and the Lake Tahoe Basin Management Unit, El Dorado County, California. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by July 10, 1992.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Craig Harasek, District Ranger, Pacific Ranger District, Eldorado National Forest, ATTN: Desolation Wilderness EIS, Pacific Ranger District, Pollock Pines, CA 95726, phone 916-644-2349.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Karen Leyse, Interdisciplinary Team Leader, Pacific Ranger District, Pollock Pines, CA 95726, phone 916-644-2349.

SUPPLEMENTARY INFORMATION: The Eldorado National Forest Land and Resource Management Plan (1989), the Lake Tahoe Basin Management Unit Land and Resource Management Plan (1988), and the 1964 Wilderness Act have provided general management direction for Desolation Wilderness. The current Desolation Wilderness Management Plan was completed in 1978; both Forest Plans indicate the need to review the existing Desolation Wilderness Plan and to revise it as needed. The decision may result in amendments to the Forest Plans.

In preparing the EIS, the Forest Service will identify and consider a range of alternatives for future management of this wilderness. One of these will be no action, which will maintain Forest Service management at existing levels. Other alternatives will consider management ranging from maximum wilderness protection to maximum recreational use of the wilderness.

Because the EIS involves two forests, Ronald E. Stewart, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Defining the scope of the analysis and the nature of the decision to be made.
2. Identifying the issues and determining the major issues for consideration and analysis within the EIS.
3. Determining the proper interdisciplinary team.
4. Exploring potential alternatives.
5. Identifying potential environmental, technical, and social effects of the proposed action and alternatives.
6. Determining potential cooperating agencies and task assignments.
7. Identifying groups or individuals interested or affected by the decision.

The Forest Supervisor will hold public scoping meetings at 7 p.m. at the following locations:

Placerville, California: Shakespeare Club, June 17, 1992

South Lake Tahoe, California: Tahoe Sands Inn, June 18, 1992

Sacramento, California: KVIE Studios, June 23, 1992.

Oakland, California: Scottish Rite Temple, June 25, 1992

The draft EIS is expected to be filed with the Environmental Protection

Agency (EPA) and to be available for public review by May 1993. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date EPA's notice of availability appears in the **Federal Register.** It is very important that reviewers participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis, 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by December 1993. The Forest Service is required to respond in the final EIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 217.

Dated: May 5, 1992.

John Phipps,

Forest Supervisor, Eldorado National Forest.

Dated: April 28, 1992.

Robert E. Harris,

Forest Supervisor, LTBMU.

[FR Doc. 92-11148 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-11-M

Rocky Mountain Region; Environmental Impact Statement for the Floating Lake Timber Sale, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to harvest aspen in the Floating Lake/Pilot Knob area of the Gunnison National Forest, Paonia Ranger District. The proposal includes commercial timber harvesting on 885 acres of suited aspen timber land and the construction of 18 miles of road in a roadless area identified during the 1979 Roadless Area Review and Evaluation (RARE II) process. The project is being proposed to implement the Grand Mesa, Uncompahgre, & Gunnison National Forests Land and Resource Management Plan by producing aspen wood fiber, maintaining local timber dependent jobs, improving wildlife habitat diversity, and maintaining aspen clones.

DATES: Open House, June 11, 1992; Comments concerning the scope and issues of the analysis should be received by June 30, 1992; Publication of Draft EIS: December, 1992; Final EIS: June, 1993.

ADDRESSES: Send written comments to Steven L. Posey, District Ranger, Paonia Ranger District, P.O. Box 1030, Paonia, Colorado, 81428.

FOR FURTHER INFORMATION CONTACT: Deirde Haneman, Forester, (303) 527-4131.

SUPPLEMENTARY INFORMATION: The proposed aspen harvest would take place on National Forest lands and would utilize irregularly shaped clearcuts less than 40 acres in size. Where aspen timber harvesting is not appropriate, burning or mechanical treatment would be used to maintain aspen clones and improve wildlife habitat diversity. Gambel oak may also be burned within the projected area for wildlife habitat diversity.

Preliminary scoping of the Floating Lake timber sale identified seven issues. The issues are:

(1) Improved access to the project area is needed;

(2) The sale area is within a roadless area as identified during the 1979 RARE II process;

(3) The planned road construction mileage is excessive;

(4) A district-wide transportation analysis is needed;

(5) Timber sale costs will exceed revenues;

(6) The timber sale should be designed for efficient logging;

(7) Soils are unstable.

An open house is scheduled for June 11, 1992 in Paonia, Colorado, at the Paonia Town Hall, 214 Grand Avenue, from 3 to 7 p.m. to discuss the proposed timber sale with the public. The purpose of the meeting is to further define the scope of the analysis, significant issues, and formulate a range of alternatives to be analyzed in the Draft EIS. A news release for local media and interested parties is being made in conjunction with the June 11 meeting.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternative discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). Please note that comments on the draft environmental impact statement will be regarded as public information.

In addition, Federal court decision have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

The responsible official for this EIS is Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

Dated: May 5, 1992.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 92-11190 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-11-M

Hay Timber Sale, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of an environmental impact statement.

SUMMARY: The Forest Service has prepared a draft Environmental Impact Statement (EIS) on a proposal to harvest timber and build roads in the Hay Planning area.

DATES: Written comments concerning the proposed action and alternatives will be accepted on or before June 12, 1992.

ADDRESSES: Copies of the draft EIS can be obtained by contacting Dan Krutina (505) 437-6030 or 1101 New York Avenue, Alamogordo, NM, 88310.

FOR FURTHER INFORMATION CONTACT: Questions about the analysis, documentation, and public involvement process should be directed to Tim Meyer, Timber Presale Forester, (505) 682-2551.

SUPPLEMENTARY INFORMATION: The proposed action is to harvest approximately 2.2 million board feet (MMBF) of timber from 556 acres of land, and build approximately 8.6 miles of road. The decision to be made will include: Whether to harvest timber and build roads; if harvesting timber and road building are to be done; the amounts and site-specific locations of each; and mitigation measures, if needed. The Lincoln National Forest Land and Resource Management Plan (LRMP) has been prepared. One of the management decisions in the LRMP was to implement a timber sale program. The Hay Timber sale is identified in Table 10 of the LRMP.

Scoping for this proposal began in April, 1990. A public participation plan was implemented, including posting notices in local post offices, local newspapers, an open house on June 7, 1990, two letters sent to the project mailing list (including adjacent landowners), and a field trip on August 6, 1991, that was open to the public. To date, scoping has identified several issues, including: how to manage old growth: how to balance wildlife habitat protection, particularly for Mexican spotted owl and Northern goshawk, with timber harvest objectives; how to protect habitat for threatened or endangered plants, especially *Cirsium vinaceum;* and an opportunity to accomplish road reconstruction identified in the LRMP.

A range of alternatives to this proposal will be considered. One of these will be a no action alternative. Other alternatives will consider varying timber harvest volumes, ranging from 0.2 MMBF to 2.6 MMBF, and varying lengths of new road construction, ranging from 7.3 miles to 16 miles.

Federal, State, and local agencies; private industry; and other individuals or organizations who may be interested in or affected by the decision were invited to participate throughout the planning process.

Lee Poague, Forest Supervisor, Lincoln National Forest, 1101 New York Avenue, Alamogordo, NM, 88310, is the responsible official.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation on the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 425 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 83 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1331, 1336 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible, it is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: May 6, 1992.

Jeanine A. Derby,

Acting Forest Supervisor

[FR Doc. 92-11191 Filed 5-12-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Report of Building or Zoning Permits Issued and Local Public Construction.

Form Number(s): C-404, C-404(TDE).

Agency Approval Number: 0607-0094.

Type of Request: Revision of a currently approved collection.

Burden: 30,795 hours.

Number of Respondents: 9,000 Monthly; 9,100 Annually.

Avg Hours Per Response: 15 minutes Monthly; 25 minutes Annually.

Needs and Uses: The Census Bureau conducts the Report of Building or Zoning Permits Issued and Local Public Construction, otherwise known as the Building Permits Survey, to prepare monthly estimates and annual totals of the number and value of residential buildings and housing units, hotels and motels, nonresidential construction, and demolitions authorized by building permits.Census plans to test the feasibility of collecting building permit data via the telephone using touchtone data entry and voice recognition. They will select a sample of 80 of the approximately 18,100 respondents who currently report in the Building Permits Survey and request that they use the telephone data entry on a trial basis. Their goal is to implement this type of reporting on a wide-scale basis if respondents find it more convenient. They will contact the respondents before they use the system to introduce them to telephone data entry. Next, they will follow-up with the respondents after they have used the system to get their opinions of the new reporting arrangement. Census will then evaluate the effectiveness of telephone data entry and, if results are favorable, plan to expand the use of touchtone data entry and voice recognition to include over half of the respondents in the Building Permits Survey by 1994.

Affected Public: State or local governments.

Frequency: Monthly and annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 7, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-11170 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Transportation - 1993 Commodity Flow Survey.

Form Number(s): TC-9503, TC-9504.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,943,000 hours.

Number of Respondents: 200,000.

Avg Hours Per Response: 2 hours and 26 minutes.

Needs and Uses: The Bureau of the Census plans to reestablish a commodity flow data program and conduct the 1993 Commodity Flow Survey (CFS) as part of the 1992 Census of Transportation. The CFS will restore a data program that was last conducted as part of the 1982 Census of Transportation. The commodity flow data program will provide quinquennial data on the origin, destination, type of commodity, weight, value, and mode of transportation for commodity movements within the United States. The 1993 CFS will consist of a sample of some 200,000 establishments classified in manufacturing, mining, wholesale, and limited retail and service industries. Each selected establishment will report a sample of its individual shipments for a two week period in each of the four quarters of 1993. Numerous Federal agencies use data on commodity flows to make transportation policy decisions that promote the domestic economy and foreign trade, maintain and develop the transportation infrastructure, and provide for the safety of people and the environment. In addition, many state agencies require these data for carrying out their own economic and transportation programs, as well as their activities supporting Federal programs.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 7, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-11173 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—October 1992 School Enrollment Supplement.

Form Number(s): CPS-1.

Agency Approval Number: 0607-0464.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 8,050 hours.

Number of Respondents: 69,000.

Avg Hours Per Response: 7 minutes.

Needs and Uses: The Census Bureau is requesting OMB clearance for the supplemental questions on school enrollment to be added to the October collection of the Current Population Survey (CPS). These questions are asked annually for the entire CPS sample. The data provide basic information on enrollment status of various segments of the population for persons enrolled in nursery school/kindergarten, elementary school, high school, college, and vocational/technical schools. We are also requesting clearance for these supplemental questions to be asked of the sample of CPS respondents participating in the CATI/CAPI Overlap (CCO) Test, sponsored by the Bureau of Labor Statistics, during the October CCO Test collection. We have included the additional reporting hours associated with these supplemental questions for the CCO Test in this clearance. These data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 7, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-11171 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Broadwoven Fabrics (Gray) Average Weight and Width Study.

Form Number(s): MC22T.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,032 hours.

Number of Respondents: 344.

Avg Hours Per Response: 3 hours.

Needs and Uses: The Census Bureau will conduct this survey as part of the 5-

year economic censuses program. This survey, which has been conducted for the past 50 years, provides conversion factors used by industry and Government analysts to monitor the continuing changes in the weight and width of fabric. These factors provide a means of comparing fabric yardage produced to the volume of fiber consumed. Federal users of the survey data include the Department of Agriculture to monitor trends affecting the demand for cotton, and the Department of Justice and the Federal Trade Commission for evaluation of anticompetitive impacts of mergers and acquisitions. Businesses and trade associations use the data to assess market trends in their analysis of the textile industry, fabrics produced, fiber consumed, and import penetration.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 7, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-11172 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

[A-122-601]

Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 12, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Canada for the period January 1, 1990 through December 31, 1990 (57 FR 5128). We have now completed that review and determine that Wolverine Tube (Canada), Inc. (Wolverine) is the successor company to Noranda Metals, Inc. (NMI) for antidumping duty cash deposit purposes, and, as such, receives the antidumping duty cash deposit rate previously assigned to NMI of 21.32 percent *ad valorem*.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki, Anne D'Alauro, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLENTARY INFORMATION;

Background

On November 22, 1989, petitioners notified the Department of Commerce (the Department) that Wolverine Tube (Canada), Inc. (Wolverine) had acquired the production facilities of Noranda Metals, Inc. (NMI) and requested that Wolverine be assigned NMI's cash deposit rate of 21.32 percent. On September 24, 1990, the Department assigned NMI's cash deposit rate to Wolverine. Wolverine protested in a letter dated September 26, 1990, and the Department reversed its earlier decision on October 18, 1990. On January 31, 1991, petitioners formally requested a review of Wolverine to examine the question of whether Wolverine was the successor to NMI for antidumping duty cash deposit purposes. On the same date, Ratcliffs Ltd., another respondent, requested a review of itself. On February 19, 1991, we initiated this administrative review (56 FR 6621). Ratcliffs Ltd. withdrew its review request on June 12, 1991, after the Department's preliminary determination in the third review indicated intent to revoke. On February 12, 1992, we published the preliminary results of review (57 FR 5128). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of brass sheet and strip, other than leaded brass and tin brass, from Canada. This merchandise is classifiable under item numbers 7409.21.00 and 7409.29.00 of the *Harmonized Tariff Schedule* (HTS). The chemical compositions of the products under review are currently defined in the Copper Development Association (CDA) 200 series or the Unified Numbering System (UNS) C2000 series. Products whose chemical compositions are defined by other CDA or UNS series are not covered by this review.

The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thicknesses or gauge, regardless of width. Coiled, wound on reels (traverse wound), and cut-to-length products are included. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of the order.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Case and rebuttal briefs were timely submitted by the petitioners (Hussey Copper Ltd.; The Miller Company; Olin Corporation; Outokumpu American Brass; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; International Union, Allied Workers of America (AFL-CIO); Mechanics Educational Society of America (Local 56); and United Steelworkers of America (AFL-CIO/CLC)), and by the respondent, Wolverine.

Comment 1: Respondent argues that the duty deposit rate for Wolverine should be all others rate, because Wolverine is not covered in this or prior administrative reviews and is unrelated to any reviewed firm. The Department, according to respondent, has disregarded its own practices for establishing duty deposit rates in favor of a successorship test which is erroneously based on the definition of corporate successorship. Respondent cites the Court of International Trade (CIT) decision regarding Large Power Transformers from Italy, Nuove Industrie Elettriche de Legnano v. United States, 739 F. Supp. 1567 (CIT 1990) (hereinafter *NIEL*), in which the CIT denied the applicability of U.S. corporate law to antidumping proceedings. In addition, respondent claims that the previous successorship determinations made by the Department do not apply in this case because the circumstances are different: the NIEL acquisition arose from an insolvency proceeding; both the predecessor and successor companies in Steel Wire Strand for Prestessed Concrete from Japan (55 FR 7759; March 5, 1990) had the same parent company; and the antidumping duty liability in

Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, Panel Reviews USA-89-1904-02, -03, and -05 (1989) (Memorandum Opinion and Order Regarding Motions to Dismiss Reviews) was specified in the purchase agreement. Respondent argues that none of these facts are found in the Wolverine case.

Petitioners argue that the Department's test is proper and legal. Petitioners claim that, in determining the applicable duty deposit rate for antidumping purposes, the Department properly examined not only the change in ownership, but also the entire operation of the firm in question. The NIEL case upheld the Department's application of a test of "old" and "new" business activities for the successor company. The Department determined that the business operation of the successor company was "old," thereby indicating that it should receive the predecessor's antidumping duty cash deposit rate. Without such a test, petitioners contend, there would be a loophole in the enforcement of the antidumping duty law, since any change in ownership could be sufficient to allow a previously reviewed firm to qualify for a lower "all other" rate. Petitioners also argue that the test is based on past Department practice and that the above precedents are pertinent and legally sound. Petitioners point out that allowing companies to avoid high rates simply by transferring ownership of the company to another party would invite widespread circumvention of antidumping duty orders.

Department's Position: We disagree with respondent's assertion that the successorship analysis applied in this case is inconsistent with the CIT's conclusion in NIEL. In that case, the Department argued, and the Court agreed, that U.S. corporate law is not determinative of the appropriate duty deposit to be assigned to a company for antidumping duty purposes. Here, as in that case, the Department instead examined the entire business complex of Wolverine after the acquisition, including such factors as management, production facilities, customers and suppliers. The Department's concern in making "successorship" determinations is to ensure the proper administration of the antidumping laws. In conducting an administrative review of an antidumping duty order, the Department is required to establish not only the amount of dumping margin, if any, for duty assessment purposes, but also appropriate rates for cash deposits for future entries of the merchandise subject to these orders.

At issue in so-called "successorship" cases is the appropriate rate to be assigned to entities affected by, for example, an acquisition of all or part of another company's assets, a transfer of another company's corporate control, or some other change which raises the questions of the company's status in the proceeding. The circumstances under which this question arises are varied. In some instances both parties will have their own rates before the transaction; in others, a party may or may not continue to exist or produce the merchandise after the transaction of assets; in one instance, a company divested itself of, and then reacquired, a company subject to the order.

It is also true that, regardless of the nature of the transaction, a company will argue successorship, or lack thereof, depending on the particular consequences of its claim on its antidumping duty deposit rate. Therefore, in attempting to fashion guiding principles for deciding what deposit rate to assign a company, the Department has concluded it must examine the totality of circumstances, including such factors as those set out in our preliminary determination. Although "successorship" is necessarily a case-by-case determination, generally in the case of an asset acquisition, the Department will consider the acquiring company to be a successor to the company covered by the antidumping duty order, and thus subject to its duty deposit rate, if the resulting operation is essentially similar to that existing before the acquisition. This rate would remain in effect until completion of an administrative review of the resulting entity's U.S. sales. In the case of Wolverine, the Department determined that their resulting operation was sufficiently similar to that of NMI to warrant receiving the NMI cash deposit rate.

Comment 2: Respondent objects to the Department's test for establishing Wolverine's duty deposit rate as set forth in the preliminary determination, because it contends that the factors examined have no bearing on whether or not Wolverine is a different business entity from NMI. According to Wolverine, under the test applied in this case, an acquiring company will always be considered a "successor," since any company purchasing a brass sheet and strip plant is planning to produce brass sheet and strip and not some other merchandise. Respondent claims that a substantive successorship inquiry would seek to determine whether Wolverine is a different business entity from NMI, and whether Wolverine is in any way related to NMI or any other reviewed firm. In this instance, respondent points out that the corporate structure and the parent company of Wolverine differ from those of NMI; that the purchase agreement specifies a cash payment and certain sale date for some (not all) assets, thereby making a clean severance of business; that substantial production improvements and cost reductions have been undertaken due to a fundamental, management policy shift; and that suppliers to its Fergus plant, the plant acquired from NMI, have been almost completely changed since the inception of NMI ownership. Respondent also claims that in all previously-cited successorship determinations by the Department, there has always been a relationship between the predecessor and the successor companies, whereas Wolverine has no relationship at all with NMI, having severed all active business contacts on the effective date of the purchase agreement.

Petitioners argue that the agency's test, as set forth in the preliminary determination, focuses upon whether one company is operating substantially the same business as its predecessor. Under this test, the point of comparison is the type of business, not the legal entity itself, and, as such, Wolverine can clearly be designated successor to NMI. Examination of any relationship between Wolverine and NMI is immaterial to determining successorship according to the Department's test.

Department's Position: The Department examined whether Wolverine is essentially the same business operation, not legal entity, as NMI, since production facilities, essential personnel, customers, and management were transferred from NMI to Wolverine without interruption. Wolverine did not produce brass sheet and strip before buying all of NMI's brass production facilities. NMI no longer produces brass sheet and strip, and so the existence of any ongoing legal relationship, while certainly a factor the Department would consider, is not dispositive.

Wolverine purchased the production facilities of NMI and continues to produce subject merchandise at these facilities. In addition, NMI no longer manufactures any brass sheet and strip, and thus no longer exists as a company subject to this order. For these reasons, we determined that Wolverine should receive the same antidumping duty deposit rate as NMI until such time as a review of its shipments is completed and it receives a rate based on its own shipments.

Comment 3: Respondent argues that, because Wolverine negotiated an arms-length transaction, it is a different business entity than NMI. Specifically, Wolverine claims that it did not acquire NMI's entire business complex, nor its liquid assets, registered pension plans, or all land. In addition, Wolverine reduced the Fergus plant personnel by 18 percent. Furthermore, Wolverine states that it has reduced the customer base for the Fergus plant since its ownership and that it has replaced the two top managers at the Fergus plant responsible for the pricing and marketing of the subject merchandise. Wolverine maintains that the fact that it lost no production time in the course of the acquisition was merely good business practice, and that this is not indicative of successorship. Respondent argues that the facts demonstrate that Wolverine is engaged in the production of brass sheet and strip, but not that Wolverine is a business entity so similar to NMI that it should receive the same cash deposit rate.

Petitioners argue that Wolverine acquired substantially all the property of NMI, including plant, equipment, and personnel. They maintain that the lack of production downtime in the acquisition meant that Wolverine had no time to make substantial changes in the management or operation of the Fergus plant and this signifies that the business is essentially the same under Wolverine as under NMI. They contend that such changes as were made were only ongoing business modifications that any company might undertake, and that actually they were undertaken some time after production commenced under Wolverine ownership. In addition, they note that the customers have remained the same, indicating a continuous business operation regardless of ownership. Petitioners assert that Wolverine's business operation is essentially the same as NMI's operation with regard to the production of brass sheet and strip.

Department's Position: We agree with petitioners. As we elaborated in our preliminary results, at the time of acquisition, NMI's production facilities, personnel, customers, and management were transferred to Wolverine, which then continued to produce subject merchandise. Our determination in this review is only for the purpose of setting a duty deposit rate for U.S. exports by Wolverine until such time as it obtains a new rate as a result of an administrative review. Any cash deposits paid in excess of duties actually found to be owed on those entries will be refunded with interest. Until that time, however, the Department considers that it is appropriate to assign Wolverine NMI's cash deposit rate.

Comment 4: Petitioners argue that the respondent's letter of September 26, 1990, protesting the Department's decision of September 24, 1990 to assign Wolverine the NMI cash deposit rate of 21.32 percent was procedurally invalid due to lack of certification and failure of service, and was submitted outside the context of any Department proceeding. Therefore, the Department's letter dated October 18, 1990 reversing that decision is legally invalid.

Department's Position: Because the Department has now conducted an administrative review to establish the duty deposit rate for Wolverine, and the record of this proceeding supersedes previous correspondence regarding this issue, petitioners' objection is moot.

Comment 5: Petitioners argue that, since the Department found Wolverine to be the successor to NMI in the context of this review, Wolverine must have always been the successor to NMI. Therefore any and all unliquidated entries of subject merchandise from Wolverine should be assessed antidumping duties at the rate of 21.32 percent. In addition, petitioners request the Department to provide them with a record of all Wolverine entries of brass sheet and strip, their cash deposit rates, and their rates of liquidation since the time Wolverine acquired the production facilities of NMI. In this way, petitioners argue, they will be able to determine whether Customs has acknowledged Wolverine as the successor to NMI for purposes of assessment.

Respondent contends that, since there have been no shipments of subject merchandise to the United States since January 1, 1990, the issue of assessment for unliquidated entries is moot. Respondent also argues that the petitioners' letter of November 22, 1989 (alleging that Wolverine should be considered successor to NMI because it purchased NMI's production facilities) was unsupported by evidence. Therefore, the Department could not establish the liability for NMI's antidumping duties without a proper determination. In addition, respondent argues that the petitioners should not be allowed to rely on their November 22, 1989 letter, since it was submitted in the context of the 1986–87 review of this order.

Department's Position: The Department verified that there were no shipments of subject merchandise entered by Wolverine during the review period. Any Wolverine shipments for the previous (1989) review period should have been liquidated at the rate entered, since no request for their review (or for shipments from their predecessor, NMI) was received by the Department. At both petitioners' and respondent's requests, however, the cited correspondence with the Department prior to the initiation of this review regarding the successorship of NMI was placed in the record of this review on November 20, 1991, and was considered in our determination.

Final Results of Review

After reviewing the comments received, we determine the antidumping duty cash deposit rate for Wolverine to be 21.32 percent *ad valorem*.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The case deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be zero. This rate represents the highest rate for any firm with shipments in the previous administrative review (57 FR 57317; November 8, 1991), since Wolverine had no shipments in this review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 6, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-11250 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-05-M

[A-482-604]

Certain Forged Steel Crankshafts From Germany; Final Results of Changed Circumstances Antidumping Duty Administrative Review and Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances administrative review and determination not to revoke antidumping duty order.

SUMMARY: We determine that, because an interested party is interested in the antidumping duty order on certain forged steel crankshafts from Germany, there is not a reasonable basis to believe that changed circumstances sufficient to warrant revocation exist. Therefore, we determine not to revoke the order.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: John R. Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3601.

SUPPLEMENTARY INFORMATION: .

Background

On September 23, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 35751) an antidumping duty order on certain forged steel crankshafts from Germany. On September 26, 1991, Thyssen Unformtechnik (Thyssen), a German manufacturer, requested revocation of this order based on changed circumstances, because another German crankshift manufacturer, Krupp Gerlach Crankshaft Company (KGCC), has acquired the crankshaft manufacturing facilities of the petitioner. On October 1, 1991, the Wyman-Gordon Company, the petitioner, informed the Department that it was not longer interested in the antidumping duty order on certain forged steel crankshafts from Germany.

On January 16, 1992, we published in the **Federal Register** (57 FR 1897) a notice of "Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Adminsitrative Review, Consideration of Revocation, and Intent to Revoke Antidumping Duty Order", and offered interested parties the opportunity to comment.

On February 18, 1992, Louisville Forge and Gear Works Inc. (Louisville Forge), a domestic producer of a like product and thus an interested party, objected to revocation of this order.

Both Thyssen and Louisville Forge submitted case and rebuttal briefs.

Scope of the Review

Imports covered by this review are shipments of certain forged steel crankshafts. The term "crankshafts", as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined.

These products are currently classifiable under item 8483.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule (HTS). Neither cost crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review.

HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This "changed circumstances" administrative review covers all producers/exporters of the subject merchandise produced in Germany and all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991.

Comment 1: Louisville Forge, a domestic producer of a like product, and thus an interested party as defined in 19 CFR 353.2(k)(3), states that it is interested in the order and objects to revocation. Louisville Forge cites numerous prior cases where the Department determined not to revoke orders based on objection from one or several interested parties. Louisville Forge also argues that the fact that the original petitioner, Wyman-Gordon Co., is no longer interested in the order is irrelevant because that firm is not longer part of the domestic industry, and thus no longer an interested party. Therefore, the predicate for preliminary revocation, that no interest by an interested party constitutes sufficient changed circumstances to warrant revocation, does not exist.

Thyssen claims first that, when the original petitioner no longer is interested in an order, and when the only party opposing revocation has not affirmatively participated in any prior portions of the proceeding, there exists a rebuttable presumption in favor of revocation, and Louisville Forge should be required to meet a very high burden of proof. Second, Thyssen asserts that its imported crankshafts do not compete with Louisville Forge's products, since Louisville Forge's crankshafts weight no more the approximately 225 pounds and are used in the automotive industry, while Thyssen's imports weigh between 280 and 400 pounds and are used in the heavy duty truck market.

In rebuttal, Louisville Forge repeats that, since the original petitioner is no longer part of the domestic industry, having sold its crankshaft manufacturing facilities to KGCC, its expression of no further interest in the order is irrelevant, since it is no longer an interested party.

Second, Louisville Forge notes that it did participate in the original investigation by supplying information to the International Trade Commission (ITC), and cites several prior cases in which the Department determined not to revoke an order based on objections by interested parties, even where no U.S. producer participated in administrative reviews for four or more years.

In its rebuttal Thyssen argues that Louisville Forge does not represent the domestic crankshaft industry. KGCC recently purchased the original petitioner's crankshaft manufacturing businesses and continues to produce forged steel crankshafts in the United States. In fact, KGCC now accounts for the vast majority of U.S. production of the subject merchandise, as did its predecessor, Wyman-Gordon. Since neither Wyman-Gordon nor its successor, KGCC, is interested in continuation of the order, Thyssen claims there exists a clear presumption that the order is no longer of interest to the domestic crankshaft industry.

Department's Position: We agree with Louisville Forge. First, as a domestic producer of a like product, Louisville Forge is an interested party as defined in 19 CFR 353.2 (k)(3). Second, its objection to revocation of this order constitutes interest by an interested party; thus, the basis for the preliminary revocation, no interest by an interested party, does not exist. We agree that Wyman-Gordon's lack of interest is irrelevant because that firm is no longer an interested party in this proceeding.

Pursuant to 19 CFR 353.25(d)(4)(i), the Department will not revoke an order if an interested party, as defined in paragraphs (k)(3), (k)(4), (k)(5), and (k)(6) of section 353.2, objects to revocation of the order. See 19 CFR 353.25(d)(i)(4). Therefore, whether Louisville Forge or

KGCC is the dominant domestic producer is immaterial. While the record reveals that there is support for revocation from a German manufacturer/importer (Thyssen), there is opposition from a member of the domestic industry (Louisville Forge). Finally, we note that, despite Thyssen's repeated assertions, the record of this review indicates that KGCC neither supports nor opposes revocation of this order.

As for Thyssen's assertion that a rebuttable presumption in favor of revocation exists, and that Louisville Forge should be required to meet a very high burden of proof, we disagree. No such rebuttable presumption or burden of proof exists; in a changed-circumstances review such as this, it suffices that an interested party expresses interest in the order, as Louisville Forge has done.

Finally, whether Thyssen's imported crankshafts compete with Louisville Forge's products may or may not be relevant in a changed-circumstances review by the ITC of its injury determination, should it conduct such a review; however, it is immaterial in a changed-circumstances review by the Department.

Comment 2: Thyssen argues that, should the Department determine not to revoke this order in its entirety, either the Department should modify the order to exclude crankshafts weighing over 240 pounds, or it should determine that Louisville Forge's crankshafts are a separate class or kind of merchandise that constitute a separate like product from Thyssen's imports.

Louisville Forge argues in rebuttal that the Department, in the original LTFV investigation, already determined that there is but one class or kind of merchandise subject to this order. As for Thyssen's claim that its imports constitute a separate like product, Louisville Forge dismisses Thyssen's citation to High Information Flat Panel Displays and Display Glass Thereof from Japan; Final Determination, Rescission of Investigation and Partial Dismissal of Petition (56 FR 32376, July 16, 1991). That case involved a final determination in an LTFV investigation, where the Department is able to define the classes or kinds of merchandise; when considering whether to revoke an order, however, the Department has no statutory or regulatory authority to redefine the classes or kinds of merchandise covered by an order. Further, the Department has never revoked an order with respect to only certain products produced by a foreign manufacturer otherwise subject to the order.

Department's Position: Louisville Forge is correct that, unlike in an original LTFV investigation, once an antidumping duty order is issued we have no statutory or regulatory authority to redefine the classes or kinds of merchandise covered by an order; although we can clarify the scope of an order, as we regularly do in scope rulings, we cannot alter or amend the scope of an order (See Royal Business Machines Inc. v. *United States*, 507, F. Supp. 1007 (CIT 1980), *aff'd*, 669 F.2d 692 (CCPA)).

We may clarify the scope of an order whenever there is a question as to whether a product falls within the same class or kind of merchandise defined by the scope of that order. This order, however, unambiguously includes Thyssen's imports, which are admittedly "forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined." As for Thyssen's request the we exclude from the order such crankshafts weighing over 240 pounds, the inclusion of specific items in, or their exclusion from, the scope of an order is not dependent on the presence or absence of manufacturing facilities in the United States for the production of specific types of merchandise. Further, the issue really addresses the question of whether domestic producers of a like product are being materially injured. Accordingly, the ITC, not the Department, is the proper forum for addressing this issue. (See *Roller Chain, Other than Bicycle, from Japan; Final Results of Administrative Review of Antidumping finding*, 46 FR 44488, September 4, 1981).

Final Results of Review and Determination Not To Revoke Antidumping Duty Order

Pursuant to sections 751(b) and (c) of the Tariff Act of 1930, as amended (the Tariff Act) and §§ 353.22(f) and 353.25(d) of the Department's regulations, the Department may revoke an antidumping duty order if it concludes that "changed circumstances" have arisen such that the order is no longer of interest to interested parties.

We determine that the affirmative statement of further interest in this antidumping duty order by Louisville Forge, an interested party, provides the Department with a reasonable basis to believe that changed circumstances sufficient to warrant revocation do not exist. Therefore, we determine not to revoke the order covering certain forged steel crankshafts from Germany.

This review, determination not to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and 19 CFR 353.22(f) and 353.25(d)(4) (1991).

Dated: May 4, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-11251 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-819]

Preliminary Affirmative Countervailing Duty Determination; Portable Seismographs From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION: Gary Bettger or Susan M. Strumbel, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2239 and 377-1442, respectively.

Preliminary Determination: The Department preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Canada of the subject merchandise.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (57 FR 8305, March 9, 1992), the following events have occurred. On March 11, 1992, we presented a questionnaire to the Government of Canada (GOC) in Washington, DC, concerning the allegations of GeoSonics Inc., petitioner in this investigation. On March 24, 1992, we presented a supplemental questionnaire to the GOC based on additional subsidy allegations made by petitioner. On March 30, 1992, the United States International Trade Commission (ITC) issued its preliminary determination that exports of portable seismographs from Canada materially injure, or threaten material injury to a U.S. industry. Timely responses to our questionnaires were submitted by the GOC, the Provincial Government of Ontario, and Instantel Inc. (Instantel). We did not receive a complete response from Nomis Computer Systems Corp. (Nomis).

Scope of Investigation

The products covered by this investigation are portable seismographs from Canada. Portable seismographs are

used by the mining, construction, and blasting industries to measure the ground and air vibrations produced by man-made blasting in compliance with seismograph standards established by the U.S. Bureau of Mines. The basic components and ranges of measurement are: Ground peak particle velocity (.02 to 10 inches per second); ground motion frequency (2 to 200 Hz); direction of motion (3 orthogonal axis (L,T,V)); airblast level (100 to 140 DBL); airblast overpressure (1/10,000 to 1/100 psi); and airblast frequency (2 to 200 Hz). Earthquake, nuclear, and reflection/refraction seismographs are not included in the scope of this investigation. Portable seismographs are currently provided for in subheading 9015.80.6000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies (the period of investigation—"POI") is calendar year 1991, which corresponds to the fiscal year of Instantel.

A. Best Information Available

We have used, in accordance with section 776(c) of the Act, best information available (BIA) for Nomis because it did not respond to our questionnaires. The Department has determined that since no applicable BIA information has been submitted by petitioner, it is appropriate to use the highest subsidy rate for each program found countervailable in previous Canadian investigations. Additionally, we have calculated a rate specific to Nomis for a clean received under the Program for Export Market Development during the POI, based on information provided by the GOC. Consequently, we have calculated a total net subsidy amount of 32.40 percent for Nomis.

B. Programs Preliminary Determined To Be Countervailable

We preliminarily determine that subsidies are being provided to manufacturers, producers or exporters in Canada of portable seismographs under the following programs:

1. Program for Export Market Development (PEMD) and Promotional Projects Program (PPP)

The PEMD was consolidated and restructured in 1987 and now includes the former PPP. PEMD is a trade promotion program of the Department of External Affairs. The program's objective is to increase export sales of Canadian goods/services by sharing with Canadian businesses the costs of undertaking or participating in various types of marketing activities. Support provided under the new program is either industry-initiated (former PEMD) or government-initiated (former PPP). Under the industry-initiated component, interest-free loans are provided to industries requesting assistance in export market development. Under the government-initiated component, the GOC underwrites some of the cost of participating in international trade fairs and missions.

The interest-free PEMD loans are repaid over several years from sales revenues earned from the export market that was the object of the promotional activities sponsored by PEMD. If no sales or insufficient sales are made to the export market in question within a given number of years, the outstanding loan is forgiven.

Since PEMD loans are provided for export activities with no interest being charged, we determine that assistance provided under the program confers export subsidies. Because the repayments terms on PEMD loans are indefinite, we are treating the PEMD loan made for Instantel's portable seismograph product-line as a short-term loan rolled over each year, with zero interest. To calculate the benefit, we multiplied the amount of principal outstanding at the beginning of the POI by our short-term interest benchmark, the rate used to meet the short- and medium-term financing needs of the private sector as found in the 1991 International Financial Statistics. We then divided the benefit by the f.o.b. value of all exports of portable seismographs by Instantel during the POI. Using this methodology, we calculated an estimated net subsidy of 0.020 percent *ad valorem*.

Using the same methodology as outline above, we calculated an estimated net subsidy of 0.058 percent *ad valorem* for Nomis. Because Nomis did not respond to our questionnaires, we did not have its value of exports of portable seismographs during the POI. Therefore, as BIA, we have used the value of exports made by Instantel during the POI in this calculation.

2. Industrial and Regional Development Program (IRDP)

The IRDP was established in 1983, replacing the Regional Development Incentive Program (RDIP). The program was designed to promote industrial development in all regions of Canada through financial support in the form of grants, loans and loan guarantees. To accomplish this goal, assistance was provided for four major purposes.

(1) To encourage the development of new products and new processes through support of research and development projects that show promise of economic success;

(2) To assist in the establishment of new production facilities;

(3) To increase industrial productivity through the improvement, modernization and expansion of existing manufacturing and processing operations; and

(4) To facilitate the identification, development and exploitation of new domestic and international market opportunities. The level of benefit received under the IRDP depended upon the census district in which a project was located. Census districts were classified into one of four tiers based on economic development. The main factors considered in measuring economic development were employment, per capita income and tax revenue receipts. The most economically deprived districts received the greatest IRDP assistance. The IRDP program was terminated on June 30, 1988.

Instantel reported that it did not receive benefits under this program during the POI. With regard to Nomis, because it did not respond to our questionnaire, as BIA we have presumed benefits were received by Nomis under this program during the POI. This program has been found to be countervailable in previous Canadian investigations. Therefore, we have assigned Nomis an estimated net subsidy rate of 0.001 percent *ad valoren*, the highest subsidy rate from a previous Canadian investigation.

3. Economic and Regional Development Agreements (ERDA)

ERDAs are essentially a continuation of the General Development Agreements

(GDAs) (discussed below) and are the principal instruments for implementing the federal government's commitment to economic development on a nationwide basis. ERDAs were signed with every province and territory in the early 1980s. Similar to GDA subsidiary agreements, ERDA subsidiary agreements establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments. Assistance is aimed at projects designed to upgrade infrastructure, such as transportation and convention centers, and to enhance productivity, particularly for small businesses.

Instantel reported that it did not receive benefits under this program during the POI. With regard to Nomis, because it did not respond to our questionnaire, as BIA we have presumed benefits were received by Nomis under this program during the POI. This program has been found to be countervailable in previous Canadian investigations. Therefore, we have assigned Nomis an estimated net subsidy rate of 6.700 percent *ad valorem*, the highest subsidy rate from a previous Canadian investigation.

4. Investment Tax Credits

There are several categories of Investment Tax Credits (ITCs) in Canada. The only category of ITC used and found to be countervailable in a previous Canadian investigation was for investment in qualified property such as new plant and equipment used for manufacturing or processing. The basic ITC for investment in qualified property is seven percent. An additional three or 13 percent is available for qualified property used in certain regions.

As discussed below, Instantel reported only using one of these categories. With regard to Nomis, because it did not respond to our questionnaire, as BIA we have presumed benefits were received by Nomis under the qualified property category of this program during the POI. Therefore, we have assigned Nomis an estimated net subsidy rate of 0.162 percent *ad valorem*, the highest subsidy rate from a previous Canadian investigation.

5. General Development Agreements

GDAs provided the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic development programs. The GDAs were umbrella agreements which stated general economic development goals. Ten-year GDAs were signed with most provinces in 1974. All of the GDA agreements expired in 1984.

Subsidiary agreements were signed pursuant to the GDAs, generally between particular federal and provincial government departments, to address economic development and infrastructure needs. These agreements established various individual types of economic development programs, delineated administrative procedures and set out the relative funding commitments of federal and provincial governments. Subsidiary agreements ere typically directed at establishing traditional government economic assistance programs, developing infrastructure, providing economic development assistance for certain regions within the province and providing financial assistance to specific regions, industries or enterprises.

Instantel reported that it did not receive benefits under this program during the POI. With regard to Nomis, because it did not respond to our questionnaire, as BIA we have presumed benefits were received by Nomis under this program during the POI. This program has been found to be countervailable in previous Canadian investigations. Therefore, we have assigned Nomis an estimated net subsidy rate of 25.48 percent *ad valorem*, the highest subsidy rate from a previous Canadian investigation.

C. Programs Preliminarily Determined Not To Be Countervailable

We preliminarily determine that subsidies are not being provided to manufacturers, producers or exporters in Canada of portable seismographs under the following programs:

1. Investment Tax Credits for Research and Development

Instantel, as a small business, claimed ITCs during the POI for expenditures for scientific research performed in the development of portable seismographs. Eligible expenditures under this category include the cost of capital equipment used for scientific research and expenses attributable to scientific research. A basic 20 percent tax credit is available for qualifying scientific research expenditures to all companies in Canada. For small Canadian-controlled private corporations (CCPC), the rate is 35 percent. For other corporations, the rate is 30 percent, if the expenditure is made in certain regions.

In the Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods From Canada, 51 FR 15037 (April 22, 1986) we determined that the 20 and 35 percent scientific research tax credits, whether sold or used by the company performing the research, did not confer domestic subsidies because they are not limited to a specific enterprise or industry, or group of enterprises or industries or to companies in specific regions.

2. Research and Development Super Allowance (R&D Super Allowance)

The R&D Super Allowance program was established in the 1988 Ontario budget. In addition to the regular federal deduction, the R&D Super Allowance program provides a 35 percent deduction for CCPC and a 25 percent deduction for other corporations for qualifying research and development expenditures net of federal ITCs. Both the 35 and 25 percent deductions are available to all industries in Ontario who have qualified expenditures.

Since this program is not limited to a specific enterprise or industry or a group of enterprises or industries in Ontario, we preliminarily determine that this program is not countervailable.

3. Ontario Current Cost Adjustment (OCCA)

The Government of Ontario introduced the OCCA in the 1988 Ontario Budget. The OCCA provides an additional deduction from income otherwise subject to tax in Ontario for the cost (net of federal investment tax credits) of new manufacturing and processing machinery and equipment acquired for use in Ontario. The deduction is ten percent for acquisitions in 1989, 15 percent in 1990 and 30 percent in 1991 and subsequent years. New manufacturing and processing machinery and equipment qualifies for the deduction if it meets the following criteria:

(1) It has not been used by any person for any purpose prior to acquisition by the taxpayer;

(2) It is first used by the taxpayer in Ontario; and

(3) It is used by the taxpayer for the purpose of earning income from business. The corporation can take the OCCA deduction from income in the taxation year when the assets become eligible assets. The OCCA was terminated on January 1, 1992.

Since this program is available to all industries in Ontario, we preliminarily determine that this program is not countervailable.

D. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that producers or exporters in Canada of the subject merchandise did not use or

receive benefits under the following programs during the POI.

1. Export Credit Financing

The Export Development Council (EDC) was created to facilitate and develop Canada's export trade within the framework of the Canadian Export Development act. The EDC, a self sustaining Crown Corporation, pursues its purpose by providing insurance guarantees and financing. EDC provides export financing to foreign buyers of Canadian goods and services. Funds are disbursed directly by EDC to Canadian exporters on behalf of the foreign buyer, in effect providing the exporter with a cash sale.

Instantel reported that it did not receive benefits under this program during the POI. The only subsidy rate calculated under this program in a previous Canadian investigation was unique to the product involved in that investigation. Therefore, we were unable to use this rate as BIA for Nomis in this investigation.

2. Canada Center for Mineral and Energy Technology (CANMET)

CANMET is the main research and technology development arm of Energy, Mines and Resources Canada. CANMET, in partnership with its clients, performs and sponsors predominantly commercial and cost-shared research and development, and technology transfer to find safer, cleaner and more efficient methods to develop and use Canada's mineral and energy resources.

Because any potential benefit received by Instantel was attributable to a product not covered by the scope of this investigation, we preliminarily determine that this program was not used. Because this program has never been investigated, we do not have a rate to assign to Nomis as BIA.

3. Program for Industry/Laboratory Projects (PILP)

PILP was established in 1978 to explore the use of government laboratory technology. The program was changed later to incorporate additionally the use of technology from other public sources, including university laboratories. This was accomplished through shared-cost government research and development contracts with companies based in Canada. The Government of Canada or the participating university owned the technology which was available for use under a non-exclusive license. The PILP program ceased to exist for funding of new proposals in 1986.

Because any potential benefit received by Instantel was attributable to a product not covered by the scope of this investigation, we preliminarily determine that this program was not used. Because this program has never been investigated, we do not have a rate to assign to Nomis as BIA.

4. Industrial Research Assistance Program (IRAP)

IRAP was established in 1962 to assist firms with R&D projects that represented an increase in R&D performed and were longer range and technically more difficult than the firms would otherwise have carried out. Assistance by government scientists was recognized as desirable whenever it could be arranged. The program was carried out through shared-cost government R&D contracts with companies based in Canada.

Instantel explained that they did benefit from this program during the POI, but since the benefit received was attributable to a product not covered by the scope of this investigation, we preliminary determine that this program was not used. Because this program has never been investigated, we do not have a rate to assign to Nomis as BIA.

5. Ontario Centre for Resource Machinery Technology

The Ontario Centre for Resource Machinery Technology was created under the Technology Centres Act, 1982 and ended operation in March 1991. It was designed to promote and to enhance the application of resource machinery technology in order to improve the productivity and competitiveness of Ontario industry and commerce. The Ontario Centre for Resource Machinery Technology provided venture capital and R&D funds to support projects which clearly contributed to resource machinery manufacturing in Ontario.

Instantel reported that it did not receive benefits under this program during the POI. Because this program has never been investigated, we do not have a rate to assign to Nomis as BIA.

6. Ontario Development Corporation (ODC) Export Support Loans

This program was established to assist in the development and diversification of industries in Ontario. Assistance is provided in the form of loans, loan guarantees and grants.

Instantel reported that it did not receive benefits under this program during the POI. Because this program has never been investigated, we do not have a rate to assign to Nomis as BIA.

Verification. In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of liquidation. In accordance with 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of portable seismographs from Canada, except those from Instantel, Inc., which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register** and to require a cash deposit or bond for such entries of the merchandise in the amount of 32.40 percent *ad valorem*, the country-wide rate. Instantel is excluded from this preliminary determination because the estimated net subsidy for this company is 0.02 percent *ad valorem*, which is *de minimis*. Pursuant to 19 CFR 355.20(d), we have calculated a separate net subsidy for Instantel because its rate differs significantly from the country-wide rate.

This suspension will remain in effect until further notice.

ITC notification. In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public comment. In accordance with 19 CFR 355.38 of the Commerce Department's regulations, we will hold a public hearing, if requested, on July 7, 1992, at 10 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearings must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain:

(1) The party's name, address, and telephone number;

(2) The number of participants;

(3) The reason for attending; and

(4) A list of the issues to be discussed. In accordance with 19 CFR 355.38(c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than June 26, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than July 2, 1992. An interest party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. Written argument should be submitted in accordance with § 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: May 7, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-11252 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-604]

Certain Stainless Steel Cooking Ware from Taiwan; Determination not to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain stainless steel cooking ware from Taiwan.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On January 2, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 48) its intent to revoke the countervailing duty order on certain stainless steel cooking ware from Taiwan (52 FR 2141, January 20, 1987). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On January 28, 1992, the Fair Trade Committee of the Cookware Manufacturers Association, petitioner, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

Dated: March 3, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-11253 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Docket No. 920524-2124]

Waiver of Cost-Share and Written Approval Requirements for Minority Business Development Centers Servicing Clients From Los Angeles, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is waiving cost-share requirements for Minority Business Development Centers (MBDCs) which service clients from Los Angeles affected by the civil disturbances in Los Angeles from April 29 through May 4, 1992. MBDA is also waiving the requirement to obtain prior written approval from the appropriate MBDA Regional Director before providing more than 200 hours of assistance to an affected client.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Bharat Bhargava, Assistant Director For Operations, Minority Business Development Agency, U.S. Department of Commerce, Washington, DC 20230 (202) 377-3015.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, the MBDA provides business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned or controlled by such individuals. To deliver this assistance, MBDA funds MBDCs which offer a full range of management and technical assistance services, coordinate public and private resources on behalf of clients, and serve as a conduit for information concerning business development.

The funding instrument for the MBDCs is a cooperative agreement, which requires the MBDCs to contribute at least 15 percent of the total project cost. Contributions which may be utilized in satisfying the cost-share requirement include client fees, in-kind contributions and cash contributions.

Client fees consists of fees assessed by the MBDCs for management and technical assistance services rendered. These fees are set at a percentage of the total cost of the services rendered. Based on a standard hourly rate of $50.00, MBDCs charge client fees at 20 percent of the total cost for entities with gross sales of $500,000 or less and 35 percent of the cost for firms with gross sales of over $500,000.

Many minority businesses in Los Angeles adversely affected by the April 29 through May 4, 1992 civil disturbances in Los Angeles have an urgent need for management and technical assistance in packaging disaster/emergency loan applications, revising business plans, and other matters. Because of the disruption to their normal business operations, many of these MBDC clients will be incapable of paying fees for services assessed by the MBDCs.

MBDA has determined that the efficient provision of assistance to businesses affected by the civil disturbances will be greatly facilitated by these waivers of fees normally assessed for management and technical assistance services. Accordingly, MBDA will instruct MBDCs assisting clients from Los Angeles affected by these civil disturbances to waive the fees they normally would charge.

Under current MBDA policy, the 15 percent minimum cost-share would remain applicable even if a substantial portion of it would have come from fees now waived. In light of the reduction in revenues resulting from the fee waivers and as a matter of equity to the MBDCs, MBDA is revising its policy and will waive the 15 percent cost-share requirement as applicable to the portion of funds expended in assisting clients from Los Angeles who are affected by the civil disturbances in Los Angeles.

Further, under existing policy, an MBDC may not provide more than 200 hours of management and technical assistance to any one client without first obtaining the approval of the appropriate MBDA Regional Director. Many clients from Los Angeles who are affected by the civil disturbances in Los Angeles may need more than 200 hours of assistance and it may not be feasible

to obtain prior MBDA approval. Accordingly, in order to expedite the provision of assistance to affected businesses in these areas, MBDA is amending its policy by waiving the prior approval requirement for clients from Los Angeles affected by the disturbances.

Executive Order 12291

MBDA has determined that this notice of policy revision is not a major rule within the meaning of section 1(b) of Executive Order 12291.

Administrative Procedure Act

Since this notice of policy revision is a matter relating to public property, loans, grants, benefits, or contracts, under section 5453(a)(2) of the Administrative Procedure Act (55 U.S.C. 553(a)(2)) the requirements of section 553 do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this notice of policy revision because the notice was not required to be promulgated as a proposed rule before issuance in final form by section 553 of the Administrative Procedure Act or by any other law. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This policy statement does not contain an information collection requirement for purposes of the Paperwork Reduction Act.

Executive Order 12612

This policy statement does not contain policies and Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Authority: 15 U.S.C. 1512; Executive Order 11625 (36 FR 19967 (1971); Executive Order 12432 (48 FR 32551) (1983).

Policy Statement

Many minority businesses in Los Angeles adversely affected by the April 29 through May 4, 1992 civil disturbances in Los Angeles have an urgent need for management and technical assistance in packaging disaster/emergency loan applications, revising business plans, and other matters. Because of the disruption to their normal business operations, many of these clients of Minority Business Development Centers (MBDCs) will be incapable of paying fees assessed by these MBDCs.

MBDS has determined that the efficient provision of assistance to businesses affected by the civil disturbances will be greatly facilitated by the waiver of fees normally assessed by MBDCs for management and technical assistance services. Accordingly, MBDA will instruct MBDCs assisting clients for Los Angeles affected by these civil disturbances to waive the fees they normally would charge. In light of the reduction in revenues resulting from the fee waivers and as a matter of equity to the MBDCs, MBDA is waiving the 15 percent cost-share requirement as applicable to the portion of funds expended in assisting clients from Los Angeles who are affected by the civil disturbances in Los Angeles.

Further, MBDA is waiving the requirements that an MBDC obtain the approval of the appropriate MBDA Regional Director before providing more than 200 hours of management and technical assistance to any one client affected by the April 29 through May 4, 1992 civil disturbances in Los Angeles.

MBDA may without further notice in the **Federal Register** make a future determination as to whether this policy change may apply to selected MBDCs outside Los Angeles. MBDA reserves the option, to establish criteria if necessary and appropriate, to apply this policy change to MBDCs outside Los Angeles which might meet such criteria. However, the reservation of this option in no way requires or commits the agency to exercise such option or suggests that the agency will exercise such option.

These policy revisions will remain in effect for one year. MBDA will review the situation at that time to determine whether the affected clients have resumed normal business operations.

Dated: May 8, 1992.

Bharat Bhargava,

Acting Director, Minority Business Development Agency.

[FR Doc. 92-11247 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, June 10, 1992, and Thursday, June 11, 1992, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100-235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on June 10 and 11, 1992, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Sheraton Inner Harbor Hotel, 300 South Charles Street, Baltimore, MD 21201. Please contact the individual in the "for further information" section to obtain specific building and conference room assignment. Inquiries regarding the Board meeting should not be directed to the conference facility.

Agenda

—Welcome
—Ethics Refresher & Update
—International Information Security Foundation
—Digital Signature Standard Patent Issue
—Digital Signature Standard Infrastructure Briefing
—Security Issues Inherent in Citizen Access to Gov't Electronic Records Systems
—Federal Trusted Criteria Update/Vendor Workshop Update
—Current Security Issue Briefings
—Public Participation
—Wrap-up

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by June 2, 1992. Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building

225, room B154, Gaithersburg, MD 20899, telephone: (301) 975-3240.

Dated: May 7, 1992.

John W. Lyons,

Director.

[FR Doc. 92-11240 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-CN-M

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Tuesday, June 9, 1992, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on the strategic planning of the Computing and Applied Mathematics Laboratory, NIST's Cooperative Research and Development Agreements, and the Advanced Technology Program. The discussion on NIST budget and planning scheduled to begin at 3:15 p.m. and ending at 5 p.m. on June 9, 1992, will be closed.

DATES: The meeting will convene June 9, 1992, at 8.30 a.m. and will adjourn at 5 p.m. on June 9, 1992. A closed session is scheduled on June 9, 1992, beginning at 3:15 p.m. and adjourning at 5:00 p.m.

ADDRESSES: The meeting will be held in Conference Room 1103, Radio Building, National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 30, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: May 5, 1992.

John W. Lyons,

Director.

[FR Doc. 92-11137 Filed 5-12-92; 8.45 am]

BILLING CODE 3510-13-M

Malcolm Baldrige National Quality Award's Panel of Judges; Closed Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Thursday, June 11, 1992, through Friday, June 12, 1992. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to begin the review process of the 1992 Award applicants to be recommended as Award winners. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 11, 1992, at 8:30 a.m. and adjourn at 3 p.m. on June 12, 1992. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 27, 1992, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 5, 1992.

John Lyons,

Director.

[FR Doc. 92-11138 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Final Management Plan for the Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve; Public Meeting

AENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS, NOAA, DOC.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the South Carolina Coastal Council and the South Carolina Wildlife and Marine Resources Department will hold a public meeting to present and discuss the proposed final management plan for the Ashepoo-Combahee-Edisto Basin National Estuarine Research Reserve. The purpose of the meeting is to receive the views of interested parties on the final management plan.

As part of the procedures leading to the designation of the reserve, the State of South Carolina must submit the proposed final management plan to NOAA for its review and approval. Copies of the plan will be made available for review before the meeting by Monday, May 18, 1992 at the following libraries: Colleton County Library in Walterboro, SC; Charleston County Library in Charleston, SC; Beaufort County Library, in Beaufort, SC; and the Hampton County Library, Hampton, SC.

The public meeting will take place at 7 p.m. on Thursday, May 28, 1992 in the Colleton Court House at 1 Washington Street, in Walterboro, South Carolina, 29448.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Graham, Sanctuaries and

Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (202) 606-4122.

Dated: May 6, 1992.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-11163 Filed 5-12-92; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Amend a record system

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend one existing record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on June 12, 1992, unless comments are received which would result in a contrary determination.

ADDRESSES: Defense Logistics Agency, DLA-XAM, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (202) 274-6234 or Autovon 284-6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48706, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19838, Apr. 30, 1991
56 FR 35852, Jul. 29, 1991
56 FR 52017, Oct. 17, 1991
56 FR 55910, Oct. 30, 1991
56 FR 56065, Oct. 31, 1991
56 FR 65245, Dec. 16, 1991
57 FR 2715, Jan. 23, 1992
57 FR 13718, Apr. 17, 1992

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), which requires the submission of an altered system report.

Dated: May 8, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base, (57 FR 2715, January 23, 1992).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Insert a new twenty-sixth paragraph as follows "To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, SSN, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements."

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location - W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93920-5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93920-5000.

Decentralized segments - Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All U.S. Postal Service employees.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; and home and work addresses.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax ID of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DoD.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT-1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL-1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; Pub. L. 95-452, as amended (Inspector General Act of 1978); and Executive Order 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Veteran Affairs (DVA) to provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans.

To the Department of Veteran Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veteran Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006-3008). The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 106 - Selected Reserve and Title 38 U.S.C., Chapter 30 - Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3006-3008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records

disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83-598, 84-356, 86-724, 94-455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the "guaranteed minimum" disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS):

1. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

2. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Pub. L. 94-505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

3. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

4. To the Social Security Administration (SSA), Office of Research and Statistics, DHHS for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

5. To the Bureau of Supplemental Security Income, SSA, DHHS to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

To DoD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, SSN, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of

civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center - Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location - Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–11194 Filed 05–12–92; 8:45 am]
BILLING CODE 3810–01–F

DEPARTMENT OF ENERGY

Award Based on Acceptance of an Unsolicited Application; State of Nebraska (Governors' Ethanol Coalition)

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Kansas City Support Office, announces that, pursuant to the DOE Financial Assistance rules 10 CFR

600.14(f), DOE intends to award a grant to the State of Nebraska for the Governors' Ethanol Coalition to coordinate marketing and promotional activities, legislative programs and informational activities, research and development activities in support of: Public Law 100-494, Alternative Motor Fuels Act (AMFA) 1988 and amendments to the Clean Air Act (CAA) 1990.

SUPPLEMENTARY INFORMATION: In July 1991, Governor Nelson of Nebraska asked several midwestern governors if they would be interested in forming a coalition of states with significant ethanol interests. As originally outlined, the goal of the coalition is to create a gubernatorial level, multi-state organization dedicated to coordinating the states' ethanol-related activities and to provide the states with a forum through which it can respond to proposed legislation and policy initiatives.

The governors believe that an organization of this type has been needed for some time and enthusiastically supported the formation of the coalition. Fifteen governors have joined what is now called the "Governors' Ethanol Coalition".

The members of the coalition are: Governor Bill Clinton of Arkansas, Governor Roy Romer of Colorado, Governor James Edgar of Illinois, Governor Evan Bayh of Indiana, Governor Terry Branstad of Iowa, Governor Joan Finney of Kansas, Governor Arne Carlson of Minnesota, Governor John Ashcroft of Missouri, Governor Stan Stephens of Montana, Governor Burce King of New Mexico, Governor Ben Nelson of Nebraska, Governor George Sinner of North Dakota, Governor George Mickelson of South Dakota, Governor Anne Richards of Texas, and Governor Tommy Thompson of Wisconsin.

The purpose of this award is to further the use of ethanol as a transportation fuel. The coalition will develop a program plan for each of its identified objectives.

The project period for the grant award is 18-months, expected to begin in June 1992. The total funding in the amount of $45,000 for the project period is to be cost shared between U.S. DOE and USDA. DOE's share is $30,000 with an additional amount of $15,000 being supplied by the USDA to support the work.

FOR FURTHER INFORMATION CONTACT: JoAnn Timm, U.S. Department of Energy, Kansas City Support Office, 911 Walnut, 14th Floor, Kansas City, MO 64106. (816) 426-3116.

Issued in Chicago, Illinois on May 5, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-11244 Filed 5-12-92; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Issuance of Proposed Remedial Order to Chevron U.S.A., Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of proposed remedial order to Chevron U.S.A., Inc. and notice of opportunity for objection.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order (PRO) issued to Chevron U.S.A., Inc. (Chevron) relating to Chevron's participation in the Tertiary Incentive Program. This PRO charges Chevron with violations of 10 CFR 212.78, 212.73, 212.74 and 205.202, as a result of Chevron's receipt of excess tertiary incentive revenue attributable to its first sales of domestically produced crude oil during the period January 1980 through January 27, 1981. The PRO further finds that Chevron failed contemporaneously to disclose to ERA Chevron's receipt of additional tertiary incentive revenue and, as early as 1982, the existence of unreported refunds of prepaid expenses. The total violation amount is $124,989,588, plus interest accrued thereon through the date of payment. The impact of Chevron's conduct was spread nationwide.

ADDRESSES: A copy of the PRO, with any confidential information deleted, may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.

DATES: Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. If a notice of objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC on the 6th, day of May 1992.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 92-11245 Filed 5-12-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD92-06340T Oklahoma-15]

Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formations

May 7, 1992.

Take notice that on May 5, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Morrow Formation underlying a portion of Custer County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area consists of sections 5 through 8, Township 13 North, Range 16 West, sections 1 through 12, Township 13 North, Range 17 West and sections 31 through 36, Township 14 North, Range 17 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Morrow Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-112262 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-06323T Arkansas-3]

Arkansas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

May 7, 1992.

Take notice that on May 4, 1992, the

Arkansas Oil and Gas Commission (Arkansas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that part of the Upper and Middle Atoka Formation in parts of Sebastian, Scott and Logan Counties, Arkansas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application is described in the attached appendix.

The notice of determination also contains Arkansas' findings that the referenced part of the Upper and Middle Atoka Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR § 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Includes the Upper, Middle and Lower Alma sands and the Basham sand, all within the Upper and Middle Atoka Formation in Sebastian, Scott and Logan Counties, Arkansas.

Township	Range	Sections
5 North	29 West	1-3, 7-30, 33 36.
5 North	30 West	5-30.
5 North	31 West	1-32.
5 North	32 West	All.
6 North	31 West	19-22. 27-35.
6 North	32 West	20-29, 32-36.

[Fr Doc. 92-11264 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-3-20-000 & TM92-16-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 7, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 1, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be Effective June 1, 1992

Sub. 12 Rev. Sheet No. 21
Sub. 12 Rev. Sheet No. 22
Sub. 8 Rev. Sheet No. 25
Sub. 12 Rev. Sheet No. 26
Sub. 12 Rev. Sheet No. 27
Sub. 12 Rev. Sheet No. 28
Sub. 12 Rev. Sheet No. 29

Algonquin states that the revised tariff sheets listed above are being filed as part of Algonquin's regularly scheduled Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") pursuant to sections 17 and 39, respectively, of the General Terms and Conditions of its FERC Gas Tariff. Algonquin further states that the demand sales rate contained therein reflects a reduction of $0.150 per MMBtu and the sales commodity rate reflects an increase of $8.9559 per MMBtu from those rates contained in Algonquin's Annual PGA as filed in Docket No. TA92-2-20-002 on March 15, 1992 and accepted by the Commission on April 2, 1992. The Annual PGA rates were effective as of March 1, 1992.

Algonquin also states that the instant filing is based upon the latest available rates from Algonquin's various suppliers and reflects the purchases and sales that are projected to be made during the three month period beginning June 1, 1992 as well as the underlying costs of standby and T&C services from Texas Eastern Transmission Corporation ("Texas Eastern") and Transcontinental Gas Pipeline Corporation.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11265 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-474-000]

Arkla Energy Resources, a division of Arkla, Inc.; Request Under Blanket Authorization

May 5, 1992.

Take notice that on April 29, 1992, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP92-474-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212) for authorization to construct and operate new sales taps and to operate existing taps for purposes other than originally installed, under AER's blanket certificate issued in Docket No. CP82-384-000 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.

AER proposes to (1) construct and operate three new sales taps, and (2) operate ten existing taps for delivery of gas for resale to consumers other than the right-of-way grantor for whom the tap was originally installed, all for the delivery of gas to Arkansas Louisiana Gas Company (ALG) for resale to domestic and commercial consumers in Arkansas, Oklahoma, Kansas and Louisiana, as described in the attached appendix. AER further states that the gas would be delivered from its general system supply, which it states is adequate to provide the service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

Ref. No.	ALG's customer [1]	Location	Tap size, inches	Peak day Mcf	Annual Mcf	Cost, dollars
(a)	William E. Davis	Comanche County, Oklahoma	¾	1	81	1,389
(b)	Rural Extension No. 1305	Union County, Arkansas	4	960	46,080	43,064
(c)	Raymond and Kristine Hill	Sedgwick County, Kansas	¾	1	85	1,389
(d)	J.R. Stanage	Hot Spring County, Arkansas	1	4	200	
(e)	Stanley Craig	Johnson County, Arkansas	1	1	85	
(f)	Martha Gillespie	Hot Spring County, Arkansas	1	5	170	
(g)	Joseph Soares	Union Parish, Louisiana	1	2	170	
(h)	Jerry Ward	LeFlore County, Oklahoma	¾	3	180	
(i)	Raetta Englehard	Comanche County, Oklahoma	¾	2	140	
(j)	Gladys Jordan	Bienville Parish, Louisiana	1	1	160	
(k)	Douglas Smith	Union Parish, Louisiana	1	1	85	
(l)	Mike and Susie Gairhan	Poinsett County, Arkansas	1	1	85	
(m)	Jerry D. Maxey	McClain County, Oklahoma	¾	1	85	
			Totals	983	47,606	$45,842

[1] Rural Extension No. 1305 serves domestic, commercial, and industrial customers. All other taps serve domestic customers.

[FR Doc. 92-11153 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-63-000 and TM92-3-63-000]

Carnegie Natural Gas Co., Proposed Changes in FERC Gas Tariff

May 7, 1992.

Take notice that on May 1, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective June 1, 1992:

Thirtieth Revised Sheet No. 8
Thirtieth Revised Sheet No. 9

Carnegie states that pursuant to the PGA and TCA clauses in its FERC Gas Tariff and § 154.308 of the Commission's regulations, it is proposing to adjust its sales rates effective June 1, 1992, as part of its scheduled Quarterly PGA filing. The revised rates reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ92-4-63-000: a $0.2717 per Dth decrease in the demand component of its LVWS and CDS rate schedules; $0.0737 per Dth decrease in the commodity component of its LVWS and CDS rate schedules; a $0.0089 per Dth decrease in its DCA charge under its LVWS and CDS rate schedules; a $0.0826 per Dth decrease in the maximum commodity rate under Rate Schedules SEGSS; and a $0.0737 per Dth decrease in the minimum commodity rate under Rate Schedules SEGSS. The revised tariff sheets also reflect an increase in the TCA charge of $0.0439 per Dth, from $0.1407 per Dth to $0.1846 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 385.214 and 18 CFR 385.211. All such protests should be filed on or before May 14, 1992. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-11266 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-472-000]

Equitrans, Inc; Application

May 6, 1992.

Take notice that on April 29, 1992, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP92-472-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Equitrans (1) to provide additional firm contract storage service under Schedule SS-3 to certain of its existing Keystone storage customers that have elected additional service, (2) to add Industrial Energy Service Company (IESCO) as a new storage customer under Rate Schedule SS-3, and (3) to remove availability restrictions for service under SS-3, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that of its seven traditional Keystone storage customers, Elizabethtown Gas Company (Elizabethtown), Philadelphia Gas Works (PGW), and Philadelphia Electric Company (Philadelphia Electric) have elected to increase their total annual storage service levels and maximum daily withdrawal capacity by 210,903 Mcf and 2,017 Mcf, respectively, under Rate Schedule SS-3. Specifically, Equitrans proposes to increase Elizabethtown's maximum daily withdrawal capacity and annual storage capacity by 539 Mcf and 56,438 Mcf, respectively. Also, Equitrans proposes to increase PGW's maximum daily withdrawal capacity and annual storage capacity by 435 Mcf and 45,538 Mcf, respectively. In addition, Equitrans proposes to increase Philadelphia Electric's maximum daily withdrawal capacity and annual storage capacity by 1,043 Mcf and 109,016 Mcf, respectively.

Equitrans further states that IESCO, a Pittsburgh-based natural gas marketing company, has requested storage service under Rate Schedule SS-3. Consistent with the request, Equitrans seeks authorization to provide annual firm storage service to IESCO of 385,135 Mcf

for a primary term of nine years, with a maximum daily withdrawal capacity of 3,684 Mcf. In addition, it is stated that, to facilitate the proposed service for IESCO and to expand the eligibility for SS-3 service generally, Equitrans proposes to modify Paragraph 1 of Rate Schedule SS-3 by making service available to any purchaser rather than any natural gas producer, pipeline or distribution company.

Equitrans states that the rates charged for the proposed service would be the rates stated in Equitrans' Rate Schedule SS-3 as changed from time to time. Equitrans proposes to provide part 284 open-access transportation service under its Rate Schedule FTS to and from storage for the additional storage volumes and the IESCO storage volumes. It is indicated that the receipt and delivery points for the proposed services are to be located at existing interconnections mutually determined by the parties. Equitrans states that it believes that transportation downstream of Equitrans' facilities would be rendered by Texas Eastern Transmission Corporation under existing Commission authorization. Equitrans states that in order to be non-discriminatory in its FTS rate treatment, Equitrans would charge the electing Keystone customers and IESCO the same effective transportation rate that it is charging all of its other storage customers. It is also indicated that the terms and conditions of storage service would be subject to the outcome of the restructuring proceeding in Docket No. RS92-15-000 and that the injection, withdrawal, storage and transportation rates applicable to the proposed service would be subject to change pending the outcome of Equitrans' section 4(e) general rate case, to be filed before the end of 1992. It is also stated that no new facilities are required to implement the requested service.

Equitrans states that it has storage capacity available to satisfy the proposed contract storage service and further, that the proposed service would benefit those customers electing the service by making low cost gas available to meet winter and peak day requirements, and would also benefit Equitrans's other existing storage customers by reducing the unit cost included in rates for those customers. Equitrans maintains that, in offering storage service to the Keystone customers and IESCO, it is fulfilling the directive of Order No. 636 to make its storage available on a non-discriminatory basis for shippers that wish to store their own gas. Equitrans indicates that it would fully unbundle its storage and allocate available storage capacity to its other customers in the above-mentioned restructuring proceeding.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 27, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Equitrans to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11154 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-168-000]

Florida Gas Transmission Co.; Petition of Florida Gas Transmission Co. for Limited Waiver of Tariff Provisions

May 7, 1992.

Take notice that on May 1, 1992, Florida Gas Transmission Company ("FGT"), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. RP92-168-000 a petition requesting authorization for waivers of Federal Energy Regulatory Commission's ("F.E.R.C." or "Commission") policy, Commission regulations, and FGT's F.E.R.C. Gas Tariff to the extent necessary to allow FGT to add a new delivery point to existing Service Agreements for firm, preferred and interruptible transportation service between FGT and Peoples Gas System, Inc. ("Peoples"), while permitting Peoples to maintain its existing priority in FGT's first-come, first-served queue.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same end-user, (ii) the new delivery point will be located in the same geographic location as an existing delivery point at which FGT presently serves Peoples, and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 14, 1992 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or protest in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene in accordance with the Commission's rules.

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. 92-11267 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-34-002 & TQ92-3-34-001]

Florida Gas Transmission Co.; Notice of Compliance Filing

May 7, 1992.

Take notice that on May 1, 1992 Florida Gas Transmission Company ("FGT") tendered for filing the following tariff sheet to become part of its FERC Gas Tariff effective May 1, 1992.

2nd Substitute Twenty-Fifth Revised Sheet No. 8

On April 21, 1992 the Office of Pipeline and Producer Regulation issued a letter order in the above-referenced dockets accepting and suspending Substitute Twenty-Fifth Revised Sheet

No. 8 effective May 1, 1992 subject to FGT refiling such sheet within 15 days to track a reduction in Southern Natural Gas Company's demand rates effective April 1, 1992 in Docket No. TA92-1-7. In the March 31 filing, FGT included the then currently effective Southern Natural Gas Company Rate Schedule OCDL-1 demand charge of $5.284/MMBtu. In the letter order, the Commission directed FGT to include the suspended Rate Schedule OCDL-1 rate of $5.176/MMBtu.

However, subsequent to FGT's March 31, 1992 filing, FGT notified Southern Natural Gas Company that FGT is terminating service under Rate Schedule OCDL-1. Therefore, in compliance with the Commissioner's directive to include the currently effective charges, the tariff sheet filed herein reflects the removal of Southern demand charges.

As a result of this revision, FGT projects an average cost of purchased gas of $1.9230/MMBtu saturated for the period May-June 1992, as compared to the $1.9733 reflected on Substitute Twenty-Fifth Revised Sheet No. 8.

FGT also states that it has filed certain schedules in accordance with FERC Form No. 542-PGA (Revised). FGT has submitted a diskette containing such schedules.

FGT states that a copy of this filing has been served on all customers receiving gas under its FERC Gas Tariff, Second Revised Volume No. 1 and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 14, 1992. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11258 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-3-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 7, 1992.

Take notice that on May 1, 1992 Florida Gas Transmission Company ("FGT") tendered for filing the following tariff sheets to become part of the FERC Gas Tariff effective June 1, 1992.

Twenty-Sixth Revised Sheet No. 8, Eighth Revised Sheet No. 8A

FGT states that the above-referenced tariff sheets are being filed pursuant to section 27 (Flowthrough Billing Mechanism) of the General Terms and Conditions of FGT's FERC Gas Tariff, Second Revised Volume No. 1. Section 27 contains tariff language that establishes a mechanism to flowthrough the fixed charge allocation of buy-out and buy-down costs billed to FGT by Southern Natural Gas Company (Southern Fixed Charges) and was approved by Commission Order dated June 16, 1989 in Docket No. RP89-44-001.

FGT further states that the schedules reflect the calculation of the Annual Unit Take-or-Pay Surcharge for the fourth annual recovery period, computed in accordance with the provisions of section 27 of the Tariff.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, Second Revised Volume No. 1 and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11263 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-143-012, RP91-231-002, and RP92-159-000]

Great Lakes Gas Transmission Limited Partnership; Errata Notice

May 7, 1992.

The Notice of Proposed Changes in FERC Gas Tariff, issued April 30, 1992, in Docket No. RP92-159-000 (57 FR 19615, May 7, 1992) contained certain errors which are hereby corrected as follows:

1. The Notice was captioned by reference only to Docket No. RP92-159-000. It should have been captioned by reference to the three dockets listed in the caption to this Notice.

2. The filing date for motions to intervene or protest was stated to be May 7, 1992. That filing date is hereby changed to May 13, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11152 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-59-000]

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

May 7, 1992.

Take notice that Northern Natural Gas Company (Northern), on May 1, 1992, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2.

On November 1, 1991, Northern filed at Docket No. TA92-1-59 its currently effective ANGTS transportation rate adjustments in order to reflect changes in the costs incurred for transportation of gas through Northern Border Pipeline Company (Northern Border) during 1992.

Since the effectuation of the rate adjustments, which became effective January 1, 1992, Northern Border's estimated transportation costs to Northern have decreased, thereby requiring Northern to redetermine the ANGTS transportation rate adjustment for the period July 1, 1992, through December 31, 1992, pursuant to Northern's Tariff (Paragraph 21.4 of Third Revised Volume No. 1 and Paragraph 4.4 of Original Volume No. 2). Therefore, Northern has filed Sixty-Ninth Revised Sheet No. 4A, One Hundred Eighth Revised Sheet No. 4B, Seventy-Sixth Revised Sheet No. 4B.1, Twenty-Fifth Revised Sheet No. 4G.2, Twenty-Fifth Revised Sheet No. 4H of its Third Revised Volume No. 1 and One Hundred Fifteenth Rev Sheet No: 1C and Twelfth Revised Sheet No. 1C.a of its Original Volume No. 2 to reflect the changes to the ANGTS rate adjustments effective July 1, 1992.

Northern states that copies of the filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11259 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-141-000]

Northwest Pipeline Corp., Notice of Change in FERC Gas Tariff

May 7, 1992.

Take notice that on May 1, 1992 Northwest Pipeline Corporation (Northwest) tendered Substitute Original Sheet Nos. 508 and 517 for filing and acceptance, to be part of its FERC Gas Tariff, First Revised Volume No. 1-A.

The purpose of the filing was to comply with the Commission's April 16, 1992 order in the reference dockets by providing for disclosure in the transported agreement of the reimbursable cost of the facilities, the monthly charge and the term of the monthly cost-of-service charge.

Northwest has requested an effective date of April 17, 1992 for the tendered sheets.

Northwest states that copies of the filing were served upon Northwest's jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 14, 1992. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11261 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI92-42-000]

Pennzoil Exploration and Production Co.; Application for Blanket Successor-in-Interest Certificate

May 6, 1992.

Take notice that on April 27, 1992, Pennzoil Exploration and Production Company (Pennzoil) of P.O. Box 2967, Houston, Texas 77252-2967, filed an application under section 7 of the Natural Gas Act. Pennzoil requests a blanket certificate authorizing sales of natural gas from properties it has acquired or may acquire as a successor-in-interest before January 1, 1993, the date total wellhead decontrol takes effect under the Natural Gas Wellhead Decontrol Act of 1989. Pennzoil also requests the Commission to waive its regulations that require the filing and maintenance of rate schedules. Pennzoil's application is on file with the Commission and open for public inspection.

To be heard or to protest this application a person must file a petition to intervene or a protest on or before May 20, 1992. A person filing a petition to intervene or a protest must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All petitions to intervene or protests must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make protestants parties to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a petition to intervene.

Under the procedure provided for here, unless otherwise advised, Pennzoil will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11155 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-475-000]

Texas Eastern Transmission Corp., Notice of Application

May 7, 1992.

Take notice that on April 30, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-475-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon Texas Eastern's obligations to provide Rate Schedule SS-1 storage service to United Cities Gas Company (United Cities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that United Cities informed Texas Eastern that it had arranged for alternate storage service and that it desired to terminate its Rate Schedule SS-1 firm storage service contract with Texas Eastern. Texas Eastern states that it had and has customers waiting in its queue for Rate Schedule SS-1 storage service under Texas Eastern's blanket storage certificate.

Texas Eastern requests that such abandonment authorization be effective upon the first day of the first month subsequent to the issuance of the Commission's order granting the abandonment authorization; provided, however, that in the event United Cities has gas in its Rate Schedule SS-1 storage inventory on such date, such abandonment authorization shall be effective on the first day on the first month after United Cities reduces such storage inventory to zero. Texas Eastern does not propose to abandon any facilities.

Texas Eastern states that the proposed abandonment would not negatively impact United Cities' customers since United Cities has in place alternate storage service to replace its Rate Schedule SS-1 storage entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulation Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed with the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11254 Filed 5-12-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-563; FRL-4063-3]

Section 409 Food Additive Regulations; Order Regarding Mancozeb Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Order.

SUMMARY: In this Order, EPA issues a determination that the mancozeb food additive regulations for raisins and bran of barley, oats, rye, and wheat pose a *de minimis* risk. This Order comes in response to a petition requesting the revocation of 14 food additive regulations. The petition asserted that these food additive regulations violated the Delaney anti-cancer clause in section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA). In a Final Order issued February 25, 1991 (56 FR 7750), EPA made a final determination as to many of the food additive regulations but a decision on the five mancozeb regulations was postponed pending completion of an ongoing administrative proceeding involving mancozeb and several related pesticides. That proceeding was concluded on February 13, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Utterback, Special Review Branch (H7508W), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, Westfield Building, 2805 Jefferson Davis Highway, Arlington, VA 22202, Telephone (703) 308-8026.

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 1989, a petition was filed by the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals requesting that EPA revoke 14 food additive regulations including the regulations for the pesticide mancozeb on raisins and bran of barley, oats, rye, and wheat. The petitioners argued that these food additive regulations should be revoked because the pesticides to which the regulations applied were animal carcinogens and, consequently, the regulations violated the Delaney anti-cancer clause in section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq. (54 FR 27700, June 30, 1989).

At the time the petition was filed, mancozeb, along with other ethylene bisdithiocarbamates (EBDCs), was the subject of an ongoing administrative proceeding known as a Special Review. On May 16, 1990, in conjunction with a preliminary decision made in the Special Review, EPA proposed to revoke the mancozeb food additive regulations for bran of barley, oats, and rye; however, it did not propose to revoke the food additive regulations for raisins and bran of wheat. (55 FR 20416, May 16, 1990).

On March 2, 1992 (57 FR 7483), EPA issued a final determination concluding the Special Review of the EBDCs, including mancozeb. In that final determination, EPA announced its intent to cancel 11 food uses of the EBDCs registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., and to revoke the attendant tolerances under FFDCA to insure that the overall cancer risk posed by use of the pesticides did not exceed an upper bound excess lifetime risk in the range of 1 in 1 million. EPA confirmed its preliminary determination that use of mancozeb on grapes and wheat should not be canceled and reversed its preliminary determination that the use of mancozeb on barley, oats, and rye should be canceled and the corresponding tolerances and food additive regulations revoked.

In a Final Order on the petition issued February 25, 1991, EPA postponed making a determination regarding whether the mancozeb regulations for raisins and the bran of wheat should be revoked pending completion of the Special Review. This Final Order rules on the merits of the petition concerning those food additive regulations. Additionally, because EPA has now concluded that use of mancozeb on barley, oats, and rye should not be canceled under FIFRA, this Final Order addresses all five food additive regulations for mancozeb listed in the petition.

II. The Statutory Framework

A. The Federal Insecticide, Fungicide, and Rodenticide Act

Under FIFRA, pesticides must be registered by EPA before they can be sold, distributed, or used in the United States. To qualify for registration, a pesticide must, among other things, perform its intended function without causing "unreasonable adverse effects on the environment." 7 U.S.C. 136a(c)(5). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." 7 U.S.C. 136(bb).

A pesticide's registration under FIFRA may be canceled by EPA when the pesticide no longer meets the standard that it not cause "unreasonable adverse effects on the environment." 7 U.S.C. 136d(b). The decision to cancel a pesticide can result from a Special Review, an intensive review of the risks and benefits of a pesticide which meets or exceeds risk criteria set forth in 40 CFR 154.7. EPA also can take action to cancel (and, if necessary, to suspend during the cancellation proceedings) the registration of a pesticide without first going through the Special Review process.

B. Sections 402, 408 and 409 of the Federal Food, Drug, and Cosmetic Act

Under FFDCA section 402, a food which is a raw agricultural commodity is adulterated if it contains a pesticide chemical residue that is not authorized by either a FFDCA section 408 tolerance (maximum permissible level) or an exemption from the requirement of a tolerance. An adulterated commodity sold or distributed in interstate commerce is subject to seizure and

condemnation under FFDCA section 304 (21 U.S.C. 334).

To establish a tolerance or exemption regulation under section 408, EPA must find that the regulation would "protect the public health." 21 U.S.C. 346a(b). In reaching this determination EPA is directed to consider, among other things, the "necessity for the production of an adequate, wholesome, and economical food supply." Id.

Under FFDCA section 402, a processed food is adulterated (and hence subject to seizure) if it contains any food additive not authorized by a section 409 food additive regulation. 21 U.S.C. 342(a)(2). An important exception to this provision is that a processed food containing pesticide residues resulting from the carryover from treatment at the raw agricultural commodity stage is not regarded as adulterated if the residue level in such a food is no greater than that allowed by the section 408 tolerance established for the raw agricultural commodity. Id. Thus, EPA has interpreted section 409 as applying to two types of pesticide residues: pesticide residues which concentrate above the section 408 tolerance level during processing, and pesticide residues which result from use of a pesticide during or after processing.

The establishment of a food additive regulation under section 409 requires a finding under the "general safety clause" in section 409(c)(3) that the use of a pesticide "will be safe." 21 U.S.C. 348(c)(3). The general safety clause is modified by the Delaney clause which provides, in full, that a food additive shall not be deemed safe "if it is found to induce cancer when ingested by man or animal or, if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal." Id.

III. Final Decision

A. Prior Decision on De Minimis Exception

In the prior Final Order issued on this petition on February 25, 1991 (56 FR 7750), EPA interpreted the Delaney clause as containing an exception for potentially carcinogenic pesticides where the pesticide use subject to the food additive regulation posed a *de minimis* risk. This Final Order relies on that decision and incorporates it by reference herein.

Briefly, in its prior Order, EPA determined that each of the conditions prerequisite to allowing a *de minimis* exception to a regulatory provision had been met. Those three conditions are that: (1) Congress has not been extraordinarily rigid in expressing its intent; (2) a *de minimis* exception would be consistent with the legislative design; and (3) the risks involved are truly *de minimis*.

As to whether Congress had acted with extraordinary rigidity, EPA considered both the statutory language and the legislative history of the Food Additives Amendment and other relevant statutory provisions. EPA noted that the different regulatory standards in section 408, which pertains to pesticides in raw agricultural foods, and in section 409, which has been interpreted as applying to some pesticide residues in processed food, suggest that Congress did not realize that the Food Additives Amendment, in fact, would extend to pesticides. (56 FR 7768). EPA concluded it would be illogical to infer that Congress intended to create a legislative scheme with contradictory standards for the regulation of pesticides. Id.

The lack of extraordinary rigidity by Congress, EPA found, was confirmed by the legislative history of the Food Additives Amendment. EPA wrote:

> Central to this determination is the absence of a congressional consideration and rejection of alternatives to the Delaney clause, the complete absence of contemplation by Congress of the effect the anti-cancer clause would have on pesticides, and the decided ambivalence of certain of the major sponsors of the bill toward the Delaney clause. In other words, Congress did not hear scientific criticism of the Delaney clause, it did not realize that it was issuing a major law for the regulation of pesticides (moreover, a law which introduced paradoxical and irrational differences into the regulation of pesticides), and it did not speak with one voice when it approved the Delaney clause. (56 FR at 7770).

EPA concluded that these factors in the legislative history outweighed the rigid intent expressed by Congressman Delaney as to food additives generally. Id. Subsequent legislative history and legislative history pertaining to pesticides, EPA decided, also supported a finding of no congressional rigidity. EPA found the congressional action in adding the color additives Delaney clause instructive as to what circumstances would evidence congressional rigidity. In the debate on the color additives Delaney clause, Congress carefully considered the need for the Delaney clause, exhaustively reviewed alternatives, and then emphatically rejected those alternatives. Id. at 7770. EPA noted that the legislative history of the color additives Delaney clause contrasted drastically with the debate on the food additives Delaney clause. Id. Finally, EPA thought it significant that in several subsequent amendments to FIFRA, Congress reaffirmed the use of a risk/benefit standard despite testimony concerning cancer risk of pesticides. Id.

EPA also ruled that a *de minimis* exception is consistent with the legislative design of FFDCA. After a review of the legislative histories of FIFRA and FFDCA section 408, EPA found that whenever Congress consciously considered the regulation of pesticides, it not only never contemplated enacting a Delaney clause but went to great lengths to ensure that a risk/benefit balancing approach was followed. Id. at 7771–7772. The legislative histories of section 409 and other provisions involving pesticides actually suggest that not to interpret the Delaney clause as containing a *de minimis* exception would interfere with the overall legislative design for the regulation of pesticides. EPA concluded that "the Delaney clause directly subverts the risk/benefit balancing that Congress so often has stated is crucial to the regulation of pesticides." Id. at 7772

Finally, EPA evaluated whether the food additive regulations challenged by the petitioners posed a *de minimis* risk. EPA conducted this evaluation by first examining what EPA and other Federal agencies considered to be risk levels which merited regulatory concern in prior regulatory decisions. Decisions were cited by FDA and OSHA as well as the EPA decisions on benzene under the Clean Air Act, asbestos under the Toxic Substances Control Act, maximum contaminant levels under the Safe Drinking Water Act, cleanup levels under Superfund, and captan, daminozide, and EBDCs under FIFRA and the FFDCA. Id. at 7755–7757. EPA found that the Federal agencies had taken a number of factors into account in judging the significance of a risk including the quantitative level of the risk, the size of the population exposed to the chemical, and the weight of evidence pertaining to the carcinogenicity determination. Id. at 7757. After evaluating how these factors had been applied, EPA concluded that where the entire U.S. population is exposed to a chemical classified as a probable human carcinogen (Group B), the regulatory consensus appears to be that risks less than 1 in 1 million over a lifetime generally can be found acceptable without consideration of other factors, while risks greater than that level require further analysis as to their acceptability. Id. EPA judged that this consensus on the acceptability of cancer risks should be given great weight in determining whether a particular risk is *de minimis*. Id.

In applying the three factors to four food additive regulations for the pesticides benomyl and trifluralin, EPA concluded that each of the regulations posed a *de minimis* risk. The estimated upper bound excess lifetime cancer risks posed by use under these regulations ranged from 1 in 10 million (1×10^{-7}) to 4 in 1 billion (4×10^{-9}), the population exposed was assumed to be the entire U.S. population, and both pesticides were classified as possible human carcinogens (Group C) with data adequate to justify quantification of the cancer risk. The risks for these uses were overestimated because, among other reasons, EPA relied on exposure assessments based on tolerance levels or average field trial residue levels, which overstate the amount of residue likely to be found on the food when consumed.

EPA concluded that the food additive regulations for DDVP on bagged and packaged nonperishable goods and for dicofol on dried tea posed greater than *de minimis* risks. These uses differed primarily from the ones above in that they were assessed as posing a quantitative risk in the range of 1 in 100,000 (1×10^{-5}) and 1 in 10,000 (1×10^{-4}), respectively. Although EPA believed these risk estimates were overstated, EPA did not have sufficient evidence to conclude that additional data would show the risks to be *de minimis*.

The petitioners have sought review of EPA's decision in court. See *Les v. Reilly*, No. 91-70234 (9th Cir.). Nothing raised by the petitioners in that litigation has convinced EPA to alter its decision.

In their briefs filed in court, the petitioners principally argue that no *de minimis* exception to the Delaney clause is appropriate because the language of the clause clearly shows that Congress intended to apply a zero-risk standard to pesticides which concentrate during processing. They additionally argue that intent is mirrored in the legislative history. The petitioners are mistaken on both points.

First, the Delaney clause evidences no such clear intent regarding pesticides because the term food additive — a term that appears in the clause itself — does not clearly encompass pesticide residues resulting from the application of pesticides to raw foods. The definition of food additive excludes from the term food additive both pesticide chemicals "in or on a raw agricultural commodity," 21 U.S.C. 201(s)(1), and pesticide chemicals "used in the production, storage, or transportation of any raw agricultural commodity," 21 U.S.C. 201(s)(2) (emphasis added). In contravention of the principle of statutory construction that separate provisions should not be interpreted so as to make them redundant, petitioners claim that both paragraphs serve only to exclude pesticide chemicals in raw foods from the term food additive. Certainly, EPA agrees that the first exemption applies only to pesticide chemicals in raw agricultural commodities. The second exemption, however, is not stated in terms of the location of the pesticide residue ("in or on a raw agricultural commodity") but in terms of the type of pesticide use ("used in the production *** of any raw agricultural commodity") without any limitation to pesticide residues in a particular location or food. Thus, the more natural construction of the phrase "pesticide chemicals *** used in the production *** of a raw agricultural commodity" is that it includes pesticide residues in any food, raw or processed, so long as they are the result of the use of a pesticide in the production of raw foods. Moreover, such a construction does not render the latter exemption mere surplusage. In support of their interpretation, the petitioners cite legislative history of section 408 which indicates the use of the terms "pesticide chemical" and "raw agricultural commodity" in section 408 were meant to exclude pesticide residues in processed food from section 408. Since the phrasing Congress chose to use in the food additive definition is different from that in section 408, this legislative history actually supports EPA's interpretation.

Additionally, the petitioners argue that a rigid congressional intent to subject some pesticide residues to the Delaney clause is supported by the flow-through provision in section 402(a)(2). Contrary to petitioners' assertion, however, the only clear intent evidenced in the flow-through provision is that pesticide residues in processed foods which are below section 408 raw food tolerances should be governed solely by the raw food tolerances. The flow-through provision states that a pesticide residue in a processed food shall not be deemed adulterated so long as the pesticide residue results from the use of the pesticide on a raw agricultural commodity, good manufacturing practices were followed during processing, and the residues in the processed food are not above the raw food tolerance. The flow-through provision does not specify under what provision processed foods containing above-tolerance residues fall. In fact, the flow-through provision is decidedly ambiguous on this point, implying that such residues might be considered under either section 409 or section 406 (dealing with poisonous and deleterious substances generally). In full, the flow-through provision provides:

> [W]here a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, *notwithstanding the provisions of sections 406 and 409*, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

21 U.S.C. 342(a)(2) (emphasis added). If pesticide residues in processed foods are clearly food additives, then the reference to section 406 is unnecessary because food additives are excluded from the substances which can be adulterated under section 406. 21 U.S.C. 342(a)(2)(A). In sum, the flow-through provision neither contains an express command nor carries the necessary implication that pesticides which concentrate during processing above raw food tolerances are food additives.

EPA, of course, has interpreted the term food additive as incorporating certain pesticide residues. The fact, however, that EPA has resolved an ambiguity in a statutory term through interpretation does not make the underlying statute clear, much less extraordinarily rigid. Petitioners assert that EPA has reversed itself in claiming that the term food additive is ambiguous. Petitioners', however, miss the principal point in EPA's Final Order issued February 25, 1991. There, EPA repeatedly emphasized that "Congress in 1958 viewed the regulation of pesticides as 'separate and apart' from the regulation of food additives." (56 FR at 7763). Thus, EPA has not acted inconsistently in citing an additional statutory argument to support its finding that Congress' intent regarding pesticides is unclear.

As to legislative history purporting to show a rigid intent to regulate pesticides which concentrate during processing, petitioners rely on a repetition of the flow-through provision in a committee report, a statement by Congressman Delaney in the legislative debate on the Food Additive Amendments, and a FDA letter that was attached to a written submission of the National Agricultural Chemical Association to legislative hearings on the proposed Food Additive

Amendments. As discussed above, the flow-through provision sends, at best, a murky signal of intent to regulate certain pesticides under the Delaney clause. Similarly, Congressman Delaney's remarks are not probative of congressional intent regarding the narrow issue of whether pesticides which concentrate during processing fall under section 409. Petitioners cite Congressman Delaney's statement that it was FDA's approval of a carcinogenic pesticide which motivated him to propose an anti-cancer clause for the Food Additive Amendments. Congressman Delaney first mentioned his concern regarding FDA's action in a legislative hearing and later expanded on his remarks in the floor debate on the bill noting "I felt strongly that the public should be assured that no similar incident would occur with regard to food additives." (104 Congressional Record 17420 (August 13, 1958), reprinted in XIV *A Legislative History of the Federal Food, Drug, and Cosmetic Act* 874). These general remarks by Congressman Delaney, however, simply do not speak to whether he, or other members of Congress, intended to regulate pesticides under section 409, much less to whether he perceived the technical distinction made in the flow-through provision which impliedly subjected only certain pesticide residues to section 409 and the Delaney clause. In fact, Congressman Delaney never mentioned the flow-through provision in his remarks.

Finally, the FDA letter, which EPA previously incorrectly described as internally contradictory, does support a reading of section 409 as applying to pesticides which concentrate above a raw food tolerance. But in the larger scheme of things, this letter does little to advance petitioners' argument. Petitioners must show more than that there is a reasonable basis for EPA's interpretation of the statute; they must show that Congress was extraordinarily rigid. EPA has acknowledged that its interpretation of the Food Additive Amendments as applying to some pesticides has support in the statute and legislative history. The FDA letter is one of the factors supporting EPA's interpretation. Yet, given that the letter was merely an attachment to a written submission by another party to a congressional hearing, the letter alone hardly evidences congressional rigidity. On the other hand, EPA has demonstrated that Congress so "dimly perceived" the relationship between sections 408 and 409 that there is no basis to infer any rigid intent to apply the Delaney clause to a subset of pesticides. 56 FR at 7763. Petitioners ignore the overwhelming evidence cited by EPA to show that "[u]nlike the 1954 amendment which expressly took into account the interest of both the pesticide industry and the food industry in coordinating the regulation of the use of pesticide chemicals on raw agricultural commodities under both FFDCA and FIFRA, the Senate Committee Report on the 1958 Act purports only to deal with the food processing industry." *Continental Chemiste Corp. v. Ruckelshaus*, 461 F.2d 331, 340 (7th Cir. 1972); (*see* 56 FR at 7763–7765).

Petitioners focus much of their argument concerning congressional rigidity on the anti-cancer language in the Delaney clause. In its earlier Final Order, EPA conceded that on its face the language prohibiting carcinogens appears rigid. EPA also showed, however, that the circumstances surrounding the adoption of the anti-cancer language — it was basically a last minute compromise — attentuated any facial rigidity. In response, petitioners contend that the circumstances surrounding the adoption of the Delaney clause are irrelevant to its interpretation. EPA must disagree. In cases where the Supreme Court has demanded a clear statement of intent to support a particular construction of a statute, that requirement has been levied precisely for the purpose of "assur[ing] that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Gregory v. Ashcroft*, 111 S. Ct. 2395, 2401 (1991) (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971); cf. *Willingham v. Macon Telegraph Publishing Co.*, 507 F.2d 1084, 1090 (5th Cir. 1975) (en banc) (because of lack of "extensive consideration" by Congress of sexual discrimination in legislative history of Title VII of the Civil Rights Act, court finds no congressional mandate to interpret term "sex" broadly). The circumstances surrounding the hurried compromise which produced the anti-cancer language are directly relevant to whether Congress actually faced the ramifications flowing from adoption of this language. Moreover, these circumstances are critical, here, because they bear on the narrower issue in this case, whether Congress rigidly intended to apply a zero-risk standard to pesticides. Congress' limited consideration of both the appropriateness of the anti-cancer standard and whether certain pesticides are covered by section 409 precludes any contention that Congress in fact faced, and intended to bring into issue, the application of a zero-risk standard to a limited subset of pesticides.

Petitioners try to buttress their arguments concerning congressional rigidity by claiming that a zero-risk interpretation of the Delaney clause has been ratified by Congress in subsequent amendments to the FFDCA. This assertion has little force, however, because none of the amendments cited by petitioners concern the application of the Delaney clause to pesticides. *See United States v. Georgia-Pacific Co.*, 421 F.2d 92, 102 n.28 (9th Cir. 1970) (ratification only occurs where Congress acts "with full knowledge of the relevant facts").

Finally, petitioners argue that a strict application of the Delaney clause to pesticides is consistent with other statutory provisions for the regulation of pesticides. Essentially, petitioners assert that what the National Academy of Sciences described as "the Delaney Paradox" does not exist. See National Academy of Sciences, *Regulating Pesticides in Food: The Delaney Paradox* (1987). According to petitioners, there is no conflict between the Delaney clause and the risk/benefit standard in FIFRA because FIFRA is merely a licensing statute which is not concerned with residues of pesticides in foods. This conclusion, however, finds no support in FIFRA, is inconsistent with the rulings of the Supreme Court, the U.S. Court of Appeals for the District of Columbia Circuit, and EPA, and conflicts with actions of the regulated community and environmental groups. The statute, as drafted by Congress, provides a broad risk/benefit standard for registration and cancellation of pesticides. 7 U.S.C. 136(bb). There is nothing in the statute or its legislative history which supports reading this broad standard to exclude consideration of one of the primary risks posed by pesticides — exposure to pesticide residues in food. (See 56 FR at 7767). The Supreme Court has described FIFRA as "a comprehensive regulatory statute." *Ruckelshaus v. Monsanto*, 467 U.S. 986, 991 (1984). The D.C. Circuit has upheld numerous EPA cancellations of pesticide registrations which were premised on food safety concerns. *See, e.g., Environmental Defense Fund v. EPA*, 548 F.2d 998 (D.C. Cir. 1976), cert. denied, 431 U.S. 925 (1977) (chlordane); *Environmental Defense Fund v. EPA*, 510 F.2d 1292, 1297 (D.C. Cir. 1975) (aldrin/dieldrin); *Environmental Defense Fund v. EPA*, 489 F.2d 1247 (D.C. Cir. 1973) (DDT). Many other pesticide uses which posed food safety risks have been removed from the market pursuant to either EPA cancellations or "voluntary" action by

the regulated community in the face of the threat of formal proceedings. Even the Natural Resources Defense Council, one of the petitioners in this case, in other proceedings has taken the position that FIFRA requires consideration of food safety concerns. For example, in 1983, NRDC sued EPA alleging that EPA had neglected its duty to protect the public against pesticide residues in food under FIFRA. *See NRDC v. EPA*, No. 83-1509 (D.D.C. filed May 26, 1983) (complaint).

Petitioners additionally argue that there is no conflict between the differing standards in sections 408 and 409 because it is rational to apply a zero-risk standard to pesticide residues above the level of a raw food tolerance in a processed food even though a risk/benefit balance is applied to the same residues in a raw food. Petitioners' position, here, is directly contrary to that of one of the most respected scientific bodies in the United States, the National Academy of Sciences (NAS), which, following an extensive study of this very issue, reached the opposite conclusion in its final report entitled *Regulating Pesticides in Food: The Delaney Paradox (Delaney Paradox* NAS Report). *Delaney Paradox* NAS Report at 41. Specifically, the NAS found that the "differences [between the standards in sections 408 and 409] based on the fact of concentration in certain processed foods make no discernible sense in terms of public health protection." Id.

Further, petitioners' current position contradicts their explicit reliance upon the Delaney Paradox NAS Report in their petition in this case and the position that NRDC took in a public meeting held by the NAS in preparing its Report. In the public meeting, NRDC contended that "there are no scientifically defensible reasons for using different standards" in sections 408 and 409. In any event, petitioners' current explanation of the rationality of the system is without merit. Petitioners claim that because consumption of one processed food, apple juice, may exceed consumption of the precursor raw food, apples, that it is rational to conclude that processed foods pose a greater risk generally and thus to apply a qualitatively different standard to pesticides in processed food. The first defect with this argument is that a single hypothetical example cannot show that processed foods in which pesticide residues have concentrated are generally consumed in greater quantities than raw foods and processed foods in which there is no concentration. The second and bigger defect is that, even if processed foods covered by section 409 carried a quantitatively greater risk because of higher residues and greater consumption, that does not make it rational to apply a qualitatively different standard in section 409. It makes no sense to say that some degree of cancer risk may be acceptable for raw foods and some processed foods, but for other processed foods no cancer risk is acceptable, even if it falls within the level of risk deemed acceptable for the former foods.

In sum, petitioners show neither that Congress intended to apply the Delaney clause rigidly to pesticides nor that a *de minimis* exception to that clause would not substantially harmonize the statutory provisions governing pesticides.

B. Current Decision

As noted above, in its prior Order, EPA set out three factors to be taken into account in determining whether a given pesticide use poses a *de minimis* risk: (1) The weight of evidence relating to carcinogenicity; (2) the level of the risk; (3) the population exposed. (56 FR at 7774).

Mancozeb poses a cancer risk because of its metabolite and degradation product ethylenethiourea (ETU). ETU has been shown to cause cancer in laboratory animals and has been classified as a probable human carcinogen (Group B2). EPA has estimated that the upper bound excess lifetime cancer risks from the consumption of the commodities raisins and bran of wheat due to the presence of mancozeb residues to be 2 in 1 billion (2×10^{-9}) and 2 in 100 billion (2×10^{-11}), respectively. Individual assessments for mancozeb residues on the commodities of bran of barley, oats, and rye could not be conducted due to current limitations in EPA's consumption database. Estimates were prepared for consumption of mancozeb residues on the grains barley (2 in 10 billion, or 2×10^{-10}), oats (3 in 10 billion, or 3×10^{-10}), and rye (<1 in 10 billion, or $<1 \times 10^{-10}$) including processed fractions. EPA believes that risk estimates for the processed commodity bran from these grains would be 3 to 4 orders of magnitude less than the risk estimate for the entire commodity. All of these risk estimates were based on exposure data which more realistically approximated residue levels likely to appear on the food as consumed (i.e., market basket survey and food monitoring data rather than tolerance levels or field trial residue levels). EPA assumes that the population exposed to these uses is the entire U.S. population.

Although the weight of evidence classification for ETU indicates a greater potential for its carcinogenicity than for benomyl or trifluralin, this concern is counterbalanced by the infinitesimal level of the estimated risk. As noted above, the risks from mancozeb on the five processed commodities at issue range from 2 in 1 billion to less than 2 in 100 billion. Assuming a population of approximately 240 million and an average lifespan of 70 years, these risk estimates suggest that the upper bound estimate of excess cancer cases due to these uses would range from one excess case occurring approximately every century and a half to less than one excess case occurring approximately every 15 millennia. Accordingly, EPA concludes that the risks posed by use under these five food additive regulations are *de minimis*. Therefore, the petition is denied as to the food additive regulations for mancozeb on raisins and the bran of barley, oats, rye, and wheat.

Dated: May, 6, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92-11236 Filed 5-12-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60032; FRL-4064-8]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notice(s) of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The notice(s) were issued following issuance of Data Call-In Notice(s) by the Agency and the failure of registrant(s) subject to the Data Call-In Notice(s) to take appropriate steps to secure the data required to be submitted to the Agency. This notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this notice further identifies the registrant(s) to whom the Notice(s) of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration number(s) and name(s) of the registered product(s)

which are affected by the Notice(s) of Intent to Suspend. Moreover, Table B of this notice identifies the basis upon which the Notice(s) of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notice(s) of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notice(s) of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registration(s) of your product(s) is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registration(s) for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S.

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirement(s) that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) of your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice or Section 4 Data Requirement Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered product(s) and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrant(s) Receiving and Affected by Notice(s) of Intent to Suspend; Date of Issuance; Active Ingredient and Product(s) Affected

A letter of notification has been sent for the following product(s):

TABLE A—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Britz Fertilizers, Inc.	01095100003	DCNA	Botran 6 Dust	4/14/92
	01095100004	DCNA	Botran 6-25 Dust	4/14/92
Ford's Chemical and Service, Inc.	01037000161	EPTC	Eptam 2.3 G Granules	4/14/92
Pennwalt Corp. Decco Div.	00279200042	DCNA	Decco Salt No. 22	4/14/92
	00279200043	DCNA	Kiwi Lustr TM 277 Concentrate with Fungicides	4/14/92
	00279200055	DCNA	Peach, Nectarine & Plum Luster 274 with Fungicide	4/14/92
	SC90000100	DCNA	Decco Salt No. 35	4/14/92
	WA90000800	DCNA	Decco Salt No. 35	4/14/92
Wilbur Ellis Co.	00293500402	DCNA	Red-Top Botran 6 Dust	4/14/92
	00293500403	DCNA	Red-Top Botran 6 Sulfur 25 Dust	4/14/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following registrant(s) failed to submit the following required data or information:

TABLE B—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
DCNA	Pennwalt Corp. Decco Div.	30-Day Response	12/26/91

TABLE B—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
	Wilbur Ellis Co.	30-Day Response	1/2/91
	Britz Fertilizers, Inc.	30-Day Response	12/27/91
EPTC	Ford's Chemical and Service, Inc.	90-Day Response	10/10/90

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. DCNA

On December 30, 1983, EPA issued a Registration Standard which included a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing DCNA used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure

to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The DCNA Registration Standard required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements. You applied for and were granted a generic data exemption and therefore, you relied on the efforts of others to provide the Agency with the required data. The basic manufacturer of DCNA for use in pesticide products voluntarily cancelled its DCNA products and is no longer generating the required data. As a result, the responsibility for generating the necessary data to support remaining DCNA registrations lies with the remaining registrants.

In a letter dated November 11, 1991, the Agency informed you and other registrants of DCNA products of the above status and required that you inform the Agency within 30 days of your receipt of the letter of the option(s) you were electing to take regarding the data requirements necessary to support your DCNA registration(s). Because the Agency has not received a response from you as a DCNA registrant to undertake the required testing or any other appropriate response (i.e., voluntary cancellation), the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. EPTC

On September 4, 1990, EPA issued a Data Call-In Notice (DCI) under authority of FIFRA section 3(c)(2)(B) which required registrants of products containing EPTC used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the requirements of a Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

This DCI was re-issued to you on August 12, 1991. According to a return receipt, you received the DCI on August 19, 1991. The EPTC Data Call-In Notice required each affected registrant to submit materials relating to the election by the registrant of the options to address the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the DCI. Because the Agency has not received a response from you as an EPTC registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notice(s) of Intent to Suspend on the dates indicated. Any further information regarding the Notice(s) may be obtained from the contact person noted above.

Dated: Dated May 6, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-11237 Filed 5-12-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60033; FRL-4064-9]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Reregistration Requirements Notice for _____ Dated _____

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4(d)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. Section 4(d)(6) provides that the Administrator "shall issue a Notice of Intent to Suspend the registration of a pesticide in accordance with the procedures prescribed by section 3(c)(2)(B)(iv) if the Administrator determines that (A) progress is insufficient to ensure submission of the data required for such pesticide under a commitment made under paragraph (3)(B) within the time period prescribed by paragraph (4)(B) or (B) the registrant has not submitted such data to the Administrator within such time period."

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy

are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of

the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a product list for which a letter of notification has been sent:

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Grace Sierra Crop Protection Company	05818500012	Dodemorph and salts	Milban	4/14/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following company failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
Dodemorph and salts	Grace Sierra Crop Protection Co.	Acute Oral Toxicity - Rat	81-1	8/24/91

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

Dodemorph and Salts

On May 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing dodemorph and salts to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The Dodemorph Reregistration Data Requirements Notice dated May 24, 1989 required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received on August 24, 1989, a response from you dated August 21, 1989, in which you as a dodemorph registrant committed to undertake the required testing. The Notice further required that data be submitted by the deadline noted for the subject data requirement on Attachment II. This deadline has passed and to date the Agency has not received adequate data to satisfy this data requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: May 6, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-11239 Filed 5-12-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180871; FRL 4064-7]

Receipt of Application for Emergency Exemption to use Fluazinam; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Virginia Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") for use of the pesticide fluazinam (CAS No. 79622-59-6) to control *Sclerotinia blight* on up to 40,000 acres of peanuts in Virginia. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 28, 1992.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180871," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-6359).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, fluazinam, available as Fluazinam 50WP from ISK Biotech Corporation, to control *Sclerotinia blight* on up to 40,000 acres of peanuts in Virginia. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the only fungicide registered to control *Sclerotinia blight* of peanuts is iprodione. Due to the development of fungal isolates resistant to iprodione and increased microbial degradation of iprodione in the soil, this fungicide no longer provides adequate control of Sclerotinia blight. The Applicant estimates that yield losses of between 10 and 50 percent will occur on up to 40,000 acres of peanuts this year if an effective alternative to iprodione is not made available to peanut growers. Yield losses of this magnitude are expected to result in economic losses of approximately $100 to $500 per acre.

Under the proposed exemption, applications of Fluazinam 50WP would be made at 1.0 to 2.0 pounds of product (0.5 to 1.0 pounds a.i.) per acre. Applications would be repeated at approximately 4 week intervals as necessary to control the disease. A maximum of 4.0 pounds of product (2.0 pounds a.i.) would be applied per acre per season. No applications would be made within 30 days of harvest. A maximum of 160,000 pounds of product (80,000 pounds a.i.) may be needed to treat up to 40,000 acres of peanuts.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. Fluazinam is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Virginia Department of Agriculture and Consumer Services.

Dated: May 5, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-11238 Filed 5-12-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

IDC Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than June 5, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. IDC Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of International Bank of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, May 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-11196 Filed 5-12-92; 8:45 am]

BILLING CODE 6210-01-F

Dale Erney Pahlke, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dale Erney Pahlke, Hebron, North Dakota; to acquire 33.8 percent of the voting shares of Hebron Banshares, Inc., Hebron, North Dakota, and thereby indirectly acquire Security Bank of Hebron, Hebron, North Dakota.

2. Raymond Edward Reich, Richarton, North Dakota; to acquire 23.1 percent of the voting shares of Hebron Banshares, Inc., Hebron, North Dakota, and thereby

indirectly acquire Security Bank of Hebron, Hebron, North Dakota.

3. Stanley Harold Sayler, Hebron, North Dakota; to acquire 16.9 percent of the voting shares of Hebron Banshares, Inc., Hebron, North Dakota, and thereby indirectly acquire Security Bank of Hebron, Hebron, North Dakota.

Board of Governors of the Federal Reserve System, May 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc 92-11195 Filed 5-12-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse and Mental Health Administration

Office for Substance Abuse Prevention; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of an advisory committee of the Office for Substance Abuse Prevention in May 1992.

The National Advisory Committee on Substance Abuse Prevention will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. Dee Herman, OSAP Committee Management Officer, Alcohol, Drug Abuse and Mental Health Administration, Rockwall II, room 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4783).

Substantive program information may be obtained from the contact whose name, room number, and telephone number are listed below.

Committee Name: National Advisory Committee on Substance Abuse Prevention.

Meeting Date: May 28-29, 1992.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: May 28, 9:30 a.m.-12:30 p.m., May 29, 9 a.m.-3 p.m.

Closed: Otherwise.

Contact: Yuth Nimit, Ph.D., room 630, Rockwall II, Telephone: (301) 443-4783.

Dated: May 7, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-11130 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Program Announcement 242]

Cooperative Agreements for Childhood Lead Poisoning Intervention Study; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces that cooperative agreement applications are being accepted for Fiscal Year 1992 for the following study: Blood Lead Levels Following Environmental Intervention, BLLFEI, which is a prospective study of blood lead levels in lead-poisoned children following environmental inteventions to reduce household lead exposure from lead paint or household dust contaminated by lead paint.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see **WHERE TO OBTAIN ADDITIONAL INFORMATION** section.)

Authority

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 317A [42 U.S.C. 247b-1] of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

Eligible applicants are state health departments or their bona fide agents or instrumentalities with active programs to screen, identify, and medically and environmentally manage lead-poisoned children. This includes the district of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau and federally-recognized Indian tribal governments.

Applicants are encouraged to collaborate with academic institutions where appropriate to obtain scientific and technical assistance in study design and implementation. If a state agency applying for cooperative agreement funds is other than the official state health department, written concurrence by the state health department must be provided.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

Approximately $200,000 will be available in Fiscal Year 1992 to fund up to four new cooperative agreements. Awards of approximately $50,000 to $100,000 each are expected to begin on or about September 30, 1992. Awards will be made for 12-month budget periods within project periods not to exceed 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This cooperative agreement program is intended to assist state and local health departments in conducting structured studies of changes in blood lead levels in lead-poisoned children following environmental interventions to reduce exposure within households to lead paint and leaded dust. It presumes that a program already exists to screen children for lead poisoning, inspect the dwellings associated with lead-poisoned children, and ensure that some form of lead exposure control is carried out. Funding and technical assistance are intended to enable recipients to conduct additional case-tracking, data-collection, and data-analysis activities which are necessary for the study, but which are not part of routine case-management. These awards are not intended to fund screening, abatement, or other lead exposure control activities.

Goals

1. To obtain quantitative estimates of both short-term and long-term changes in the blood lead levels of lead-poisoned children not requiring chelation therapy, (see CDC Statement, Preventing Lead Poisoning in Young Children, dated October 1991, Chapter 7, "Diagnostic Evaluation and Medical Management of Children with Blood Lead Levels => 20 ug/dL"), following environmental interventions to reduce or eliminate exposure within households to lead paint or dust contaminated by lead paint.

2. To obtain estimates of short-term and long-term changes in amounts or levels of house dust lead in dwellings that have undergone interventions to reduce household exposure to lead paint or leaded dust.

3. To identify factors that may modify changes in blood lead levels or dust lead

exposure following environmental interventions to reduce household exposure to lead paint or leaded dust.

4. If possible, to evaluate and compare alternative environmental intervention strategies and, where applicable, to evaluate new or revised local regulations, procedures, or standards, directed towards reducing household exposure to lead paint of leaded dust.

Program Requirements

To be able to fulfill the objectives and carry out the activities of this cooperative agreement, the recipient must:

1. Have direct responsibility for, or have and maintain a close working relationship with, an ongoing program that screens children for elevated blood lead levels (or monitors screening performed by others), identifies children with elevated blood lead levels, and provides for or ensures the appropriate medical and environmental management of such children, including obtaining follow-up blood lead measurements at appropriate intervals.

2. Have direct responsibility for, or have and maintain, close connection with, inspection/intervention activities, which include inspecting residences of children with elevated blood lead levels for lead paint hazards and providing or ensuring some form of intervention intended to reduce household exposure to lead paint or leaded dust using generally acceptable practices. These intervention activities must meet the following minimal criteria:

- Strategies for lead paint abatement must use acceptable, safe methods of lead paint removal, enclosure, encapsulation, or repair of non-intact lead paint surfaces;
- Strategies for household dust control must use acceptable, safe methods of reducing lead dust burdens on household surfaces;
- all strategies should prevent the exposure of children to the abatement process;
- all strategies should protect abatement workers from excessive lead exposure;
- all strategies should provide for containment and cleanup of dust and debris generated by the intervention; and
- dwellings should be inspected after intervention to ensure adequate compliance with the intervention standards.

3. Recipients must demonstrate the capacity to collect and analyze data needed to fulfill the study objectives, including ability to obtain follow-up blood and dust lead measurements at required intervals.

4. Recipients must have experience in conducting relevant epidemiologic studies.

5. Recipients must have access to a laboratory with demonstrated proficiency in performing lead measurements.

Cooperative Activities

In addition to meeting the above program requirements, the recipient will be responsible for conducting all activities listed under A., below and CDC will be responsible for conducting all activities listed under B., below.

A. Recipient Activities:

1. enroll study subjects meeting specified eligibility criteria after obtaining informed consent;
2. collect demographic, behavioral, and household inspection data using structured interviews and data collection forms;
3. measure baseline blood lead levels, amounts or levels of house dust lead, and soil lead levels;
4. measure follow-up blood lead levels and amounts or levels of house dust lead at defined intervals; and
5. analyze collected data.

B. CDC Activities:

1. collaborate with recipient in revising and refining the approved study protocol;
2 provide technical advice on data collection and management;
3. assist in assessment of quality of laboratory measurements;
4. collaborate on data analysis and interpretation;
5. assist in preparation, provide editorial review, and assist in seeking publication of the report of study results.

Evaluation Criteria

Application will be reviewed and evaluated according to the following criteria (Maximum of 100 points):

1 *Study Protocol* (30%): The protocol's scientific soundness, its feasibility, its consistency with the project goals, and the extent to which it provides adequate detail for evaluation. Applicants should demonstrate the ability to carefully measure the impact and effectiveness of the intervention(s), while controlling for the effect of factors not part of the environmental intervention(s) (such as changes in other lead exposures, and nutritional and educational interventions). The ability to measure and compare different intervention strategies would be an asset but not a requirement for the study protocol.

2. *Access to Study Subjects* (20%): The extent to which the application documents the presence of an ongoing childhood lead poisoning screening program with the ability to identify and follow-up the number of lead poisoning cases required to meet study criteria.

3. *Ability to Ensure Inspection and Intervention* (25%): The extent to which the application documents the ability to inspect dwellings for lead hazards, to define proposed or existing environmental intervention(s), and to ensure completion of the intervention(s) in accordance with any established local guidelines, statutes, or regulations.

4. *Laboratory Capacity* (10%): The extent to which the application documents access to a laboratory with demonstrated proficiency in performing lead measurements. The adequacy of available facilities to support the project will also be evaluated.

5. *Project Personnel* (10%): The extent to which the application documents qualifications and time commitments adequate to complete the study and meet the project goals.

6. *Experience* (5%): The extent of the applicant's experience in conducting similar studies.

7. *Budget Justification and Adequacy of Facilities* (unscored): The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Continuation Awards

Noncompeting continuation awards for the second and third budget periods will be made on the basis of the availability of funds and the following criteria:

1. Satisfactory progress is made towards achieving first budget year objectives for implementation of the study protocol.
2. The proposed activities for the new budget period are consistent with the study protocol and project goals.
3. The budget request is clearly explained, adequately justified and consistent with the intended use of grant funds.

Other Requirements

Human Subjects

Individual state projects may include research on human subjects, including access to personal identifiers to link relevant data sets. Therefore, if applicable, applicants must comply with Public Law 93–148 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be

responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Executive Order 12372 Review

Applications are subject to the Intergovernmental review of Federal programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, no later than 60 days after the deadline date for new and competing awards. The funding agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadlines

The original and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before July 1, 1992.

Applicants should follow the guidance provided in PHS Form 5161-1 in preparing the applications, and are encouraged to be concise. You may refer to appendices to provide detailed program descriptions and program protocols.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director, and telephone number. The abstract should include a brief summary of the study protocol, a brief description of the population of study subjects and of laboratory capacity, and a brief synopsis of the applicant's experience in conducting similar studies.

Where to Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from Ned Hayes, M.D., Medical Epidemiologist, or Jerry Hershovitz, Deputy Chief, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-28, Atlanta, Georgia 30333, (404) 488-4880.

Please refer to Announcement Number 242 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: May 7, 1992.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 92-11165 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92F-0161]

Diversey Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Diversey Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an aqueous solution of iodine and hypochlorous acid generated by the dilution of an aqueous acidic (21.5 percent nitric acid) solution of iodine monochloride as a sanitizing solution to be used on dairy-processing equipment, in addition to food-processing equipment and utensils.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409B(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B245) has been filed by Diversey Corp., 1532 Biddle Ave., Wyandotte, MI 48192. The petition proposes to amend the food additive regulations in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of an aqueous solution of iodine and hypochlorous acid generated by the dilution of an aqueous acidic (21.5 percent nitric acid) solution of iodine monochloride as a sanitizing solution to be used on dairy-processing equipment, in addition to food-processing equipment and utensils.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-11129 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92F-0163]

Mitsubishi Kasei Corp. and Mitsubishi Kasei America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of Mitsubishi Kasei Corp. and Mitsubishi Kasei America, Inc., proposing that the food additive regulations be amended to provide for the safe use of sucrose fatty acid esters as an emulsifier in coffee and tea beverages.

FOR FURTHER INFORMATION CONTACT: Dennis Keefe, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9519.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2A4321) has been filed on behalf of Mitsubishi Kasei Corp., 5-2, Marunouchi 2-chome, Chiyoda-ku, Tokyo, Japan, and Mitsubishi Kasei America Inc., 81 Main St., White Plains, NY 10601. The petition proposes to amend the food additive regulations in § 172.859 *Sucrose fatty acid esters* (21 CFR 172.859) to provide for the safe use of sucrose fatty acid esters as an emulsifier in coffee and tea beverages.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-11128 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92D-0137]

Animal Drug Clinical Investigator and Monitor; Draft Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of a draft document entitled "Guideline on the Conduct of Clinical Investigations: Responsibilities of Clinical Investigators and Monitors for Investigational New Animal Drugs," prepared by the Center for Veterinary Medicine (CVM). This draft guideline applies to clinical investigators and monitors of clinical investigations of new animal drugs and addresses the responsibilities of clinical investigators and monitors.

DATES: Written comments by July 13, 1992.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Communications and Education Branch (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8755. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kristi O. Smedley, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8737.

SUPPLEMENTARY INFORMATION: The draft guideline entitled "Guideline on the Conduct of Clinical Investigations: Responsibilities of Clinical Investigators and Monitors for Investigational New Animal Drugs," is being developed for use by clinical investigators and monitors of clinical investigations for guidance in the proper conduct of clinical investigations.

The term clinical investigator includes investigators employed by the sponsoring pharmaceutical firm, investigators under contract to the sponsoring pharmaceutical firm to perform a clinical trial, and sponsor-investigators (individuals who sponsor an investigational new animal drug). Monitors represent the pharmaceutical sponsor and ensure that the study is conducted according to the protocol. Although proper monitoring of new animal drug investigations is covered under an existing general guideline ("Guideline for the Monitoring of Clinical Investigations," January 1988), the current draft guideline will supersede the former guideline insofar as clinical investigations of animal health products are concerned.

The draft guideline addresses the responsibilities under 21 CFR 511.1 of clinical investigators for new animal drugs and monitors of clinical investigations of such drugs. The guideline presents approaches acceptable to FDA for the conduct and monitoring of clinical investigations of new animal drugs by reflecting principles commonly recognized by the scientific community as appropriate and necessary to collecting scientific data. It is equally applicable to intramural and extramural research efforts. A person may follow the guideline or may choose to follow alternate procedures. The person choosing alternate procedures may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA.

This draft guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. Where the guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Dated: May 7, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-11176 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92E-0004]

Determination of Regulatory Review Period for Purposes of Patent Extension; Meta II, Model 1204 Cardiac Pacing System*

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Meta II, Model 1204 Cardiac Pacing System* and is publishing this notice of that determination as required by law. FDA

has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

FDA recently approved for marketing the medical device Meta II, Model 1204 Cardiac Pacing System®. Meta II, Model 1204 Cardiac Pacing System® is indicated for use in maintaining and regulating cardiac rate in patients exhibiting generally acceptable symptoms and indications for long-term cardiac pacing. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Meta II, Model 1204 Cardiac Pacing System® (U.S. Patent No. 4,702,253) from Telectronics, N.V., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 18, 1992, advised the Patent and Trademark Office that this medical device had undergone a regulatory review period, and that the approval of Meta II, Model 1204 Cardiac Pacing System® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Meta II, Model 1204 Cardiac Pacing System® is 448 days. Of this time, zero days occurred during the testing phase of the regulatory review period, while 448 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* Not applicable. Applicant did not perform clinical investigations utilizing the patented device, but, rather, sought and was granted marketing approval based on a supplemental filing to a previously approved premarket approval application (PMA).

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* July 20, 1990. FDA has verified the applicant's claim that the PMA for Meta II, Model 1204 Cardiac Pacing System® (PMA-P880038/S13) was submitted on July 20, 1990.

3. *The date the application was approved:* October 11, 1991. FDA has verified the applicant's claim that PMA P880038/S13 was approved on October 11, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 349 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 13, 1992, submit to the Dockets Management Branch (address above) written comments and ask for redetermination. Furthermore, any interested person may petition FDA, on or before November 9, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-11127 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Funding Criteria and Priorities for Community and Migrant Health Center Activities for the Provision of Technical and Non-Technical and Non-Financial Assistance to Community and Migrant Health Centers, and for Cooperative Agreements to Support Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final funding criteria and priorities.

SUMMARY: The Health Resources and Services Administration announces final funding priorities for continuation activities and improvements under sections 330 and 329 of the Public Health Service (PHS) Act for Community Health and Migrant Health Centers (C/MHC); section 333(d) cooperative agreements and section 330(f)(1) and 329(g)(1) technical and non-financial assistance.

Proposed funding priorities were published for public comment in the **Federal Register** on March 13, 1992, at 57 FR 8883. Three comments were received during the 30-day comment period.

COMMENT AND RESPONSE: One respondent commented that the criteria for funding major capital improvements contain only one "priority", i.e., for correction of fire and life safety codes. The respondent suggested that other priorities for recruitment and retention projects and for community need should be included.

The Secretary wishes to point out that under the subpart of the notice which discusses C/MHC activities, $15 million is made available to support C/MHC improvement activities that go beyond the current level of activities at C/MHCs. Emphasis for improvement activities will be on: (1) Retention and recruitment of primary care providers; (2) Correction of cited fire and life safety code violations involving imminent danger to patients and staff and that require under $100,000 in additional Federal funds; and (3) Provision of translation and culturally sensitive services.

In addition, within the $15 million for improvement activities, approximately $3 to $5 million will be available to support major capital improvement projects. The preference for funding is for proposals to correct existing fire and life safety code violations for which the grantee has been officially cited and for which the total amount of funds requested exceeds $100,000. However, it should be understood that proposals for other types of major capital improvement projects will be considered.

The Department reviews all C/MHC applications for compliance with standard criteria stipulated in the program regulations (42 CFR part 51c for CHC activities and part 56 for MHC activities) which relate to need and community impact, health service delivery capacity, management and finance, and governance. The Secretary believes that this is clear in the notice and has, therefore, concluded that no action is necessary to address the concern stated in the comment.

Three respondents commented about the published priority funding review criteria for national awards funded under sections 329(g)(1) and 330(f)(1) of the PHS Act for providing technical and non-financial assistance to C/MHCs. The respondents suggested that the notice should include a review criterion concerning a grant recipient's capability to provide assistance in the areas of environmental and occupational health services.

The Secretary notes that there are ongoing technical assistance activities in the area of environmental health services and recognizes the importance of these services as well as occupational health services. The Secretary acknowledges the oversight in not including a review criterion addressing these services in the notice and accepts the comments. Therefore, the funding criteria for national awards for technical and non-financial assistance is amended to include an additional criterion as follows: (6) environmental and occupational health services. All other proposed funding preferences and priorities published at 57 FR 8883 remain unchanged.

FOR FURTHER INFORMATION CONTACT: For technical assistance and general program information about the availability of sections 329 and 330 funds, contact Richard C. Bohrer, (301) 443-2260. For additional information about funding under section 329(g)(1), contact Jack Egan, (301) 443-1153. Additional information about funding under sections 330(f)(1) and 330(d) can be obtained from Bonnie Lefkowitz, (301) 443-2270. For assistance on section 333(d) State-specific cooperative agreement retention and recruitment issues, contact Donald L. Weaver, M.D., (301) 443-2900. Additional information about current comprehensive perinatal care activities can be obtained from Beverly Wright, (301) 443-7587.

SUPPLEMENTARY INFORMATION: In the Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 93.224; the Migrant Health Center program is Number 93.246; the program of technical and other non-financial assistance, including national organizations, for development and coordination of comprehensive primary care services is Number 93.130.

Dated: May 7, 1992.

John H. Kelso,

Acting Administrator.

[FR Doc. 92-11175 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-15-M

Final Funding Priorities for Grants to Provide Health Care for the Homeless and Health Care Services for Homeless Children

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final funding priorities.

The Health Resources and Services Administration announces the final funding priorities for fiscal year (FY) 1992 for grants to provide health care for the homeless and health care services for homeless children, authorized under the authority of section 340 of the Public Health Service Act.

Proposed funding priorities were published for public comment in the Federal Register dated March 23, 1992, at 57 FR 10034. No comments were received during the 30-day comment period. Therefore, the proposed funding priorities remain unchanged.

Final Funding Priorities for FY 1992—New Starts

For FY 1992, funding priority will be given to:

—Applicants located in those States and other distinct geographic areas (for example, cities, counties, or designated health professional shortage areas) which have not previously received funds under section 340(a) of the PHS Act and/or

—Applicants which intend to serve a primarily rural homeless population.

Applicants which do not meet these priorities will be considered only if sufficient program funds are available.

Final Funding Priorities for FY 1992—Homeless Children

For FY 1992, funding priority will be given to:

—Applicants which currently receive funding under Section 340(a) of the PHS Act;

—Applicants which intend to serve a primarily rural population; and/or

—Public and nonprofit private children's hospitals that provide primary health services to a substantial number of homeless individuals.

Applicants which do not meet these priorities will be considered only if sufficient program funds are available.

Final Funding Priorities for FY 1992—Improvements

For FY 1992, funding priority will be given to: programs which expand the availability of and access to substance abuse services; innovative approaches to enhancing access to entitlement programs, including Supplemental Security Income; programs which develop or enhance relationships with shelters for homeless and runaway youth; programs which develop innovative programs in collaboration with other community-based organizations engaged in health care delivery to homeless clients; programs which develop innovative service arrangements for homeless individuals with HIV/AIDS; and programs which enhance quality assurance systems to improve their appropriateness in assessing services delivered to homeless individuals.

FOR FURTHER INFORMATION CONTACT: For technical assistance and general program information regarding the Health Care for the Homeless program an the Health Care Services for Homeless Children program, contact Ms. Joan Holloway, Director, Division of Special Populations Program Development, Bureau of Health Care Delivery and Assistance, (301)443-8134.

SUPPLEMENTARY INFORMATION: The OMB *Catalog of Federal Domestic Assistance* number for this program is 13.151.

Dated: May 7, 1992.

John H. Kelso,

Acting Administrator.

[FR Doc. 92-1174 Filed 5-12-92; 8:45 am]

BILLING CODE 4160

Health Resources and Service Administration

Availability of Funds for Grants for the Public Housing Primary Health Care Program and for a Minority Community Health Coalition Demonstration Program Related to HIV/AIDS Centered Education and Prevention

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $6 million for fiscal year (FY) 1992 for grants to be awarded under section 340A of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 256a. The purpose of these grants is to enable the provision of primary health services as defined in section 330(b)(1) of the PHS Act, including health screenings, and health counseling and education services to residents of public housing. Emphasis will be placed on the provision of a comprehensive package of outreach and case-managed prenatal, delivery, post-partum and infant care services. Grants will include both new and noncompeting continuation awards. Approximately $3.4 million in non-competing continuation grants for the 7 currently funded programs and $2.5 million in discretionary grants for new programs will be awarded. Approximately 3 to 5 new awards will be made, ranging from approximately $300,000 to $500,000 for a 12-month budget period with up to a 3-year project period.

In addition, $500,000 will be available in FY 1992 for a demonstration effort co-sponsored by the HRSA and the Office of Minority Health (OMH) in the Office of the Assistant Secretary for Health. Second year funding will be subject to the availability of funds. This activity will assist in implementing section 1707(d)(1) of the PHS Act and will enable public housing grantees to organize and operate minority community health coalitions (MCHC) and to implement AIDS/HIV health education and prevention strategies.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program announcement is related to the priority of improving access to health services for minorities and disadvantaged Americans in underserved areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone No. 202-783-3238).

ADDRESSES: The PHS Regional Grants Management Officers (RGMO), whose names and addresses are provided in the appendix to this document, are responsible for distributing application kits and guidance (Form PHS 5161-1 with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0934-0189), and completed applications must be submitted to them. Application kits contain guidance information which outlines program requirements indicated in the authorizing legislation. Potential applicants can contact the appropriate RGMO for assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Ms. Joan Holloway, Director, or Mr. James Gray, Health Care for the Homeless and Public Housing Program Director, Division of Special Populations Program Development, Bureau of Health Care Delivery and Assistance (BHCDA), at 5600 Fishers Lane, Rockville, Maryland 20857 (telephone 301-443-2512).

DUE DATE: To receive consideration, grant applications must be received by the appropriate RGMO by July 1, 1992.

Applications will be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly-dated receipt from a commercial carrier or the U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the announced closing date will not be considered for funding and will be returned to the applicant.

ELIGIBLE APPLICANTS: To be eligible, an applicant must be a public or non-profit private entity and have the capacity to effectively administer a grant.

SUPPLEMENTARY INFORMATION: Section 340A of the PHS Act authorizes the Secretary to award grants to enable grantees, directly or through contracts, to provide for the delivery of primary health care services, including health screenings, and health counseling and education services to residents of public housing. This effort is one of several initiatives designed to improve the health status of disadvantaged minorities, especially at-risk pregnant women and infants, as intended in Public Law 101-527, the Disadvantaged Minority Health Improvement Act of 1990.

In an area where there is a certified resident management corporation and public or private nonprofit entities providing primary health services, including those receiving funds under sections 330 or 340 of the PHS Act, the organizations are encouraged to submit only one application demonstrating collaboration between the organizations.

Grantees and organizations with whom grantees contract to provide primary health services must be participating and qualified providers under the Medicaid plan approved under title XIX of the Social Security Act, and must maximize payment for services available from private insurance, Medicare, other Federal programs, and other third-party sources. Grantees entering into contracts for services may be granted a waiver of this requirement if the organization they contract with does not impose a charge or accept payment available from any third-party payor, including payment under any insurance policy or under any Federal or State health benefits program, including Medicaid.

The Secretary may not make a grant to an applicant unless the applicant signs an agreement indicating that, whether the services are provided directly or through contract, services under the grant will be provided without regard to ability to pay for the services and, if a charge is imposed, it (1) will be made according to a schedule of charges that is made available to the public, (2) will not be imposed on any resident of public housing with an income less than the official poverty level, and (3) will be adjusted to reflect the income and resources of the resident.

For applicants which are public entities, e.g., State or local health departments, the Secretary may not award a grant unless the public entity agrees that, with respect to the costs to be incurred by such entity in carrying out the purposes of the grant (providing primary health services, including health screening, and health counseling and education services to residents of public

housing), the entity will make available non-Federal contributions in cash toward such costs in an amount equal to not less than $1.00 for each $1.00 of Federal funds. In-kind contributions will not constitute acceptable contributions, and funds provided by the Federal Government, or services assisted or subsidized by the Federal Government, may not be included in determining the amount of the non-Federal contributions.

Project Requirements

The following services are required by Section 340A and must be provided either directly or through contract:

a. Comprehensive primary health care services, including health screening, and health counseling and education services for all residents of public housing, along with specialty medical services for pregnant women and their infants, on the premises of public housing projects or at other locations immediately accessible to residents of public housing;

b. Referral of residents, as appropriate, to qualified facilities and practitioners for necessary followup services;

c. Outreach services to inform residents of the availability of such services (especially high risk women of child-bearing age) and;

d. Aid to residents in establishing eligibility for assistance under entitlement programs (e.g., Medicaid, WIC, AFDC) and in obtaining services, under Federal, State and local programs providing health services, mental health services, or social services.

In addition, applicants may also provide the following optional services:

a. Training to residents of public housing to provide health screenings and to provide educational services and;

b. Health services to individuals who are not residents of public housing if those services will be provided to such individuals under the same terms and conditions as such services are provided to the residents.

Restrictions on the Use of Grant Funds

The following restrictions apply to the use of grants funds awarded for the purpose of providing health services for residents of public housing:

a. The applicant may not expend more than 10 percent of the Federal grant funds for the purpose of administering the grant;

b. Grant funds may not be used for inpatient services;

c. Grants funds may not be used to make cash payments to intended recipients of primary health services, or health counseling and education services;

d. Grant funds may not be used to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment or motor vehicles.

However, upon request by the applicant demonstrating that the purposes of the project cannot otherwise be carried out, the Secretary may waive the restriction in paragraph (d).

Criteria for Evaluating Applications

An objective review of applications will consider the adequacy of the documentation submitted to comply with the following statutory requirements:

1. Consultation with residents of the designated public housing development in preparation for submission of applications and the development of an on-going process for consultation with the residents regarding the planning and administration of the proposed program;

2. Appropriate leadership and management structures to ensure delivery of health services efficiently and effectively;

3. Procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

4. An ongoing program of quality assurance with respect to the services provided under the grant;

5. Procedures to ensure the confidentiality of records maintained on residents of public housing that are receiving such services;

6. In the case of a program that serves public housing residents, a substantial portion of whom are of limited English-speaking ability, the applicant has developed and has the ability to carry out a reasonable plan to provide health services through individuals who are able to communicate in the language and cultural context of the population or populations, and has designated at least one person, fluent in both English and the appropriate language or languages, to assist in carrying out the plan; and

7. A process whereby an annual report will be submitted to the Secretary describing the use and costs of services under the grant.

Each application will also be evaluated on the following:

1. The relative need of the population to be served for the services to be provided, based on such factors as high infant mortality rates and lack of availability of primary health services due to barriers such as limited access, location of providers, and inability to pay for services.

2. The appropriateness of the proposed services to meet the primary health care needs of the community, especially the unmet need for comprehensive case managed prenatal, delivery, post-partum and infant care services.

3. The appropriateness of the current or proposed clinical staffing pattern which should include an adequate number of full-time, qualified health professionals and key managers so that services are accessible, comprehensive, continuous and coordinated.

4. The level of community commitment to reducing infant mortality, as well as local and State Government and private sector funding to assist in this reduction.

5. The reasonableness of the proposed budget and adequacy of the budget justification, including estimates of expenditures for revenues from the services proposed in the description of purpose; estimates of the average cost of providing services to each recipient and a plan to identify, monitor and control costs (accounting structure) related to the provision of primary health care, health education and counseling to residents of public housing.

6. The adequacy of the proposed project activities, such as the actual service delivery system, including health screenings, diagnostics, treatment (provided on-site or through contract), entitlement eligibility assistance, and the optional activities of training public housing residents or providing health services to non-residents, as well as proposed linkages with other community-based programs (e.g., social service, education and State sponsored programs) and outreach initiatives. This includes special activities designed to provide outreach to at-risk pregnant women and address their prenatal, delivery, and postpartum needs and those of their infants.

7. The appropriateness of coordination and integration with existing public and private health care providers and related social service agencies to ensure, to the maximum extent possible, referral followup and outreach to residents.

In selecting applications for funding, preference will be given to: (1) Resident management corporations as defined under section 20 of the U.S. Housing Act of 1937, or (2) entities receiving funds under either section 330 of the PHS Act (Community Health Centers) or section 340 of the PHS Act (Health Care for the Homeless Programs). Grant awards will be made in such a manner as to provide for an appropriate distribution of

program resources throughout the country.

Non-competing continuation requests will be reviewed for funding based on each grantee's progress in achieving its stated goals and objectives for the previous year, and the appropriateness of the project plan and budget for the coming year.

Minority Community Health Coalition Demonstration Program Related to HIV/AIDS Centered Education and Prevention

Funding

Grant awards for the MCHC grant will range up to $100,000 each for approximately 5 projects for 1 year. Proposals for this program must be submitted as part of the applications for the Public Housing Primary Care Program. Funds will be awarded only to organizations awarded Public Housing Primary Care grants.

Project Requirements

Grantees will be required to develop community health coalitions to identify minority-targeted health education and prevention strategies which will help eliminate or reduce risk for acquiring or transmitting HIV, and other health problems that are acquired and/or transmitted or associated with similar risk behaviors. These must include tuberculosis (TB), substance abuse and sexually-transmitted diseases (STDs), and hepatitis B. Although TB is not directly related to risk behaviors underlying HIV transmission, it is a serious health problem aggravated by HIV infection and warrants special attention in HIV education/prevention information because of its high level of communicability. The coalition are then expected to begin implementing the strategies they have identified.

Evaluation Criteria

Proposals for the demonstration program will be evaluated on the following:

1. The relative need of the population to be served for the proposed HIV/AIDS centered education and prevention program;

2. The adequacy of the proposed plan to assure the development and operation of an effective coalition which should include involvement of the target population;

3. The appropriateness of coordination and linkages with State and local health departments and other existing HIV-related activities such as the federally funded Ryan White Consortia.

4. The appropriateness of the proposed staffing pattern;

5. The adequacy of community commitment and coordination to develop the proposed coalition, including evidence of appropriate community participation and endorsement;

6. The reasonableness of the proposed budget and adequacy of the budget justification; and

7. The adequacy of the evaluation plan in measuring the coalition's effectiveness in a quantifiable fashion.

8. The extent to which the demonstration activity will be coordinated with the activities under the Public Housing Primary Health Care program.

In selecting applications for funding, preference will be given to applicants located in those States and other distinct geographic areas, which have not previously received Federal funds for this program.

Other Award Information

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kits will contain a listing of States which have chosen to set up a review system and will provide a point of contract in States for that review. Applicants (other than federally recognized Indian governments) should contact their State Single Points of Contact (SPOCS) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contract the SPOC of each affected State. State process recommendations should be submitted to the appropriate Regional Office (See appendix). The due date for State process recommendations is 60 days after the appropriate application deadline date. The BHCDA does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.927.

Dated: March 18, 1992.

John H. Kelso,

Acting Administrator.

Appendix

Region I—(CT, ME, MA, NH, RI, VT)

Grants Management Officer, PHS Office of Grants Management, John F. Kennedy Federal Bldg. #1400, Boston, Massachusetts 02203, (617) 565-1482.

Region II—(NJ, NY, PR, VI)

Grants Management Officer, PHS Office of Grants Management, 26 Federal Plaza #3337, New York, New York 10278, (212) 264-4496.

Region III—(DE, DC, PA, VA, WV)

Grants Management Officer, PHS Office of Grants Management, 3535 Market Street #10-140, Philadelphia, Pennsylvania 19101, (215) 596-6653.

Region IV—(AL, FL, GA, KY, MS, NC, SC, TN)

Grants Management Officer, PHS Office of Grants Management, 101 Marietta Tower, Suite 1121, Atlanta, Georgia 30323, (404) 331-2597.

Region V—(IL, IN, MI, MN, OH, WI)

Grants Management Officer, PHS Office of Grants Management, 105 West Adams, 17th Floor, Chicago, Illinois 60603, (312) 353-8700.

Region VI—(AR, LA, NM, OK, TX)

Grants Management Officer, PHS Office of Grants Management, 1200 Main Tower Bldg. #1600, Dallas, Texas 75202, (214) 767-3885.

Region VII—(IA, KS, MO, NE)

Grants Management Officer, PHS Office of Grants Management, 601 East 12th Street #501, Kansas City, Missouri 64106, (816) 426-5841.

Region VIII—(MT, ND, SD, WY, UT, CO)

Grants Management Officer, PHS Office of Grants Management, 1961 Stout Street, Fed Bldg. #492, Denver, Colorado 80294.

Region XI—(AS, AZ, CA, GU, HI, NV, TT)

Grants Management Officer, PHS Office of Grants Management, 50 United Nations Plaza #331, San Francisco, California 94102, (415) 556-2595.

Region X—(AK, ID, OR, WA)

Grants Management Officer, PHS Office of Grants Management, 2201 6th Avenue, #710, Seattle, Washington 98121, (206) 442-7997.

[FR Doc. 92-11131 Filed 5-12-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for

Human Genome Research, May 17 and 18, 1992, in Chevy Chase I & II of the Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC.

This meeting will be open to the public on May 18, 1992, from 8:30 a.m. to 10 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on May 17, 1992, from 7 p.m. to recess and on May 18, 1992, from 10 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published later than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institute of Health, Building 38A, room 605, Bethesda, Maryland 20892, (301) 496-0844 will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: May 5, 1992.

Susan K. Feldman

Committee Management Officer, NIH.

[FR Doc. 92-11299 Filed 5-12-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pubic Law 92-463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of the meeting. Attendance by the public will be limited to space available. This meeting will be closed thereafter in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual contract proposals. These contracts and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7548, will furnish meeting information upon request. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend the meeting contact the Scientific Review Administrator to confirm the exact date, time, and location.

Name of panel: NHLBI SEP on RFP for the Clinical Trial of an Implantable Cardiac Defibrillator.

Scientific Review Administrator: Dr.Dave Monsees. Telephone: 301-496-7361.

Dates of Meeting: May 17-18, 1992.

Place of Meeting: Residence Inn, Bethesda, Maryland.

Time of Meeting: 8 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of health.)

Dated: May 5, 1992.

Susan K. Feldman,

Committee Management Officer, HIH.

[FR Doc. 92-11158 Filed 5-12-92; 8:45 am]

BILLING CODE 4140-01-M

Prospective Grant of Exclusive License: Recombinant Pseudomonas Exotoxin

AGENCY: National Institutes of Health, Public Health Services, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(91) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,892,827 (SN 06/911,227), entitled, "Recombinant Pseudomonas Exotoxin", to Merck & Co., Inc. having a place of business in Rahway, New Jersey. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention relates to a modified Pseudomonas exotoxin(PE40) which is less toxic than the unmodified Pseudomonas exotoxin. The PE40 exotoxin of this invention may prove to be a valuable cancer therapeutic when fused to various target-specific cell recognition proteins. The invention relates to the modified exotoxin being covalently bound to a cell recognition proteins and a method for achieving targeted cytotoxicity. The recognition protein of the invention is selected from an antibody, a growth factor, a peptide hormone and a cytokine. Merck & Co., Inc. intends to use this invention for the therapeutic targeting of the modified Pseudomonas exotoxin specific to Epidermal Growth Factor Receptor (EGFR).

Requests for a copy of this patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496-0750; Facsimile: (301) 402-0220.

Dated: May 5, 1992.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92-11159 Filed 5-12-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3422; FR-3220-C-02]

Fund Availability: Service Coordinators in Section 202 Projects; Correction.

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability for Fiscal Year 1992; Correction.

SUMMARY: On May 5, 1992 (57 FR 19338), the Department published in the Federal

Register, a notice of funding availability (NOFA) that announced the funding of regional lotteries for the hiring of a service coordinator in section 202 projects for the elderly and people with disabilities. The purpose of this document is to correct several errors that were found in the published NOFA.

FOR FURTHER INFORMATION CONTACT: The HUD field office for your jurisdiction (see appendix published with the May 5, 1992 NOFA).

SUPPLEMENTARY INFORMATION: Accordingly, in FR 82-10464, the following corrections are being made to the Notice of Fund Availability published in the **Federal Register** on Tuesday, May 5, 1992 (57 FR 19338), to read as follows:

1. On page 19340, in the second column, in paragraph I.D.2.f., correct the word "time" to read "amount".

2. On page 19340, in the third column, in paragraph II, correct the paragraph heading to read "*B. Application Requirements*" instead of "*A. Application Requirements*".

3. On page 19342, in the first column, in the middle of the column, remove the paragraph heading "*C. Screening for Completeness (Technical Deficiencies)*".

4. On page 19342, in the second column, in paragraph II.D.1.f., correct by removing the second complete sentence that begins with "It is in default * * *".

Dated: May 8, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92-11268 Filed 5-12-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-966-4230-15]

Alaska Native Claim Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to The Aleut Corporation for approximately 201 acres. The lands invovled are in the vicinity of Adak, Alaska, as described below:

Seward Meridian, Alaska (Unsurveyed)

T. 96 S., R. 196 W. (AA-12080, AA-12108, AA-12109, AA-12110)
T. 97 S., R. 197 W. (AA-12078, AA-12111, AA-12116)
T. 97 S., R. 198 W. (AA-12081, AA-12082, AA-12084, AA-12117, AA-12121, AA-12122, AA-12123, AA-12125, AA-12134, AA-12136, AA-12138,
T. 98 S., R. 198 W. (AA-12095)

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ALEUTIAN EAGLE and THE ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until June 12, 1992 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary Jane Piggott,

Chief, Branch of Southwest Adjudication.

[FR Doc. 92-11169 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-JA-M

[AK-967-4230-15; AA-6646-A and AA-6646-A2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611, will be issued to Akhiok, Alaska.

Seward Meridian, Alaska

T. 35 S., R. 29 W.,
Sec. 13;
Secs. 19 to 22;
Secs. 23, 24 and 30.
T. 35 S., R. 31 W.,
Secs. 5, 8 and 10;
Secs. 13 to 15;
Secs. 17, 24 and 25.
T. 36 S., R. 31 W.,
Secs. 12, 13, 14 and 24.
T. 38 S., R. 31 W.,
Secs. 4 and 5.
T. 38 S., R. 32 W.,
Secs. 1 and 12.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 12, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 92-11168 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-JA-M

[CA-063-02-4320-07]

Suspension of Temporary Closure of Public Lands in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of suspension of temporary closure of public lands in Kern County, CA.

SUMMARY: Effective immediately this notice suspends closure order published in Volume 57, Number 62 of the **Federal Register** on Tuesday, March 31, 1992 listed on pages 10919 and 10920. The affected Public Land is along the eastern edge of the El Paso Mountains, Kern County, California under the administrative responsibility of the Ridgecrest Resource Area, California Desert District. The following is a description of the Public Land open for public use in the manner and degree prior to temporary closure:

Mount Diablo Baseline and Meridian

T. 28 S., R. 40 E.,
Section 19: SE¼SE¼/.
Section 20: S½S½.
Section 21: S½S½.
Section 22: SW¼ west of Highway 395.
Section 27: W½, that portion of the E½ west of Highway 395.
Section 28: All.

Section 29: All.
Section 30: E½E½.
Section 31: E½E½.
Section 32: All.
Section 33: All.
Section 34: W½, that portion of the E½ west of Highway 395.

Mount Diablo Baseline and Meridian

T. 29 S., R. 40 E.,
Section 2: That portion of the N½N½ west of Highway 395 (not surveyed).
Section 3: N½N½ (not surveyed).
Section 4: N½N½ (not surveyed).
Section 5: NE¼NE¼ (not surveyed).

The Public Lands listed above are open to public entry including vehicles, camping and hiking. The area is located approximately 15 miles south of Inyokern, California.

The purpose of the closure was to preclude public access to a large research plot within the closed area where desert tortoise research was to be conducted and the closure would have averted any potential problems from the public and activities that may adversely affect the experiment. Due to a variety of factors research efforts have been discontinued.

EFFECTIVE DATE: This suspension of the closure will be in effect May 13, 1992.

FOR FURTHER INFORMATION CONTACT: District Manager, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507-0714, (714) 697-5370.
Area Manager, 300 South Richmond Road, Ridgecrest, CA 93555, (619) 375-7125.

SUPPLEMENTARY INFORMATION: Maps showing the areas no longer affected by the closure are available by contacting the aforementioned office.

Authority for this suspension of the temporary closure order is found in 43 CFR 8364.1.

Dated: April 29, 1992.

Bonnie R. Johnson,
Acting District Manager.

[FR Doc. 92-11199 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-40-M

[NM-060-02-4212-14-610; (NMNM 82227)]

Exchange of Public Lands (Rio Bonito Exchange); New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment—Notice of realty action.

SUMMARY: This notice amends the notice of realty action published in the Federal Register on April 9, 1992, by extending the date for receipt of comments to June 30, 1992.

Dated: May 1, 1992.

Mary McCloskey,
Acting District Manager.

[FR Doc. 92-10914 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-FB-M

[ID-010-4333-02]

Owyhee Resource Area; Recreational Restrictions

AGENCY: Boise District, Bureau of Land Management, Department of the Interior.

ACTION: Notice that the Owyhee Front is being closed to all competitive motorized and nonmotorized events and to all other recreation events involving more than 15 persons.

SUMMARY: Notice is hereby given that the Owyhee Front Special Recreation Management Area of the Owyhee Resource Area, Boise District is closed to all competitive motorized and nonmotorized recreational events under authority of 43 CFR 8341.2(a), 8372.1-2, and 8372.5. Public lands are also closed to all other organized groups of more than 15 persons under authority of 43 CFR 8364.1(a) and 9268.3(d).

The Owyhee Front Special Recreation Management Area is experiencing the worst drought on record. Concentrated recreational use of public lands under these drought conditions are expected to cause significantly greater adverse impacts to soils, vegetation, and potentially wildlife and wild horses than is customary. Of particular concern are the adverse impacts that can be generated as a result of large, organized recreational events. Consequently, the BLM is initiating an emergency closure of public lands on the Owyhee Front below 4,000 feet elevation to all organized events. Existing 5-year special recreation permits will be stipulated to exclude event locations below 4,000 feet. New permits will be considered only for event locations above 4,000 feet.

Recreation use can continue to occur for individuals or organized groups of 15 persons or less. Recreation users are encouraged to make use of the existing developed recreation sites at Hemmingway Butte, Rabbit Creek, and Fossil Creek.

ADDRESSES: The Boise District Office is located at 3948 Development Ave., Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Jay Carlson, Boise District, BLM, (208) 384-3430.

Dated: May 5, 1992.

Rodger E. Schmitt,
Assoc. District Manager.

[FR Doc. 92-11164 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-294]

Order Imposing Civil Penalty and Terminating Informal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of certain carrier materials bearing ink compositions to be used in a dry adhesive-free thermal transfer process and signfaces made by such a process.

SUMMARY: Notice is hereby given that the United States International Trade Commission has entered an order imposing a civil penalty on respondent Signtech Inc. and terminating an informal enforcement proceeding which was commenced by the Commission on June 12, 1990. With the consent of Signtech, the Commission has ordered Signtech to pay a civil penalty of $100,000 for violating a consent order which was issued by the Commission in the underlying investigation on August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone, 202-205-2577. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-205-1810.

AUTHORITY: The Commission's authority for imposing a civil penalty is found in section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

SUPPLEMENTARY INFORMATION: The above-captioned investigation was instituted on March 22, 1989, pursuant to a complaint and amendment filed by Minnesota Mining and Manufacturing Company ("3M"). 54 FR 11821 (March 22, 1989). The investigation was instituted to determine whether Signtech, a Canadian corporation, and eight other respondents violated section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation or sale of certain carrier materials bearing ink compositions to be used in a dry adhesive-free thermal transfer process which were alleged, *inter alia*, to infringe U.S. Letters Patent 4,737,224 (the

" '224 patent") owned by 3M.

On June 19, 1989, the complainant and respondents entered into a consent order agreement. Under the terms of the agreement, respondents agreed not to import into the United States any allegedly infringing materials after July 15, 1989. On August 16, 1989, the Commission issued a consent order based on the consent order agreement and terminated the investigation.

On June 12, 1990, the Commission commenced an informal enforcement proceeding pursuant to Rule 211.56(a) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 211.56(a), to determine whether Signtech had violated the consent order. On October 24, 1990, while the informal enforcement proceeding was ongoing, 3M and Signtech filed a joint motion to rescind the consent order based upon a settlement agreement whereby 3M licensed Signtech's use of the '224 patent. The Commission granted the joint motion and rescinded the consent order on December 20, 1990. Through the informal enforcement proceeding, however, the Commission continued investigating whether violations had occurred while the consent order was in effect.

On April 13, 1992, Signtech executed a Consent to Entry of Commission Order Imposing Civil Penalty ("Consent") for the purpose of terminating the informal enforcement proceeding. Signtech has consented to payment of a civil penalty of $100,000 for violating the August 16, 1989, consent order during the period that the order was in effect. On May 7, 1992, the Commission issued an Order imposing the civil penalty and terminating the informal enforcement proceeding.

PUBLIC INSPECTION: Nonconfidential versions of the documents cited in this notice and all other nonconfidential documents on the record of this informal enforcement proceeding will be made available for public inspection upon request during official business hours (8:45 a.m. to 5:15 p.m., Monday through Friday) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Docket Section—room 112, Washington, DC 20436, telephone 202-205-1802.

Issued: May 7, 1992.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-11227 Filed 5-12-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-332]

In the Matter of Certain Translucent Ceramic Orthodontic Brackets; Commission Determination Not to Review An Initial Determination Granting Joint Motions To Terminate the Investigation; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) in the above-captioned investigation granting joint motions to terminate the investigation with respect to two respondents on the basis of a consent order and with respect to two other respondents on the basis of a settlement agreement. Termination of the four respondents terminates the investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Lyle B. Vander Schaaf, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3107. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: On November 21, 1991, Minnesota Mining and Manufacturing Company ("3M"), 3M Unitek Corporation ("3M Unitek"), and Ceradyne, Inc. ("Ceradyne") (collectively "complainants") filed a complaint alleging unfair methods of competition and unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain translucent ceramic orthodontic brackets imported from Japan and Germany by reason of infringement of claims 1-2, 4, 6-8, 19, 22-23, 25-26, 28-31, 35-36, 39-40, and 42-43 of U.S. Letters Patent 4,954,080 ('080 patent) and the single claim of U.S. Letters Patent Des. 304,077 ('077 patent). A supplement to the complaint was filed on December 5, 1991. On December 18, 1991, the Commission determined to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (56 FR 66876 (Dec. 26, 1991)).

On February 6, 1992, complainants and respondents Dentaurum, Inc. and Dentaurum J.P. Winkelstroeter, KG (collectively "the Dentaurum respondents") jointly moved for termination of this investigation as to the Dentaurum respondents on the basis of a consent order and consent order agreement (Motion Docket No. 332-8). On the same date, complainants and respondents GAC International, Inc. ("GAC") and Tomy Incorporated ("Tomy") jointly moved for termination of this investigation as to GAC and Tomy on the basis of a settlement agreement and license agreement (Motion Docket No. 332-9). The Commission investigative attorney filed papers supporting the joint motions. On April 10, 1992, the presiding administrative law judge issued an ID (Order No. 4) granting the motions. Notice of the ID was published in the **Federal Register** on April 22, 1992 (57 FR 14738). No petitions for review were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53 and 211.21 (19 CFR 210.53 and 211.21, as amended).

Issued: May 6, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-11226 Filed 5-12-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-333]

In the Matter of Certain Woodworking Accessories; Commission Determination to Review an Initial Determination Finding A Respondent in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative judge's (ALJ's) initial determination (ID) in the above-captioned investigation finding respondent Taiwan Zest Industrial Co., Ltd. ("Taiwan Zest") in default.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On January 23, 1992, complainant Cantlin, Inc. ("Cantlin") filed a motion for a default judgment against Taiwan Zest. On March 11, 1992, the ALJ issued an order (Order No. 23) giving Taiwan Zest until March 24, 1992, to show cause why it should not be found to have waived its rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. Taiwan Zest did not respond to the show cause order. On April 1, 1992, complainant and Taiwan Zest also filed a joint motion for termination of the investigation with respect to Taiwan Zest on the basis of a proposed consent order. On April 7, 1992, the ALJ issued an ID (Order No. 28) finding Taiwan Zest in default. In doing so, the ALJ found that Taiwan Zest had waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. In the ID, the ALJ noted that he had also issued an order (Order No. 29) denying the joint motion to terminate the investigation as to Taiwan Zest on the basis of the consent order as moot in view of his ID finding Taiwan Zest in default.

Because of the intervening filing of the joint motion to terminate the investigation on the basis of a consent order, the Commission has determined to review the ID finding Taiwan Zest in default. Specifically, the Commission wishes to receive written submissions from the parties addressing the questions of (1) whether the joint motion to terminate the investigation on the basis of a proposed consent order is the current position of the parties and, if so, (2) whether there is any reason that motion should not therefore supersede the motion to find Taiwan Zest in default. The Commission also wishes to determine whether Taiwan Zest, as distinct from Jaw-Hwa International Patent and Trademark Offices, received the order to whose cause (Order No. 23) and the default ID (Order No. 28). The Commission will review the ID finding Taiwan Zest in default in light of comments received from the parties.

Written Submissions: The parties to the investigation are encouraged to file written submissions on the issue under review. Written submissions must be filed by May 21, 1992. Reply submissions are due by May 28, 1992.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours 8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: May 7, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-11228 Filed 5-12-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-333]

In the Matter of Certain Woodworking Accessories; Commission Determination Not to Review An Initial Determination Finding A Respondent In Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation finding respondent An Yun Industrial Co., Ltd. ("An Yun") in default, and that An Yun has thereby waived its right to appear, to be served with documents, and to contest the allegations in issue in the investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On March 11, 1992, the ALJ issued an order (Order No. 24) giving An Yun until March 25, 1992, to show cause why it should not be found to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. An Yun did not respond to the show cause order. On April 3, 1992, the ALJ issued an ID (Order No. 27) finding An Yun in default. In doing so, the ALJ found that An Yun had waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: May 5, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-11229 Filed 5-12-92; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this

notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) *Gangs in correctional facilities: a national assessment.*
(2) No form number. Office of Justice Programs.
(3) One-time response.
(4) State or local governments. Correctional population increases have accelerated the growth of prison gangs. Correctional administrators need practical methods for controlling these groups. The survey information collected from local, state, and Federal corrections officials will indicate the most effective methods for achieving this objective.
(5) 125 annual responses at .5 hours per response.
(6) 62.5 annual burden hours.
(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) *Application for nonresident alien's Mexican border crossing card.*
(2) Form I-190. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used to obtain data from an applicant for a Mexican Border Crossing Card, Form I-186/I-586; the data is used by INS to determine eligibility of applicant.
(5) 230,000 annual responses at .083 hours per response.
(6) 19,090 annual burden hours.
(7) Not applicable under 3504(h).

(1) *Application for registration; application for registration renewal.*
(2) Forms 225 and 225a. Drug Enforcement Administration.
(3) On occasion.
(4) State or local governments, businesses or other for-profit, non-profit institutions. The Controlled Substances Act requires all firms and individuals who manufacture, distribute, import, export, conduct research on, or dispense controlled substances to register with the DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.
(5) 10,000 annual responses at .5 hours per response.
(6) 5,000 annual burden hours.
(7) Not applicable under 3504(h).

Reinstatement of a previously approved collection for which approval has expired

(1) *1992 Directory survey of law enforcement agencies.*
(2) Form No. CJ-38.
(3) On occasion.
(4) State or local governments. This survey will collect data needed to update the law enforcement sector of the Justice Agency list. This information is essential to maintain a complete, current sampling and stratification frame for the triennial Sample Survey of Law Enforcement Agencies.
(5) 18,400 annual responses at .083 hours per response.
(6) 1,533 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: May 8, 1992.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-11225 Filed 5-12-92; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-29]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Nils M. Thorjussen, of Houston, Texas, and exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,067,015, entitled "System and Method for Tracking a Signal Source," which issued to the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, on January 3, 1978. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by July 13, 1992.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453-2430.

Dated: May 4, 1992.

Edward A. Frankle,

General Counsel.

[FR Doc. 11193 Filed 5-12-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries; Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on Friday, May 29, 1992, 9:30 a.m. to 12 p.m. at the John F. Kennedy Library, Columbia Point, Boston, Massachusetts.

This will be the sixth meeting of the committee. The agenda for the meeting will be a review of the startup operations of the Reagan Library and discussion of Presidential Library Museum exhibits, public programs and funding issues.

The meeting will be open to the public. For further information, call John Fawcett on (202) 501-5700.

Dated: May 5, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-11201 Filed 5-12-92; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems

The ACNW Working Group and the ACRS Subcommittee on Occupational and Environmental Protection Systems will hold a joint meeting on May 27, 1992 at the Holiday Inn of Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 8:30 a.m. until the conclusion of business. The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 27, 1992—8:30 a.m. until the conclusion of business.

The purpose of the meeting will be to review the following regulatory guides related to the implementation of the revised 10 CFR Part 20, "Standards for Protection Against Radiation":

—RG 8.7, Rev. 1, "Instructions for Recording and Reporting Occupational Radiation Exposure Data."
—RG 8.25, Rev. 1, "Air Sampling in the Work Place."
—RG 8.N.6, "Planned Special Exposures."
—RG 10.8, Appendix X, "Preparation of Applications for Medical Use Programs."
—RG 8.N.5, "Criteria for Monitoring and Methods for Summation of Internal and External Occupational Doses;" and
—RG 8.N.7, "Radiation Dose to the Embryo/Fetus."

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group/ACRS Subcommittee Chairmen; written statements will be accepted and made available to the Working Group/Subcommittee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the ACNW Working Group/ACRS Subcommittee, their consultants, and staff. Persons desiring to take oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group/ACRS Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group/ACRS Subcommittee will hear presentations by and hold discussions with the NRC staff and the nuclear industry, as appropriate.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff person, Mr. Giorgio Gnugnoli (telephone 301/492-9851) between 8:30 a.m. and 5:15 p.m.

Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 7, 1992.

Richard K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 92-11249 Filed 5-12-92; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 20, 1992 through April 30, 1992. The last biweekly notice was published on April 29, 1992 (57 FR 18168).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review 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. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 12, 1992, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 which 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 for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the

Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. 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 amendment 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 amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** 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 Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: March 20, 1992

Description of amendment requests: The proposed amendments would change the Containment Purge Valve Isolation System (CPVIS) operability requirements to be consistent with other containment penetration operability requirements. Specifically, the CPVIS would be declared OPERABLE if a deactivated automatic valve in the respective containment purge penetration is administratively secured in the closed position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability and consequences of an accident previously evaluated will not be increased by this proposed Technical Specification change. Section 15.7.4.2 of the UFSAR discusses fuel handling accidents.

Offsite doses are calculated as less than one-third of 10 CFR 100 limits. The accident analyses assume that the containment purge isolation valves are open and that there is an instantaneous release of activity from the containment. This Technical Specification change reduces the probability and consequences of a radiological release to the environment by requiring that the containment purge valves be closed, if not verified to be closeable on a CPIAS. A valve in the closed position removes the potential for the valve to fail to close on an isolation signal.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification change does not introduce any new operational conditions. The proposed amendment does not affect the requirement that the refueling purge valves be sealed and their breakers be locked open except during refueling operations.

The effect of this change will be to further limit when containment purge penetrations are permitted to be open. The proposed change does not affect plant equipment configuration and is administrative in nature. Therefore, it does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3 -- Involve a significant reduction in a margin of safety.

The containment purge isolation valves are not credited with mitigating the effects of a fuel handling accident in UFSAR Chapter 15 accident analyses. The proposed change will increase the margin of safety, not decrease the margin, by requiring that valve(s) be placed in their actuated position. This will further mitigate the effects of a fuel handling accident.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary & Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: April 8, 1992

Description of amendment request: The proposed amendment would remove the words "last operating cycle" for Main Steam Isolation Valve and personnel air lock door testing. This change will clarify that the test intervals are as required by 10 CFR 50 Appendix J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deleting the words "each operating cycle" from Surveillance 4.7.A.2.a(1) does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change is administrative in nature. It allows Pilgrim's 18 month (+25%) interval for performing Local Leak Rate Testing of the Main Steam Isolation Valves to be scheduled at 24 month intervals in accordance with 10CFR50 Appendix J. This change does not affect plant operation or design.

The proposed change deleting the words "each operating cycle" from Surveillance 4.7.A.2.a(2) does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change is administrative in nature. It clarifies the interval for performing Local Leak Rate Testing of the personnel air lock door in accordance with 10CFR50 Appendix J.III.D.2.b.ii which requires testing at 6 month intervals. This change does not affect plant operation or design.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes are administrative in nature and involve no physical alterations of plant configuration, no changes to setpoints or operating parameters, or exemptions from code requirements.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed amendment clarifies the appropriately allowed test interval and does not involve a significant reduction in a margin of safety because MSIV testing will continue to be conducted in accordance with the 10CFR50 Appendix J interval as will the personnel air lock testing.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199, attorney for the licensee.

NRC Project Acting Director: Victor Nerses

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 2, 1988 as revised by March 17, 1992

Description of amendment request: The proposed amendment would revise the provisions in the Technical Specifications to incorporate operability and surveillance requirements for core exit thermocouples (CET). A new specification and applicable footnotes would be added to Table 3.17.4 establishing minimum CET operability requirements, permissible bypass conditions, and compensatory actions to be taken in the event of CET inoperability. These action statements were revised in the March 17, 1992 submittal to require entry into a "Shutdown Action Statement" with less than three CET operable (vice two, as stated in the original proposed wording). A new item would also be added to Table 4.1.3 specifying periodic surveillance requirements for the CET. In addition, the licensee proposes to revise Basis paragraph 3.17 to reflect the above described changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely add operability and surveillance requirements for the upgraded core exit thermocouples (CETs) where none had existed previously. The upgraded CETs are environmentally qualified thermocouples with increased indicating range and improve the operators' ability to monitor core temperatures following an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely add operability and surveillance requirements for the upgraded

core exit thermocouples (CETs) where none had existed previously.

(3) Involve a significant reduction in a margin of safety.

The changes do not involve a significant reduction in the margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 24, 1988 as revised February 27, 1991

Description of amendment request: The proposed amendment would make changes to Technical Specifications (TS) 3.0.4 of the Fermi-2 operating license in accordance with staff guidance contained in Generic Letter 87-09. Currently, TS 3.0.4 prohibits entry into OPERATIONAL CONDITIONS or other specified conditions while relying on the provisions of the ACTION requirements of the TS. Many TS have exemptions to the provisions of TS 3.0.4. The proposed change would apply the restriction against entry into an OPERATIONAL CONDITION or other specified condition only when the Limiting Condition for Operation associated with a TS is not met and the ACTION requirements of the TS do not allow unlimited continued operation. Additionally, many of the exemptions to TS 3.0.4 will no longer be required and will be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluate.

In each case where relief from OPERATIONAL CONDITION change restrictions will now be available from Specification 3.0.4, it was either available before as specified in the individual specifications or it is now being proposed in recognition that taking the prescribed remedial action upon entry into a given specified condition, as opposed to having already been in that condition is not adverse to safety. This is a valid statement because such relief is only allowed when the prescribed action has no time limit, which signifies that unlimited operation under the ACTION has already been determined by the NRC to be an acceptably safe alternative means of meeting the LCO requirements. Based on the above, the proposed change to Specification 3.0.4 (and the editorial changes to the specifications where the provision of Specification 3.0.4 were previously stated to be not applicable) do not adversely affect the probability or consequences of any previously evaluated accident.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated in 1) above, the nature of the actions associated with this proposal ensure a level of safety commensurate with that which is normally required. These changes do not result in any modification to the plant or system operation and no safety-related equipment or function is altered. The changes do not create any new accident mode. Therefore, these conditions do not create the possibility of a new or different kind of accident previously evaluated and do not require analysis of potentially new or different accidents.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The premise upon which these changes are proposed is that the difference in safety margin between taking a time-independent action upon entry into a given OPERATIONAL CONDITION and taking the same action while in that condition is insignificant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: L. B. Marsh

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 13, 1992

Description of amendment request: The licensee proposes to change Technical Specification 3.6.5.5 to allow a pressurizer hatch between the lower and upper containment volumes to be open for up to six hours, instead of one hour, to facilitate inspections of components such as the PORV block valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated in the FSAR (Final Safety Analysis Report). Removal of the pressurizer hatch will not cause an increase in the probability of an accident which has been previously evaluated because the pressurizer hatch is not an accident initiator.

The consequences of an accident which has been previously evaluated will not be significantly increased by removal of the pressurizer hatch. As discussed in the preceding analysis, the new compression peak pressure of 8.17 psig is well below the acceptance criteria of 14.68 psig. In addition, the long term containment peak pressure will not be affected due to the delay time in melting of the ice.

The removal of the pressurizer hatch itself has been previously evaluated in modes 1, 2, 3, and 4. In a letter from your staff dated March 27, 1990, a safety evaluation report was issued which concluded that removal of the pressurizer hatch to facilitate inspections inside the pressurizer cavity was appropriate.

The possibility of a missile exiting through the open pressurizer hatch was also evaluated. FSAR Section 3.5.1.2 states that the only credible source of jet propelled missiles within the pressurizer cavity is from the pressurizer RTD (resistence temperature detector) wells. The physical location of these RTD wells with respect to the open hatch has been reviewed. In the event that these wells became missiles, their location makes it incredible that they would exit the open pressurizer hatch.

This proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed above, extending the time that the pressurizer hatch is allowed to be open will not create any new or different accidents from those previously evaluated. Removal of the pressurizer hatch to perform inspections inside the pressurizer cavity has been previously evaluated and determined to be acceptable. The preceding analysis provides results which conclude that the containment compression peak pressure, and the long term containment peak pressure, are acceptable with the pressurizer hatch open.

This proposed change will not involve a significant reduction in the margin of safety. As discussed in the preceding analysis, the new compression peak pressure of 8.17 psig is well below the acceptance criteria of 14.68 psig. In addition, the long term containment peak pressure will not be affected due to the delay time in melting of the ice.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: April 20, 1992

Description of amendment request: Consistent with the guidance in NRC Generic Letter 88-12, "Removal of Fire Protection Requirements From Technical Specifications," this Technical Specification Change Request proposes to (1) remove requirements for fire protection systems from the Technical Specifications (TS), (2) remove fire brigade staffing requirements from the TS, and (3) revise the administrative controls in the TS to support the fire protection program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPUN has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed TS does not involve a significant hazards consideration as defined in 10 CFR 50.92.

A. The proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

1. The proposed changes to the TS made in accordance with Generic Letter 88-12 do not alter GPUN's existing commitments on fire protection. These existing commitments have been reviewed and approved by the NRC. The probability and consequences of accidents has been evaluated for the existing approved FPP in NRC Safety Evaluation dated March 3, 1978 and supplements thereto.

License condition 2.C(3) requires any changes made to the FPP be evaluated under the provisions of 10 CFR 50.59 and allows only those changes that would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

2. The proposed change to TS 6.5.3.2.a does not effect previously evaluated accidents. Based on existing procedural controls which define the composition of the audit team, this change does not reduce the quality or effectiveness of the annual audit. The annual audit will continue to adequately assess plant fire protection equipment and program implementation.

3. The proposed change to TS tables 3.12-6 and 4.12-1 to reflect the installation of a new flow indicator for CRD system flow does not effect previously evaluated accidents. The use of the new flow indicator in the event of a fire does not alter the previous considerations.

4. The proposed change to TS tables 3.12-6 and 4.12-1 to delete the operability and surveillance requirement for the condensate transfer pump discharge pressure indicator does not [a]ffect previously evaluated accidents. The Appendix R strategy will not be affected since an existing Appendix R component is used to determine the operability of IC shell side water makeup systems.

5. The proposed change to TS table 3.12-6 to correct the readout location for shutdown cooling system flow is an administrative change only and does not [a]ffect previously evaluated accidents.

B. The proposed changes to the TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

1. The proposed changes to the TS made in accordance with Generic Letter 88-12 do not alter GPUN's existing previous evaluations of possible accidents. Further, license condition 2.C(3) requires that any changes to the FPP be evaluated via the 50.59 process to determine if the possibility of a new or different kind of accident would be created.

2. The proposed change to TS 6.5.3.2.a removes the requirement that offsite personnel shall be used to perform the annual fire protection and loss prevention program inspection and audit, and is unrelated to the possibility of creating a new or different kind of accident.

3. The proposed change to TS tables 3.12-6 and 4.12-1 to reflect the installation of a new flow indicator for CRD system flow does not create the possibility of a new or different kind of accident. The use of the new flow indicator in the event of a fire does not alter the previous evaluation.

4. The proposed change to TS tables 3.12-6 and 4.12-1 to delete the operability and surveillance requirement for the condensate transfer pump discharge pressure indicator does not create the possibility of an accident or malfunction of a type different from any previously identified since it's Appendix R function is performed by another existing Appendix R component.

5. The proposed change to TS table 3.12-6 to correct the readout location for shutdown cooling system flow is an administrative change only and does not create the possibility of a new or different kind of accident.

C. The proposed changes to the TS do not involve a significant reduction in a margin of safety.

1. The proposed changes to the TS made in accordance with Generic Letter 88-12 will maintain the existing margin of safety by transferral of the FPP provisions from the TS to the FSAR. Since the provisions of 10 CFR 50.59 allow for evaluation of any reduction in the margin of safety and allow for changes to the FPP without prior NRC approval after 50.59 evaluation, the proposed changes will not involve a reduction in a margin of safety.

2. The proposed change to TS 6.5.3.2.a does not reduce the quality or effectiveness of the annual audit. Therefore there is no reduction in a margin of safety.

3. The proposed change to TS tables 3.12-6 and 4.12-1 to reflect the installation of a new flow indicator for CRD system flow does not reduce any margin of safety. The new flow indicator enhances the operator's ability to monitor CRD system flow during a fire and was installed for this purpose.

4. The proposed change to TS tables 3.12-6 and 4.12-1 to delete the operability and surveillance requirement for the condensate transfer pump discharge pressure indicator does not reduce any margin of safety. Existing Appendix R instrumentation will be used to determine the operability of IC shell side water makeup systems during a fire.

5. The proposed change to TS tables 3.12-6 to correct the readout location for shutdown cooling system flow is an administrative change only and does not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: November 18, 1991

Description of amendment request: The proposed amendment would revise Hatch Unit 1 Technical Specifications (TS) to reflect the as-built conditions of the plant. Specifically, the request is to revise Unit 1 TS Tables 3.2-12, 3.2-13, 4.2-12, and 4.2-13; TS 4.9.A.7.b.2; their associated Bases; and the corresponding items in the Table of Contents. These portions of the TS deal with the 4160V undervoltage relays and are being revised to reflect the implementation in 1983 of a design change performed under Design Change Request (DCR) 82-34. The proposed change would resolve NRC deficiency 91-202-03 identified during the Summer 1991 Electrical

Distribution System Functional Inspection (EDSFI) at Plant Hatch.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are being made to reflect the actual as-built plant conditions for the 4160V emergency busses and the 1C Startup Transformer (SUT) undervoltage relays.... No physical changes are being made to the plant as a result of this proposed amendment. Also, no changes are being made to the function, operation, or testing of any of the undervoltage relays.

* * * * *

These changes are necessary to update the Technical Specifications to reflect accurately and completely the previously proposed, and implemented, changes. These administrative changes do not result in any physical changes to the plant. All equipment affected by this change will be operated and tested as before.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The change does not result in any new or different modes of operation, because the changes are being proposed to update the specifications to reflect the present plant design. The function of the relays will continue to be as described in Design Change Request 82-34 and GPC to NRC correspondence dated January 26, 1982. Also, as noted previously, all surveillances and testing presently performed on the relays will continue to be performed.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

These proposed changes only update the specifications to accurately reflect the relay functions. The undervoltage relays monitoring emergency bus voltage and inputting to the LOSP [loss-of-offsite power] circuitry meet IEEE Standard 279-1971.

All surveillance and testing requirements which assure the operability of these undervoltage relays remain the same. The margin of safety to the LOSP event is, therefore, not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 11, 1991, as supplemented February 20, 1992

Description of amendment request: The proposed amendments would revise Hatch Unit 1 Technical Specification (TS) 4.6.L and Hatch Unit 2 TS 4.7.4 concerning snubber surveillance to reflect the present guidance proposed in Enclosure B of NRC Generic Letter 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions," issued December 11, 1990.

The current guidance for snubber visual inspection schedule is based only on the number of inoperable snubbers found during the previous visual inspections, irrespective of the size of the snubber population. Many licensees, having a large number of snubbers, have spent a significant amount of resources and subjected plant personnel to unnecessary radiological exposure to perform the required visual inspections.

To alleviate this situation, the NRC staff developed an alternate guidance for visual inspections that maintains the same confidence level as the existing guidance and generally allows the licensee to perform visual inspections and corrective actions during plant outages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical change to the facility or its operating parameters is being made. The proposed changes were developed by the NRC Staff and maintain the same confidence level as the existing visual snubber inspection schedule as specified within Generic Letter 90-09. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to degrade the design, operation, or maintenance of the plant, a new mode of failure is not created. Therefore, a new or different kind of accident will not occur as a result of these changes.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The Surveillance Requirements set forth in Generic Letter 90-09 as alternate requirements for snubber visual inspection intervals were developed by the NRC Staff and, as addressed in Generic Letter 90-09, maintain the same confidence level as the present requirements. Therefore, incorporating the suggested Surveillance Requirements from Generic Letter 90-09 will not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 23, 1991

Description of amendment request: In accordance with 10 CFR 50.90, the following change to Clinton Power Station (CPS) Technical Specification 6.3, "Unit Staff Qualification," paragraph 6.3.1 is being proposed. The position title, Supervisor - Plant Operations, is being changed to Assistant Director - Plant Operations. This proposed change is editorial in nature in that it does not impact the current duties, responsibilities, or required qualifications associated with this position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below

1. The proposed change only affects the position title for the Supervisor - Plant Operations and does not alter the plant design or operation. As a result, this proposed change cannot increase the probability or the consequences of any accident previously evaluated.

2. The proposed change is editorial only and does not affect the plant design or operation. As a result, this proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change only affects the position title for the Supervisor - Plant Operations and does not alter the duties, responsibilities, or required qualifications associated with this position. In addition, this proposed change does not alter the plant design or operation. As a result, this proposed change cannot reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: April 3, 1992

Description of amendment request: The proposed amendment would delete Facility Operating License Condition 2.B.7(a), which has been satisfied. This amendment also would revise License Condition 2.A by deleting the words "740-acre."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below.

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Removal of the Cowseagan Causeway was accounted for in the station's accident analysis at the time the causeway was replaced by an appropriate bridge in 1974. Removing this Condition from the Facility Operating License will have no impact on the current accident analysis.

Because Maine Yankee need not modify the station radiological, environmental or security plans as a consequence of removing the "740 acre" site description, this change will not impact the existing probability or consequences of an accident previously considered.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no physical alterations to the plant configuration, changes to setpoint values or limits, or changes to procedures as a result of these proposed changes. The existing accident basis, therefore, will remain and conservatively bound plant operation with these changes. It is concluded that there is no possibility of a new or different accident resulting from these changes.

3. The proposed amendment would not involve a significant reduction in a margin of safety.

As indicated above, these proposed changes to the Facility Operating License do not modify any existing accident analysis, monitoring program, or emergency preparations. Additionally, these proposed changes will not create any new or different kind of accidents. We therefore conclude that these proposed changes do not result in a reduction in any margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Acting Director: Victor Nerses

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London, Connecticut

Date of amendment request: August 1, 1989, superseded April 13, 1992.

Description of amendment request: The proposed amendment to the Unit 1 Technical Specifications is in response to NRC Generic Letter (GL) 83-36 "NUREG-0737 Technical Specifications" concerning TMI items II.F.1.3, "Containment High Range Radiation Monitors," II.F.1.4, "Containment Pressure Monitors and II.F.1.5, "Containment Water Level Monitors." In addition, the licensee has proposed a change to TS 3.7.A.1, "Suppression Chamber Water Level and Temperature."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes described above and has concluded that they do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability of an accident previously evaluated.

The proposed changes regarding containment high-range radiation monitors, drywell pressure monitors, and torus water level monitors will have no impact on the initiation or consequences of an accident previously evaluated. These changes ensure that additional information is available to the operator for proper accident assessment. Therefore, the aforementioned changes do not increase the probability or consequences of a design basis accident nor do they affect the performance or failure probability or consequences of any safety systems. Additionally, the addition of Technical Specifications 3.7.A.1.d, 3.7.A.3.b, 3.7.A.4.c, and 3.7.A.6.d and the elimination of Technical Specification 3.7.A.7 are administrative in nature as they provide each substation within the containment systems section with its individual action statement instead of having an overall action statement. The action remains the same. As such, these changes have no affect on the initiation, probability, or consequences of any previously evaluated accident scenarios.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

These changes do not result in physical modification of the plant response or operator response to an accident, and no new failure modes are associated with these changes. Instrument drift factors were reviewed to ensure the instrumentation does not provide erroneous or conflicting information to the operator in any given situation. In addition, given the inherent characteristics of passive monitoring equipment, it has been determined that no new or different kind of accident has been created.

3. Involve a significant reduction in the margin of safety.

These changes do not impact the consequences on the protective boundaries, no safety limits for the protective boundaries are impacted, and the basis for any technical specification is not changed because the instrumentation associated with these changes are passive by nature and do not in any way affect the operation of any safety-related equipment. Also, the bases for these proposed technical specifications are being revised to include information regarding these systems which serve to provide additional information to plant personnel during and following an accident. Therefore, there is no reduction in the margin of safety associated with these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: April 15, 1992

Description of amendment request: The license amendment request proposes changes to the Monticello Technical Specifications in response to Generic Letter 90-09, "Alternative Requirements For Snubber Visual Inspection Intervals And Corrective Actions." Generic Letter (GL) 90-09 describes line-item Technical Specification improvements developed by the NRC Staff to alleviate problems being encountered with current snubber visual inspection requirements. The improvements described in GL 90-09 provide an alternative schedule for visual inspections of snubbers that maintains the same confidence level for identifying defective snubbers as the schedule in the Standard Technical Specifications. The alternative inspection schedule is based on the number of unacceptable snubbers found during the previous inspection, the total snubber category size, and the previous inspection interval. Implementation of the proposed changes will reduce occupational radiation exposure and will generally allow the snubber visual inspections and corrective actions to be performed during plant outages. In addition, the implementation of the proposed alternative snubber visual inspection schedule will allow for less frequent snubber inspections, provided the results of ongoing inspections are favorable. The proposed changes can be summarized as follows:

(a) The current snubber visual inspection schedule requirements would be eliminated from Technical Specification Section 4.6.H.1 and be replaced with a reference to new Technical Specification Table 4.6-1, which incorporates the alternative snubber visual inspection schedule described in Enclosure B to GL 90-09. It is unlikely that the population of snubbers at Monticello will ever exceed 300, so information provided in the GL pertaining to larger populations has been omitted. Also, the statement at the end of paragraph 4.7.9.b of Enclosure B to GL 90-09, which discusses the determination of the first inspection interval under the new criteria, is not included in proposed changes as it is a short term requirement which is no longer meaningful after the first inspection interval. However, the licensee will establish the first inspection intervals under the new criteria per the guidance of that statement.

(b) The current snubber visual inspection acceptance criteria described in Technical Specification Section 4.6.H.2 would be revised to be consistent with the guidance in GL 90-09. The most significant changes that will result from the revision to Section 4.6.H.2 are: (a) The requirements for visual inspection of the fasteners for attachment of the snubbers to components and anchorages would be added, (b) Standard requirements for the justification of continued operation with an unacceptable snubber, and the actions to be taken if continued operation cannot be justified, would be incorporated, and (c) The requirement to consider a snubber with a fluid plunger gauge below the low range inoperable for the purposes of establishing the next visual inspection interval is unnecessarily restrictive and would be eliminated. The fluid plunger gauges are not designed to give precision readings, and the fluid can be at or slightly below the low mark without adversely affecting snubber performance. If the visual inspection reveals the fluid level of a snubber is unacceptable (i.e., below the low range), the licensee would perform an assessment of the operability of that snubber and other susceptible snubbers, just as would be done for any other deficiency that caused the operability of a snubber to be in question. Also, a statement of Section 4.7.9.c of Enclosure B to GL 90-09 regarding snubbers connected to an inoperable common hydraulic fluid reservoir was not included because snubbers of this type are not installed at Monticello.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes incorporate the guidance of [GL] 90-09 into the Monticello snubber visual inspection program. The NRC Staff concluded in [GL] 90-09 that the alternative snubber visual inspection schedule, also described in [GL] 90-09, maintains the same confidence level in the operability of snubbers as the existing visual inspection schedule. Since the proposed changes conform with the guidance in [GL] 90-09, the confidence level in the operability of the snubbers is unchanged. It is therefore concluded that the proposed changes will not significantly affect the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any modification in operational limits. Only the snubber inspection program is being changed. Replacing the current snubber visual inspection requirements with requirements consistent with the guidance in [GL] 90-09 will not affect the capability of the snubbers to perform their intended function during normal or accident conditions. The resulting snubber visual inspection program will continue to assure the ability of snubbers to provide dynamic load support during a seismic event. It is therefore concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the accident analyses presented in the Updated Safety Analysis Report will remain bounding.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed snubber visual inspection requirements are consistent with the guidance in [GL] 90-09, and are equivalent to the previous requirements with regard to assuring the capability of the systems which are supported. The snubber functional testing continues to provide incentive for proper maintenance and assurance of the capability of the snubbers. It is therefore concluded that the proposed changes will not result in any reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: L. B. Marsh

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 3, 1992

Description of amendment request: The amendment would revise the Surveillance Requirements (SRs) in the Technical Specifications (TS) for the Standby Liquid Control (SLC) system. Specifically, this change request proposes to: 1) use the daily check of the SLC pump suction piping temperature to determine system operability, rather than heat tracing system operability; 2) verify that the piping is not blocked by pumping from the storage tank to a test drum, rather than to the test tank; and 3) require only one SLC storage tank heater to be operable, rather than two which are currently required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Standby Liquid Control (SLC) system is one of several systems designed to mitigate an Anticipated Transient Without Scram (ATWS) event. It is an accident mitigation system, and therefore, the implementation of the proposed change will not increase the probability of an accident. The SLC system is required to inject sodium pentaborate solution into the reactor vessel to control reactivity in the event the normal reactivity control systems are not functioning properly. The normal reactivity control systems are the Control Rod Drive (CRD) or the Alternate Rod Insertion (ARI) systems. The proposed TS changes do not affect the operation of the normal reactivity control systems (i.e., CRD or ARI systems). The proposed changes do not impact any other plant equipment or involve modifications to plant hardware. The probability of a malfunction of any SLC system components, or other equipment important to safety, is not affected by this proposed change since no physical changes are made and the proposed changes to the surveillance requirements (SRs) provide an equivalent level of assurance that the equipment will operate as designed. Therefore, the probability of an accident previously evaluated is not increased.

The proposed change to the SR for determining pump suction line temperature will continue to be a part of verifying SLC system operability by performing an identical check of suction piping temperature, but the heat tracing system will no longer be required operable. The heat tracing system is nonsafety-related and is powered from a nonsafety-related power supply. Upon implementation of the proposed changes, the heat tracing will be administratively controlled such that it can be removed from service, when required, if the ambient temperature in the suction piping area, or alternate heating methods, will maintain the suction piping temperature above 70 degrees F.

The proposed change to the SR concerning the blockage flow test will still utilize a similar flowpath (i.e., from the storage tank to the pump suction) but will be performed in a manner different from the current method. The test will require pumping the sodium pentaborate solution into a measurable test drum instead of the test tank. The drum will serve an identical purpose as that of the test tank, and the test will still identify any blockage which adversely impacts pump operation. In addition, flow testing will be performed by pumping demineralized water from the test tank back to the test tank. This will minimize waste sodium pentaborate in the system piping; thereby, further reducing the chance for flow blockage due to precipitation.

The current SR for storage tank heaters requires that both heaters be operable in order to satisfy the SLC system operability requirements. The "A" heater provides the safety-related automatic heat source for maintaining storage tank temperature while the "B" heater provides a backup source primarily used during mixing operations. Therefore, an operable "A" heater only is necessary to ensure SLC system operability. Since the "B" heater is manually actuated, and is only used during mixing operations, removing it from service to support maintenance activities is acceptable with respect to the requirements to maintain the SLC system operable, although the out-of-service periods should be kept to a minimum. A low storage tank temperature alarm is provided in the Main Control Room (MCR) to alert Operations personnel, so compensatory actions such as energizing the "B" heater, can be performed. This proposed change will require that in the event that the "A" heater is inoperable, compensatory surveillances be performed every eight (8) hours to determine storage tank temperature.

Therefore, the consequences of accidents previously evaluated remain unchanged since the proposed changes to the SRs will provide an equivalent level of assurance that the SLC system will be available to perform its design function.

2) The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLC system is a redundant and diverse system to the CRD and ARI systems. The SLC system is an accident mitigation system, and therefore, the proposed changes will not create the possibility of a new or different kind of accident. The proposed TS changes do not add or delete any equipment, and do not involve any systems or equipment which could create an accident. In addition, the proposed changes do not create the possibility of a new or different failure of any other equipment important to safety. The proposed changes to the SRs provide the same level of assurance that the SLC system will be available and capable of performing its design function.

Administrative controls will be provided to ensure that the SLC system heat tracing is in service when needed. The testing conditions and parameters as proposed, are equivalent to the current testing methods so that the system/equipment will not be subjected to more severe conditions than currently exists.

3) The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes to the SLC system SRs do not reduce the margin of safety since no physical changes are being made and the proposed SRs provide an equivalent level of assurance that the SLC system will be available and capable of performing its design function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 31, 1992

Description of amendment request: The proposed amendments would change Sections 3.9 and 4.9 of the Technical Specifications to modify existing surveillance requirements and add additional surveillance requirements for the Emergency Diesel Generators (EDGs). The changes are proposed in order to: 1) establish a more rigorous and comprehensive Surveillance Test Program for the EDGs in accordance with the guidelines in U.S. NRC Regulatory Guide 1.108 and NUREG-0123 (designated by the licensee as Group A changes); 2) reduce wear and stress on the EDGs by modifications to the EDG testing methodology, testing schedule and requirements for demonstrating EDG operability (Group B changes) in accordance with the guidelines in Generic Letter 84-15; 3) establish requirements consistent with NUREG-0123 for operability and for demonstrating operability of redundant

components and systems when an Alternating Current (AC) source is not operable (Group C changes); and 4) establish more specific requirements for minimum inventories of diesel fuel oil consistent with the guidelines in U.S. NRC Information Notice 89-50 (Group D Changes).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below. Operation of the facility in accordance with a proposed amendment will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated because all of the changes proposed by the licensee affect only the availability and reliability of AC power sources. The failure of an AC power source would not increase the probability of a reactor accident. Although the failure of an AC source could increase the consequences of a reactor accident, the proposed Technical Specification changes increase both the availability and reliability of the EDGs and thus would not increase the consequences of a reactor accident; or

2) create the possibility of a new or different type of accident from any previously evaluated. The cumulative effect of the proposed changes is to increase EDG reliability. The licensee does not introduce any new equipment or operating methods which would introduce the possibility of a different type of accident than previously evaluated. In addition, the licensee commits to implementing procedures for the proposed surveillance requirements that will ensure that the testing does not initiate unintended operational transients or initiate loss of AC power; or

3) involve a significant reduction in a margin of safety. As discussed in item (1), the proposed changes serve to increase the reliability and availability of the EDGs to perform their design function. This would not tend to decrease a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 8, 1992

Description of amendment request: The licensee requests an amendment to the Technical Specifications to revise Section 6.4 (Training). This section would be revised to reflect the change in the Code of Federal Regulations (CFR) which redesignated Appendix A to 10 CFR Part 55 as 10 CFR 55.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

No. The proposed change to the IP3 Technical Specifications indicated that the proposed change will not adversely affect the probability or consequences of any accident previously analyzed. The proposed change addresses the change in 10 CFR [Part] 55 that redesignated Appendix A of that section as 10 CFR 55.59. The change does not alter the operation of the plant or the assumptions or results of any accident analyses described in the FSAR [Final Safety Analysis Report]. Therefore, the probability and consequences of any previously analyzed accident is not adversely affected by this change.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

No. The proposed changes will not cause the initiation of any accident nor create any new credible single failure. The change does not result in any event previously deemed as incredible being made credible. The change does not alter the design, material or construction or method of operation of the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

No. The proposed change will not result in a change in the operation of the plant nor will it alter or invalidate the assumptions or results of any analyses described in the FSAR. Therefore, the proposed change will not result in significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: March 20, 1992

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to permit a plant design change that will eliminate the Resistance Temperature Detector (RTD) Bypass System which is currently used for the measurement of narrow range Reactor Coolant System hot leg and cold leg temperatures. The RTD Bypass System will be replaced by narrow range thermowell-mounted fast-response RTDs. The proposed TS changes also modify the requirements for the performance of a precision heat balance to determine Reactor Coolant System (RCS) flow rate by increasing the thermal power level at which the heat balance is required. New Hampshire Yankee (NHY) has also proposed changes to the RCS flow rate requirement by specifying the thermal design flow analysis value instead of the currently stated flow value which includes measurement uncertainty.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

New Hampshire Yankee has determined that License Amendment Request 92-01 does not involve a significant hazard consideration pursuant to the standards of 10CFR50.92 based on the following evaluation:

1. The proposed changes do not involve a significant increase in the probability or consequences of a[n] accident previously evaluated.

Westinghouse has prepared WCAP-13181 "RTD Bypass Elimination Licensing Report

for Seabrook Nuclear Station" (Proprietary) in support of the four loop operation of Seabrook Station utilizing new thermowell-mounted RTD's. For the Westinghouse scope, WCAP-13181 contains a safety evaluation for this modified hot leg and cold leg temperature measurement system. This significant hazards evaluation addresses both the mechanical modifications to the reactor coolant system pressure boundary and the instrumentation uncertainty changes associated with the modified system.

The installation of thermowells and fast response RTD's will not increase the probability of an accident previously analyzed. The modifications to the Reactor Coolant System pressure boundary will be performed utilizing the same ASME Section III installation requirements as were used for the original installation. The installation requirements are specified in the ASME Section III 1977 Edition thru Winter 1977 Addenda.

The removal of the bypass piping and valves associated with this piping will enhance the integrity of the Reactor Coolant System. By removing significant lengths of piping, numerous valves and instrument penetrations the probability of a small break LOCA will be reduced.

The new thermowell mounted RTDs have a total response time equivalent to the existing system as discussed in WCAP-13181. The increased instrumentation uncertainty associated with the new thermowell mounted RTDs necessitated an increase in the Overpower [delta-]T K4 term safety analysis limit and conservative changes to the K6 term to assure protection for all power ranges. The Overpower [delta-]T and Overtemperature [delta-]T functions thus continue to provide an equivalent degree of reactor protection. RTD signal processing and the added circuitry to the reactor protection system racks will be accomplished using the same type of Westinghouse 7300 series reactor protection system technology as has been previously qualified and used in the reactor protection system of Seabrook Station. There is no change in the use of the temperature signals by any reactor protection or reactor control system.

The compliance of Seabrook Station to IEEE 279-1971, ("IEEE Standard: Criteria for Protection Systems for Nuclear Power Generating Stations"), applicable NRC General Design Criteria and regulatory guides has not changed.

This modification does not increase the radiological consequences of any accident previously evaluated. Although the pressure boundary will be modified, proper welding techniques, penetrant testing, radiographs, and system hydrostatic tests will insure the integrity of the pressure boundary and thus not contribute to any radiological consequences.

The proposed revisions to Technical Specification 3/4.2.5 (DNB parameters) for RCS flow from a value that includes measurement uncertainty to the analysis limit has no effect on the accident analyses since the analysis limit which is based on the thermal design flow will not be changed. Appropriate measurement uncertainties for the method used to measure RCS flow, including the effect of venturi fouling, have been determined. This uncertainty will be added to the RCS flow requirement of Technical Specification 3/4.2.5 to establish the acceptance criteria for the measured value of RCS flow. The acceptance criteria for the measured value of RCS flow will be specified in appropriate procedures.

Surveillance Requirement 4.2.5.3 for the precision heat balance determination of RCS flow is changed from being required prior to operation above 75% Rated Thermal Power (RTP) to being required prior to exceeding 95% RTP. Performance of the precision heat balance above 90% RTP was recommended by Westinghouse in association with the RTD bypass elimination to minimize flow rate measurement uncertainties that are exacerbated at lower power levels. The precision heat balance is performed each cycle to detect changes in the RCS flow element (elbow taps) characteristics that would affect the accuracy of the RCS flow indication. Significant changes in the characteristics of all of the elbow taps over a single operational cycle is not credible. Performing the flow rate measurement prior to exceeding 95% RTP provides adequate margin to DNB in the highly improbable event that there is a degradation in RCS flow rate that is masked by a simultaneous non-conservative change in all elbow taps.

The effect of the increased instrument uncertainty on updated Final Safety Analysis Report (UFSAR) Chapter 6 and 15 LOCA and non-LOCA accident analyses within the Westinghouse scope has been evaluated as discussed in WCAP-13181. Relative to both the LOCA and non-LOCA safety analysis, Westinghouse has concluded in WCAP-13181 that the modification does not affect the conclusions of the UFSAR safety analyses.

Additionally, Yankee Atomic Electric Company (YAEC) has evaluated the affect of the modified system for hot leg and cold leg temperature measurement on (1) containment response, (2) Boron Dilution events and (3) Steam Generator Tube Rupture design basis events.

Relative to containment response YAEC concluded that during the limiting event (large break LOCA), the early containment pressure response during the blowdown phase may increase slightly due to the increased uncertainties associated with the modification. However, the long term and peak containment pressures are still valid and the effects of the modification on the containment response is bounded by the current analysis. The YAEC evaluation of the affect of the modification on containment response is enclosed in Section VIII.

Yankee Atomic Electric Company has concluded that the increase[d] uncertainties associated with the modification will have a negligible effect on the Steam Generator Tube Rupture analysis which was performed by them and submitted to the NRC on April 16, 1991 in NHY letter NYN-91061. Yankee Atomic Electric Company also concluded that the modification will have negligible effect on the Boron Dilution analysis to be performed by them for Cycle 3. The YAEC evaluation of the affect of the modification on the Steam Generator Tube Rupture analysis and on the Boron Dilution Analysis which is to be performed for Cycle 3 is enclosed in Section VIII.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The removal of the RTD Bypass System will not create the possibility of a new or different kind of accident from any accident previously evaluated. The reactor coolant pressure boundary modifications design and installation will be equivalent to the original RCS design and installation. Reactor coolant loop temperature inputs for reactor control and reactor protection functions will continue to be supplied. Other equipment important to safety will be unaffected and will continue to function as designed.

The removal of the Resistance Temperature Detector (RTD) bypass piping and the installation of a modified temperature measurement system does not affect the integrity of the reactor coolant system pressure boundary. This is due to the reactor coolant piping (pressure boundary component) modifications adhering to the ASME Code (Sections III, Class 1 and Section XI) and to the NRC General Design Criteria. Installation requirements will be equivalent to the original RCS installation pursuant to ASME Section III, 1977 Edition thru Winter 1977 Addenda.

The removal of the RTD Bypass System eliminates components that have been a major cause of plant outages in the industry as well as a major contributor to occupational radiation exposure. Additionally, with these components removed, the probability of a malfunction from them is eliminated. The installation of fast response thermowell mounted RTDs on the reactor coolant loop piping and additional processing electronics will continue to provide the individual loop temperature signals for input to the reactor control and reactor protection systems using components that are environmentally and seismically qualified.

The RTD Bypass System flow alarm is no longer required to warn of flow reduction that would affect instrument system response. Flow through the scoop tubes with thermowells is not monitored because blockage of the flow path is not credible. Blockage is not credible because of the multiple scoop tube holes, the size of the holes, and administrative and chemistry controls that prevent the introduction of objects that could block the flow path.

The modification does not affect the ability of the protection system to mitigate the radiological consequences of any accident. The new RTD signals are processed to provide equivalent signals to those provided by the original direct immersion RTDs. Since three RTDs will be used to provide an average hot leg temperature as opposed to the original use of one RTD, the consequences from a failed RTD are unchanged. Manual actions to bypass a failed RTD channel remain the same.

3. The proposed changes do not result in a significant reduction in the margin of safety

The instrumentation uncertainty analysis associated with this modification has

resulted in proposed Technical Specification changes to the uncertainty terms associated with Overpower [delta-]T and Overtemperature [delta-]T and low Reactor Coolant System (RCS) Flow reactor trip functions. Additionally RCS average temperature measurements used for control board indication and input to the rod control system, and the value of the RCS flow measurement uncertainty are also affected by the modification. The safety evaluations of this modification which have been performed by Westinghouse and YAEC referenced above conclude that sufficient margin exists such that margins to safety are not affected.

The proposed Technical Specification changes also include the elimination of the bypass piping loop low flow alarms and the revision to the Technical Specification requirement for RCS flow. The proposed change to the RCS flow requirement to specify analysis values provides consistency in this Technical Specification for DNB limits which currently specifies analysis values for Tavg and pressurizer pressure. This change to an analysis value for RCS flowrate does not affect any margin of safety.

The RTD Bypass System flow alarm is no longer required to warn of flow reduction that would affect instrument system response. Flow through the scoop tubes with thermowells is not monitored because blockage of the flow path is not credible. Blockage is not credible because of the multiple scoop tube holes, the size of the holes, and administrative and chemistry controls that prevent the introduction of objects that could block the flow path. The removal of this alarm does not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Acting Project Director: Victor Nerses

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of amendment request: April 2, 1992

Description of amendment request: The proposed amendment would modify the operating license to remove authorization for reactor power operation upon the permanent cessation of operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), Southern California Edison Company (SCE or the licensee) has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

No. The proposed change will remove SCE's authorization to operate SONGS 1 as a nuclear generating station. The proposed amendment does not modify the present plant systems or administrative controls necessary to preserve and protect the integrity of the spent fuel pool. The proposed amendment will actually involve a significant decrease in the probability or consequences of previously evaluated accidents since there will not be any fuel in the reactor. Those design basis accidents credible for an operating reactor are eliminated when SONGS 1 is permanently shutdown and completely defueled. In addition, a fuel handling accident has been previously analyzed to address the consequences of an accident while fuel is in the spent fuel pool, in the reactor, or in transit during core off load. The probability or consequences from a fuel handling accident remains unchanged and bounded by the accident analysis. Therefore, the proposed change is deemed not to involve a significant hazard.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Upon permanent shutdown and defueling the reactor at the end of Fuel Cycle 11 under this proposed change, SCE's authorization to resume power operations is removed. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated. Any accident associated with this proposed change is bounded by current accident analyses. Existing analyses address potential accident scenarios from reactor startup through full power operation. There are no new accident scenarios or failure modes created by maintaining the reactor in the defueled condition. In the permanently shutdown, defueled condition with all fuel stored in the spent fuel pool, there are no new credible accident conditions from those previously analyzed. Therefore, the proposed change will not create the possibility of new or different kind of accident.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in the margin of safety?

No. The proposed change removes SCE's authorization to operate SONGS 1 as a nuclear generating station. Defueling the reactor and placing the fuel in long term storage in the spent fuel pool in a subcritical condition does not affect previously accepted margins of safety. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on the above Safety Analysis, it is concluded that: (1) the proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Boeletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: Seymour H. Weiss

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: November 27, 1991

Description of amendment request: This amendment proposes to change Technical Specifications 3/4.4.4, 3/4.4.8.1 and 3/4.4.8.3 and their associated Bases in response to the recommendations of Generic Letter 90-06 to resolve Generic Issues 70 "Power-Operated Relief Valve and Block Valve Reliability," and 94 "Additional Low-Temperature Overpressure Protection for Light-water Reactors."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes improve the overall safety of the plant by providing additional Low-Temperature Overpressure Protection (LTOP) and improving the reliability of the Power-Operated Relief Valves (PORVs) and block valves. The reliability of the PORVs and block valves will be improved with the revisions made to the Action Statements of Technical Specification (TS) 3/4.4.4. The Action Statements identify when the block valves are permitted to close, when

power is permitted to be removed from the block valves, and when control of the PORV should be shifted to manual. The reliability of the PORVS and block valves is also improved by changing Surveillance Requirement 4.4.8.1.2 to assure operability when needed and prohibit testing when the valves should remain closed.

The proposed changes to the LTOP TS are to allow the use of one PORV and one residual heat removal (RHR) suction relief valve to satisfy the LTOP protection requirements, and to reduce the allowed outage time in MODES 5 and 6. As stated in the current Bases for this TS, any one PORV or RHR suction relief valve has sufficient relief capacity to prevent the overpressurization of the reactor coolant system (RCS) as a result of a LTOP design transient. The TS requirement to have two valves available for LTOP mitigation is necessary to satisfy the single active failure criterion. Therefore, the additional allowance for the use of one PORV and one RHR suction relief valve for LTOP mitigation would not adversely affect the results of the design LTOP transient analyses, and has no effect on the probability of occurrence of an LTOP design transient.

Reducing the allowed outage time in MODES 5 and 6 will decrease the probability of an overpressure transient when the plant is most vulnerable. This change will not affect the consequences of any accident, but it will reduce the probability of an overpressure event.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because:

Only the new equipment combination of using one RHR suction relief valve and one PORV for overpressure protection has the potential for creating a new or different kind of accident. However, there is no potential single failure that may make both devices inoperable. Thus, the devices can continue to be assessed separately and the new combination does not create the possibility of a new or different kind of accident. The remaining changes do not create any new failure modes, equipment combinations, or operating modes not previously considered to determine potential accidents.

3. The proposed change does not involve a significant reduction in the margin of safety because:

Compliance with the proposed Technical Specification changes would improve the availability of the overpressure protection devices. The allowances for the use of one PORV and one RHR suction relief valve for use in LTOP mitigation is entirely within the current Bases of the LTOP mitigation system at Comanche Peak Steam Electric Station, Unit 1. The ability to operate the PORVs in manual for a period of time when the block valves are inoperable is considered an enhancement due to the increased availability of the PORV for manual overpressure protection and RCS pressure control even though the duration of a stuck open PORV would be affected. Hence, the proposed revisions do not adversely impact the safety of CPSES; in fact, they are considered to offer an overall improvement in safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for an amendment involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: December 27, 1991

Description of amendment request: The proposed amendments would change the pressure/temperature (P/T) limits during heatup and cooldown and the low temperature/overpressure protection system (LTOP) setpoints for Units 1 and 2. The current P/T limits and LTOP setpoints are valid through 10 effective full power years of operation (EFPY) for both units. Unit 1 is expected to reach 10 EFPY in April 1993 and Unit 2 in September 1993. The revised values would be valid through 12 EFPY for Unit 1 and through 17 EFPY for Unit 2. The P/T limit curves are required by Appendix G of 10 CFR Part 50. The proposed curves include the effects of the incremental radiation exposure on the reactor vessel beltline region and have been prepared utilizing standard methodologies and the requirements of Regulatory Guide 1.99, Revision 2. The revised LTOP setpoints have been developed to provide bounding heatup and cooldown curve protection for the worst-case mass and heat addition low temperature overpressure transients.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed changes will not] result in a significant increase in the probability or consequence of an accident previously evaluated. The application of the revised pressure-temperature limitations and the revised LTOP setpoints [result] in greater restrictions on the operation of the units and will insure that the requirements of 10 CFR [Part] 50, Appendix G, for fracture toughness of the Reactor Coolant System pressure boundary will continue to be satisfied.

2. [The proposed changes will not] create the possibility of a new or different kind of accident from any accident previously identified. There will be greater restrictions on the operation of North Anna Power Station Units 1 & 2 using the revised pressure-temperature limitations and the revised LTOP setpoints. These restrictions will insure that the requirements of 10 CFR [Part] 50, Appendix G, for fracture toughness of the Reactor Coolant System pressure boundary will continue to be satisfied. The proposed amendments will not result in other changes in the way the units are operated.

3. [The proposed changes will not] result in a significant reduction in a margin of safety. The revised pressure-temperature limitations and the revised LTOP setpoints will insure that the requirements of 10 CFR [Part] 50, Appendix G, for fracture toughness of the Reactor Coolant System pressure boundary will continue to be satisfied. The safety factors defined in the ASME Code and the requirements of 10 CFR [Part] 50 Appendix G provide the basis for the applicable safety margins. The plant specific information obtained from the testing of the sample vessel material and utilized to develop the revised pressure-temperature limitations and the revised LTOP setpoints will confirm that these safety margins are not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 15, 1991

Description of amendment request: The proposed amendment increases the surveillance test intervals and allowable outage times for the reactor core isolation cooling (RCIC) system actuation instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes have been shown to have insignificant impact to overall RCIC failure rates and operability. As shown by generic analyses enveloping WNP-2, performed by General Electric for the Boiling Water Reactor Owner's Group ... the changes do not significantly degrade the reliability of the RCIC. Further, as shown in the General Electric analysis specific to RCIC changes the increase in water injection failure frequency due to the proposed changes to the RCIC system is less than 1% and, in absolute value, well within established acceptance criteria. Hence the probability and consequences of previously evaluated accidents are not significantly increased due to this change. To the contrary as stated in the General Electric analysis ... the changes, in combination with similar changes to ECCS, RPS, Isolation Actuation and Control Rod Block instrumentation, provide a net improvement in overall plant safety. This is due to the optimization of system downtime, testing and failure probabilities.

2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the RCIC function and reliability are not significantly degraded by these changes. No new modes of plant operation are introduced with these changes. Hence, no new or different kind of accident is credible.

3) The proposed changes do not involve a significant reduction in a margin of safety because, as shown in the generic analyses enveloping WNP-2 performed by General Electric for the Boiling Water Reactor Owner's Group ... the changes represent an overall improvement in plant safety. This ... is due to the optimization of system downtime, testing and failure probabilities. As such the margin of safety is enhanced by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: April 10, 1992

Description of amendment request: The proposed amendment removes the schedule for withdrawal of material specimens from the reactor vessel. A schedule approved by the NRC already exists in the Final Safety Evaluation Report (FSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Supply System has evaluated this amendment request per 10 CFR 50.92 and determined that it does not represent a significant hazard because it does not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the regulatory requirement of 10 CFR 50 Appendix H will remain in effect in the Technical Specifications. Removing Table 4.4.6.1.3-1, and any references to it, will not result in any loss of regulatory control because changes to this schedule are controlled by the requirements of 10 CFR 50 Appendix H. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because as previously stated in Appendix H Section II.B.3 of 10 CFR 50, the licensee must have a withdrawal schedule approved by the NRC prior to program implementation. Removal of Table 4.4.6.1.3-1 and any references to it only eliminates duplication of a requirement that is already adhered to by compliance to 10 CFR 50 Appendix H. No new modes of operation of any equipment result due to this change. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in a margin of safety because the surveillance requirement still requires surveillance specimens to be removed and examined, to determine changes in material properties, at intervals required by 10 CFR 50 Appendix H. Further, no change is made in the requirement that the results of these examinations shall be used to update the pressure/temperature curves of Technical Specification Figure 3.4.6.1. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Previously Published Notices of Consideration of Issuance of Amendments To Operating Licenses and Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 16, 1992

Description of amendment request: The proposed amendment would modify the existing two region spent fuel pool design of Millstone, Unit No. 2, modified by amendment 109, dated January 15, 1986, and amendment 128, dated March 31, 1988, to a three region configuration.

Date of publication of individual notice in **Federal Register:** April 28, 1992 (57 FR 17934)

Expiration date of individual notice: May 28, 1992

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 11, 1990

Brief description of amendment: The proposed Technical Specification (TS) revises Section 3/4.7.2 to provide clarification of those redundant components that constitute an Operable Control Room Emergency Filtration System subsystem and the actions required in the event that one or both subsystems are inoperable. In addition, changes to the Surveillance Requirements were requested to revise the listing of actuation signals for the system and to minimize unnecessary run time for the recirculation and emergency makeup air filter trains.

Date of issuance: April 22, 1992

Effective date: April 22, 1992

Amendment No.: 81

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15640) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: March 30, 1992, as supplemented April 10, 1992, and April 16, 1992.

Brief description of amendment: The amendment revises the Surveillance Requirement for the Arkansas Nuclear One, Unit 2 steam generator (SG) tubing, Technical Specification 4.4.5. The amendment allows the installation of tube sleeves as an alternative to plugging defective SG tubes.

Date of issuance: April 22, 1992

Effective date: April 22, 1992

Amendment No.: 133

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1992 (57 FR 11526) The additional information contained in the supplemental letters dated April 10, 1992, and April 16, 1992, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The notice period ends May 4, 1992. However, due to changed circumstances, the amendment was issued prior to the end of the 30-day notice period. The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 22, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: November 14, 1990, as supplemented by letters dated June 6, June 14, September 18, November 27, and December 12, 1991, and February 13, 1992.

Brief description of amendment: The amendment revises Technical Specifications to allow for reracking of Spent Fuel Pool "A".

Date of issuance: April 27, 1992

Effective date: April 27, 1992

Amendment No.: 164

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1991 (56 FR 66939) The supplemental submittals provided additional clarifying information and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 27, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: December 23, 1991

Description of amendment request: The amendment revises Technical Specification 4.6.1.2.d, Primary Containment Leakage, by granting an exemption from local leak rate testing requirements of Appendix J to 10 CFR Part 50 as they apply to the packing and body-to-bounnet seal of test boundary valve 1E51-F374, and by modifying Operating License Conditon 2.D, Exemptions.

Date of issuance: April 24, 1992

Effective date: April 24, 1992

Amendment No.: 62

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications and amended the license.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9445) the Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Docket No. 50-316, Donald C Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: February 15, 1991 and supplemented December 13, 1991

Brief description of amendment: The amendment changes the Appendix A, Technical Specifications (TS) and associated Bases relating to boric acid storage tank and refueling water storage tank operability requirements to reflect reanalysis for Cycle 8.

Date of issuance: April 22, 1992

Effective date: April 22, 1992

Amendment No.: 148

Facility Operating License No. DPR-74. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22469). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: December 16, 1991

Brief description of amendment: The amendment changes references to the spent fuel pool area radiation monitors in the Technical Specifications to remove any inference that they perform a criticality monitoring function, thereby making the Technical Specifications consistent with the NRC exemption issued October 18, 1991.

Date of issuance: April 24, 1992

Effective date: April 24, 1992

Amendment No.: 65

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4490) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: October 22, 1991

Brief description of amendment: Revises the Appendix A Technical Specifications to revise surveillance test intervals and allowable out-of-service time limits for common instrumentation serving the reactor protection system and containment isolation system.

Date of issuance: April 16, 1992

Effective date: April 16, 1992

Amendment No.: 81

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (55 FR 64657) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 5, 1992, as supplemented April 8, 1992

Brief description of amendment: The amendment revised the Fort Calhoun Technical Specifications, incorporating the latest NRC-approved revisions to core reload topical reports, and was administrative in nature.

Date of issuance: April 22, 1992

Effective date: April 22, 1992

Amendment No.: 144

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9450) The additional information contained in the supplemental letter dated April 8, 1992, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 9, 1992, as supplemented by letter dated March 23, 1992.

Brief description of amendment: The proposed amendment implemented Generic Letter (GL) 90-09 concerning snubber visual inspection testing in Technical Specification (TS) 3.14. The amendment also deleted TS 3.14(2), which is now unnecessary, and corrected a typographical error in the Bases for 3.14. The issues dealing with GL 91-01 are being addressed separately.

Date of issuance: April 23, 1992

Effective date: April 23, 1992

Amendment No.: 145

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4491) The additional information contained in the supplemental letter dated March 23, 1992, was clarifying in nature and, thus, within the scope of the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 18, 1991, as supplemented by letters dated May 3 and November 22, 1991 (License Amendment Request LAR 94-01)

Brief description of amendments: These amendments revised the combined Technical Specifications for the Diablo Canyon Power Plant Unit Nos. 1 and 2 by deleting the requirement to verify that the containment fan cooler unit (CFCU) dampers transfer from the normal to the accident position, subsequent to a planned CFCU modification that will secure the dampers in their accident position.

Date of issuance: April 17, 1992
Effective date: April 17, 1992
Amendment Nos.: 69 and 68
Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24214) The supplemental letter dated November 22, 1991 contained clarifying information and did not affect the proposed determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 17, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 5, 1991 (Reference LAR 91-06)
Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 to support a comprehensive program to upgrade the plant radiological monitoring system.
Date of issuance: April 20, 1992
Effective date: April 20, 1992
Amendment Nos.: 70 and 69
Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37588) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 20, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: November 4, 1991 and supplemented by letter dated March 4, 1992
Brief description of amendments: These amendments changed the Technical Specification Section 6.0, "Administrative Controls," to reflect organizational changes within the Nuclear Department Organization of Pennnsylvania Power and Light Company (PP&L) made as a result of an Operational Effectiveness Review.
Date of issuance: April 22, 1992
Effective date: April 22, 1992
Amendment Nos.: 117 and 86
Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4492) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: March 3, 1992
Brief description of amendment: The amendment provided a one-time change to the Technical Specifications to extend the allowed outage time for the Emergency Core Cooling Systems supported by the "B" loop of the Emergency Service Water system to allow for continued operation of Unit 2 while repairs and modifications are made on the "B" loop.
Date of issuance: April 22, 1992
Effective date: April 22, 1992
Amendment No. 18
Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9450) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1992. No significant hazards consideration comments received: No
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: June 26, 1990
Brief description of amendments: The amendments revise the NA-1&2 TS requirements governing the operability of the emergency and vital busses of AC distribution by making the re-energization and power source requirements of the vital busses more specific and conservative.
Date of issuance: April 21, 1992
Effective date: April 21, 1992
Amendment Nos.: 155 and 137
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30320) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 21, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 16, 1991
Brief description of amendments: The amendments clarify the emergency power supplies which must be operable in modes 5 and 6 and add to the applicability sections the case of moving irradiated fuel assemblies or any loads over irradiated fuel assemblies with the reactor defueled. Finally, the requirement to establish containment integrity if a required bus is lost is deleted.
Date of issuance: April 21, 1992
Effective date: April 21, 1992
Amendment Nos.: 156 and 138
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22481) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 21, 1992. No significant hazards consideration comments received: No.
Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Notice of Issuance of Amendment to Facility Operating License And Final Determination of No Significant Hazards Consideration And Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following

amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 12, 1992, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 which 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 for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. 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 amendment 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.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, 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) 3426700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Duquesne Light Company, et. al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: January 13, 1992

Description of amendment request: The amendment revises Table 3.2-1 of Technical Specification 3.2.5, "DNB Parameters." Specifically, it lowers the value for the minimum required reactor coolant system (RCS) total flow rate from 274,800 gpm to 270,850 gpm and lowers the flow measurement uncertainty value, specified in the footnote, from 3.5% to 2.0%.

Date of issuance: April 23, 1992

Effective date: April 23, 1992

Amendment No.: 45

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 23, 1992.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 5th day of May 1992.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 92-11099 Filed 5-12-92; 8:45 am]

BILLING CODE 7590-01-F

Uranium Mill Facilities, Request for Public Comments on Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments and Position and Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is soliciting public comment on two guidance documents: "Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, section 11e.(2) Byproduct Material in Tailings Impoundments" and "Position ad Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores;" along with the associated staff analyses.

DATES: The comment period expires June 12, 1992.

ADDRESSES: Send written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or hand deliver to 7920 Norfolk Avenue, Bethesda, MD, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 504-2555.

SUPPLEMENTARY INFORMATION:

Discussion

NRC staff has prepared a revision to its licensing guidance, issued July 27, 1988, on the disposal of material other than that defined in section 11e.(2) of the Atomic Energy Act of 1954 (AEA), as amended, in uranium mill tailings impoundments (Part A of the Supplementary Information). The staff has also prepared new licensing guidance on the processing of feed materials other than natural ores in uranium mills (Part B of the Supplementary Information). In developing the guidance, staff analyzed the policy and legal issues involved for each guidance document. In order to solicit input all interested parties on the issues associated with these guidance documents, the NRC is soliciting comments from the public, the Environmental Protection Agency, NRC Agreement States, and regional low-level waste compacts. Comments received will be considered in deciding whether the guidance documents should be revised.

In the guidance documents and associated staff analyses, the term "non-11e.(2) byproduct material" is used to refer to radioactive waste that is similar in physical and radiological characteristics (for example, low specific activity) to byproduct material, as defined in Section 11e.(2) of the AEA but does not meet the definition in that section because it is not derived from ore processed primarily for its source material content.

The staff analyses in Parts A and B contain additional definitions and extensive background information necessary to understand the summary guidance documents. The reader should consult the analyses for the terms and issues presented in context.

Part A—Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments

1. In reviewing licensee requests for the disposal of source material wastes that have radiological characteristics comparable to those of Atomic Energy Act (AEA) of 1954, section 11e.(2) byproduct material (hereafter designed as "11e(2) byproduct material") in tailings impoundments, staff will follow the guidance set forth below. Licensing of the receipt and disposal of such non-AEA, section 11e.(2) byproduct material [hereafter designated as "non-11e.(2) byproduct material"] should be done under 10 CFR Part 40.

2. Naturally occurring and accelerator produced material waste shall not be authorized for disposal in an 11e.(2) byproduct material impoundment.

3. Special nuclear material and Section 11e.(1) product material waste should not be considered as candidates for disposal in a tailings impoundment, without compelling reasons to the contrary. If staff believes that such material should be disposed of in a tailings impoundment in a specific instance, a request for approval by the Commission should be prepared.

4. The 11e.(2) licensee must demonstrate that the material is not subject to applicable Resource Conservation and Recovery Act regulations or other U.S. Environmental Protection Agency standards for hazardous or toxic wastes prior to disposal.

5. The 11e(2) licensee must demonstrate that there are no Comprehensive Environmental Response, Compensation and Liability Act issues related to the disposal of the non-11e(2) byproduct material.

6. The 11e.(2) licensee must demonstrate that there will be no significant environmental impact from disposing of this material.

7. The 11e.(2) license must demonstrate that the proposed disposal will not compromise the reclamation of the tailings impoundment by demonstrating compliance with the reclamation and closure criteria of appendix A of 10 CFR part 40.

8. The 11e.(2) licensee must provide documentation showing approval by the Regional Low-Level Waste Compact in whose jurisdiction the waste originates as well as approval by the Compact in whose jurisdiction the disposal site is located.

9. The Department of Energy should be informed of the Nuclear Regulatory Commission findings and proposed action, with an opportunity to provide comments within 30 days, before granting the license amendment to the 11e.(2) licensee.

10. The mechanism to authorize the disposal of non-11e.(2) byproduct material in a tailings impoundment is an amendment to the mill license under 10 CFR Part 40, authorizing the receipt of the material and its disposal. Additionally, an exemption to the requirements of 10 CFR Part 61, under the authority of § 61.6, must be granted. The license amendment and the § 61.6 exemption should be supported with a staff analysis paper addressing the issues discussed in this guidance.

NRC Staff Analysis of Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments

1. Introduction

Recently, the Nuclear Regulatory Commission (NRC) received several requests to allow activities other than the normal processing of native uranium ore at licensed uranium milling facilities. We have, in the past, received, and, in some cases, approved, similar requests. These requests have fallen into two categories. The first category of requests is to allow the processing of feedstock material that is not usually thought of as ore, for the extraction of uranium, and then dispose of the resulting wastes and tailings in the facility's tailings pile. The second category of requests is to allow the direct disposal of non-Atomic Energy Act (AEA) of 1954, section 11e.(2) byproduct material [1] [hereafter designated as "non-11e.(2) byproduct material"], that was not generated onsite, into tailings piles.

In assessing these requests, the staff has raised two policy concerns related to tailings piles. The first concern is that the requested activity might result in complicated, dual, or even multiple regulation of the tailings pile, and the second concern is that the requested activity might jeopardize the ultimate transfer to the United States Government, for perpetual custody and maintenance, of the reclaimed tailings pile.

This analysis addresses the second category of requests, that is, requests to dispose of non-11e.(2) byproduct material in tailings piles. Issues relating to such proposals requesting regulatory consideration of commingling of tailings with other radioactive wastes are discussed. This analysis is limited to options involving commingling with existing tailings impoundments.

2. Background

The Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 amended the AEA to specifically include uranium and thorium mill tailings and other wastes from the process as radioactive material to be licensed by NRC. Specifically, the definition of byproduct material was revised in Section 11e.(2) of the AEA, to include ". . . the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content."

The definition of byproduct material [2] in Section 11e.(2) of the AEA includes all the wastes resulting from the milling process, not just the radioactive components. In addition, Title II of UMTRCA amended the AEA to explicitly exclude the requirement for the Environmental Protection Agency (EPA) to permit 11e.(2) byproduct material under the Resource Conservation and Recovery Act (RCRA). The designation of 11e.(2) byproduct material contrasts significantly with the situation for source material [3] and other radioactive materials controlled under the authority of the AEA. This possibility for dual regulation by both NRC and EPA can become an issue when dealing with mixed hazardous wastes. As a result of UMTRCA, NRC amended 10 CFR Part 40 to regulate the uranium and thorium tailings and wastes from the milling process. Thus, under normal operation, all the tailings and wastes in an NRC or Agreement State licensed mill producing uranium or thorium are classified as "11e.(2) byproduct material," and are disposed of in tailings piles regulated under Part 40. They are not subject to EPA regulation, under RCRA. However, the EPA Clean Air Act regulations still result in direct EPA permit authority over the mill tailings, whether or not they are commingled with non-11e.(2) byproduct material waste.

The UMTRCA also required and provided for long-term custody and surveillance of the byproduct material and the land use for its disposal. The Department of Energy (DOE) is the Federal agency currently designated as

[1] For the purposes of this analysis, the term "non-11e.(2) byproduct material" will be used to refer to radioactive waste that is similar to byproduct material, as defined in the AEA in section 11e.(2), but is not legally considered to be 11e.(2) byproduct material.

[2] Henceforth, byproduct material as defined in Section 11e.(2) of the AEA will be referred to as "11e.(2) byproduct material."

[3] Except in the case of source material ore, source material consists only of the radioactive components of the waste, that is: uranium, thorium, or any combination of the two [10 CFR 40.4(h)].

the "custodial agency" by the AEA. However, the UMTRCA specifically referred only to 11e.(2) byproduct material. UMTRCA contains no provision allowing for the transfer of custody or title, and hence for eventual long-term custody and surveillance of other material, even if the material were no more radioactive or toxic than the uranium or thorium tailings themselves.

3. The Category of Requests for Commingled Disposal To Be Addressed

Some licensees have proposed to directly dispose of radioactive wastes in existing uranium mill tailings sites. The materials vary from tailings from extraction processes for metals and rare-earth metals (such as copper, tantalum, columbium, zirconium) to spent resins from water-treatment processes. However, because these materials did not result from the extraction or concentration of uranium or thorium from ore, they are not 11e.(2) byproduct material. Many of these "orphaned" wastes have elevated concentrations of source material, and unless otherwise exempted, require licensed control, if the materials exceed the 0.05-percent licensable (content of source material by weight) criterion in 10 CFR Part 40. Some of the wastes proposed for commingling contain radioactive material, not regulated by NRC, that classify as naturally-occurring and accelerator-produced radioactive material (NARM) and as such cannot be easily disposed of. In most of the proposals the staff has seen, disposal of these materials in tailings impoundments would not significantly increase the effect on the public health, safety, and environment. Because of the relatively large volumes of these wastes, low-level waste disposal options are limited. These wastes are similar to tailings in volume, radioactivity, and toxicity. Therefore, some waste producers see the mill tailings disposal sites as providing an economical option for such disposal.

4. Types of Wastes Being Proposed for Disposal Into Tailings Piles

The NRC and the Agreement States continue to receive requests for the direct disposal of non-11e.(2) byproduct material into uranium mill tailings piles. The following general categories of non-11e.(2) byproduct material illustrate the requests submitted to NRC and the Agreement States for disposal into uranium mill tailings piles licensed under authority established by title II of UMTRCA:

4.1 Mine Wastes

To mine uranium or other source material ore from underground or open-pit mines, operators frequently need to dewater the mine cavities. This results in quantities of mine water with suspended or dissolved constituents, some of which are source material. After processing the mine water to satisfy National Pollution Discharge Elimination System or other release requirements, the resultant clean mine water is then discharged offsite. In some cases, the resulting water-treatment filter-cake or sludge residues exceed the 0.05-percent licensable limit for source material. These residues do not satisfy the definition of 11e.(2) byproduct material, because they do not result from the extraction or concentration of uranium or thorium from ore.

NRC and the Agreement States have been contacted by licensees and waste generators that desire to dispose of such filter-cake or sludge residue directly into the tailings piles at licensed uranium mill tailings sites. NRC has indicated that such material does not constitute 11e.(2) byproduct material.

4.2 Secondary Process Wastes

Frequently, natural ores that are processed for rare-earth or other metals have significant concentrations of radioactive elements. Examples include copper, zirconium, and vanadium ores. Sometimes the uranium is captured in a side-stream recovery operation, in which uranium is precipitated out of the pregnant solution, before or after the rare earth or other metal. Although this side-stream recovery operation is licensed by NRC, the tailings (which consist of the crushed depleted ore and the depleted solution after recovery of metals and rare earths) are not 11e.(2) byproduct material. This is because the ore was not processed primarily for its source material content, but for the rare earth or other metal. If the tails contain greater than 0.05 percent uranium and thorium, they would be source material and would thus be licensable and have to be disposed of in compliance with NRC regulations. NRC has received requests from NRC and Agreement State licensees to dispose of such tailings (resulting from processes to extract other metals) into licensed uranium mill tailings piles.

4.3 Formerly Utilized Sites Remedial Action Program (FUSRAP)

These sites primarily processed material, such as monazite sands, to extract thorium for commercial applications. Government contracts were issued for thorium source material used in the Manhattan Engineering District and early Atomic Energy Commission programs. Wastes resulting from that processing and disposed of at these sites would qualify as 11e.(2) byproduct material. However, it is not clear that all the contaminated material at these sites result from processing of ore for thorium. At some sites there was also processing for rare earths and other metals. The DOE, which accepts responsibility for the FUSRAP materials, is investigating options for disposal and control of these materials. DOE estimates that a total of 1.7 million cubic yards of material is located at sites in 13 States. Recent proposals have considered the transportation of FUSRAP materials from New Jersey to tailing piles at uranium mills in other States, such as Utah, Washington, and Wyoming.

4.4 NARM

These wastes result from a wide range of operations, but are not generally regulated by the AEA. Past requests for disposal in uranium mill tailing ponds have included contaminated resins from ion-exchange well-water purifying operations. NRC has also received inquiries regarding the disposal of construction scrap and radium-contaminated soil from old commercial operations. The individual States usually administer the regulatory responsibility over NARM, but many other Federal agencies have jurisdictional responsibilities related to NARM. These include EPA, the Consumer Product Safety Commission, the Department of Health and Human Services, and the Department of Labor. There is a State-licensed NARM disposal facility in Clive, Utah, licensed to Envirocare of Utah, Inc.

Two common elements run through most of the requests we have received for direct disposal of non-11e.(2) byproduct material in tailings piles; the material is of low specific-activity, and the material is physically similar to 11e.(2) byproduct material. Most of the requests are for bulk material like soil, crushed rock, or sludges, contaminated with source material in relatively low concentrations.

5. Previous Staff Guidance

In response to a request from Region IV, the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) provided guidance for addressing requests to allow the disposal of non-11e.(2) byproduct material in licensed mill tailings impoundments. The staff considered that the types of material proposed for such disposal could be

separated into two categories: (1) NARM wastes; and (2) wastes generated by operations regulated under the AEA.

In the guidance, the staff concluded that it would not approve a policy of allowing disposal of NARM wastes in tailings impoundments. A major concern was that NRC did not have authority to regulate NARM. If States or EPA became involved in regulation of NARM, a situation with duplicative jurisdiction with respect to the commingled radioactive materials could be created. Furthermore, the Commission's authority, under section 84c of the AEA, to approve alternatives to requirements, if the NARM wastes were to violate standards, would be impaired.

The staff viewed the other category, wastes generated by operations regulated under the AEA, as potentially acceptable in a mill tailings impoundment. Each such proposal should be considered on a case-specific basis. The guidance identified four findings that would have to be made before NRC would authorize such disposal.

As a result of this guidance, present policy is that NRC will approve of proposed disposals of source material on their individual merits, and only if the licensee can demonstrate the following:

a. The disposal will have no significant additional effects on public safety and health, and the environment.

b. The disposal will not compromise the reclamation of the tailings impoundment. In effect, disposal must comply with the reclamation and closure criteria in part 40, appendix A.

c. The disposal will not result in the tailing becoming subject to RCRA or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

d. DOE or the State agrees, in advance, to take title to the site, upon completion of the reclamation.

The first two conditions are self-evident and will not be discussed further. The other two conditions can be sufficient obstacles to any routine decisions to allow such commingling of byproduct and non-11e.(2) byproduct materials under UMTRCA, and are discussed, along with other issues, below.

6. Major Issues

Although the technical, economic and societal advantages in some proposals have appeared to encourage such disposal of low specific-activity radioactive material into tailing piles, significant statutory and regulatory issues may complicate such disposal;

6.1 RCRA Authority and Mixed Waste

The NRC and Agreement State licensed uranium and thorium milling facilities do not fall under the jurisdiction of RCRA. The AEA explicitly excludes 11e.(2) byproduct material from RCRA permitting. However, radioactive wastes that are not 11e.(2) byproduct material and contain hazardous wastes are mixed wastes and are not exempted from RCRA. Commingling RCRA-regulated wastes with tailings could result in the application of the EPA RCRA regulations and separate EPA-permitting authority. The licensee would have to comply with both EPA- and AEA-related regulations.

NRC has revised the regulations in 10 CFR part 40 (including appendix A) to conform to the appropriate portions of EPA's RCRA regulations. The UMTRCA, as amended, stipulates that regulations for byproduct material be consistent with the Solid Waste Disposal Act (SWDA). On November 13, 1987, NRC conformed the regulations of part 40 to the EPA standards containing the RCRA provisions of the SWDA. However, if a licensee disposes of source material compounds or mixtures other than uranium or thorium ores, in the tailings piles, only the source material component of that compound or mixture would be excluded from the provisions of RCRA, if the compound or mixture qualifies as "hazardous." The bulk of such material would come under the purview of EPA RCRA regulations, resulting in dual regulation of the tailings impoundment. To preclude this dual regulatory authority and the complications resulting from it, including potential conflicts in requirements, the staff will not approve co-disposal of non-11e.(2) byproduct material containing hazardous constituents, regulated under RCRA.

6.2 Custody and Title Transfer

UMTRCA, title II, section 202 (Section 83 of the AEA) stipulates that such title to the 11e.(2) byproduct material and to the land used for the disposal of 11e.(2) byproduct material shall be transferred to either the United States Government or to the State in which the land is located. UMTRCA identifies DOE, or any other agency so designated by the President, to be the custodial agency for the U.S. Government. However, at its option, the State may elect to become the custodial licensee of the site after closure.

The NRC staff has two concerns relating to this transfer:

a. The licensee for any site where the materials would be commingled would need strong assurances or permission from either the State or DOE that the commingling would not compromise the eventual transfer of title and custody.

b. The license cannot be legally terminated, unless the custody and title have been transferred as stipulated in Section 83 b(1)(A) of the AEA. Commingling of wastes could complicate this transfer and, hence, the termination of the license.

Because of these concerns, NRC staff wrote to DOE regarding its position on such transfers. DOE's response of June 10, 1988, indicated its uncertainty regarding authority to accept custodial transfer of tailings sites, where radioactive material not constituting 11e.(2) byproduct material has been commingled. In further correspondence, of October 5, 1988, and March 16, 1990, the NRC staff requested more specificity from DOE.

DOE's initial responses addressed the general issue of DOE acceptance of a Title II site containing non-11e.(2) byproduct material. DOE would have no objection to such a transfer provided it would not incur any additional costs related to the non-11e.(2) byproduct material. To ensure that there would be no additional costs due to the non-11e.(2) byproduct material, DOE suggested that NRC make the following findings before transfer:

—That there is no adverse environmental impact resulting from the dispoal of these wastes (e.g., that the reclamation of the impoundment will not be impacted or that there are no groundwater restoration issues).

—There are no outstanding environmental compliance issues under any applicable environmental law (e.g., under RCRA or CERCLA).

These conditions will be met if the first three conditions (a-c) discussed in section 5, above, are demonstrated.

By letter dated January 23, 1991, DOE responded to five specific questions NRC staff had raised. The questions focused on the quantities and concentrations of several categories of non-11e.(2) byproduct material that DOE would find acceptable to dispose of in tailings impoundments without jeopardizing title transfer. DOE's response stated that criteria for determining acceptability should consider three issues:

a. Concentrations of hazardous constituents in the non-11e.(2) byproduct materials.

Tables showing concentrations typically found in tailings were presented and the statement made that acceptable concentrations could be

selected from those tables. DOE also recommended that if concentrations in the non-11e.(2) byproduct material exceed those "* * * adopted from the tables (or other sources) * * *," a risk assessment be performed.

Thus, DOE described a process, with an ultimate resort to risk assessment, that could be used to determine acceptable concentrations of constituents in non-11e.(2) byproduct materials. The first demonstration, discussed in Section 5, above (that the disposal have no significant additional effects on public safety and health and the environment), encompasses this DOE consideration. Thus, this consideration will be met if the 1988 staff guidance is adhered to.

b. Impact of the additional material quantity (volume) of non-11e.(2) byproduct materials that the Title II site would have to accommodate.

DOE stated that this determination would have to be made on a site-specific basis, considering cost, schedule, design capacity of the impoundment, and the impact of errors and uncertainties in these projections and estimates. This consideration will be satisfied by the first two demonstrations discussed in section 5 above.

c. Possibility that Radon-222 releases from the disposal site would exceed the limits specified in 40 CFR 192.32, as a result of including non-11e.(2) byproduct materials in the title II site.

The Radon-222 release limits in 40 CFR 192.32 are incorporated in Criterion 6 of 10 CFR part 40, appendix A. Thus, this consideration will be satisfied by the second demonstration discussed in section 5 above.

Therefore, demonstration of the first three findings discussed in section 5 above (health and safety, compliance with appendix A, and no RCRA problems), should result in the fourth finding (DOE acceptance of title) being met. However, there is one remaining concern related to DOE's acceptance of title to tailings impoundments containing non-11e.(2) byproduct material. None of DOE's response to NRC on this question contains an unequivocal statement that, if NRC determines that the above discussed concerns and criteria are satisfied, DOE will accept title to such a site. For example, in the letter of November 6, 1990, DOE states "At this time, we would interpose no objection if NRC transferred * * *." At a meeting on December 11, 1990, NRC staff discussed this issue with DOE and a possible DOE concurrence on individual NRC decisions to allow non-11e.(2) byproduct material disposals. DOE responded by letter dated December 24, 1990, that its concurrence would not be appropriate or necessary. However, in order to reduce the potential for future problems with transfer to DOE, NRC staff will notify DOE (with an opportunity to provide comments) of each impending decision to allow non-11e.(2) byproduct material disposal in a tailings impoundment.

6.3 Acceptable Wastes

As discussed in section 4 above, most of the requests for commingling non-11e.(2) byproduct material in tailings impoundments pertain to material similar to uranium mill tailings and wastes. These are usually bulk materials like soil, crushed rock, or sludges contaminated with low concentrations of source material or NARM.

For the reasons discussed in section 5 above, the staff will not approve commingling of NARM in tailings impoundments. However, current staff policy is to consider on a case-specific basis, wastes generated by operations regulated under the AEA. This would allow consideration of byproduct, as defined in section 11e.(1) of the AEA, and special nuclear materials (SNM) wastes, in addition to source material waste, for disposal in tailings impoundments. Recently, there have been inquiries to the staff about disposal of SNM-contaminated soils in tailings impoundments. For the reasons discussed below, NRC staff will not normally approve disposal of 11e.(1) byproduct material (hereafter referred to as "byproduct material") or of SNM in tailings impoundments.

Appendix A of 10 CFR part 40 presents criteria for the disposal of 11e.(2) byproduct material. These criteria, to properly dispose of this material, were developed based on the physical, chemical, and radiological characteristics of the material. The basis for most of the requests to commingle non-11e.(2) byproduct material in tailings impoundments is that the proposed material is similar in characteristics to 11e.(2) byproduct material, but does not meet the definition, which is based on process and history, rather than characteristics. Because of this similarity to 11e.(2) byproduct material, the criteria in appendix A are appropriate to use, to ensure safe disposal of this material.

This premise is only valid for the types of materials discussed in section 4, that is, bulk material whose primary radiological contamination is uranium, thorium, and radium in low concentrations. Wastes contaminated with byproduct material are sufficiently different that this premise may not be valid.

Soils contaminated with SNM may be similar to 11e.(2) byproduct material in physical, chemical, and radiological characteristics. There are, however, issues related to the disposal of byproduct material or SNM-contaminated soils in tailings impoundments that preclude routine approval, using the criteria in appendix A of 10 CFR part 40. Possession of byproduct material or SNM would have to be licensed under 10 CFR part 30 or 70, respectively, and not part 40. For SNM, the issues of criticality, material control and accountability, and site security might also have to be addressed.

For these reasons, the staff will not approve the disposal of byproduct material or SNM through the process discussed in this guidance and analysis. If there is a compelling reason, such as an immediate health and safety concern, to consider a specific proposed disposal of byproduct material or SNM in a tailings impoundment, approval of the Commission will be required.

6.4 Regulatory Issues

There are two regulatory issues that require consideration in developing this guidance:

a. Inasmuch as the kind of material under consideration is within the purview of the States under the Low Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA), the explicit approval of both the originating and the receiving Compact should be obtained if the waste is going anywhere but a designated Regional facility. Although this is not specifically a health and safety issue, it is an issue that could cause problems for the licensee and perhaps interfere with ultimate reclamation of the tailings. As a result, the policy should include a requirement that the licensee's submittal provide evidence of the Compacts' approval of the proposed disposal.

b. The material being proposed for disposal in tailings impoundments is material subject to the Commission's authority under the Atomic Energy Act. It is mostly, if not all, soil contaminated with uranium, thorium, and associated radium (which is a decay product of uranium and thorium) with radiological characteristics similar to those of tailings (11e.(2) byproduct material). The disposal of such material is regulated by 10 CFR 20.301 (10 CFR 20.2001 in the new part 20). That section states that no licensee shall dispose of licensed material except by (a) transfer to an authorized recipient as provided in 10 CFR part 30, 40, 60, 61, 70, or 72; or (b) disposal authorized pursuant to § 20.302

(20.2002) or part 61. Part 61 provides regulations for the disposal of radioactive waste received from others, while § 20.302 (20.2002) allow for disposal by a licensee of licensed material in a manner not otherwise authorized in the regulations.

Since the material proposed for disposal in tailings impoundments will be received from licensees other than the impoundment owner, 10 CFR part 61 is the appropriate regulation for such disposal. Disposal under § 20.302 has been used by licensees to dispose of their own wastes onsite. It does not preclude disposal of radioactive waste received from others. Section 20.2002 (in the new part 20), however, specifically limits disposals under that Part to licensed material generated in the licensee's activities, so it could not be used for the disposals discussed in this paper. The new Part 20 became effective on June 20, 1991, with discretion by licensees to defer implementation until January 1, 1993 (however, the Commission has under consideration a proposal to change the discretionary implementation date to January 1, 1994).

Thus, in order to allow disposal of non-11e.(2) byproduct material at a tailings impoundment, either a part 61 review would have to be performed and a license under 10 CFR part 61 would have to be issued to the mill operator, or an exemption to such a review and license would have to be granted. The part 61 license to allow disposal of the non-11e.(2) byproduct material in the tailings impoundment would be in addition to the amendment to the part 40 license authorizing receipt of the material.

The basic objectives of parts 40 and 61 are the same; protection of public health and safety and the environment by disposal that controls and isolates the wastes for long periods of time. Part 61.6 of title 10 allows for exemptions from the requirements of Part 61 if such an exemption will not endanger life or property. In order to avoid separate part 40 and 61 reviews and licenses for the disposal of non-11e.(2) byproduct material in tailings impoundments, an exemption under Part 61.6 will be granted for each such proposed commingling that meets all of the other requirements discussed in this analysis. The basis for such an exemption is that the proposed disposal will not endanger life and property by virtue of its meeting the criteria discussed in this analysis (which includes demonstrating that the reclamation and closure criteria in appendix A to part 40 will be met).

7. Results of Staff Analysis

NRC staff identified the following course of action with respect to requests for direct disposal of non-11e.(2) byproduct material in tailings impoundments:

1. Each proposal will be treated on its individual merits.

2. The guidance discussed in section 5, will be followed. Specifically, for each such co-disposal request, the staff will:

a. Reject the request if the non-11e.(2) byproduct material is NARM waste.

b. Determine whether the request is for bulk material contaminated with low concentrations of source material. If the request is for byproduct material or SNM, determine if there is a compelling reason, such as an immediate health and safety concern, to grant the request. If so, a specific request for approval by the Commission will be prepared.

c. Determine whether the proposed disposal will cause significant additional effects to public safety, health and the environment.

d. Determine whether the proposed disposal will compromise the reclamation of the tailings impoundment by determining whether compliance with the reclamation and closure criteria stated in 10 CFR part 40, appendix A, will be ensured.

e. Not approve the request if the non-11e.(2) byproduct material contains hazardous constituents regulated under RCRA.

f. Notify DOE (with an opportunity to provide comments) if the staff intends to approve the proposed disposal.

g. The licensee must provide documentation showing approval by the Regional LLW Compact in whose jurisdiction the waste originates as well as approved by the Compact in whose jurisdiction the disposal site is located.

3. Approval of the request will be accomplished through an amendment to the part 40 license of the impoundment owner.

Part B—Position and Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores

Staff reviewing licensee requests to process alternate feed material (material other than natural ore) in uranium mills should follow the guidance presented below. Besides reviewing to determine compliance with appropriate aspects of appendix A of 10 CFR part 40, the staff should also address the following issues:

1. Determination of Whether the Feed Material Is Ore

For the tailings and wastes from the proposed processing to qualify as 11e.(2) byproduct material, the feed material must qualify as "ore." In determining whether the feed material is ore, the following definition of ore must be used:

Ore is a natural or native matter that may be mined and treated for the extraction of any of its constituents or any other matter from which source material is extracted in a licensed uranium or thorium mill.

2. Determination of Whether the Feed Material Is Mixed Waste

Note to Federal Register notice readers: For further explanation of this complex issue, see the discussion section of the Staff Analysis that follows.

If the proposed feed material were hazardous or mixed waste, it would be subject to EPA regulation under RCRA. To avoid the complexities of NRC/EPA dual regulation, such feed material will not be approved for processing at a licensed mill. If the licensee can show that the proposed feed material would not be a hazardous or mixed waste, if not proposed for processing at the mill, this issue is resolved.

Feed material exhibiting only a characteristic of hazardous waste (ignitable, corrosive, reactive, toxic) would not be regulated as hazardous waste and could therefore be approved for recycling and extraction of source material. However, this does not apply to residues from water treatment, so acceptance of such residues as feed material will depend on their not being hazardous or mixed waste. Additionally, if proposed feed material contained a waste listed under Subpart D (261.30–33) of 40 CFR, it would be a hazardous waste and should not be approved.

3. Determination of Whether the Ore Is Being Processed Primarily for Its Source-Material Content

For the tailings and waste from the proposed processing to qualify as 11e.(2) byproduct material, the ore must be processed primarily for its source-material content. There is concern that wastes that would have to be disposed of as radioactive or mixed waste would be proposed for processing at a uranium mill primarily to be able to dispose of it in the tailings pile as 11e.(2) byproduct material. In determining whether the proposed processing was primarily for the source-material content or for the disposal of waste, either of the following tests can be used:

a. *Co-disposal test.* Determine if the feed material would be approved for disposal in the tailings impoundment under the guidance contained in the July 27, 1988, memorandum from Hugh L. Thompson to Robert D. Martin, or subsequent revisions (e.g., as described

in Part A of this notice). If it would, it can be concluded that if a mill operator proposes to process it, the processing is primarily for the source-material content. The material would have to be physically and chemically similar to 11e.(2) byproduct material and not be subject to RCRA or other EPA hazardous-waste regulations, as discussed in Part A.

b. *Licensee certification test.* If the licensee certifies under oath or affirmation that the feed material: (1) is being reclaimed or recycled in accord with RCRA, or does not contain RCRA hazardous waste; and (2) is to be processed primarily for the recovery of uranium and for no other primary purpose, it can be accepted.

If it can be determined, using the aforementioned guidance, that the proposed feed material meets the definition of ore, that it will not introduce a hazardous waste not otherwise exempted, and that the primary purpose of its processing is for its source-material content, the request can be approved.

NRC Staff Analysis of the Use of Uranium Mill Feed Materials Other Than Natural Ores

1. Introduction

The Nuclear Regulatory Commission (NRC) and Agreement States have received, and in some cases approved, requests to allow a uranium mill to process feed material that was not natural (native, raw) uranium ore and dispose of the resulting waste in the facility's tailings impoundment. In those cases, the feed material was generally either processing wastes from other extraction procedures or the residues from mine-water treatment. These requests were handled on a case-by-case basis, and approvals were based on the interpretation that the proposed feed material was refined or processed ore. This designation of the feed material as ore is critical to the determination of disposal methods. This stems from the definition under section 11e.(2) of the AEA, which limits byproduct material origin to "ore processed primarily for its source material content."

If the alternate feed material does not meet the definition of ore, or is not processed primarily for its source material, there are two concerns. The first is that complicated, dual regulation of the tailings pile by both NRC and the Environmental Protection Agency (EPA) under RCRA could result. The second concern is that the requested activity might jeopardize the ultimate transfer of the reclaimed tailings impoundment to the State or Federal Government for perpetual custody and maintenance.

During the past three years, several additional requests for approval of alternate feed materials have been received. Decisions on those requests are pending until development of a generic agency position. The analysis addresses the need for a definition of the term "ore" as used in the definition of byproduct material in the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), and for criteria to determine if mill-processing wastes from alternate feed material will meet the requirements for byproduct material under a 10 CFR part 40 license.

2. Background

The UMTRCA amended the AEA to include uranium and thorium mill tailings and other wastes from the milling process as material to be licensed by NRC. Specifically, the definition of byproduct material was revised in section 11e of the AEA by adding:

> And (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Such byproduct material includes all the wastes resulting from the milling process, not just the radioactive components. In addition, title II of UMTRCA amended the AEA to explicitly exclude the requirement for EPA to permit 11e.(2) byproduct material under the RCRA. The definition and RCRA exemption of 11e.(2) byproduct material contrasts significantly with the situation for source material and low-level radioactive waste (LLW), where only the radioactive component is regulated under the authority of the AEA. EPA has to address hazardous constituents in those materials separately.

As a result of UMTRCA, the NRC amended 10 CFR Part 40, to regulate the uranium and thorium tailings and wastes from the milling processes. Thus, under normal operation, all tailings and wastes in an NRC or Agreement State licensed mill producing uranium or thorium are classified as "11e.(2) byproduct material," and are disposed of in tailings piles regulated under part 40. They are not subject to EPA regulation, under RCRA. However, if material that did not qualify as 11e.(2) byproduct material was placed in a mill's tailings impoundment, any hazardous constituents it contained could lead to regulation by EPA.

The UMTRCA also required either the United States, or the State in which the byproduct material has been disposed of, to maintain long-term custody of, and surveillance over, the byproduct material and the land used for its disposal. The AEA currently designates the Department of Energy (DOE) as the Federal "custodial agency." However, the UMTRCA specifically referred only to 11e.(2) byproduct material, and contains no provision allowing for the transfer of custody or title of any other material. While the application of section 151(b) of the Nuclear Waste Policy Act could mbot this issue in a specific case, it does not provide a legal basis for avoiding the labeling of a tailings disposal impoundment as either a mixed waste facility or a low-level waste disposal facility with the complex regulatory burdens these labels carry. One of the purposes of the guidance is to avoid these consequences.

The term "alternate feed materials" is used to indicate sources of uranium or thorium (throughout this analysis references to uranium mills or ore should be taken to apply to thorium mills or ore, also), for a mill, that are not natural ore (ore is not defined in the AEA nor in UMTRCA). NRC staff has approved requests, in the form of license amendments, to allow processing of alternate feed materials in uranium mills. The requested license amendments generally were to allow the mill to use feed materials that were either processing wastes such as those derived through the extraction of other elements, or the residues from mine-water treatment.

The following are examples of license amendments approved in the past:

1. Processing Wastes From Other Operations

The Rio Algom (Lisbon uranium mill in Utah has had its source-material license amended several times in the period from 1982 to 1987, so the mill could receive alternate feed materials. The mill was authorized to use processing wastes from: a uranium hexafluoride conversion facility, a niobium-tantalum recovery facility, and from an yttrium-lanthanides recovery facility. The materials were radiologically consistent with the existing tailings, but, in the first example, the fluoride was in higher concentration (greater than one percent) than in the existing tailings. In 1987, NRC also authorized the Quivira Mining Company to process raffinate sludge from a uranium hexafluoride conversion plant. The uranium content of these wastes (the yttrium-lanthanides wastes averaged 1.17 percent and the uranium hexafluoride waste streams 0.6 to 6.7 percent) was higher than the average

natural ore processed in the United States.

2. Wastes From Treatment of Mine Water

Some mines have to be dewatered as the shafts or pits fill with ground-water. This water often contains dissolved constituents as a result of flow through and contact with ore bodies. It must therefore be treated before it can be discharged offsite. Treatment is often via ion-exchange columns which concentrate high levels of uranium on resins or the eluate. Several mills (Western Nuclear Inc., Split Rock, Wyoming, and Atlas Minerals Corp., Moab, Utah) have obtained license amendments and processed these residues/wastes through the mill.

The NRC staff approved the processing of these alternate feed materials, considering them to be refined and processed ore.This designation as ore is essential so that the residue from uranium processing can qualify as 11e.(2) byproduct material for the reasons stated earlier. With this interpretation, the resultant milling wastes were legitimately classified as 11e.(2) byproduct material.

However, because there is not a definition of ore in 10 CFR Part 40 and because of the potential policy issues involved in approving the processing of feed material other than natural ore, the staff has put recent requests on hold, pending establishment of an agency position.

3. Discussion

Uranium mills were designed and operated to process natural uranium-bearing rock (i.e., ore), usually mined nearby, in order to produce uranium (in the form of yellowcake). There usually was no question of other feed material or what constituted ore. However, there have been occasions when other material has been proposed for processing at uranium mills.

Mill tailings that meet the definition of 11e.(2) byproduct material must be stabilized in accordance with the criteria in appendix A of 10 CFR part 40, but are not subject to separate regulation as LLW or as hazardous waste under RCRA. The wastes and tailings produced in a uranium mill processing uranium-bearing rock from nearby mines would meet the definition of 11e.(2) byproduct material. However, it is not obvious, from the definition alone, whether wastes produced from processing feed material that is something other than rock mine from the earth meets the definition of 11e.(2) byproduct material.

Neither the AEA nor 10 CFR part 40 contains a definition of "ore" as it appears in the definition of 11e.(2) byproduct material. The term "unrefined and unprocessed ore" is, however, defined separately in part 40, in relation to the exemption in 10 CFR 40.13(b) for source material in ore, as:

> Ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining.

The fact that the term "any ore", rather than "unrefined and unprocessed ore," is used in the definition of 11e.(2) byproduct material implies that a broader range of feed materials could be processed in a mill, with the wastes still being considered as 11e.(2) byproduct material.

Legislative history confirms the validity of a broad interpretation of the term "any ore." The definition of 11e.(2) byproduct material as originally presented in UMTRCA was:

> The tailings or wastes produced by the extraction or concentration of uranium or thorium from any source material.

However, there was a concern that tailings resulting from the processing of ore containing less than 0.05 percent uranium (the minimum concentration that would still meet the definition of source material) would fall outside the definition. To preclude that possibility, it was suggested that the words "any ore processed primarily for its source material content" be substituted for "any source material."

In its decision in a case involving whether certain material in and near the West Chicago, Illinois, facility of Kerr-McGee Chemical Corporation (Kerr-McGee Corporation v. NRC, 903 F2d 1 (D.C. Cir. 1990) was 11e.(2) byproduct material or source material, the United States Court of Appeals arrived at a broad interpretation of the definition of byproduct material in which the concept of ore is not restricted to native rock. It also cited Chairman Hendrie's testimony before Congress that led to the wording that now exists, in the AEA, defining 11e.(2) byproduct material as establishing that a broad reading of the definition was in line with Congressional expectations.

The previous discussion leads to the conclusion that the term "ore" in the definition of 11e.(2) byproduct material can be applied to a broad spectrum of feed materials from which uranium or thorium is extracted. In view of the foregoing, NRC staff has recommended a definition of ore as follows:

> Ore is a natural or native matter that may be mined and treated for the extraction of any of its constituents or any other matter from which source material is extracted in a licensed uranium or thorium mill.

Two major considerations that went into this proposed definition of ore were:

1. It is broad enough to include a wide variety of feed materials.

2. The definition continues to be tied into the nuclear fuel cycle. Because the extraction of uranium in a licensed mill remains the primary purpose of processing the feed material, it excludes secondary uranium side-stream recovery operations at mills processing ore for other metals. Thus, tailings from such side-stream operations at facilities that are not licensed as uranium or thorium mills, would not meet the definition of 11e.(2) byproduct material.

Although the intent of Congress in defining 11e.(2) byproduct material appears to have been to encompass the wastes from all feed material processed primarily for its source-material content, two significant issues result from the proposed definition of ore.

Since some of the feed material could contain hazardous components, in addition to source material, the first significant issue is whether material that would otherwise have to be disposed of as hazardous waste can be processed in a uranium mill and disposed of in the tailings impoundment as 11e.(2) byproduct material. If such feed material were not processed at a uranium mill, it would be classified as mixed waste (radioactivity regulated under AEA, plus hazardous waste regulated by EPA) and would thus have to be disposed of in a mixed waste facility.

To determine if the feed material would be regulated as hazardous waste, one must first determine if it meets the definition of solid waste, since hazardous waste is a subset of solid waste, under RCRA. The EPA regulations that implemented RCRA state (40 CFR 261.1–261.4) that solid waste is any discarded material not excluded in the regulations and includes recycled material. A material is recycled if it is reclaimed. Reclaimed is defined as, "* * * processed to recover a usable product * * *" Since alternate feed material would be reclaimed at the mill, it would be considered solid waste. It also would be classified as byproduct, which EPA defines as, "* * * not one of the primary products of a productive process * * *" However, 40 CFR 261.2c(3) provides that byproducts that exhibit only a characteristic of hazardous waste (ignitable, corrosive, reactive, toxic) and that are being reclaimed are not regulated as hazardous waste. To support the "reclaimed" provision, it must be demonstrated that there is a known

market for the material and documentation provided, such as contracts showing that a second person uses the material as an ingredient in a production process. An exception to this exemption is sludge from a water treatment plant, so residues from mine-water treatment would not qualify.

Since feed material is being used as an ore from which a useable product (uranium) is to be extracted, it is being reclaimed and thus would meet the EPA exemption to regulation as characteristic hazardous waste, except if it were mine-water treatment residues.

The proposed feed material would still be hazardous waste if it contained a waste listed under subpart D (part 261.30–.33) of the EPA regulations. It is unlikely that feed material for uranium mills would contain such substances. Assurances need to be provided that these proposed feed materials do not contain RCRA or TSCA listed hazardous wastes.

Constituents with hazardous characteristics that were in feed materials processed at a uranium mill would eventually end up in the tailings impoundment as 11e.(2) byproduct material. As such, they would be regulated under appendix A of 10 CFR part 40 which provides for monitoring and control of hazardous constituents. Thus, the ultimate fate of hazardous constituents that might be in uranium mill feed material would not escape regulatory oversight.

The second significant issue that must be addressed is the potential of converting material that would have to be disposed of as LLW or mixed waste into ore, for processing and disposal as 11e.(2) byproduct material. The possibility of converting such wastes to 11e.(2) byproduct material can be very attractive to owners of such material. This is because of the high cost of disposing of LLW and especially of mixed waste. An owner of such material could pay a mill operator substantially less to process it for its uranium content and dispose of the resulting 11e.(2) byproduct material than to dispose of the material as waste at an appropriate facility. Utah officials have already expressed concern over "sham disposal" (i.e., converting a mill into a LLW disposal site).

The proposed definition of ore would include any material from which source material is extracted in a licensed mill and would thus seem to allow such sham disposals. However the definition of 11e.(2) byproduct material requires that the ore be processed "* * * primarily for its source material content" and thus would not permit such sham disposals. Material that was processed primarily to convert what would have been LLW or mixed waste into 11e.(2) byproduct material would not meet the definition of 11e.(2) byproduct material.

Therefore, as part of its review of a licensee proposal to process material other than natural ore, the staff would have to determine whether the processing was primarily for the source-material content or for the disposal of waste. This determination would have to be made on a case-specific basis, but either of the following tests can be used:

1. *Co-disposal test*: If the feed material would be approved for disposal in the tailings impoundment, under the guidance contained in the July 27, 1988, memorandum from Hugh L. Thompson to Robert D. Martin, or subsequent revisions, it can be concluded that if a mill operator proposes to process it, the processing is primarily for the source-material content. The material would have to be physically and chemically similar to 11e.(2) byproduct material and not be subject to RCRA or other EPA hazardous-waste regulations, as discussed in this notice.

2. *Licensee certificate test*: If the licensee certifies under oath or affirmation that the feed material: (1) is being reclaimed or recycled in accord with RCRA, or does not contain RCRA hazardous waste; and (2) is to be processed primarily for the recovery of uranium and for no other primary purpose, it can be accepted.

4. Results of Staff Analysis

The staff has determined to issue guidance on the definition of ore and on the issues related to feed material that could be considered waste. Although Agency guidance does not carry the weight of a regulation, the staff concludes that the time and resources required for rulemaking on the definition of ore would not be justified in this instance. There are only a few mills that are in active or standby status and that would be able to process alternate feed material, and it is estimated that the Agency would receive only one or two such requests a year. However, the staff will include the definition of ore the next time amendments to 10 CFR Part 40 are proposed.

Issuance of the guidance would also assist Agreement States. As a policy, the Agreement States are not required to adopt this guidance as a matter of compatibility. However, if an Agreement State implements a similar policy, the State will have some assurance that NRC will not question its policy in program reviews and in making the determination as required in 10 CFR 150.15a(a) prior to the State terminating the license.

Dated at Rockville, Maryland, this 7th day of May 1992.

For the Nuclear Regulatory Commission.

John Surmeier,

Chief, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92–11215 Filed 5–12–92; 8:45 am]

BILLING CODE 7490-01-M

[Docket No. 50–416]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, 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. NPF–29, issued to Entergy Operations, Inc. (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Clairborne County, Mississippi.

The proposed amendment would increase the trip setpoints of four circuit breakers for the suppression pool makeup (SMPU) valves.

In response to NRC Generic Letter 89–10, the licensee has identified the need to replace four valve actuators for the SPMU valves with larger actuators. During the design change process, it was determined that the required larger valve actuator motors would require circuit breakers with higher trip setpoints. These trip setpoints are specified in the Technical Specifications (TS), and the licensee must request a TS change to permit the use of the higher trip setpoints. Allowing for the standard 30-day Federal Register notice would delay approval of the requested change beyond the scheduled end of the current refueling outage. The staff concludes that the licensee has provided an acceptable basis for its request and that exigent circumstances exist.

Before issuance of the proposed license amendment, the Commission 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 amendment request 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. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The breakers for which the trip setpoints are requested to be changed are addressed in Technical Specification 3.8.4.1 as primary containment penetration conductor overcurrent protective devices. The Suppression Pool Makeup (SPMU) system initiation logic will not be affected by this change. The breakers currently installed are to be replaced with breakers sized to account for the increased size of the valve actuator motors to be installed.

The replacement of the overcurrent protective devices to account for the larger valve actuator motors ensures that the equipment will operate without inadvertent actuation of the protective devices. Spurious trip avoidance for these devices is based on the valve actuator motors' inrush current as well as valve stroke times and motor running currents. The proposed trip setpoints are high enough to prevent spurious tripping of the breakers while providing protection of the penetrations in accordance with the guidance of Regulatory Guide 1.63, Revision 0. Proper coordination is maintained between the primary and backup penetration overcurrent protection and the penetration conductors.

The increased load placed by the larger valve actuator motor has been evaluated and found to have no adverse impact on the electrical distribution system.

Based on the above analysis increasing the trip setpoints for these breakers will not significantly increase the probability or consequences of a previously analyzed accident.

b. The change will not create the possibility of a new or different kind of accident from any previously analyzed.

The replacement of the overcurrent protective devices to account for the larger valve actuator motors ensures that the equipment will operate without inadvertent actuation of the protective devices. Spurious trip avoidance for these devices is based on the valve actuator motors' inrush current as well as valve stroke times and motor running currents. The proposed trip setpoints are high enough to prevent spurious tripping of the breakers while providing protection of the penetrations in accordance with the guidance of Regulatory Guide 1.63, Revision 0. Proper coordination is maintained between the primary and backup penetration overcurrent protection and the penetration conductors.

The Suppression Pool Makeup (SPMU) system initiated logic will not be affected by this change. Therefore, operating the plant with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. This change will not involve a significant reduction in the margin of safety.

Implementation of this change to the breakers' trip setpoint will not reduce the margin of safety as defined in the basis for any technical specification. The Bases for Technical Specification 3/4.6.3 address the function and operability requirements of the SPMU system. The modifications being made will enhance the reliability of the SPMU system by providing actuators which are capable of delivering the torque required to stroke the valves against the design differential pressure and flow rate, following a Loss of Coolant Accident (LOCA), without exceeding the actuator manufacturer's design torque rating for the actuators.

The Bases for Technical Specification 3/4.6.3 also address the fact that the SPMU system initiation logic is bypassed when the reactor mode switch is in the REFUEL position. This design change makes no changes to the SPMU system initiation logic. The adequacy of protection of primary containment electrical penetrations and penetration conductors as addressed by Bases for Technical Specification 3/4.8.4 will not be affected by the modification. The change to the overcurrent protective device trip setpoint will ensure that proper coordination is maintained for equipment operation and protection.

Therefore, these modifications will not reduce the margin of safety as defined in the basis for any technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) 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 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 28, 1992, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 which 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 Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

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 Panel, 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 Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which maybe entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. 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 amendment 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 the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-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 15-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 in the **Federal Register** a notice of 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 Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800)-325-6000 (in Missouri 1-(800)-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John T. Larkins, Director, Project Directorate IV-1: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005-3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board Panel that the petition and/or request should be granted 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 May 6, 1992, 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 Judge George W. Armstrong Library, Post Office box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Dated at Rockville, Maryland, this 7th day of may 1992.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Project Manager, Project Directorate IV-1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-11218 Filed 5-12-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-19521, License No. 50-19913-01, EA 91-146]

In the Matter of Ketchikan General Hospital, Ketchikan, AL; Order Imposing Civil Monetary Penalty

I

Ketchikan General Hospital (Licensee) is the holder of Materials License No. 50-19913-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on April 6, 1989. The license authorizes the medical use of radioactive materials by the licensee in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on October 10 and 18 and December 9-13, 1991. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated January 13, 1992. The Notice states the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in letters dated February 5 and 26, 1992. In its response, the Licensee admitted the violations but requested mitigation of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this order, that the violations occurred as stated and that the penalty proposed for the violations designated in the notice should be mitigated as requested by the licensee.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act

of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered*, That:

The Licensee pay a civil penalty in the amount of $1,000 within 30 days of the date of this order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC. 20555.

V

The Licensee may request a hearing within 30 days of the date of this order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region V, 1450 Maria Lane, suite 210, Walnut Creek, California 94596.

If a hearing is requested, the Commission will issue an order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this order, the provisions of this order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether on the basis of the violations admitted by the Licensee, this order should be sustained.

Dated at Rockville, Maryland this 4th day of May 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix to Order Imposing Civil Penalty Evaluation and Conclusion

On January 13, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Ketchikan General Hospital responded to the Notice in a letter dated February 5, 1992, admitting all of the violations, but requesting mitigation of the civil penalty from $2,500 to $1,000 on the grounds that it is a small, rural, isolated facility with limited financial resources. In a letter dated February 26, 1992, the licensee provided further information to justify the mitigation request, specifically noting that it engages in nuclear medicine as a community service and not for profit.

NRC Evaluation of Licensee's Request for Mitigation

The basis for mitigation is that the licensee is a small, rural, isolated facility with limited financial resources. The information provided on February 6, 1992, indicated that the licensee operated its nuclear medicine department at a loss. However, the licensee being a non profit hospital normally operates on a break even basis (expenditures balancing revenue).

In the staff's view, the licensee's ability to pay is not so marginal that collection of the full civil penalty either in a lump sum or permitting payment over time with appropriate interest would adversely affect the ability for this licensee to safely run its nuclear medicine department. However, the licensee is clearly a small rural hospital (44 beds) with a very small nuclear medicine program (10 to 15 diagnostic treatments a month). The revenue from the nuclear medicine department is about $70,000 a year which has been declining for the past several years. The expenditures for the department including overhead expenses are about $85,000. The closest hospitals with nuclear medicine departments are in Seattle 600 miles away and in Anchorage 860 miles away. Access to Ketchikan is only by boat or airplane.

In the staff's view, application of the normal civil penalty process to this small hospital is not warranted. Given the range of the sizes of hospitals covered by the normal base penalty of $2500, this hospital is clearly at the low range. A civil penalty of $1000 appears to be a fairer penalty. This penalty should be sufficient to emphasize the need for the licensee to maintain lasting corrective action.

NRC Conclusion

Therefore, in accordance with section VII.B.6 of the Enforcement Policy the Staff, after notification of the Commission, is exercising enforcement discretion and imposing a civil penalty of $100.

[FR Doc. 92-11221 Filed 5-12-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

In the Matter of Power Authority of the State of New York; Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3. The licensee provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Westchester County, New York.

II

By letter dated January 8, 1992, as supplemented February 26, 1992, the licensee requested an amendment to the Technical Specifications that would allow the use of fuel clad with ZIRLO, a zirconium alloy similar to Zircaloy. Currently, the Technical Specifications allow only the use of Zircaloy clad fuel. In addition, the licensee's letter requested exemptions from several Code of Federal Regulations (CFR) requirements since specific reference is made to only Zircaloy clad fuel in the CFR requirements.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) when special circumstances are present. According to 10 CFR 50.12(a)(2)(ii), special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *."

The Code of Federal Regulations at 10 CFR 50.46 states: Each boiling and pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical Zircaloy cladding must be provided with an emergency core cooling system (ECCS) that must be designed such that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated loss-of-coolant accidents are calculated.

The Code of Federal Regulations at 10 CFR 50.46 then goes on to give specifications for peak cladding temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry, and long term cooling. Since 10 CFR 50.46 specifically refers to fuel with Zircaloy cladding, the use of fuel with ZIRLO cladding would, in effect, place the licensee outside the applicability of this section of the Code.

The underlying purpose of the rule is to ensure that facilities have adequate acceptance criteria for ECCS. The

effectiveness of the ECCS will not be affected by a change from Zircaloy to ZIRLO cladding. The licensee and its contractor have performed calculations that demonstrate the adequacy of this ECCS for a ZIRLO core; therefore, due to the similarities in the material properties of Zircaloy and ZIRLO, the acceptability criteria for ECCS applied to reactors fueled with Zircaloy clad fuel are also applicable to the ECCS for the Indian Point Nuclear Generating Unit No. 3 reactor fueled with ZIRLO clad fuel. An evaluation of the acceptability of ZIRLO clad fuel may be found in the staff's safety evaluation of Topical Report WCAP-12610, "Vantage+ Fuel Assembly Reference Core Report," dated July 1, 1991, and supplemented October 9, 1991. Strict interpretation of the regulation would render the criteria of 10 CFR 50.46 inapplicable to ZIRLO, even though analysis shows that applying the Zircaloy criteria to ZIRLO fuel yields acceptable results. Application of the regulation in this instance would not meet the underlying purpose of the rule; therefore, special circumstances exist. The Commission, based on a request from the licensee, has taken under consideration an exemption from 10 CFR 50.46(a)(1)(i) that would allow the licensee to apply the acceptance criteria of 10 CFR 50.46 to a reactor powered by ZIRLO clad fuel.

The Code of Federal Regulations at 10 CFR 50.44 provides requirements for control of hydrogen gas generated in part by Zircaloy clad fuel after a postulated loss-of-coolant-accident (LOCA). The intent of this rule is clearly to ensure that there is an adequate means of controlling generated hydrogen. The hydrogen produced in a post-LOCA scenario comes from a metal-water reaction. Metal-water reaction rate, as determined by applying the Baker-Just equation has been shown to be conservative for ZIRLO clad fuel; therefore, the amount of hydrogen generated by metal-water reaction in a ZIRLO core will be within the design basis. An evaluation of the acceptability of ZIRLO clad fuel is contained in the staff's safety evaluation of Topical Report WCAP-12610, "Vantage+ Fuel Assembly Reference Core Report," dated July 1, 1991, and supplemented October 9, 1991. A strict interpretation of the rule in this instance would result in the criteria of 10 CFR 50.44 being inapplicable to ZIRLO. Since application of the regulation is not necessary to meet the underlying purpose of the rule, special circumstances exist. The Commission, based on a request from the licensee, has taken under consideration an exemption to 10 CFR 50.44 to a reactor powered by ZIRLO clad fuel.

Paragraph I.A.5 of appendix K to 10 CFR part 50 states that the rates of energy release, hydrogen generation, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. The Baker-Just equation presumes the use of Zircaloy clad fuel. The intent of this part of the appendix, however, is to apply an equation that conservatively bounds all post-LOCA scenarios. Due to the similarities in the composition of ZIRLO and Zircaloy, the application of the Baker-Just equation in the analysis of ZIRLO clad fuel will conservatively bound all post-LOCA scenarios. A complete evaluation of the acceptability of ZIRLO clad fuel is contained in the staff's safety evaluation of Topical Report WCAP-12610, "Vantage+ Fuel Assembly Reference Core Report," dated July 1, 1991, and supplemented October 9, 1991. Since the use of the Baker-Just equation presupposes Zircaloy cladding, and since failure to apply Baker-Just would defeat the purpose of paragraph I.A.5 of appendix K given that post-LOCA scenarios will be conservatively bounded, special circumstances exist. The Commission, based on a request from the licensee, is considering an exemption from paragraph I.A.5 of appendix K to 10 CFR part 50 that would allow the licensee to apply the Baker-Just equation to a ZIRLO clad fuel.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12, that exemptions as described in section III are authorized by law, will not endanger life or property, and are otherwise in the public interest; it has also determined that special circumstances exist pursuant to 10 CFR 50.12(a)(2)(ii). Therefore, the Commission hereby grants the following exemptions:

(1) The Power Authority of the State of New York is exempt from the requirement of 10 CFR 50.46(a)(1)(i) in that the acceptance criteria for emergency core cooling systems given in 10 CFR 50.46 for reactors using Zircaloy clad fuel may also be applied to the Indian Point Nuclear Generating Unit No. 3 reactor using ZIRLO clad fuel.

(2) The Power Authority at the State of New York is exempt from the requirements of 10 CFR 50.44(a) in that the requirements for hydrogen gas control given in 10 CFR 50.44 for reactors using Zircaloy clad fuel may also be applied to the Indian Point Nuclear Generating Unit No. 3 reactor using ZIRLO clad fuel.

(3) The Power Authority of the State of New York is exempt from the requirements of paragraph I.A.5 of appendix K to 10 CFR part 50 in that the Baker-Just equation, which presumes the use of Zircaloy clad fuel, may also be applied to the Indian Point Nuclear Generating Unit No. 3 reactor using ZIRLO clad fuel.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the quality of the human environment (57 FR 17933).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of May 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-11217 Filed 5-12-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric & Power Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its March 15, 1990 application for proposed amendments to Facility Operating License Nos. NPF-4 and NPF-7 for the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

The proposed amendments would have converted the North Anna Technical Specifications to MERITS Technical Specifications.

The Commission has previously issued a notice of consideration of issuance of amendments published in the **Federal Register** on April 27, 1990 (55 FR 17848). However, by letter dated May 1, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated March 15, 1990, and the licensee's letter dated May 1, 1992, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Alderman Library, Special Collections Department,

University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland this 6th day of May, 1992.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–11220 Filed 5–12–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30677; File No. SR–Amex–92–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by American Stock Exchange, Inc. Establishing a Cabinet System for Trading Certain Equity and Derivative Securities

May 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") 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 self-regulatory organization. On April 13, 1992, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change to clarify that orders to buy cabinet securities, in addition to orders to sell, would be accepted under proposed Amex Rule 25.[1] 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 Amex is proposing to adopt new Exchange Rule 25 to establish a cabinet system for the trading of certain equity and derivative securities. The following is the text of the proposed rule change:

Rule 25 Cabinet Trading of Equity and Derivative Securities

(a) The Exchange may designate to be traded in a Cabinet System those equity securities and derivative products which in the judgment of a Floor Governor with the concurrence of the Exchange's Member, Firm and Trading Floor Services [2] do not warrant their retention in the specialist system. Cabinet trading under the following terms and conditions shall be available for designated securities admitted to trading on the Exchange:

(i) Trading shall be conducted in accordance with other Exchange rules except as otherwise provided herein or unless the context otherwise requires.

(ii) The specialist registered in each such designated security shall supervise the operation of the cabinet in that security.

(iii) Only limit orders priced at the rate of $1 per 1,000 shares (.001 per share) may be placed in the cabinet.

(iv) All orders placed on the cabinet shall be assigned priority based upon the sequence in which those orders are received by the specialist.

(v) All such buy (sell) orders must be submitted to the specialist in writing and the specialist shall effect all cabinet transactions by pairing such orders placed with him with sell (buy) orders received by him or represented in the trading crowd.

(vi) Specialists shall not be subject to the requirements of Rule 170 and Traders shall not be subject to any similar market making requirements in respect of orders placed pursuant to this rule. Cabinet transactions shall not be reported on the ticker.

(vii) All cabinet transactions shall be so marked and reported to the Exchange following the close of business each day.

(b) Notwithstanding the provisions of Rule 5(a), any (i) member, (ii) member organization, or (iii) other person which is a non-member broker or dealer and who directly or indirectly controls, is controlled by, or is under common control with, a member or member organization (any such other person being referred to as an affiliated person) may effect any transaction as principal in the over-the-counter market in any cabinet-designated security traded on the Exchange for a price not in excess of paragraph (a)(iii) above.[3]

. . . Commentary

.01 For the purposes of this rule, a "designated" security is defined as any equity or derivative security,[4] other than a bond or option, in which there is no bid or buying interest at a price equal to or higher than the minimum price at which such a security may trade on the exchange (currently 1/256 of $1.00).

.02 For each transaction executed by a member or member organization or affiliated person pursuant to paragraph (b) above, a record of such transaction shall be maintained by the member or member organization and shall be available for inspection by the Exchange for a period of three years. Such record shall include the circumstances under which the transaction was executed in conformity with this rule.

.03 Should buying interest develop which would cause the "designated" security to trade at or above the minimum fraction(1/256 of $1) at which securities trade on the Exchange, the security will revert to the regular trading procedures.

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

1. Purpose

Currently, under Amex Rule 170, an Amex specialist has an obligation to make a two-sided market in all securities in which the specialist is registered. In the absence of public buying or selling interest, a specialist is required to bid for and/or offer securities for his or her own account. However, when there is an absence of buying interest because a security has, for all practical purposes, become worthless, the Exchange believes that the obligation to make a two-sided market places an unjustified burden on the specialist. For example, if an issue of warrants is expiring worthless, and the holder of a large position, perhaps several thousand warrants, seeks to dispose of the warrants on the Exchange, the specialist would technically be required to purchase the warrants, at the minimum price at which transactions may be done through the normal Exchange systems, 1/256 of $1.00.[5] Even at such a low price, the Amex believes that a purchase of a large number of such securities is unjustifiably costly for the specialist.

A procedure under new Amex Rule 25 would permit the specialist, with the approval of a Floor Governor and the

[1] The text of the changes to proposed Amex Rule 25 were submitted as Exhibit A to Amendment No. 1 and copies are available at the Amex as well as at the Commission.

[2] *See* letter from Claudia Crowley, Special Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated May 7, 1992, deleting the word "area."

[3] The Exchange corrected the text of the proposed rule by adding the words "broker" and "control" to Amex Rule 25(b). *See supra*, note 2.

[4] The Exchange inserted the words "equity or derivative" to coincide with the title of the proposed rule. *See supra* note 2.

[5] Although the minimum fractional change specified in Amex Rule 127 is 1/32 of $1.00, this rule also provides that the Exchange may fix different minimum fractional changes for dealings in securities. Accordingly, the Exchange has fixed 1/256 of $1.00 as the minimum for certain securities.

concurrence of the Exchange's Member, Firm and Trading Floor Services area, to relegate an essentially worthless "designated" security [6] to a "cabinet" where the security may be bid for or offered at .001 per share, or $1.00 for 1,000 shares. The specialist would have no obligation to purchase or sell the security. If and when the market situation changes so that "cabinet" trading in an issue is no longer appropriate, the security will revert to the regular market.[7] This arrangement is similar to the cabinet trading already provided on the Exchange for certain bonds and options.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-09 and should be submitted by June 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11205 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[6] *See* proposed Amex Rule 25, Commentary .01.

[7] *See* proposed Amex Rule 25, Commentary .03.

[8] *See* Amex Rules 136 and 959.

[Release no. 34-30673; File No. SR-CBOE-92-09]

May 6, 1992.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Position Limits for European-Style Standard & Poor's ("S&P") 500 Stock Index Options Settled Based on the Opening Prices of Component Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The CBOE hereby files proposed rule changes relating to position limits for European-style S&P 500 Index options settled based on the opening prices of component securities ("A.M.-settled"). The changes include increasing position limits to 45,000 contracts on one side of the market and eliminating the telescoping provision for near-month positions. In addition, exemptions are proposed for certain hedge positions and customer facilitation transactions.

The text of the proposed rule changes is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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 the Statutory Basis for, the Proposed Rule Changes

(1) Purpose

For some time, the Exchange has recognized that the existing index option position limits are too restrictive for certain investors. The amount of assets controlled and managed by institutional investors and member firms has grown exponentially in recent years. These increasingly sophisticated and well capitalized investors have utilized both SEC and Commodity Futures Trading Commission ("CFTC")-regulated products, as well as over-the-counter ("OTC") derivatives, in connection with the management of their assets. The proposed rule changes are intended to afford these investors greater opportunities to utilize A.M.-settled, European-style S&P 500 Index options in the performance of their management responsibilities.

(2) Background

In May 1987, the Commission approved two proposed rule filings designed to enable investors to hedge with options. The first established a "hedge" exemption for up to 75,000 contracts in excess of index option position limits for pubic customers with a qualified portfolio of stocks.[1] The Commission noted that broad-based index options were cash-settled and overlay a large number of securities and, therefore, were "not as likely to disrupt the markets in their underlying

[1] See Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204.

securities or be as readily susceptible to manipulation as individual options." [2]

The Commission provided certain safeguards such as limiting the exemption to public customer orders (orders eligible to be placed on the public limit order book under CBOE Rule 7.4). This safeguard later proved to be a disincentive for market makers and member firms who were unable to facilitate customers utilizing the exemption. Other safeguards, such as defining a qualified stock portfolio, not allowing the use of the exemption in connection with arbitrage between stock baskets and overlying stock index options, and providing for the orderly initiation and liquidation of options and stock positions, presented no problems. In approving the hedge exemption pilot program, the SEC noted that institutions had increased their use of index-related derivative products to hedge the risks associated with holding diversified equity portfolios.

The second rule filing, approved in May 1988, increased position limits in equity options by creating a limited position limit exemption for the four most commonly used hedge positions.[3] The Commission found that the approach balanced the benefits of providing greater depth and liquidity for institutional customers seeking to hedge portfolios by trading stock options against the potential for increased market disruption and possible manipulation.

Since that time, the Exchange has submitted to the Commission the following rule filings proposed position limit increases in index options and equity options: (1) SR-CBOE-89-10; (2) SR-CBOE-89-11; (3) SR-CBOE-89-20; (4) SR-CBOE-89-26; and (5) SR-CBOE-91-33.[4] Each of these rule filings are being withdrawn contemporaneously with the submission of this proposal.

With the tailored approach contained in this filing, it can be determined whether institutional customers and the professionals who serve them will benefit by an approach that broadens hedging exemptions in conjunction with raising position limits for the groups of investors most likely to utilize them. There will be a very limited number of customers to whom the exemptions will apply. Based on the CBOE's experience with the approach contained in this filing, the Exchange may proposed further changes and refinements.

The changes currently proposed will apply to only one type of product: A.M.-settled, European-style S&P 500 Index options ("SPX"). The S&P 500 Index is the subject of futures trading at the Chicago Mercantile Exchange ("CME") and is an index believed to have many OTC substitutes. In addition, the CBOE believes the SPX is primarily an institutional product. Therefore, the exemptions are targeted to participants in that market, *i.e.*, institutional customers and the member firms serving such investors. Further, the proposed rule change would incorporate the present S&P 500 Index Option contract that is A.M.-settled ("NSX") and provide for A.M.-settlement of all newly listed SPX contracts traded on the Exchange. Accordingly, all outstanding NSX contracts will be eligible for the revised position limits. Outstanding SPX and long-term SPX ("SPL") contracts will continue to be settled based on closing prices ("P.M.-settled"), however, these contracts will not be subject to the increased position limits. With these changes, the CBOE believes that the already considerable volume of SPX trading will rise substantially and, coupled with SEC oversight over these investments, will prove increasingly attractive to certain large investors and the market professionals that serve them.

Surveillance procedures will generally remain the same, except that an appropriate applicant may request a position limit exemption orally with the backup documentation telefaxed or telecopied as soon as possible thereafter. This reflects advances in technology and will better serve the investors to which the exemptions will be granted. A detailed discussion of each of the changes follows:

(3) Rule changes

(a) *Position Limit Increase.* The proposal would increase the existing basic position limit from 25,000 to 45,000 contracts and eliminate the telescoping provision of CBOE Rule 24.4 only with respect to A.M.-settled SPX options. No change in position limits or the existing hedge exemption for American-style indexes or equity options or for P.M.-settled, European-style index or equity options is proposed.[5] In addition, the rules governing position limits for industry index options have been moved unchanged to new Rule 24.4A to enhance clarity.

A.M.-settled SPX options have been selected for the increased position limits because increased institutional investment in this product will benefit not only the beneficiaries of the assets managed by these institutional investors, but the market as a whole. By enhancing the ability of institutional customers and the member firms serving them to hedge their equity market positions, the proposed increased position limits will minimize such beneficiaries' individual risks and increase market liquidity. Moreover, these benefits can be achieved with little or no attendant risk to the marketplace, since SPX contracts, by their very nature, are not readily susceptible to efforts by market participants to artificially influence the value of the underlying index. First, SPX contracts are European-style index options, and, consequently, are not subject to early exercise. Second, the securities underlying the S&P 500 Index are more liquid and less volatile as a group than an individual security. Finally, both the securities within the SPX and the CBOE's SPX option are actively traded and, therefore, generally are able to experience heavy trading volume with minimum price fluctuation. Accordingly, larger positions in these options are less likely to disrupt the marketplace. Indeed, the largest possible position allowable under the proposed rule changes is less than one-half percent of the market capitalization represented by the S&P 500.

The CBOE further believes that the elimination of the telescoping provision will facilitate institutional trading, which currently is hampered by the requirement that investors may only hold 15,000 contracts in the near-term expiration month. The Exchange states that investors have complained that this telescoping requirement places them in the untenable position of rolling positions unnecessarily. Accordingly, for many investors, this requirement has effectively lowered actual position limits to 15,000 contracts.

(b) *New hedge exemptions.* New Interpretation .02 lists seven hedging transactions and positions involving A.M.-settling SPX options and a qualified portfolio which, upon application and approval by the Exchange, will not be counted against position limits. The seven listed positions may be described as transactions intended to reduce the risks of equity market positions. Four of the proposed hedge exemptions are already available for positions held in equity options. In no event may positions exempted under this hedge exemption

[2] *Id.* at 53 FR 20295

[3] See Securities Exchange Act Release No. 24701 (July 14, 1987), 52 FR 27269.

[4] SR-CBOE-89-26 (proposing facilitation relief) and SR-CBOE-91-33 (concerning A.M.-settled, European-style broad-based index options) have been substantially incorporated into this rule filing

[5] For example, the basic limit for SPX options would be 45,000 contracts, but not more than 25,000 could be in P.M.-settling contracts.

exceed 150,000 same-side-of-the-market option contracts in A.M.-settled SPX options. Exchange approval for the proposed hedge exemptions may be granted on the basis of oral representations, in which event the customer or money manager receiving such approval shall, within a period of time to be designated by the Exchange, furnish the CBOE's Department of Market Surveillance with appropriate documentation and forms substantiating the basis for the exemption.

For purposes of this hedge exemption, money managers qualify for higher position limits under the proposed rule change.[6] Specifically, a money manager may hold up to 250,000 exempted same-side-of-the-market option contracts in its aggregate accounts, with any single account under its control limited to 135,000 exempted same-side-of-the-market option contracts.

(c) *Facilitation Exemption.* New Interpretation .03 is intended to insure that customer transactions are executed timely pursuant to the facilitation rule (CBOE Rule 6.74(b)). The Interpretation enables a member organization to obtain a position limit exemption for positions in A.M.-settled SPX options taken in order to facilitate its customer's orders in such options. A market maker participant in a facilitation transaction may already obtain a similar exemption under existing Exchange rules. The facilitation exemptions will better serve the needs of the investing public, while distributing the risks in large customer transactions to additional market participants. This exemption contains a ceiling of 100,000 same-side-of-the-market contracts.

Although the issuance of an exemption is tailored to the need for quick market decisions, safeguards are in place to insure that transactions are documented, and that the liquidation and establishment of positions is orderly and will not cause unreasonable price fluctuations. Specifically, to remain qualified under this proposal, a facilitation exemption member or member organization must, within five business days after the execution of a facilitation exemption order, hedge all exempt options and furnish the Exchange's Department of Market Surveillance with documentation reflecting the resulting hedge position(s).[7] In addition, the proposal provides that the facilitation exemption is unavailable for use in index arbitrage.

(d) *Exercise.* Interpretation .02 to Rule 24.5, Exercise Limits, provides that the exercise limit applicable to positions exempted pursuant to Rule 24.4 will correspond to the amount of the exemption.

(4) Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b) of the Act in general, and section 6(b)(5), in particular, in that they are designed to promote just and equitable principles of trade, to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule changes will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11142 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[6] A hedge exemption may be granted to an individual or organization controlling or managing customer accounts in which exempt option positions are held, *i.e.*, a money manager. The use position limit hedge exemption, however, is not permitted for index arbitrage accounts. The determination that one is in fact a money manager based on the control over accounts is determined pursuant to Interpretation .03 of Rule 4.11. Accordingly, accounts controlled by money managers will be aggregated for position limit purposes

[7] The facilitation exemption member or member organization, if requested, must also provide to the CBOE any information or documents concerning the exempted options and hedge positions.

[Release No. 34-30678; File No. SR-DTC-91-11]

Self-Regulatory Organization; The Depository Trust Co.; Filing and Order Approving on an Accelerated Basis a Proposed Rule Change Relating to the Automated Tender Offer Program

May 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 15, 1991, The Depository Trust Company ("DTC") 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 for the most part by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On May 7, 1991, the Commission approved on a temporary basis a proposed rule change filed by DTC to modify its Automated Tender Offer Program ("ATOP ").[2] The modifications

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 29168 (May 7, 1991), 56 FR 22742.

included: (1) Enabling participants to withdraw through DTC's participants terminal system ("PTS") securities previously tendered; (2) permitting agents of tender offers ("agents") to receive agent messages from DTC by computer to computer transmission; and (3) implementing a new program, ATOP II, to enable agents that do not handle a large volume of offers and that do not have a PTS terminal and printer to participate in ATOP. DTC's current proposal would permanently approve those modifications.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

ATOP enables Participants to submit acceptances in tender and exchange offers ("offers") by means of electronic instructions through PTS. Prior to the previous temporary approval of ATOP modifications, participants wishing to withdraw acceptances of an offer pursuant to withdrawal rights in the offer had to submit withdrawal instructions by means of hardcopy forms (*i.e.*, paper forms). Participants had experienced difficulty in coordinating the automated submission of acceptances in ATOP with the manual submission of withdrawals of acceptances. To alleviate that difficulty, DTC modified ATOP to include a withdrawal capability. By means of PTS instructions, a participant which has previously accepted an offer can request the depository or agent for the offer to permit withdrawal of all or part of the tendered securities, and the agent can accept or reject the withdrawal request. ATOP was also modified to permit an agent to receive "agent's messages," which indicate acceptances of an offer, by computer-to-computer transmissions in addition to or in place of receiving agent's messages by generating hardcopy versions on the agent's PTS printer.

The temporary approval order also approved DTC's implementation of the new ATOP II Service which allows agents that do not have a large volume of offers and that do not have a PTS terminal and printer to participate in ATOP without incurring the ongoing costs of a PTS terminal and printer. (A PTS terminal and printer are required to participate in the full version of ATOP.) Using ATOP II, participants utilize PTS to submit acceptances of offers and instructions to fulfill notices of guaranteed deliveries just as they do in the full version of ATOP. Under ATOP II, after receiving a participant's ATOP message DTC generates the message on a printer at DTC and then delivers it to the agent at the end of the day. During the day, the agent can access information about the offer, such as which DTC participants have tendered securities, through a personal computer. The electronic withdrawal capability which was added to the full version of ATOP is not available under ATOP II, and so withdrawals must be made by hardcopy instructions.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will further automate the processing of offers involving securities on deposit at DTC. DTC believes that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change enhances DTC's existing ATOP service.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was developed through discussion with participants and agents. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Discussion

The Commission believes that DTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3)(A) and (F).[3]

[3] 15 U.S.C. 78q-1(b)(3)(A) and (F).

Sections 17A(b)(3)(A) and (F) of the Act require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

Whereas in the past participants were required to submit withdrawal instructions by means of hardcopy instruction forms, the proposed rule change enables participants to withdraw acceptances through PTS instructions to DTC or the agent. Thus, the Commission believes the proposed rule change provides participants a more efficient means of withdrawing acceptances of tender offers and further enhances the prompt and accurate clearance and settlement of tender offer transactions.

The proposed rule change also permits an agent to receive agent's messages through computer-to-computer transmissions in addition to or in place of receiving agent's messages by generating hardcopy versions on the agent's PTS printer. The Commission notes that in adopting section 17A of the Act, Congress found that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. The Commission believes that DTC's proposed computer-to-computer transmission of agents' messages is consistent with these goals and should promote the prompt and accurate clearance and settlement of tender offers.

The proposed rule change also implements a new service, ATOP II, that will enable agents that do not handle large volumes of offers, and therefore do not maintain PTS terminals and printers, to participate in ATOP without incurring the ongoing cost of PTS terminals and printers. By allowing these smaller agents access to DTC's ATOP service, ATOP II will further automate tender offers that otherwise would be conducted completely with hardcopy instructions and, thereby should help reduce the inefficiencies and risks associated with the unautomated processing of tender offers.[4]

[4] Because of the inefficiencies and risks associated with the processing of tender offers that are tendered in physical form, the Commission adopted Rule 17Ad-14 of the Act (17 CFR 240.17Ad-14). Rule 17Ad-14 requires transfer agents acting as tender agents on behalf of bidders to establish and maintain special accounts with all qualified securities depositories holding the subject company's securities. Securities Exchange Act Release No. 20581 (March 1, 1984) 49 FR 3064.

The Commission also finds that good cause exists under section 19(b)(2) of the Act for approving the proposal prior to the thirtieth day after publication of notice of the filing in the **Federal Register.**[5] As noted in the original ATOP approval order,[6] the Commission believes that automation of tender and exchange offer processing provides significant benefits to a process that previously was handled through inefficient physical means. DTC has operated the ATOP program for the past three years and has encouraged tender and exchange offer processing to be brought within the automated, centralized environment of securities depositories. The modifications to ATOP and the new ATOP II service have been run as a pilot program for the past year. During that time, DTC has been able to monitor these modifications and has gained experience in processing low volume tender offers. In light of the above considerations and because the previous order temporarily approving the modifications to ATOP and the new ATOP II service expires on May 7, 1992, the Commission believes "good cause" exists for approving DTC's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-91-11 and should be submitted by June 3, 1992.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A.

It is therefore, ordered, pursuant to section 19(b)(2 of the Act, that the above-mentioned proposed rule change (File No. SR-DTC-91-11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11202 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[5] As required by section 19(b)(4)(A) of the Act (15 U.S.C. 78s(b)(4)(A)), the Commission has consulted with and has received the concurrence of the Board of Governors of the Federal Reserve System in granting accelerated approval. Telephone conversation between Don R. Vinnedge, Manager, Trust Activities Program, Board of Governors of the Federal Reserve System, and Anthony Bosch, Staff Attorney, Division of Market Regulation, Commission (May 5, 1992).

[6] Securities Exchange Act Release No. 27139 (August 14, 1989), 54 FR 34841 (File No. SR-DTC-88-19).

[Release No. 34-30675; File No. SR-NYSE-92-07]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc.

Relating to Amendments to Rule 600 (Arbitration), 607 (Designation of Number of Arbitrators), 621 (Interpretation of the Provisions of the Code and Enforcement of Arbitrator(s) Rulings) and 636 (Requirements When Pre-Dispute Arbitration Agreements with Customers).

May 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 7, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission;; or "SEC") the proposed rule change relating to class actions, the classification of arbitrators, and the ability of arbitrators to enforce compliance with their own rulings. The proposal excludes class actions from submission to the NYSE arbitration facilities, and enables brokerage customers to pursue class action claims against their broker-dealers in court, notwithstanding any arbitration agreement they may have signed. The proposed rule change is described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Proposed NYSE Rule 600(d) provides that class actions are ineligible for submission to arbitration. Proposed NYSE Rule 607(a)(2)v. will classify individuals who are registered under the Commodities Exchange Act ("CEA") or associated with a registered futures association or any commodities exchange as being from the securities industry for the purposes of classification of arbitrators. The proposed amendment to NYSE Rule 621 will clarify that arbitrators are empowered to take appropriate action in order to obtain compliance with any ruling by the arbitrators.[1] Proposed NYSE Rule 636 (e) and (f) will require that all new pre-dispute arbitration agreements with customers include a statement regarding the ineligibility of class actions for submission to arbitration in accordance with the provisions of proposed Rule 600(d).

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 proposed rule change is based for the most part on proposals developed by the Securities Industry Conference on Arbitration ("SICA").[2] The proposed

[1] The NYSE anticipates that appropriate action would include assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals.

[2] SICA is comprised of a representative from each self-regulatory organization ("SRO") that administers an arbitration program, a representative of the securities industry, and four representatives of the public. The SROs that administer an arbitration program are the NYSE, Boston ("BSE"), American ("Amex"), Cincinnati ("CSE"), Midwest ("MSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges, the Chicago Board Options Exchange ("CBOE"), the National Association of Securities Dealers ("NASD"), and the Municipal Securities Rulemaking Board ("MSRB").

rule change is intended to address the ineligibility of class actions for arbitration and to require new pre-dispute arbitration agreements with customers to include a statement regarding the ineligibility of such class actions for submission to arbitration, to classify individuals registered under the CEA or associated with a registered futures association or commodities exchange as securities arbitrators, to clarify the arbitrators' authority to assess fees and costs in arbitration, to preclude documents or witnesses and to make disciplinary referrals in order to obtain compliance with the arbitrators' rulings.

1. Purpose

The purpose of the proposed rule change is:

(a) To provide that class actions are ineligible for submission to arbitration [Rule 600(d)];

(b) To classify individuals registered under the CEA or associated with a registered futures association or commodities exchange as securities industry arbitrators [Rule 607(a)(2)v.];

(c) To clarify that arbitrators are empowered to take appropriate action in order to obtain compliance with any of their rulings (Rule 621); [3]

(d) To require that all new pre-dispute arbitration agreements with customers include a statement regarding the ineligibility of class actions for submission to aribration in accordance with the provisions of proposed Rule 600(d) stated above [Rule 636 (e) and (f)].

2. Statutory Basis

The proposed change is consistent with section 6(b)(5) of the Act in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have an impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-07 and should be submitted by June 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11203 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[3] *See supra*, note 1.

[Release No. 34-30676; File No. SR-NYSE-92-11]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc.

Relating to the Extension of Rule 103A—Specialist Stock Reallocation—until May 9, 1993.

May 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 23, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval of the proposed rule change pursuant to Section 19(b)(2) of the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. At the same time, the Commission is granting temporary accelerated approval to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of Rule 103A (Specialist Stock Reallocation) for an additional year until May 9, 1993.

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 III 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

(1) Purpose

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange's Market Performance Committee ("MPC") to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the MPC is

authorized to conduct a formal Performance Improvement Action in an appropriate case.

On May 8, 1991, the Commission extended the effectiveness of Rule 103A for one year until May 9, 1992.[1] In the May 8 Order, the Commission stated its belief that the Exchange should develop objective performance standards to measure specialist performance.[2] The Exchange, with the assistance of outside consultants, currently is exploring the development of an additional objective performance standard.

Rule 103A has proven to be very effective during the past year, as two formal performance improvement actions were initiated. As the Rule is working well, the Exchange requests that its effectiveness be extended for an additional year, until May 9, 1993.

(2) Basis

The statutory basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general, to protect investors and the public interest. The proposed extension of Rule 103A is consistent with these objectives in that it will allow the Exchange to continue to administer the Rule on an uninterrupted basis ensuring quality specialist performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-11 and should be submitted by June 3, 1992.

IV. Discussion

The rules of the Exchange, in addition to the rules set forth under the Act, impose certain obligations upon the specialist unit, including, but not limited to, the maintenance of fair and orderly markets.[3] Because specialist units play a crucial role in providing stability, liquidity and continuity to the trading of stocks on the Exchange, the Commission believes that effective oversight, including periodic evaluation of the specialists' performance, is important to the maintenance of a fair and efficient marketplace. Critical to this oversight is the specialist performance evaluation process embodied in Rule 103A.

Consistent with past Commission orders approving the extension of the Rule 103A pilot program, in the May 8 Order the Commission stated its desire for the Exchange to develop objective measures of market making performance and incorporate such measures into the proposed rule change to extend the Rule 103A pilot. In fact, prior to the Order extending the pilot until May 9, 1991,[4] the Exchange informed the Commission that it had employed the services of an outside expert to study the feasibility of adopting such objective measures of specialist performance. To date, however, the Exchange has not finished its development of objective measures of market making performance. Indeed, in the proposed rule change, the Exchange states that it is continuing to study the issue of objective performance standards and is seeking to extend Rule 103A for an additional year while it considers adopting objective standards. Accordingly, the proposal herein to extend Rule 103A until May 9, 1993, does not include objective measures as the Commission originally had hoped.

Even though the proposal lacks objective market making performance standards, the Commission has determined to approve the proposal to extend the effectiveness of Rule 103A for an additional year in light of the significant enhancements the NYSE has made to the Rule 103A program thus far, and the substantial time and resources the Exchange already has dedicated to the development of objective criteria. The revisions to Rule 103A, adopted in the July, 1990[5] and the subsequent adoption of relative performance standards[6] have augmented the Exchange's ability to evaluate specialist performance.[7]

The Commission continues to believe, however, that the Exchange should develop objective performance standards that would measure accurately the traditional indicia of specialist performance, namely, market depth, price continuity and dealer participation and stabilization. Similarly, as noted in previous orders, including the May 8 Order, the Commission believes that the mature status of the Intermarket Trading System ("ITS") as a market structure facility warrants the incorporation of ITS turnaround and "trade-through" concerns into the NYSE's Rule 103A performance standards. The Commission, therefore, strongly encourages the NYSE to incorporate objective standards into the Rule 103A program prior to or simultaneous with the NYSE's future proposal to extend the effectiveness of Rule 103A or adopt the Rule on a permanent basis.[8]

[1] See Securities Exchange Act Release No. 29180 (May 8, 1991), 56 FR 22498 ("May 8 Order") (order approving File No. SR-NYSE-91-14). Prior to the May 8 Order, on July 17, 1990, the Commission approved various revisions to Rule 103A including, among other things, enhancing the performance criteria for administrative messages received through the SuperDot system, and, at the same time, extended the effectiveness of the revised Rule 103A until May 9, 1991 [see Securities Exchange Act Release No. 28215 (July 17, 1990), 55 FR 30060 (order approving File No. SR-NYSE-90-24)]. Subsequently, on February 27, 1991, the Commission approved the NYSE's proposal to adopt relative performance standards into the Rule 103A program [see Securities Exchange Act Release No. 28923 (February 27, 1991), 56 FR 9993 (order approving File No. SR-NYSE-90-44)].

[2] The Commission notes that the Exchange's current evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Objective market making measures, however, currently are not included in the Rule 103A program.

[3] See generally NYSE Rule 104; Rule 11b-1 under the Act, 17 CFR 240.11b-1 (1991).

[4] *See* note 1, *supra*.

[5] *Id.*

[6] *Id.*

[7] As the NYSE notes in its proposed rule change, the effectiveness of the current Rule 103A program can be witnessed by the Exchange's initiation of two performance improvement actions over the past year.

[8] In this regard, the Commission expects the NYSE to submit to the Division of Market

Continued

The Commission has reviewed carefully the NYSE's proposed rule change and, for the above reasons, believes that the proposal is consistent with the requirements of Sections 6 and 11 of the Act [9] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest.

Further, the Commission finds that the proposal is consistent with section 11(b) of the Act, [10] and Rule 11b-1 thereunder, [11] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system. The Commission believes that the NYSE's Rule 103A performance evaluation process provides the Exchange with the means to ascertain whether each specialist unit is maintaining a fair and orderly market in his/her assigned securities, pursuant to Exchange rules and the Act, and the rules and regulations thereunder, [12] The extension of Rule 103A's effectiveness until May 9, 1993 will provide the Exchange with the ability to continue evaluating specialist performance, which should enhance market quality and performance in Exchange listed securities. The Exchange also will be able to continue developing objective measures of market making performance.

Moreover, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer, on an uninterrupted basis, its Rule 103A evaluation process. During the one year extension of the Rule, the Commission expects the NYSE to continue its examination of the efficacy of its current specialist evaluation procedures, as well as determine whether to extend the pilot for a further period or, in the alternative, approve Rule 103A on a permanent basis. Finally, a substantial portion of current Rule 103A was noticed for a full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program. [13] Further, interested persons were invited to comment on the past proposals to extend the effectiveness of Rule 103A, the most recent of such proposals being the extension of Rule 103A until May 9, 1992. The Commission received no comments on these proposals. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act. [14]

V. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with sections 6(b)(5) and 11(b) under the Act, and Rule 11b-1 thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [15] that the proposed rule change be, and hereby is, approved for the period ending May 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11204 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

Regulation, prior to the quarter ending March 1993, a proposed rule change pursuant to Rule 19b-4 under the Act, 17 CFR 240.19b-4, to extend the Rule 103A pilot or make the Rule permanent. As emphasized above, this proposed rule change should include objective measures of market making performance that have been developed by the outside experts retained by the Exchange. The Commission also expects the Exchange to submit to the Division, by the quarter ending March 1993, a status report on the implementation of Rule 103A. The report should contain data, for each quarter of 1992, on (1) the number of specialists that fell below acceptance levels of performance improvement actions commenced; (3) the number of units subjected to informal counseling to improve performance; and (4) a list of stocks reallocated due to substandard performance under the Rule and the particular unit involved.

[9] 15 U.S.C. 78f and 78k (1988).

[10] 15 U.S.C. 78k(b) (1988).

[11] 17 CFR 240.11b-1 (1991)

[12] See note 3, *supra*.

[13] See Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (notice of filing of File No. SR-NYSE-87-25); and 25681 (May 9, 1988), 53 FR 17287 (order approving File No. SR-NYSE-87-25).

[14] 15 U.S.C. 78f (1988).

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-30672; International Series No. 382; File No. SR-PHLX-91-30]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to the Listing of Long-Term Foreign Currency Options

May 6, 1992.

On September 9, 1991, the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] a proposed rule change to provide for the listing of long-term foreign currency options that expire up to 36 months after they are first listed for trading.

The proposed rule change was published in Securities Exchange Act Release No. 29804 (October 10, 1991), 56 FR 52305. No comments were received on the proposed rule change.

The Exchange proposes to amend its Rule 1012(a)(ii) to provide for the listing of long-term foreign currency options which will be listed and traded on an every other cycle month (six-month) expiration basis for up to thirty-six months from the date of issuance. Currently, the PHLX trades options on individual foreign currencies with six expirations of up to one year in length with two consecutive month and four cycle month expirations. The Exchange proposes to retain flexibility in the listing of new strike prices in longer term cycle months (*i.e.*, those cycle months with an expiration date longer than one year into the future) by providing for an at-the-money strike price and one in- and one out-of-the-money strike prices at double the interval applicable for foreign currency options with expirations of twelve months or less.

The PHLX originally intended to list long-term foreign currency options series at eighteen, twenty-four and thirty-six month expirations, with additional longer term series being introduced at each cycle month expiration until the entire set of cycle month expiration series would be available up to thirty-six months. [3] To reduce concerns regarding the proliferation of strike prices in the options markets, however, the PHLX has amended its proposal to provide that new long-term foreign currency options

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1991).

[3] See Securities Exchange Act Release No. 29804 (October 10, 1991), 56 FR 52305.

series will be introduced only at six-month intervals, or at every other cycle month expiration.[4]

The proposed long-term foreign currency options, with some exceptions, will be subject to the same rules that presently govern the trading of existing foreign currency options contracts, including sales practice rules, margin requirements, and floor trading procedures. The Exchange believes that bid/ask differential (quotation parameters) and price continuity rules should not apply to such longer term foreign currency options series until their time to expiration is twelve months or less because, at this time, no basis has been determined for establishing reasonable prices for longer term foreign currency options as a result of the lack of historical pricing. Nevertheless, the PHLX has stated that it will make a good faith attempt to observe price continuity and quotation parameter rules that presently govern trading in existing foreign currency options with expirations of one year of less.[5] With regard to position and exercise limits, the PHLX proposes to aggregate positions in long-term, short-term, and cross-rate options overlying the same foreign currency.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[6] In particular, the Commission believes that the proposed rule change is designed to provide investors with additional means to hedge foreign currency portfolios and cash flows from long-term market risk, thereby facilitating transactions in the foreign currency forward and cash markets. Specifically, by allowing investors to lock in their foreign currency hedges for up to thirty-six months, the PHLX proposal will permit investors to protect better their portfolios from adverse currency exposure. By extending the expirations of foreign currency options out to thirty-six moths, the Exchange is providing an additional product for investors who desire a long-term foreign currency hedge. Further, long-term foreign currency options will allow this protection at a known and limited cost. Finally, the proposal will provide portfolio managers and other institutional currency market participants with an alternative to hedging portfolios with futures contracts, forward contracts and/or off-exchange customized derivative instruments.

The Commission notes that the Exchange's strike price interval, bid/ask differential, and continuity rules will not apply to such long term options series until their time to expiration is less than twelve months. This approach is consistent with the approach currently being taken by the Exchange with regard to its long-term index options because of a lack of historical pricing data for long-term foreign currency options.[7] Strike price interval requirements and bid/ask differential rules applicable to foreign currency options currently are based on options that expire twelve months from the time they begin trading.[8] Therefore, there currently is no basis for establishing accurate prices for long-term foreign currency options that will expire thirty-six months from the time they begin trading.

However, although specific bid/ask differential and price continuity rules will not apply to long-term foreign currency options with over twelve months to expiration, the Commission notes that the Exchange's general rules that obligate specialists and Registered Options Traders ("ROTs") to maintain fair and orderly markets will continue to apply.[9] The Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and price continuity requirements, to provide the Exchange with the authority to make a finding of inadequate specialist or ROT performance should specialists or ROTs enter into transactions or make bids or offers (or fail to do so) in long-term foreign currency options that are inconsistent with the maintenance of a fair and orderly market. Finally, the Commission notes that the bid/ask differential and price continuity rules will apply to long-term foreign currency options when the time remaining until expiration is less than twelve months.

The Commission also does not believe that the listing of long-term foreign currency options will cause a proliferation of options series since the Exchange will only list four additional expiration months between 12 and 36 months and the Exchange has stated that it will only bring up a limited number of strike prices in these far-term months.[10] Lastly, based on representations from the Options Price Reporting Authority ("OPRA"), the Commission believes that OPRA will have adequate computer processing capacity to accommodate the additional expiration months. Specifically, OPRA represented that "[b]ased on PHLX's projections dated March 30, 1992 of the volume impact of long term FCO's, OPRA has the capacity to process long term FCO's." [11] Nevertheless, the Commission requests that the Exchange monitor the volume of additional options series listed as a result of this rule change and the effect of these additional series on the capacity of the PHLX's OPRA's, and vendors' automated systems.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR-PHLX-91-30) is approved.

[4] Accordingly, the PHLX will initially list options series with thirty months until expiration in addition to the eighteen, twenty-four and thirty-six month series as originally proposed. Thereafter, at the first and third cycle month expirations, the Exchange will add new options series with twelve-month expirations. In addition, at the second and fourth cycle month expirations, the Exchange will add options series with thirty-six month expirations. *See* letter from Michele R. Weisbaum, Assistant General Counsel, PHLX, to Thomas R. Gira, Branch Chief, Division of Market Regulation, SEC, dated January 22, 1992. The Commission notes that any proposed modification to this pattern for the introduction of new long-term foreign currency options would necessitate the submission of a proposed rule change pursuant to Section 19(b) of the Act.

[5] The PHLX has also stated that it will conduct a special one year market surveillance study of the markets in listed longer term foreign currency options with expirations of over twelve months. This one-year period will permit the PHLX to observe trading in the longer term foreign currency options and build a historical pricing reference database. The one-year historical pricing database, in turn, should afford the PHLX a basis to analyze whether existing price continuity and quotation parameter rules should be imposed on trading in longer term foreign currency options.

[6] 15 U.S.C. 78f(b)(5) (1982).

[7] See Security Exchange Act Release No. 28910 (February 22, 1991), 56 FR 9032 (order approving long-term index options on the PHLX).

[8] See PHLX Rule 1011(a)(ii).

[9] See PHLX Rules 1014 and 1020.

[10] The PHLX has indicated that its guidelines for adding new series of strike prices is determined by whether the underlying foreign currency moves significantly enough to hit an existing strike. In such a case, the PHLX would add a new strike at double the intervals for existing 12-month foreign currency options. Conversation between Murray Ross, Secretary, PHLX, and Jeffrey P. Burns, Attorney, Division of Market Regulation, SEC, on May 5, 1992.

[11] See Memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Kathi Garrity and Mike Masciantonio, PHLX, dated April 2, 1992 which is enclosed in a letter from Michele R. Weisbaum, Assistant General Counsel, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated April 10, 1992.

[12] 15 U.S.C. 78s(b)(2) (1982)

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11141 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18696; File No. 812-7894]

First Variable Life Insurance Co., et al.; Application

May 6, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: First Variable Life Insurance Company ("First Variable"), Monarch Life Insurance Company ("Monarch Life"), First Variable Life Insurance Company Fund E ("Fund E"), Variable Account A of Monarch Life Insurance Company ("Variable Account A"), Variable Account B of Monarch Life Insurance Company ("Variable Account B"), Variable Account A1 of Monarch Life Insurance Company ("Variable Account A1"), Variable Account B1 of Monarch Life Insurance Company ("Variable Account B1"), The Fidelity Variable Account of Monarch Life Insurance Company ("Fidelity Account"), Separate Account VA-1 of Monarch Life Insurance Company ("Separate Account VA-1"), Separate Account VA of Monarch Life Insurance Company ("Separate Account VA"), (together, the "Separate Accounts"), Monarch Securities, Inc. ("MSI") (collectively, the "Original Applicants"), and First Variable Capital Services, Inc. ("FVCS") (together with the Original Applicants, the "Applicants").

RELEVANT 1940 ACT SECTION: Order requested pursuant to section 6(c) of the 1940 Act amending an order that amended certain prior orders of exemption from sections 2(a)(32), 2(a)(35), 12(d)(1), 22(c), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d), 27(f), and 27(h)(3) of the 1940 Act and Rules 6e-2 and 22c-1 thereunder

SUMMARY OF APPLICATION: Applicants seek an order amending an order (the "Amended Order") that amended certain prior exemptive orders (the "Existing Orders") previously issued by the Commission (i) to add FVCS as a party to the exemptive relief previously granted in the Existing Orders, and (ii) to specify that, upon execution of appropriate principal underwriting agreement(s), FVCS will act as principal underwriter, alone or in addition to MSI, with respect to the variable life insurance policies and variable annuity contracts (collectively, the "Variable Contracts") described in the Existing Orders to the extent so provided in such principal underwriting agreement(s).

FILING DATE: The application was filed on March 26, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 1992, and should be accompanied by proof of service on Applicants 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 may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, First Variable Life Insurance Company and Monarch Life Insurance Company, One Monarch Place, Springfield, Massachusetts 01133.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Special Counsel, (202) 272-2026, or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. First Variable is a stock life insurance company organized under the laws of the state of Arkansas. Fund E is a separate account of First Variable. Monarch Life is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts. Variable Account A, Variable Account B, Variable Account A1, Variable Account B1, the Fidelity Account, Separate Account VA-1, and Separate Account VA are each separate accounts of Monarch Life. MSI is a broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act"), and is also a member of the National Association of Securities Dealers, Inc. ("NASD").

2. MSI currently serves as principal underwriter of the Variable Contracts. MSI replaced Monarch Financial Services, Inc. ("MFSI") as the principal underwriter of the Variable Contracts in connection with a restructuring of affiliated companies of Monarch Life initiated as a result of the financial difficulties of Monarch Life's parent company, Monarch Capital Corporation ("MCC"). FVCS has applied for registration as a broker-dealer under the 1934 Act and has also applied for membership in the NASD, and is expected to become a registered broker-dealer and NASD member in due course. FVCS is a wholly-owned subsidiary of First Variable.

3. In connection with the issuance and distribution of the Variable Contracts, the Original Applicants (except MSI) obtained various exemptive orders (the "Existing Orders") in concert with the entity then acting as principal underwriter for the Variable Contracts. These orders provided exemptive relief to the extent necessary to permit, with respect to variable life insurance contracts, (i) the acquisition of units of certain unit investment trusts ("Zero Trust Units"); (ii) the recovery from certain separate accounts of certain costs of acquiring Zero Trust Units; (iii) the deduction of specified charges under certain of the Variable Contracts, and (iv) the treatment of certain of the Variable Contracts as "variable life insurance contracts" under Rule 6e-2 under the 1940 Act, and, with respect to variable annuity contracts, the deduction of mortality and expense risk charges and any distribution expense risk charges.

4. In all of the Existing Orders described below, except those described in paragraphs d, f, and j, MFSI (which, prior to August 11, 1988, operated under the name of Monarch Resources, Inc.) was designated as the principal underwriter of the Variable Contracts. The orders described in paragraphs d, f, and j designate Variable Annuity Sales Corporation ("VASCO") as the principal underwriter of the Variable Contracts. Pursuant to a statutory merger effected as of January 30, 1990, MFSI assumed all of VASCO's obligations and liabilities, including the principal underwriting agreements for First Variable Contracts. The Existing Orders are as follows:

a. *File No. 812-7553:* Fund E, First Variable, and MFSI obtained exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. The relief permitted the deduction of mortality and expense risk charges from the assets of Fund E. (Release Nos. IC-17630 (July 31, 1990)

---

[13] 17 CFR 200.30-3(a)(12) (1990).

(notice) and IC-1711 (Aug. 29, 1990) (order).)

b. *File No. 812-7453:* Separate Account VA, Monarch Life, and MFSI obtained exemptions from sections 26(a)(2) and 27(c)(2) of the Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. The relief permitted the deduction of mortality and expense risk charges from the assets of Separate Account VA. (Release Nos. IC-17349 (Feb. 21, 1990) (notice) and IC-17393 (Mar. 21, 1990) (order).)

c. *File No. 812-7471:* Separate Account VA-1, Monarch Life, and MFSI obtained exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. The relief permitted the deduction of mortality and expense risk charges from the assets of Separate Account VA-1. (Release Nos. IC-17343 (Feb. 16, 1990)(notice) and IC-17381 (Mar. 15, 1990 (order).)

d. *File No. 812-6915:* Separate Account VA, Monarch Life, First Variable Annuity Fund BE, First Variable, and VASCO obtained exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. The relief permitted the deduction of mortality and expense risk charges from the assets of Separate Account VA and First Variable Annuity Fund BE. (Release Nos. IC-16521 (Aug. 11, 1988) (notice) and IC-16556 (Sept. 8, 1988) (order).)

e. *File No. 812-6684:* Variable Account A, Monarch Life, and Monarch Resources, Inc. obtained exemptions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d), 27(f) and 27(h)(3) of the 1940 Act and Rules 6e-2 and 22c-1 thereunder with respect to certain scheduled premium variable life insurance contracts. The relief permitted the contracts to include features such as (i) the right of the insured to pay unscheduled premiums under the contracts; (ii) the deduction of a sales load chargeable to first year scheduled premiums and unscheduled premiums in the nature of a "deferred sales load" and the deduction of a premium tax charge for unscheduled premiums in the nature of a deferred charge; and (iii) the deduction from the investment base of the contracts for cost of insurance and the deduction from separate account assets for the guaranteed benefits risk charge. (Release Nos. IC-16179 (Dec. 17, 1987) (notice) and IC-16219 (Jan. 12, 1988) (order).)

f. *File No. 812-6606:* Fund E and First Variable obtained exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act with respect to certain flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts. The relief permitted the deduction of mortality and expense risk charges from the assets of Fund E. (Release Nos. IC-15644 (Mar. 26, 1987) (notice)and IC-15701 (Apr. 24, 1987) (order).)

g. *File No. 812-6406:* Variable Account A1, Variable Account B1, the Fidelity Account, Monarch Life, and Monarch Resources, Inc. obtained exemptions from section 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d), and 27(f) of the 1940 Act, and rules 6e-2 and 22c-1 thereunder, with respect to certain single premium variable life insurance contracts. The relief permitted (i) the deduction of a surrender charge under a contingent deferred sales load structure; (ii) deductions from each contract's investment base for cost of insurance, first year administrative, and state premium tax charges; (iii) deductions from the assets of the separate accounts identified in the application as amended for minimum death benefit risk charges; and (iv) partial withdrawal rights (and certain other features) that affect the duration of the contracts' minimum death benefit guarantee. (Release Nos. IC-15443 (Nov. 28, 1986) (notice) and IC-15503 (Dec. 29, 1986 (order).)

h. *File No. 812-6244:* Variable Account A, Variable Account B, and Monarch Life obtained an order amending Existing Orders (i) and (k) below, and granting exemptions from subsections (a)(2) and (b)(15) of rule 6e-2 under the 1940 Act, with respect to certain flexible premium variable life insurance contracts. (Release Nos. IC-14937 (Feb. 13, 1986 (notice) and IC-14978 (Mar. 11, 1986) (order).)

i. *File No. 812-6026:* Variable Account B and Monarch Life obtained exemptions from sections 12(d)(1), 26(a)(2), and 27(c)(2) of the 1940 Act to the extent necessary to permit variable Account B to acquire Zero Trust Units, and to recover through an asset charge amounts paid by Monarch Life to Oppenheimer Investor Services, Inc. in connection with the acquisition by Variable Account B of Zero Trust Units. (Release Nos. IC-14407 (Mar. 7, 1985) (notice) and IC-14460 (Apr. 9, 1985) (order).)

j. *File No. 812-5926:* Fund E and First Variable obtained exemptions from sections 26(a) and 27(c)(2) of the 1940 Act with respect to certain individual and group variable annuity contracts. The relief permitted the deduction of mortality risk, expense risk, and distribution expense risk charges from the assets of Fund E. (Release Nos. IC-14225 (Nov. 5, 1984) (notice) and IC-14265 (Dec. 3, 1984) (order).)

k. *File No. 812-5724:* Variable Account A and Monarch Life obtained exemptions from Sections 12(d)(1), 26(a)(2), and 27(c)(2) of the 1940 Act to the extent necessary to permit Variable Account A to acquire Zero Trust Units, and to recover through an asset charge amounts paid by Monarch Life to Merrill Lynch, Pierce, Fenner & Smith in connection with the acquisition by Variable Account A to Zero Trust Units. (Release Nos. IC-13874 (Apr. 10, 1984) (notice) and IC-13914 (May 1, 1984) (order).)

5. At the time of the filing of the application for the Amended Order, MCC, the parent corporation of Monarch Life, had been experiencing serious financial difficulties; as a result, MCC appeared unable to retain ownership and control of Monarch Life and certain other MCC subsidiaries. In connection with a restructuring plan (the "Restructuring Plan") which was then being developed and implemented by MCC's creditors, pursuant to discussions in which Monarch Life and the Massachusetts Insurance Commissioner (the "Commissioner") had also participated, ownership of certain MCC subsidiaries with insurance-related operations or the operations themselves were proposed to be or had been transferred to Monarch Life and certain of its subsidiaries. The purpose of the Restructuring Plan was to consolidate insurance operations related to Monarch Life, and to bring such operations under Monarch Life's control.

6. As a step toward implementing the Restructuring Plan, MSI became a direct wholly-owned subsidiary of Monarch Life, effective April 18, 1991. Prior to the Restructuring Plan, MSI has functioned as a broker-dealer engaged in the retail sale of certain of the Variable Contracts pursuant to a sales agreement with MFSI, the principal underwriter for such Variable Contracts. In connection with the Restructuring Plan, the principal underwriting functions previously preformed by MFSI were transferred to MSI, so that MSI functioned as both a principal underwriter for all Variable Contracts and a retail seller of certain of the Variable Contracts. As a result of the Amended Order, MSI also became entitled to rely on the exemptive relief previously accorded to the Original Applicants, in the role it then assumed

as the principal underwriter for the Variable Contracts.

7. On May 30, 1991, the Commissioner, with the assent of Monarch Life, was appointed temporary receiver (the "Temporary Receiver") of Monarch Life in a rehabilitation proceeding. Also on May 30, 1991, the Temporary Receiver filed a petition against MCC on behalf of Monarch Life and two of its subsidiaries to commence an involuntary case under Chapter 11 of the Bankruptcy Code. On June 20, 1991, MCC consented to the entry of an order for relief under the Bankruptcy Code, and on July 16, 1991, a trustee (the "MCC Trustee") was appointed in the MCC bankruptcy proceeding.

8. On October 4, 1991, the Temporary Receiver announced an Agreement in Principle contemplating the termination of Monarch Life's receivership and the acquisition of control of Monarch Life by the banks (the "Banks") holding a pledge of Monarch Life stock, provided that certain conditions are met. (Monarch Life's common stock was pledged by MCC as security for MCC's obligations under a credit agreement with the Banks.) The Agreement in Principle provides for the termination of the receivership and the acquisition of control of Monarch Life by the Banks upon the satisfaction of certain conditions, including the approval of the MCC Trustee. Discussions contemplated by the Agreement in Principle regarding the satisfaction of such conditions are ongoing.

9. In connection with these further developments, it has been determined that a subsidiary of First Variable should perform the principal underwriting functions performed by MSI with respect to the Variable Contracts since the Amended Order was issued. Accordingly, a new booker-dealer, FVCS, has been established as a subsidiary of First Variable, to assume principal underwriting responsibilities for the Variable Contracts. It is possible, however, that MSI may continue to act alone, or in addition to FVCS, as principal underwriter for certain of the Variable Contracts.

10. Given FVCS's prospective rule as principal underwriter for all or certain of the Variable contracts, the Applications seek to extend the exemptive relief under the Existing Orders and the Amended Order, which is currently applicable to MSI, as principal underwriter of the Variable Contracts, to FVCS.

11. Applications request an order of the Commission pursuant to section 6(c) of the 1940 Act (i) to amend the Amended Order to further amend the Existing Orders to add FVCS as a party to the exemptive relief previously granted in each Existing Order and (ii) to specify that, upon execution of appropriate principal underwriting agreement(s), FVCS will then act as principal underwriter, alone or in addition to MSI, with respect to the Variable Contracts to the extent so provided in such principal underwriting agreement(s).

12. Applicants assert that such an order is necessary and appropriate in the public interest and 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.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11143 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18698; 812-7407]

BMC Fund, Inc., et al.; Application

May 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: BMC Fund, Inc. (the "Fund") and Broyhill Investments, Inc. ("BII").

RELEVENT 1940 ACT SECTIONS: Exemption requested under section 17(b) from section 179(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) of the 1940 Act exempting from section 17(a)(2) of the 1940 Act BII's purchase of certain real estate from the Fund, an affiliated person of BII.

FILING DATES: The application was filed on October 5, 1989, and amendments to the application were filed on November 14, 1989, April 30, 1990, May 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 1, 1992, and should be accompanied by proof of service on Applicants, 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 5th Street, NW., Washington, DC 20549. Applicants, P.O. Box 500, Golfview Park, Lenoir, North Carolina 28645.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund, incorporated under the laws of the State of North Carolina in 1940 as Lenoir Chair Company, is the successor to several operating companies owned primarily by the family of the late J.E. Broyhill. His son, Paul H. Broyhill ("Broyhill"), is the chief executive officer, chairman of the board, and the largest shareholder of the Fund. Since 1980 the Fund has engaged primarily in the business of investing, reinvesting and trading in securities. The Fund was excepted from the 1940 Act's definition of an investment company by reason of section 3(c)(1) thereof until March 19, 1981, when it registered as a closed-end investment company under the 1940 Act. The Fund currently has two subsidiaries: Broyhill Industries, Inc., and P.B. Realty.

2. On September 30, 1991, the net asset value (unaudited) of the Fund's portfolio was $137,762,305. The assets consist primarily of securities that are exempt from federal income tax. The Fund also holds real estate with a market value of $3,565,000 (unaudited) at September 30, 1991. The Fund had 184 shareholders as of March 10, 1992. There is no established market for the Fund's common stock, its only issued and outstanding security.

3. BII is a North Carolina corporation engaged in the furniture rental business. It also owns other income producing properties and 6.4% of the Fund's common stock. In addition, Broyhill, his wife and three children collectively own all of BII's outstanding stock, and Broyhill is a director and president of BII.

4. BII wishes to exercise and purchase option under a lease agreement with the Fund relating to certain real property located in Lenoir, North Carolina (the "Property"). The Property, consisting of

a 5.42 acre tract of land together with a clubhouse building and other improvements, was formerly owned by Blue Ridge Development Corporation of Lenoir, Inc. ("Blue Ridge") and leased to Lenoir Country Club beginning in the late 1950's. Lenoir Country Club had been formed by Blue Ridge for the benefit of members of the furniture industry near Lenoir, several of whom, including the Fund, were shareholders of Blue Ridge. Lenoir Country Club was forced to close in the middle 1970's. Except for a period of less than two years from 1976 to 1978, when it rented the Property to a restaurant, Blue Ridge was unable to find a tenant for the Property.

5. In 1979, the Fund owned approximately 44% of Blue Ridge's outstanding common stock, with the balance of Blue Ridge's outstanding common stock being owned by five other corporate shareholders. On May 31, 1979, Blue Ridge entered into an agreement to purchase all of its outstanding common stock owned by the five other shareholders for a total of $82,150. Following this purchase, the Fund operated Blue Ridge as a wholly-owned subsidiary until 1981, when Blue Ridge was merged into the Fund.

6. After acquiring sole ownership of the Property in 1979, the Fund made several unsuccessful attempts to lease it. By 1984 prospects for disposing of the Property were bleak, especially since it had been vacant for about six years and had experienced significant deterioration. On October 24, 1984, Broyhill Consolidated Warehouse Corporation ("Consolidated"), then a subsidiary of BII, entered into a lease agreement with the Fund relating to the Property (the"Lease"). BII succeeded to the rights of Consolidated as the Lessee under Lease upon the merger of Consolidated into Investments in 1986. (The term "Lessee" shall refer herein to Consolidated or BII, as appropriate.)

7. The Lease had been approved by a majority of the Fund's board of directors, including a majority of the directors who are not interested persons of the Fund as defined in section 2(a)(19) of the 1940 Act, on July 24, 1984. In connection with their approval of the Lease, the directors were advised of the Fund's efforts to sell or lease the Property; the continued costs of owning the Property in the form of taxes and insurance, and the tax value of the Property of $442,310, as determined by the Caldwell County, North Carolina tax assessor's office in 1981. The directors were further advised that the value of the Property had been diminishing for several years (both before and after the 1981 tax valuation) as a result of the building's extended nonuse and continuing deterioration (including severe water damage due to flooding), and that repairs of the Property to make it suitable for occupancy would require significant expenditures. The directors recognized that the Lease afforded the Fund the only known opportunity to convert the Property from a wasting asset into an income producing asset and concluded that the Lease provided the Fund with a fair rental rate and a fair option price and that entering into the Lease would be in the best interests of the Fund and its shareholders.

8. The Lease provides for rent of $25,000 per annum and affords the Lessee the option of purchasing the Property at the end of a five year term (the "Option") beginning on January 1, 1985, for the sum of $375,000, payable in cash (the "Option Price"). The Lease further provides that, if the Lessee elects not to exercise the Option at the end of the five year term, then it can renew the Lease for a second five years at a rent of $50,000 per annum. At the end of the second five year term, the Lessee again has an option of purchasing the Property, but for the sum of $500,000 in cash.

9. The Lessee undertook an extensive renovation of the Property beginning in 1985 to make it suitable as an office building. From 1985 through 1988, the Lessee spent a total of $558,638 on repairs to the buildings and grounds situated on the Property. Following renovation of the Property, since March 1, 1986, BII has subleased portions of the Property to the Fund and the Fund's two subsidiaries. BII also subleases portions of the Property to two other parties, one of which is an affiliated person of Broyhill and one of which is a successor to a former affiliated person of Broyhill.

10. On June 7, 1989, BII timely notified the Fund of its intention to exercise the Option at the end of the first five year term. In view of the pending application, the first term of the Lease has been extended indefinitely. If BII is permitted to exercise the Option, then BII and the Fund intend to enter into a lease agreement on the same terms as currently exist under the sublease. By affidavit submitted as an exhibit to the application, Broyhill states that BII has not engaged in any discussions regarding a sale or other disposition of the Property and has no present plans to engage in any such discussions.

11. In connection with the application, and to provide additional data supporting its determination that the Option Price for the Property is fair and reasonable and does not involve overreaching of the Fund or its shareholders, the Fund's board of directors established a committee of three directors who are not interested persons of the Fund (the "Committee") to select an independent appraiser for the Property. In separate affidavits submitted as exhibits to the application, each director on the Committee stated that he was a director when the Fund entered into the Lease and attended the meeting of the Fund's board of directors on July 20, 1984, at which time he and the other directors approved the Lease.

12. In December 1990 the Committee selected Southern Appraisal Service, Inc., of Columbia, South Carolina (the "Appraiser"), to appraise the Property. The Appraiser was asked to evaluate the fair market value of the Property as of October 24, 1984, when the Lease was entered into, as well as the fairness of the Lease and the Option. Based on its physical inspection of the market and the Property, the collection and analysis of limited market data and the techniques employed in the appraisal report, the Appraiser concluded that the value of the Property in its "as is" condition on October 24, 1984 was $350,000. The Appraiser also concluded that the Lease, including the provision for the Option, was fair to both parties.

13. The Appraiser prepared an appraisal report of April 24, 1991 (the "Report"), the cost of which was borne by BII, based on its physical inspection of the Property and collection of data in December 1990 and January 1991. The Report acknowledges that the lack of good, solid market data during the initial lease period and in subsequent years made the task of estimating the value of the Property in its "as is" condition very difficult. Nonetheless, the Report also states that the evidence, including an offer from a third party to lease a portion of the main clubhouse building (the "Building") in 1982 and the sale of two commercial buildings characterized as "good comparables," does support the Option Price reached in 1984.

14. The Appraiser also calculated the value of the Property using a "building residual technique" that assumed the Building was renovated and leased as a multi-tenant building and considered (i) the value of the Property to an investor in 1984, taking into account the present value of the net rental income that could reasonably be expected to be generated by the Building and (ii) the amount that the investor would spend on repairs and upfitting of the Building. Under that approach, the Appraiser determined that the value of the Property would have been between $245,000 and $450,000, depending on the cost of repair and

renovation to the investor. Assuming that an investor were to spend $550,000 in renovations on the Building, as was done by the Lessee, the value of the Property to the investor was estimated to be $245,000.

15. In addition, the Appraiser analyzed the leased fee value of the Property under the Lease. Using a present worth analysis, the Appraiser calculated the present worth of lease and option payments under the Lease to be $310,000 and $350,000, respectively, assuming, first, that the Option were exercised at the end of the first term and, second, that the corresponding second term option were exercised at the end of the second term. The Appraiser concluded that the present worth of the Lease through the second term is the better indicator of value and stated that the present value of rental and option payments under the Lease was $350,000.

16. Based on the Report, the Committee reaffirmed the 1984 determination by the board of directors that the Lease, including the Option, was fair to all parties as of the date of the Lease. The Committee also concluded that the Report provides a reasonable basis for concluding that the Lease and Option continue to be fair to all parties.

Applicants' Legal Analysis

1. Section 17(a)(2) of the 1940 Act makes it unlawful for any affiliated person of a registered investment company knowingly to purchase any security or other property from such registered company. Section 17(b) of the 1940 Act provides, however, that the SEC may exempt a proposed transaction from the prohibitions of section 17(a)(2) upon a showing that (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of the registered investment company as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicants seek an order under section 17(b) of the 1940 Act exempting the proposed exercise of the Option by BII, an affiliated person of the Fund, from the prohibitions of Section 17(a)(2) of the 1940 Act.

2. Applicants submit that the Lessee's acquisition of the Option in connection with entering into the Lease does not constitute the purchase of property for purposes of section 17(a)(2). Since the Lease states that both options are subject to the prior condition that an exemptive order be obtained from the SEC (or an opinion of counsel that such an order is not required), Applicants contend that, absent an exemptive order, the Option grant was a nullity and should not be viewed separately from the establishment of the lessor-lessee relationship under the Lease. Applicants maintain that the Lease itself is exempt from section 17(a) of the 1940 Act by virtue of section 17(c) thereof. Applicants do not seek any determination as to the fairness or legality of the Lease or the grant of the Option thereunder, however, and the Division of Investment Management expresses no views with respect to those issues.

3. Applicants submit that the proposed exercise of the Option meets the standards set forth in section 17(b) of the 1940 Act. Applicants assert that, in determining whether the proposed transaction satisfies the standards of section 17(b)(1) of the 1940 Act, the Option Price must be evaluated according to the facts and conditions as they existed when the Lease was executed. See *E.A. Tracey*, 18 S.E.C. 807 (1945). In this connection, the Appraiser's Report states that "[i]t is not unusual to establish a purchase option within a lease, especially if the lease were for a short term such as five years. Almost always, a purchase option is calculated at the signing of the lease rather than leaving the price open at the end of the term." The Report goes on to note that this is especially true in those situations, such as this one, where a tenant makes substantial leasehold improvements since, if the option price were left open, such a tenant would be at the mercy of the landlord at the end of the lease. Applicants also submit that evaluating the Option Price at the time of the proposed exercise of the Option would not resolve the fairness of the Option Price, but instead would merely decide how well the parties to the Lease predicted in 1984 what the value of the Property would be at the end of 1989.

4. The Fund's Board of Directors considered the overall fairness of the proposed transaction in light of the circumstances existing at the time the Lease was executed. Of critical importance was the fact that the Property was unproductive and rapidly deteriorating in value and suitability for use. Despite several attempts at finding a suitable tenant for the Property, the Fund was unable to do so. In light of the Property's poor rental history and its equally dim rental prospects, the Lessee's offer to lease the Property was an attractive one; the Fund would not only receive a return on its investment, but would also benefit from having a tenant it could trust. Further, at the time of the Lease, the condition of the Property had deteriorated so much that it was unlikely the Fund could find another tenant who possessed both the willingness and the financial resources to restore the Property to a serviceable state. Thus, leasing the Property to the Lessee relieved the Fund of the burden and expense of repairing the Property itself, and the Option Price and the rental and other terms of the lease were fair to the Fund and the Lessee.

5. Applicants submit that the Report of the Appraiser supports the conclusion by the board of directors that the Option Price was fair and reasonable to the parties thereto and did not involve overreaching. As discussed above, the Appraiser examined the Option Price in relation to several factors. An analysis of these factors led the Appraiser to conclude that the purchase price agreed upon through the purchase option was correctly estimated in the Lease. Thus, Applicants contend that when viewed in relation to the market value of the Property at the time the Lessee entered into the Lease, the terms of the Lease, including the Option Price, were fair to the Fund and to the Lessee.

6. Applicants also submit that the proposed sale of the Property to BII is fully consistent with the Fund's investment policies as set forth in its registration statement. The Fund's primary investment policy is to seek as high a level of current income as is consistent with preserving capital. If BII is permitted to exercise the Option, then the Fund will receive a substantial amount of cash that it may reinvest at a higher rate of return and at a lesser degree of risk than if it continued to hold the Property. Further, the Fund's investment policies allow it to purchase, hold or sell real estate interests as long as such investments do not exceed 25% of the Fund's assets. The sale of the Property to BII will not violate this limitation.

7. Applicants submit that the proposed sale of the Property is consistent with the general purposes of the 1940 Act. The findings and declaration of policy by Congress when it adopted the 1940 Act recited numerous abuses resulting from transactions between investment companies and their affiliates. The abuses which the 1940 Act was designed to prevent are not present here because the terms of the proposed transaction are fair to all parties.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11206 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18693; 812-7285]

Merrill Lynch Ready Assets Trust et al.; Application

May 6, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Merrill Lynch Ready Assets Trust ("MLRAT"); CMA Money Fund ("CMAM"); Merrill Lynch Institutional Fund ("MLIF"); Merrill Lynch Government Fund ("MLGF") and Merrill Lynch Treasury Fund ("MLTF") of Merrill Lynch Funds for Institutions Series; CMA Government Securities Fund ("CMAG"); Summit Cash Reserves Fund of Financial Institutions Series Trust ("SCRF"); Merrill Lynch Retirement Reserves Money Fund of Merrill Lynch Retirement Series Trust ("MLRR"); Merrill Lynch U.S.A. Government Reserves ("USA"); CBA Money Fund ("CBA"); CMA Treasury Fund ("CMAT"); Merrill Lynch U.S. Treasury Money Fund ("MLUSTMF"); Money Reserve Portfolio of Merrill Lynch Series Fund, Inc. ("MRP"); and Merrill Lynch Reserve Assets Fund of Merrill Lynch Variable Series Fund, Inc. ("MLRAF") (the "Funds"); Merrill Lynch Asset Management, Inc. ("MLAM"); and Fund Asset Management, Inc. ("FAM") (the "Advisers"); Merrill Lynch Government Securities Inc. ("GSI"), Merrill Lynch Money Markets Inc. ("MMI"), and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") (the "Affiliated Dealers"); and Merrill Lynch & Co., Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from section 17(a).

SUMMARY OF APPLICATIONS: Applicants seek a conditional order to permit the Funds to engage in certain principal transactions with the Affiliated Dealers.

FILING DATE: The application was filed on April 6, 1989, and amended on July 10, 1991 and February 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 1, 1992, and should be accompanied by proof of service on the applicants, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. MLRAT, CMAM, CMAG, SCRF, MLRR, USA, CBA, CMAT, MLUSTMF, MRP, MLRAF, MLAM and FAM, Box 9011, Princeton, New Jersey 08543-9011. MLIF, MLTF and MLGF, One Financial Center, Boston, Massachusetts 02110. GSI, MMI, MLPF&S and Merrill Lynch & Co., Inc., World Financial Center, North Tower, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 504-2259, or Jeremy Rubenstein, Assistant Director, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is a diversified, open-end management investment company registered under the 1940 Act. Each Fund is a money market fund whose investment objectives are to seek safety of principal, liquidity, and current income by investing in a portfolio of high quality, short-term money market securities, primarily United States Government and Government agency securities, bank money instruments, commercial paper, short-term fixed income instruments, and repurchase agreements. Each Fund has an investment advisory agreement with one of the Advisers pursuant to which the Adviser, subject to the general supervision of the directors (or trustees) of the Fund, provides investment advisory and management services.

2. MLAM, a wholly-owned subsidiary of Merrill Lynch & Co., Inc., and FAM, a wholly-owned subsidiary of MLAM, are both registered investment advisers under the Investment Advisers Act of 1940. MLAM and FAM have substantially the same identity, with the same directors and executive officers, and, insofar as investment company operations are concerned, the same employees. In their respective contracts with the Funds, the Advisers are responsible for managing the portfolios, subject to the supervision of the directors (or trustees) of the Funds, and have the responsibility for making investment decisions and for the placement of portfolio transactions.

3. GSI, a wholly-owned subsidiary of Merrill Lynch & Co., Inc., was organized in 1973 and succeeded to the business of the Government Securities Division of Merrill Lynch. GSI is one of the largest dealers in short-term Government and Government agency securities. GSI is both a primary dealer and a distributor, acts as an agent with respect to Government and Government agency issues, makes a market in both Government and Government agency issues, and enters into repurchase agreements with respect to these securities with investors. MMI, a second-tier, wholly-owned subsidiary of GSI, was organized in 1979 and acts as a primary dealer and distributor. It makes a market in bank money market instruments (such as certificates of deposit and bankers' acceptances) and commercial obligations such as commercial paper and variable rate notes. MLPF&S, a wholly-owned subsidiary of Merrill Lynch & Co., Inc., is a registered broker-dealer that conducts a diversified securities business. MLPF&S participates as a underwriter in a substantial number of public offerings of, and acts as a major dealer in, fixed income securities including medium-term notes ("MTNs"), a substantial number of which meet the quality and maturity requirements for the Funds. Merrill Lynch & Co., Inc. is the parent of the Affiliated Dealers and the Advisers.

4. The Affiliated Dealers and the Advisers operate as completely separate entities under the umbrella of the Merrill Lynch & Co., Inc. holding company. Although under common control, the Affiliated Dealers and the Advisers have their own separate officers and employees, are separately capitalized, and maintain separate books and records.

5. The portfolio securities in which the Funds may invest are limited to money market securities. Practically all trading in money market securities takes place in over-the-counter markets consisting of groups of dealer firms which are primarily major securities firms or large banks. The largest group of such dealers consists of the 39 Government securities dealers (one of which is GSI) that report their daily positions and trading to the Federal Reserve Bank of New York. Many of these dealers also handle other money market securities, and there are additional dealers who specialize in

other instruments. Money market securities are generally traded in round lots of $1,000,000 on a net basis and do not normally involve either brokerage commissions or transfer taxes. The cost of portfolio securities transactions of the Funds consists primarily of dealer or underwriter spreads. Spreads generally do not exceed 25 basis points (if quoted in terms of a yield basis) or ¼ of a dollar (if quoted on a dollar price basis) and decline on larger amounts. A typical spread for a portfolio transaction of one of the Funds is 12.5 basis points, or ⅛ of a dollar. It has been the experience of the Funds that there is not a great deal of variation in the spreads charged by the various dealers.

6. Applicants define the term "money market" to include the market for repurchase agreements. Practically all trading in repurchase agreements takes place in the over-the-counter market that consists of dealers that are major securities firms or large banks. Repurchase agreements generally involve securities in large amounts of $5,000,000 or more and do not normally involve either brokerage commissions or transfer taxes.

7. Because of the variety of types of money market securities, the money market tends to be segmented. The markets for the various types of securities will vary in terms of price, volatility, liquidity, and availability. Although the rates for the different types of instruments tend to fluctuate closely together, there are significant differences in yield among the various types of instruments, and even within a particular type, depending upon the maturity date and the quality of the issuer. Moreover, from time to time segmenting exists within money market securities with the same maturity date and rating. The segmenting is based on such factors as whether the issuer is an industrial or financial company and whether the issuer is domestic or foreign. Because dealers tend to specialize in certain types of money market securities, the particular needs of a potential buyer or seller in terms of type of security, maturity, or quality may limit the number of dealers who can provide best price and execution. Hence, with respect to any given type of security, there may be only a few dealers who can be expected to have such a security in inventory and be in a position to quote a favorable price.

8. GSI and MMI are among the largest, if not the largest, competitive retail dealers in the money market, and MLPF&S is among the largest competitive retail dealers in the short-term fixed income market. The Affiliated Dealers are competitive retail dealers and maintain inventories in most types of money market securities. The Affiliated Dealers believe that, unlike some other large retail dealers, they are generally competitive in smaller sized money market security transactions, as well as in larger transactions.

9. The market share of GSI and MMI in each segment of the money market in which they conduct business has risen from 1983 to 1990. The role of the Affiliated Dealers is most prominent in the commercial paper and MTN segment of the money market. At December 31, 1990, MMI managed close to 41% of all dealer-placed commercial paper programs and had placed over 23% of the outstanding dealer-placed commercial paper. Applicants believe that MLPF&S is the leading manager of MTN programs in both the United States and the world. GSI and MLPF&S are also participants in the repurchase agreement market. The Affiliated Dealers estimate that, taken together, GSI and MLPF&S range between 8th and 12th place among dealers in repurchase agreements, depending on their share of the market at any particular time.

10. Subject to policy established by the directors (or trustees) and officers of the Funds, the Advisers are primarily responsible for portfolio decisions and the placing of the Funds' portfolio transactions. In placing orders, it is the policy of each of the Funds to obtain the best net results, taking into account such factors as price, size, type, and difficulty of the transaction involved, the firm's general execution and operational facilities and the firm's risk in positioning the securities involved. The Funds' policy of investing in securities with short maturities, combined with portfolio management techniques employed by the Advisers, results in high portfolio activity. The application indicates that the investment policies of the Funds, the nature of the money market, and the fact that the Funds' shares are redeemable, require rapid acquisition and disposition of portfolio securities.

11. On August 10, 1976, the Commission issued an order (the "1976 Order") [1] pursuant to sections 6(c) and 17(b) of the 1940 Act granting an exemption from the provisions of section 17(a) of the 1940 Act to permit MLRAT and MLAM to engage in certain principal transactions with GSI. The 1976 Order applied only to short-term United States Government securities and Government agency securities and it specified a number of conditions that had to be met before transactions could be conducted. Among the conditions were requirements that all transactions be unsolicited (i.e., all transactions had to originate with MLRAT or MLAM, not with GSI), a price test had to be met and price verification procedures followed. A determination was required in each instance, based upon information available to MLRAT and MLAM, that the price available from GSI was "better than" that available from other sources. To be considered "better than" the quotation from other sources, the GSI quotation had to be at least one basis point or 1/64 of a dollar better than that available from other sources. The "better than" price test had to be verified by obtaining competitive quotations from at least three other dealers maintaining a market in such securities.

12. On May 19, 1981, the Commission issued an order (the "1981 Order") [2] pursuant to sections 6(c) and 17(b) of the 1940 Act that modified the 1976 Order. The 1981 Order covered these money market funds advised by MLAM or FAM that were organized since the issuance of the 1976 Order and also covered FAM and MMI, which had also been organized in such interim period. In addition, the 1981 Order was made applicable to short-term bank money instruments (i.e., certificates of deposit and bankers' acceptances). In all other respects, the 1981 Order was subject to the same conditions set forth in the 1976 Order.

13. On October 26, 1983, the Commission issued an order (the "1983 Order") [3] pursuant to sections 6(c) and 17(b) of the 1940 Act that modified the 1981 Order In a number of respects. The 1983 Order covered the Funds organized since the issuance of the 1981 Order and also covered any other money market funds for which MLAM or FAM becomes the investment adviser in the future. The 1983 Order also was made applicable to unsolicited transactions involving commercial paper rated in the highest category by a nationally recognized rating agency. The 1983 Order permitted solicited as well as unsolicited transactions under certain conditions. Volume limits were imposed restricting solicited transactions to no more than 20% or (a) the portfolio

[1] Merrill Lynch Ready Assets Trust, Investment Company Act Release Nos. 9345 (July 8, 1976) (notice) and 9392 (Aug. 10, 1976) (order).

[2] Merrill Lynch Ready Assets Trust, Investment Company Act Release Nos. 11628 (Feb. 18, 1981) (notice) and 11783 (May 19, 1981) (order).

[3] *Merrill Lynch Ready Assets Trust*, Investment Company Act Release Nos. 13550 (Sept. 30, 1983) (notice) and 13598 (October 26, 1983) (order).

purchases or the portfolio sales, as the case may be, by each Fund of each type of portfolio security and (b) the transactions conducted by GSI and MMI in that type of security. The volume limitation is measured on an annual basis and computed both as to number of transactions and dollar volume thereof. The 1983 Order also modified the price verification procedures to provide different procedures for unsolicited and solicited transactions. In the case of solicited transactions, the Funds or the Advisers were required to obtain and document competitive quotations from at least two other dealers who are in a position to quote favorable prices with respect to the specific proposed transaction. If quotations are unavailable from two such dealers, the requirement may be satisfied by obtaining a quotation from one such dealer. In the case of unsolicited transactions, the price test could be verified from current price information obtained through the contemporaneous solicitation of bona fide offers with respect to the type of securities involved from other dealers making a market in such securities. Finally, the 1983 Order modified the price test for unsolicited transactions in all securities covered by the order from the "better than" test to a "no less favorable" price test (i.e., the price available from GSI or MMI need only be at least as favorable as that available from other sources). Solicited transactions with respect to fixed price offerings may be conducted pursuant to the "no less favorable" test if the securities are unavailable from other sources and if such transactions comply with the conditions set forth in paragraph (d) and (e) of Rule 10f-3 under the 1940 Act. In all other respects, the 1983 Order was subject to the same conditions set forth in the 1981 Order.

14. Applicants state that factors such as changes in the nature of the money market and the increased role of the Affiliated Dealers in the money market increase the necessity for the Funds to have greater access to the Affiliated Dealers to obtain best price and execution, to have access to suitable portfolio securities and to obtain trading opportunities to enhance performance. Because of these needs, the Applicants proposed that the conditions in the 1983 Order be revised to provide the Funds with greater flexibility in conducting portfolio transactions with the Affiliated Dealers.

Applicants' Legal Analysis

1. Applicants request an order (the "Proposed Order") pursuant to sections 17(b) and 6(c) of the 1940 Act to permit the Funds to engage in principal transactions with the Affiliated Dealers in the manner and subject to the conditions set forth below. Section 17(a) of the 1940 Act, among other things, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, (1) from selling to or purchasing from such registered company, or any company controlled by such registered company, any security, or other property, or (2) from borrowing money or other property from such registered company. Section 17(b) of the 1940 Act provides, however, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the 1940 Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants believe that the terms of the transactions to be conducted pursuant to the Proposed Order would be reasonable and fair and would not involve overreaching on the part of any person concerned. In this regard, the Applicants submit that the safeguards contained in the Applicants' conditions (discussed below) ensure that the price received from the Affiliated Dealer is at least as favorable as that from other sources. Moreover, the volume limits and information required to document compliance with the price test ensure that the Funds maintain relationships with unaffiliated dealers and limit the number of transactions conducted with the Affiliated Dealers.

3. Applicants believe that the transactions to be conducted pursuant to the Proposed Order are consistent with the policy of each of the Funds by enabling the Funds to obtain the best price and execution in effecting portfolio transactions and by providing the funds and the Advisers with important new information sources in the money market, thereby working to the benefit of the shareholders of the Funds. In addition, the transactions to be conducted pursuant to the Proposed Order are limited to the securities which the Funds are permitted to purchase under each Fund's respective investment objectives.

4. Applicants believe that the proposed transactions would be appropriate in the public interest. In this regard, Applicants submit that the Proposed Order will provide benefits to the Funds and the shareholders both in terms of best price and execution, the need to obtain suitable portfolio securities and the need to obtain trading opportunities to enhance performance.

5. Applicants believe that the Proposed Order would also be consistent with the protection of investors, with the policies of the 1940 Act generally, and with the policies of section 17. The Proposed Order reduces the potential abuse of overreaching by the Affiliated Dealers because the focus of the Proposed Order is directed to the quality of the security being traded rather than the structure of the transaction. In this regard, the Proposed Order adopts the maturity and quality restrictions of rule 2a-7, as well as putting additional limitations on the amount Second Tier Securities that can be purchased by the Funds from the Affiliated Dealers. In addition, the price test and volume limitations help ensure that the price received from the Affiliated Dealer is at least as favorable as that from other sources and that the great majority of the Funds' transactions are conducted with nonaffiliated dealers.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. *Parties Subject to the Exemption*—The exemption shall be applicable to principal transactions between GSI, MMI, or MLPF&S, or any of their successors (the "Affiliated Dealers") and the taxable money market funds (the "Funds") for which MLAM or FAM (the "Advisers") serve or will serve in the future as investment advisers and shall be applicable to transactions in the secondary market and primary or secondary fixed price dealer offerings not made pursuant to underwriting syndicates.

2. *Transactions Subject to the Exemption*—The principal transactions which may be conducted pursuant to the exemption shall be limited to transactions in *Eligible securities* meeting the portfolio maturity and quality

requirements of paragraphs (c)(2) and (c)(3) of rule 2a-7, except that:[4]

(a) No Fund shall make portfolio purchases pursuant to the exemption that would result in the Fund investing pursuant to the exemption more than 2% of its *Total Assets* in securities which, when acquired by the Fund (either initially or upon any subsequent roll over) were *Second Tier Securities;* provided that any Fund may make portfolio sales of *Second Tier Securities* pursuant to the exemption without regard to the percentage of its *Total Assets* involved;

(b) The exemption shall not apply to an *Unrated Security* other than (i) a *Government Security;* or (ii) a security that is a rated security and is the subject of an external credit support agreement that was not in effect when the security (or the issuer) was assigned its rating, provided that (A) the issuers of the external credit support agreement is rated with respect to a class of *Short-term* debt obligations (or any security within that class) that is now comparable in priority and security with the credit support agreement, in one of the two highest rating categories for *Short-term* debt obligations, (B) the external credit support agreement is irrevocable, unconditional, and has terms co-extensive with those of the underlying security, and (C) for the purposes of the exemption, the security covered by the external credit support agreement will be deemed to have a rating no higher than the rating described in subparagraph 2(b)(ii)(A).

(c) The exemption shall not apply to any security, other than a repurchase agreement, issued by Merrill Lynch & Co., Inc. or any affiliated person thereof or to any security subject to a *Put* or *Demand Feature* issued by Merrill Lynch & Co., Inc. or any affiliated person thereof.

(d) With respect to transactions covered by the exemption, applicants will not utilize the maturity shortening provisions set forth in rule 2a-7(d)(2), or assert that such provisions apply, with respect to any instrument unless the issuer of such instrument is unconditionally and without any action by the holder required to pay the entire principal amount noted on the face of the instrument in 397 calendar days or less.

3. *Repurchase Agreement Requirements*—The Funds may engage in repurchase agreements with an Affiliated Dealer only if the Affiliated Dealer has: (a) net capital, as defined in rule 15c3-1 under the Securities Exchange Act of 1934, of at least $100 million and (b) a record (including the record of predecessors) of at least five years continuous operations as a dealer, during which time it engaged in repurchase agreements relating to the kind of security subject to the repurchase agreement. The Affiliated Dealers shall furnish the Advisers with financial statements for their most recent fiscal year and the most recent semi-annual financial statements made available to their customers. The Advisers shall determine that the Affiliated Dealer complies with the above requirements and with the repurchase agreement guidelines adopted by the Board of Directors (or Trustees) of the Fund. Each repurchase agreement will be *Collateralized Fully.*

4. *Volume Limitations on Transactions*—Transactions conducted pursuant to the exemption shall be limited to no more than 25% of (a) the purchases or sales, as the case may be, by each Fund of *Eligible Securities* other than repurchase agreements; and (b) the purchases or sales, as the case may be, by each Affiliated Dealer of *Eligible Securities* other than repurchase agreements. Transactions conducted pursuant to the exemption shall be limited to no more than 10% of (a) the repurchase agreements entered into by each Fund and (b) the repurchase agreements transacted by the Affiliated Dealer. These calculations shall be measured on an annual basis (the fiscal year of each Fund; the calendar year for the Affiliated Dealer) and shall be computed with respect to the dollar volume thereof.

5. *Informantion Required to Document Compliance With Price Tests*—Before any transaction may be conducted pursuant to the exemption, the Funds or the Advisers must obtain such information as they deem necessary to determine that the price test (as defined in condition (6) below) applicable to such transaction has been satisfied. In the case of purchase or sale transactions, the Funds or the Advisers must make and document a good faith determination with respect to compliance with the prices test based upon current price information obtained through the contemporaneous solicitation of bona fide offers in connection with the type of security involved (the same instrument, credit rating, maturity and segment, if any, but not necessarily the identical security or issuer). With respect to prospective purchases of securities, these dealers must be those who have, in their inventories, money market securities of the categories and the types desired and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Funds and the Advisers, are in a position to quote favorable prices. Before any repurchase agreements are entered into pursuant to the exemption, the Funds or the Advisers must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers only one other competitive quotation is required.

6. *Price Tests*—In the case of purchase and sale transactions, a determination will be required in each instance, based upon the information available to the Funds and the Advisers, that the price available from the Affiliated Dealer is at least as favorable as that available from other sources. In the case of "swaps" involving trades of one security for another, the price test shall be based upon the transaction viewed as a whole, and not upon the two components thereof individually. With respect to transactions will be required in each instance, based upon the information available to the Funds and the Advisers, that the income to be earned from the repurchase agreement is at least equal to that available from other sources.

7. *Permissible Dealer Spread*—The Affiliated Dealers' spreads in regard to any transaction with the Funds will be no greater than their customary dealer spreads, which in turn will be consistent with the average or standard spread charged by dealers in money market securities for the type of security and the size of transaction involved.

8. *Parties Must Be Separate Entities*—The exemption will be valid only so long as the Advisers, on the one hand, and the Affiliated Dealers, on the other, operate as separate entities within the holding company framework of Merrill Lynch & Co., Inc., with separate capitalization, separate books and records and substantially separate officers and employees. Merrill Lynch & Co., Inc. will not have any involvement with respect to proposed transactions pursuant to the exemption and will not attempt to influence or control in any way the placing by the Funds or the Advisers of orders with the Affiliated Dealers.

9. *Record-keeping Requirements*—The Funds and the Advisers will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. In this regard:

(a) Each Fund shall maintain an itemized daily record of all purchases and sales of securities pursuant to the exemption, showing for each transaction: the name and quantity of securities; the unit purchase or sale price; the time and date of the transaction; whether such security was a *First Tier Security* or a *Second Tier Security:* and the name of the dealer from whom purchased or to whom sold. Such records also shall, for each transaction, document two quotations received from other dealers for comparable securities, including: the names of the dealers; the names of the securities; the prices quoted; the times and dates the quotations were received; and whether such securities were *First Tier Securities* or *Second Tier Securities.*

(b) Each Fund shall maintain a ledger or other record showing, on a daily basis, the percentage of the Fund's *Total Assets* represented by *Second Tier Securities* acquired from Affiliated Dealers.

(c) Each Fund shall maintain records sufficient to verify compliance with the volume limitations contained in condition (4), above. The Affiliated Dealers will provide the Funds with all records and information necessary to implement this requirement.

(d) Each Fund shall maintain records sufficient to verify compliance with the repurchase agreement requirements contained in condition (3), above.

The records required by this condition (9) will be maintained and preserved in the same manner as records required under rule 31a-1(b)(1).

10. *Merrill Lynch Guidelines*—The legal departments of the Affiliated Dealers and the Advisers will prepare guidelines for personnel of the Affiliated Dealers and the Advisers to make certain that transactions conducted pursuant to the exemption comply with the conditions set forth therein, and that the parties generally maintain arm's length

[4] Italicized terms are defined as set forth in paragraph (a) of rule 2a-7.

relationships. In the training of personnel of the Affiliated Dealers, particular emphasis will be given to the fact that the Funds are to receive rates as favorable as other institutional purchasers buying the same quantities. The legal departments will periodically monitor the activities of the Affiliated Dealers and the Advisers to make certain that the conditions set forth in the exemption are adhered to.

11. *Audit Committee Guidelines*—The Audit Committees of the Boards of Directors (or Trustees) of the Funds, consisting of the non-interested Directors (or Trustees), will prepare guidelines for the Funds and the Advisers to insure that transactions conducted pursuant to the exemption comply with the conditions set forth therein and that the above procedures are followed in all respects. The respective Audit Committees will periodically monitor the activities of the Funds and the Advisers in this regard to insure that these matters are being accomplished.

12. *Scope of Exemption*—Applicants expressly acknowledge that any order issued on the application would grant relief from section 17(a) of the 1940 Act only, and would not grant relief from any other section of, or rule under, the 1940 Act including, without limitation, rule 2a-7.

13. *Board Review*—The Board of Directors (or Trustees) of each Fund, including a majority of the non-interested Directors (or Trustees), have approved the Fund's participation in transactions conducted pursuant to the exemption and have determined that such participation by the Fund is in the best interests of the Fund and its shareholders. The minutes of the meeting of the Board of Directors (or Trustees) at which this approval was given reflect in detail the reasons for the Directors' determination. The Board of Directors (or Trustees) will review no less frequently than annually the Fund's participation in transactions conducted pursuant to the exemption during the prior year and determine whether the Fund's participation in such transactions continues to be in the best interests of the Fund and its shareholders. The minutes of the meetings of the Board of Directors (or Trustees) of each Fund at which this determination is made will reflect in detail the reasons for the Directors' determination.

By the Commission,

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11140 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18697; 811-4499]

National Value Fund, Inc.; Notice of Application

May 6, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: National Value Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 15, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the requests, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 1, 1992, and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1415 Kellum Place, suite 250, Garden City, New York 11530.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end diversified management investment company. On November 25, 1985, Applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement was declared effective on February 20, 1986, and applicant commenced public offering of its shares on that date.

2. On December 5, 1991, applicant's Board of Directors approved a plan of Liquidation and Dissolution,[1] which was approved by applicant's shareholders on February 6, 1992.

3. Preliminary proxy materials relating to applicant's special meeting of shareholders were filed with the Commission on December 12, 1991. Definitive proxy materials were mailed to shareholders on January 6, 1992, and filed with the Commission on January 7, 1992.

4. As of February 7, 1992, there were 45,292.980 shares outstanding of applicant, with an aggregate net asset value of $534,457.18 and a per share net asset value of $11.80.

5. On February 10, 1992, all of applicant's shareholders received a final liquidating distribution of $11.80 per share.

6. Applicant estimates that its aggregate liquidation expenses will be $25,000, all of which will be borne by John Hancock Advisers, Inc. or by American Fund Advisors, Inc., applicant's investment adviser.

7. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11144 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[1] Applicant's counsel stated, by letter dated May 6, 1992, that the Board of Directors approved the Plan because, as stated in applicant's proxy statement dated January 6, 1992, applicant's small size had an adverse effect on its per share operating costs.

[Investment Company Act Rel. No. 18695; 811-2949]

Parkway Cash Fund, Inc.; Application

May 6, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Reregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Parkway Cash Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an Order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on February 10, 1992, and an amendment thereto was filed on May 4, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons 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 June 1, 1992, and should be accompanied by proof of service on 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, 985 Old Eagle School Road, suite 515, Wayne, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Branch Chief, at (202) 272-3018, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company. On August 21, 1979, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. The registration statement became effective on November 5, 1979, and the initial public offering of applicant's shares commenced on that date.

2. On May 22, 1991, applicant's board of directors approved an Agreement and Plan of Reorganization (the "Plan") between applicant and The Cortland General Money Market Fund (the "Fund"), a portfolio of the Cortland Trust, Inc., a registered open-end management investment company, pursuant to which the Fund would acquire substantially all of the assets of applicant in exchange for Fund common stock. The combined proxy statement and prospectus was mailed to applicant's shareholders, and was filed with the SEC on June 21, 1991. The Plan was approved at a special meeting of applicant's shareholders held on September 13, 1991. Shareholders of applicant received that number of full and fractional shares of the Fund having an aggregate net asset value equal to the net asset value of the shareholders' shares of applicant as of the close of business on September 12, 1991, the business day immediately preceding the closing of the reorganization.

3. As of September 13, 1991, the effective date of the reorganization, applicant had outstanding 61,380.892 shares, with a net asset value of $1.00 per share, for a total net asset value of $61,380,892. On September 13, 1991, applicant sold its portfolio securities and substantially all of its other assets to the Fund. The shares of the Fund received by applicant in exchange for its assets were then distributed to its shareholders *pro rata* in accordance with their respective interests in applicant. No brokerage fees were paid in connection with the reorganization.

4. All of applicant's expenses associated with the reorganization, consisting of legal and accounting fees and printing, mailing and other costs of soliciting proxies, were paid by Interstate/Johnson Lane Corporation ("ILJ"). ILJ is the corporate parent of Parkway Management Corporation, applicant's investment adviser, and, prior to the reorganization, acted as a distributor of applicant's shares.

5. Articles of Transfer were filed on September 13, 1991 with the Department of State of Maryland. Applicant intends to file Articles of Dissolution with the Department of State of Maryland.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. 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.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11145 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18694; 811-3092]

Parkway Tax-Free Reserve Fund, Inc.; Application

May 6, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act")

APPLICANT: Parkway Tax-Free Reserve Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an Order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on February 10, 1992, and an amendment thereto was filed on May 4, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons 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 June 1, 1992, and should be accompanied by proof of service on 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, 985 Old Eagle School Road, Suite 515, Wayne, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Branch Chief, at (202) 272-3018, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company. On September 12, 1980, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. The registration statement became effective on March 16, 1981, and the initial public offering of applicant's shares commenced on that date.

2. On May 22, 1991, applicant's board of directors approved an Agreement and Plan of Reorganization (the "Plan") between applicant and The Municipal Money Market Fund (the "Fund"), a portfolio of the Cortland Trust, Inc., a registered open-end management investment company, pursuant to which the Funds would acquire substantially all of the assets of applicant in exchange for Fund common stock. The combined proxy statement and prospectus was mailed to applicant's shareholders, and was filed with the SEC on June 21, 1991.

The Plan was approved at a special meeting of applicant's shareholders held on August 29, 1991. Shareholders of applicant received that number of full and fractional shares of the Fund having an aggregate net asset value equal to the net asset value of the shareholders' shares of applicant as of the close of business in August 29, 1991, the business day immediately preceding the closing of the reorganization.

3. As of August 29, 1991, applicant had outstanding 6,379,743 shares, with a net asset value of approximately $1.00 per share, for a total net asset value of $6,376,770. On August 30, 1991, applicant sold its portfolio securities and substantially all of its other assets to the Fund. The shares of the Fund received by applicant in exchange for its assets were then distributed to its shareholders *pro rata* in accordance with their respective interests in applicant. No brokerage fees were paid in connection with the reorganization.

4. All of applicant's expenses associated with the reorganization, consisting of legal and accounting fees and printing, mailing and other costs of soliciting proxies, were paid by Interstate/Johnson Land Corporation ("ILJ"). ILJ is the corporate parent of Parkway Management Corporation, applicant's investment adviser, and, prior to the reorganization, acted as a distributor of applicant's shares.

5. Articles of Transfer were filed on August 30, 1991 with the Department of State of Maryland. Applicant intends to file Articles of Dissolution with the Department of State of Maryland.

6. As of the date of the application, application had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. 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.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11146 Filed 5-12-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: May 7, 1992.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to conduct the TeleFile Focus Group Interviews described below by late-June 1992, the Internal Revenue Service is requesting a less than 60-day review and approval from the Office of Management and Budget (OMB). In accordance with 5 CFR 1320.15, the proposed interviews are being published as part of this notice.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: TeleFile Focus Group Interviews.

Description: These focus groups are being conducted to help the Service evaluate TeleFile and to initiate recommendations for changes and improvements. Participants will be taxpayers who were eligible to use TeleFile to file their 1991 Federal Tax Returns.

Respondents: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent:

TeleFile Focus Group Moderator's Guide (filer group).	3 hours.
TeleFile—Focus Group Moderator's Guide (non-filer group).	3 hours.
Telephone Screener—TeleFile Focus Groups (filer group).	5 minutes.
Telephone Screener—1991 TeleFile Focus Groups (non-filer group).	5 minutes.

Frequency of Response: Other (One-time Focus Group)

Estimated Total Reporting Burden: 282 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

Draft—Focus Group Moderator's Guide Telefile (Filter Group)

Greeting

Hi! My name is _____ and I am a focus group's moderator from the Research Division of the Internal Revenue Service. We've asked you here today to assist in a test of a new method of filing taxes through use of Touch-Tone telephones.

Explanation

You were selected to take part in this focus group because you participated in an IRS test project called Telefile. As you may already know, TeleFile is an IRS research project piloted earlier this year in the state of Ohio. It allowed taxpayers with simple returns to file their taxes through touch-tone telephones. Our records show that each of you filed your 1991 tax return through TeleFile. The IRS submitted a list of the names and addresses of thousands of taxpayers who filed their returns through Telefile to _____ and asked them to recruit small groups of taxpayers for focus groups. The IRS did not select your specifically to be here and will not be able to connect your name and comments with your tax return.

Objective

The objective of our focus group is to explore your opinions and attitudes towards filing your income tax return by telephone. The information you provide today will be used to assist us in evaluating the system. With your assistance, we will find out why you used to TeleFile system. We will also test a new version of TeleFile to find out what you think of it. We are looking to you to help us decide whether TeleFile is a good idea and whether we should continue developing the project.

Guidelines

I encourage you to speak up and let me know what's on your mind. I don't know how many of you have participated in a focus group before, so let me share with you a couple of basic ground rules for this session:

(1) No smoking.

(2) Speak one-at-a-time, loudly and clearly.

(3) Comments are being recorded. My colleague _____ and I will use the tapes from the four groups we are doing

to prepare a report to the group developing TeleFile.

(4) The room has a one-way mirror and you may notice someone behind it from time to time. My colleagues are behind it taking notes to assist me in my analysis and report writing.

(5) There are no wrong ideas. I need your candid opinions.

(6) And, please, no side conversations.

We will be here about 2 hours. I will be watching our time and directing our conversation. Although I don't plan a formal break, if you need to stand up and stretch, please feel free to do so.

Let's begin!

Introduction

I would like to go around the table and have each of you introduce yourselves. Please give us your fist name only as well as your occupation.

Warm Up

I'd like to ask you some questions about your tax return filing. In order to refresh your memories, _____ and I will give each of you a copy of the tax package your received in the mail.

Note to moderators: Distribute packages. Answer any questions.

General Filing Characteristics

I'd like to know what steps you go through when you a file your return?

Probe

• Do the respondents normally file their own returns? If not, what do they do with the tax package mailed to them? Who does their return? (parent, son, daughter, accountant, etc.)

• Do they normally wait for their tax package to arrive in the mail or do they get their forms elsewhere? If they normally got their forms elsewhere, where, on what day do they file, and also why don't they wait for the tax package?

• Do people with multiple Forms W-2 have different patterns?

1992 Tax Season Filing

Do you recall anything different in the mail from the IRS this year?

Probe

• Try to determine whether the taxpayers remember receiving the postcard (Moderators will have copy for illustrative purposes).

• If received, when (before or after tax package). Explore their response to the card.

• Did the card change their mind about going to another person to prepare their taxes?

• Did you notice anything different about the tax package that the IRS mailed to you this year?

Probe

We're trying to determine how they responded to its appearance (e.g., color and presentation).

Did you receive it?

What did you think of it? Did you notice the 1040-TEL attached?

Probe

Explore for clarity, completeness, accuracy, language.

What did you like best about the form/instructions?

What did you like least about the form/instructions?

TeleFile

Now let's talk about using the telephone to get the return information to the IRS.

What did you think of the whole idea (filing telephonically)?

Probe

• Explore for general impressions of the system.

• The respondents should be explaining what they liked about TeleFile and answering the question "what contributed to your using TeleFile?"

• Explore whether the postcard/tax package presentation persuaded the taxpayer to TeleFile.

What did you think of TeleFile?

Probe

• Was the voice clear? Did the system give adequate instructions?

• What did you like best about TeleFile?

• What did you like least about TeleFile?

• What are the pluses and minuses of filing by TeleFile?

How may times did you call before getting through?

Probe

• Determine a degree of frustration, if any. Did they get through and not complete the call (if so, why? were they interrupted, change their minds, not trust the system, etc.* * *).

• If busy, ask when they called (as specifically as possible—day and time ideally, but w/in a week or two span is good also).

What differences do you see between the new way of filing and the old way?

Did you calculate your tax due/refund due before calling TeleFile? Likewise, did you check the TeleFile calculation after completing your call?

Probe

Did the taxpayer trust the IRS to compute his/her taxes?

What would make TeleFile appeal to you more?

Probe

• What suggestions do you have for changing/ improving the system?

• Explore reasons why people used the system.

• Explore whether returning the 1040-TEL was considered bothersome and whether the 1040-Tel reminder letters were considered a help of a hindrance.

Wrap-Up

Since you participated in the TeleFile test earlier this year, would you be likely to use TeleFile if it were available to you again next filing season?

Probe

Explore reasons why people would/ would not use the system.

What do you think the advantages of TeleFile are to IRS?

What do you think the disadvantages of TeleFile are to IRS?

What is the likelihood of you calling TeleFile if it were not a toll-free number? (toll or 1-900 call)

Part II

Now let's move on the second part of our session. Each of you has used TeleFile already, but today you are going to try a TeleFile system which is a little different than the one you used. My colleague _____ and I will be giving each an information package creating a hypothetical taxpayer for you—this includes a W-2 showing earnings for the tax year. You also have the TeleFile tax package, instructions and mailing label showing the hypothetical taxpayer's name, address, etc. By the way, none of the packages have identical information. (Moderators will have a large example package to use as a visual aid).

Please take a few minutes to review the TeleFile form and instructions, and look at the hypothetical income information provided for you. Follow the instructions to file your return using TeleFile. Our aim is to simulate an actual tax filing situation; we want you to tell us if the process flows logically. In fact, I look at it like buying a new car. Much as you test drive a car to see if it is comfortable, large enough, etc. before you come back and order one, this test allows you to test drive the TeleFile system and suggest modifications.

When you are ready to use the phone, _____ or I will direct you to a phone at the back of the room so that you may actually use the TeleFile

System. *This is not a speed contest,* so take your time to make sure you are comfortable with what you've completed. Your taxpayer packages have extra paper in them, so feel free to take notes. When you complete the telephone call, return to the table to finish the filing process. When everyone is finished, we'll start to talk about what you think of the new TeleFile.

Note to moderators: Distribute packages. Answer any questions. Have respondents start phone calls.

Each of you has filed a return using a TeleFile system which is slightly different than the one you used during the filing season. During the filing season, you give income information over the phone, then signed and mailed you paper return to the IRS.

The voice recording you just gave is called a voice signature. It is used in place of a written signature to make your tax return legally complete. If this were a real system, you would not have to mail in a paper required last year.

TeleFile

Now let's talk about using the telephone and voice signature to transmit the return information.

What do you think about using the system?

Probe

- What did you like best about voice signature?
- What did you like least about voice signature?
- What would you change?
- What are the pluses and minuses of voice signature?

Was the voice clear? If so, could you understand the directions? Did the system give adequate instructions?

Wrap-Up

Now that you have participated in this test, would you be likely to use TeleFile if voice signature were available to you.

Probe

Explore reasons why people would/would not use the system.

What do you think the advantages of voice signature are to IRS?

What do you think the disadvantages of voice signature are to IRS?

Conclusion

You've given us a lot of helpful information this afternoon. Your comments will be very valuable to the people setting up the TeleFile system. Any last thoughts or ideas you want to pass on to me? Thanks very much for your help!

DRAFT—TeleFile—Focus Group Moderator's Guide (Non-Filer Group)

Greeting

Hi! My name is _____ and I am a focus group moderator from the Research Division of the IRS. We've asked you here today to assist in the test of a new system for filing an income tax return called TeleFile.

Explanation

You were selected to take part in this focus group because, although you may not know it, you participated in the IRS test project called TeleFile. TeleFile is an IRS research project which was piloted this year in the state of Ohio. It allowed taxpayers with simple returns to file their taxes through touchtone telephone. Our records, however, show that although each of you was potentially eligible to file your 1991 tax return through TeleFile, each of you chose not to. The IRS submitted a list of thousands of taxpayers' names and addresses to _____ and asked them to recruit small groups of taxpayers for focus groups. The IRS did not select you specifically to be here and will not be able to connect your name with your tax return.

Objective

The objective of our focus group is to explore your opinions and attitudes towards filing your income tax return by telephone. The information you provide today will be used to assist us in evaluating the system. With your assistance, we will find out why you did not use the TeleFile system. We will also test a new version of TeleFile to find out what you think of it. We are looking to you to help us decide whether TeleFile is a good idea and whether we should continue developing the project.

Guidelines

I encourage you to speak up and let me know what's on your mind. I don't know how many of you have participated in a focus group before, so let me share with you a couple of basic ground rules for this session:

(1) No smoking.

(2) Speak one-at-a-time, loudly and clearly.

(3) Comments are being recorded. My colleague _____ and I will use the tapes from the four groups we are doing to prepare a report to the group developing TeleFile.

(4) The room has a one-way mirror and you may notice someone behind it from time to time. My colleagues behind it are taking notes to assist in my analysis and report writing.

(5) There are no wrong ideas. I need your candid opinions.

(6) And, please, no side conversations.

We will be here about 2 hours. I will be watching our time and directing our conversation. Although I don't plan a formal break, if you need to stand up and stretch, please feel free to do so. Please do so quietly.

Let's begin!

Introduction

I would like to go around the table and have each of you introduce yourselves. Please give us your first name only as well as your occupation.

Warm Up

I'd like to ask you some questions about the filing of your tax return. In order to refresh your memories, _____ and I will give each of you a copy of the tax package that Internal Revenue mailed to you.

Note to moderators: Distribute packages. Answer any questions.

General Filing Characteristics

I'd like to know what steps you go through when you file your return?

Probe

- Do the respondents file their own returns? If not, what do they do with the tax package mailed to them? Who does their return? (parent, son, daughter, accountant, etc.)
- Do they wait for their tax package to arrive in the mail or do they get their forms elsewhere? If they get their forms elsewhere, where, what day do they file, and also why don't they wait for the tax package?
- Do people with multiple Forms W-2 have different patterns?

Did you (or your preparer) file a 1040 EZ thie year?

1992 Tax Season Filing

Do you recall receiving anything different in the mail from the IRS this year?

Probe

- Try to determine whether the taxpayers remember receiving the postcard (Moderators Will Have Copy for Illustrative Purposes).
- If received, when (before or after tax package). Explore their response to the card.

Did you notice anything different about the tax package that the IRS mailed to you this year?

Probe

We're trying to determine how they responded to its appearance.

Did you receive it?

What did you think of it? Did you notice the TEL attached to it?

Probe

Explore for clarity, completeness, accuracy, language.

What did you like best about the form/instructions?

What did you like least about the form/instructions?

TeleFile

Now let's talk about using the telephone to get the return information to the IRS.

What did you think of the whole idea?

Probe

Explore for general impressions of the system. The respondents should be explaining what they didn't like about TeleFile. What contributed to you not using TeleFile?

Did you consider the TeleFile system a real method of filing? Why/Why not?

Did you attempt to file your return using TeleFile? Why or why not?

Probe

- Determine a degree of frustration, if any.
- Did they get through and not complete the call (if so, why? Were they interrupted, change their minds, not trust the system, etc * * *
- How many times did they try? If busy, ask when they called (as specifically as possible—day and time ideally, but w/in a week or two span is good also).
- Did they have touch-tone telephones?

What differences do you see between the new way of filing and the old way?

What would take TeleFile appeal to you more?

Probe

What suggestions do you have for changing/improving the system? Explore reasons why people did not use the system.

What are the pluses and minuses of filing by TeleFile?

How likely would you be to pay for the call if it were not a toll-free call? (toll or 1-900)

Part II

Now let's move on to the second part of our session. My colleague _____ and I will be giving each of you a package of information which creates a hypothetical taxpayer for you—this includes a W-2 showing earnings for the tax year. You also have the TeleFile tax package, instructions and mailing label showing the hypothetical taxpayer's name, address, etc. By the way, none of the distributed packages have the same information. (Moderators will have a large example package to use as a visual aid).

Please take a few minutes to review the TeleFile form and instructions, and look at the hypothetical income information provided for you. Follow the instructions to file your return using TeleFile. Our aim is to simulate an actual tax filing situation; we want to you to tell us if the process flows logically. In fact, I look at it like buying a new car. Much as you test drive a car to see if it is comfortable, large enough, etc., before you come back and order one, this test allows you to test drive the TeleFile system and suggest modifications.

When you are ready to use the phone, _____ or I will direct you to a phone at the back of the room so that you may actually use the TeleFile System. *This is not a speed contest,* so take your time to make sure you are comfortable with what you've completed. Your taxpayer packages have extra paper in them, so feel free to take notes. When you complete the telephone call, return to the table to finish the filing process. When everyone is finished, we'll start to talk about what you think of the new TeleFile.

Note to moderators: Distribute packages. Answer any questions. Have respondents start phone calls.

Each of you has filed a return using a TeleFile system which is slightly different than the one you could have used during the filing season. During the filing season, taxpayers gave income information over the phone, then signed and mailed their paper return to the IRS.

The voice recording you just gave is called a voice signature. It is used in place of a written signature to make your tax return legally complete. If this were a real system, you would not have to mail in a paper tax return as was required last year.

TeleFile

Now let's talk about using the telephone and voice signature to transmit the return information.

Now that you've used TeleFile, what do you think about it?

Was the voice clear? Did the system give adequate instructions? If the voice was clear, could you understand the directions.

What suggestions do you have for changing/improving the system?

Wrap-Up

Now that you have participated in this test, would you be likely to use TeleFile if voice signature were available to you.

Probe

Explore reasons why people would/would not use the system.

What do you think are the pluses and minuses of voice signature?

What do you think the advantages of voice signature are to IRS?

What do you think the disadvantages of voice signature are to IRS?

Probe

Additional requested responses by observers from first half.

Conclusion

You've given us a lot of helpful information this afternoon. Your comments will be very valuable to the people setting up the TeleFile system. Any last thoughts or ideas you want to pass on to me? Thanks very much for your help!

DRAFT—Telephone Screener—TeleFile Focus Groups (filer group)

Introduction:

Hello, I'm _____ with _____. We're assisting in the performance of a research study for the Internal Revenue Service. We are asking a group of about ten people to participate in an informal round table discussion commonly called a focus group. The purpose of the study is to obtain input from the public regarding their opinions about TeleFile, a new and simpler way to file taxes. We're pleased that you used TeleFile earlier this year when you filed your 1991 income tax return. Personal tax information will not be discussed and anything you say will be confidential. We will use only first names in the discussion.

(*If* Respondents Ask: tell respondents that IRS research personnel will be present at the sessions.)

These qualifying questions should take no more than 5 minutes of your time. If you are eligible and agree to participate, the discussion itself will take approximately 2 hours, with your total involvement requiring an estimated 3 hours when your travel time is included. I can give you a name and address where you can send comments and questions regarding these time estimates.

(Read Only *If* Respondent *Asks for Address* Where to Send Comments:)

Send your comments to the U.S. Department of the Treasury/Internal Revenue Service/Attention IRS Reports Clearance Officer T:FP/ 1111 Constitution Avenue N.W./ Washington, D.C. 20224; and to the Office of Management and Budget/

Paperwork Reduction Project/ OMB #1545– / Washington, D.C. 20503.

Is it okay for me to ask you a few questions to see if you're eligible for our study?

1. Do you consider yourself * * *? (Read List to Respondent)

White ☐ Get a Mix
Black ☐ Get a Mix
Asian or Pacific Islander ☐ Get a Mix
American Indian or Alaskan Native ☐ Get a Mix

2. Are you of Hispanic origin?

Yes ☐
No ☐

3. Of the following, which most accurately describes your income

Under $10,000 ☐ Get a mix
$10,000 to $20,000 ☐ Get a mix
$20,000 to $30,000 ☐ Get a mix
$30,000 to $50,000 ☐ Get a mix
Over $50,000 ☐ Terminate

4. Are you? (Read)

Male ☐ Get a mix
Female ☐ Get a mix

5. As I mentioned earlier, we are asking a group of about eight to ten people to participate in an informal discussion commonly called a focus group. Have you ever participated in a focus group before?

Yes ☐ (maximum=4)
No ☐ Continue

6. Did you participate within the past twelve (12) months?

Yes ☐ Terminate
No ☐ Continue

Extend invitation to eligible respondent and record information on page below.

We would like to invite you to attend an informal group discussion to discuss TeleFile with 8 or 9 other taxpayers who also used it. This meeting will be held on _____ (day/date)

From:

At: _____

You will receive $_____ for participating in this research project.

Name: _____
Address: _____
_____
Zip Code: _____
Telephone number: _____

We will send you a confirmation letter and directions to the facility. We look forward to seeing you, and we will call you the day before the session just as a reminder.

Draft Telephone Screener—1991 Telephone Focus Groups (Non-Filer Group)

Introduction

Hello, I'm _____ with _____. We're assisting in the performance of a research study for the Internal Revenue Service. We are asking a group of about ten people to participate in an informal round table discussion commonly called a focus group. The purpose of the study is to obtain input from the public regarding their opinions about TeleFile, a new and simpler way to file taxes. You may remember receiving the TeleFile information in the mail in January with your 1991 income tax package. Participants in the sessions will discuss why they did not use TeleFile, and will then test the system and share their opinions about it. Personal tax information will not be discussed and anything you say will be confidential. We will use only first names in the discussion.

(*If* Respondents Ask: tell respondents that IRS research personnel will be present at the sessions.)

These qualifying questions should take no more than 5 minutes of your time. If you are eligible and agree to participate, the discussion itself will take approximately 2 hours, with your total involvement requiring an estimated 3 hours when your travel time is included. I can give you a name and address where you can send comments and questions regarding these time estimates.

(Read Only *If* Respondent *Asks For Address* Where to Send Comments:)

Send your comments to the U.S. Department of the Treasury/ Internal Revenue Service/ Attention IRS Reports Clearance Officer T:FP/ 1111 Constitution Avenue N.W./ Washington, D.C. 20224; and to the Office of Management and Budget/ Paperwork Reduction Project/ OMB #1545– / Washington, D.C. 20503.

Is it okay for me to ask you a few questions to see if you're eligible for our study?

1. Is your address now the same as last year when you filed your tax return?

Yes ☐ Continue
No ☐ Terminate

2. Is your age under 65?

Yes ☐ Continue
No ☐ Terminate

3. Do you have any visual impairments?

Yes ☐ Terminate
No ☐ Continue

4. What is your marital status?

Married ☐ Terminate
Single ☐ Continue
Divorced ☐ Continue

5. Did you claim any dependents?

Yes ☐ Terminate
No ☐ Continue

6. Of the following, which most accurately describes your annual income before taxes? (Read List to Respondent)

Under $10,000 ☐ Get a Mix
10,000 to $20,000 ☐ Get a Mix
$20,000 to $30,000 ☐ Get a Mix
$30,000 to $50,000 ☐ Get a Mix
Over $50,000 ☐ Terminate

7. Do you earn over $400 in interest annually?

Yes ☐ Terminate
No ☐ Continue

8. Do you have income other than interest, wages, salaries, tips, and taxable scholarships or fellowships?

Yes ☐ Terminate
No ☐ Continue

9. What is your race? (Read List to Respondent)

White ☐ Get a Mix
Black ☐ Get a Mix
Asian or Pacific Islander ☐ Get a Mix
American Indian or Alaskan Native ☐ Get a Mix

10. Are you of Hispanic Origin?

Yes ☐ Get a Mix
No ☐ Get a Mix

Are you? (Read)

Male ☐ Get a Mix
Female ☐ Get a Mix

12. As I mentioned earlier, we are asking a group of about ten people to participate in an informal discussion commonly called a focus group. Have You ever Participated in a focus Group before?

Yes ☐ (maximum=4)
No ☐ Continue

13. Did you participate within the past twelve (12) months?

Yes ☐ Terminate
No ☐ Continue

Extend invitation to Eligible respondent and record information below

We would like to invite you to attend an informal group discussion to try our new system and discuss it with 8 or 9 other taxpayers. This meeting will be held on _____ (day/date)

From:

At: _____

You will receive _____ for participating in this research project.

Name: _____
Address: _____
_____
Zip code: _____
Telephone Number: _____

We will send you a confirmation letter and directions to the facility. We look forward to seeing you, and we will call

you the day before the session just as a reminder.

[FR Doc. 92-11210 Filed 5-12-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 7, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1134.

Regulation ID Number: IA-141-83 Final.

Type of Review: Extension.

Title: Installment Method Reporting by Dealers in Personal Property.

Description: These regulations provide guidance with respect to the manner in which dealers are required to account for installment sales. This document redesignates the section and revises the effective dates of the existing regulation.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Responses/Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 10 hours.

Frequency of Response: On occasion

Estimated Total Reporting Burden: 500,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-11209 Filed 5-12-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 7, 1992.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to conduct the pre-testing phase of the Benefit Recipient Profile Survey described below by June 1, 1992, the Financial Management Service is requesting a less than 60-day review and approval from the Office of Management and Budget. In accordance with 5 CFR 1320.5, the proposed survey is being published as a part of this notice.

Financial Management Service

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Benefit Recipient Profile Survey

Description: Survey will collect information needed to put together a nationwide profile of benefit recipients and their financial patterns in order to determine an appropriate marketing strategy for nationwide implementation of voluntary Direct Federal EBT programs.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,800.

Estimated Burden Hours Per Response: 10 minutes.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 350 hours.

Clearance Officer: Jacqueline R. Perry (301) 436-6453, Financial Management Service, 3361-L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

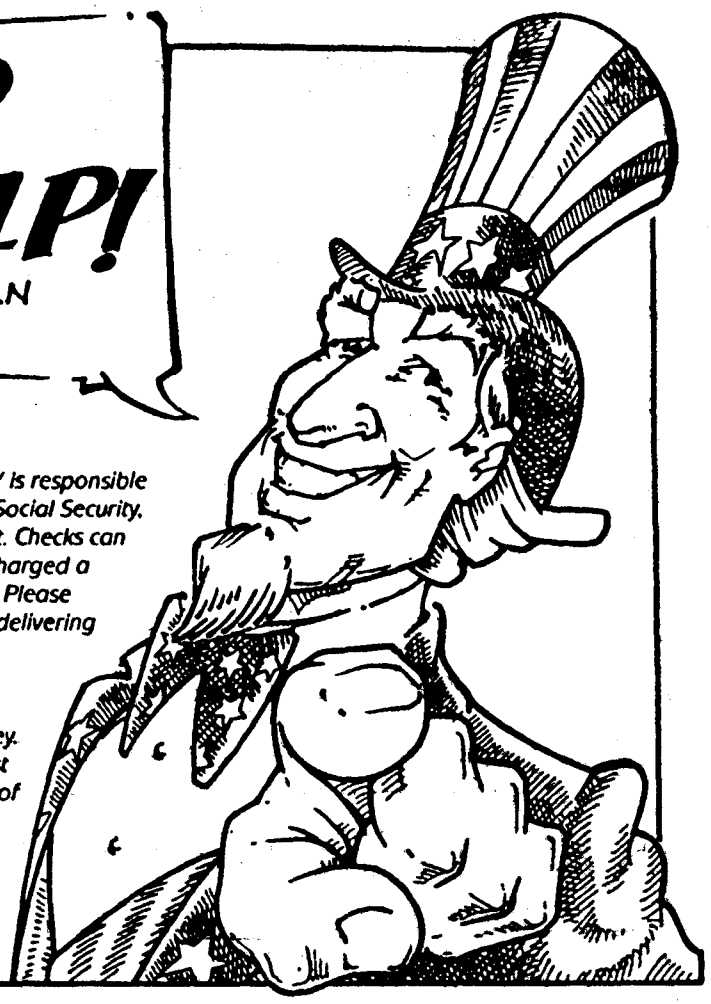
Lois K. Holland,

Department reports Management Officer.

BILLING CODE 4810-35-M

I NEED YOUR HELP!

SO THE U.S. TREASURY CAN SERVE YOU BETTER.



Dear Benefit Recipient:

The UNITED STATES DEPARTMENT OF THE TREASURY is responsible for delivering your monthly benefit payments such as Social Security, Supplemental Security Income and Railroad Retirement. Checks can be delayed or even lost in the mail, and you may be charged a fee to cash your checks. Let's make the process better. Please help us develop a safer, more convenient method for delivering your money to you.

Here's all you do:

You were chosen at random to participate in this survey. Please take a few minutes to check the boxes that best tell us about your opinion. Since you are the recipient of a monthly government payment, your opinion is very important to us and can help us serve you better.

This is a confidential questionnaire, please do not sign your name. *Mail your completed questionnaire in the enclosed postage paid envelope.*

PLEASE TELL US ABOUT YOURSELF.

a. Are you a ☐ *Male?* ☐ *Female?*

*b. How old are you?*_____

c. What language do you usually speak at home?

☐ *English* ☐ *Spanish*

☐ *Other*

*d. What is your Zip Code?*_____

e. Do you have a telephone at home?

☐ *Yes* ☐ *No*

f. Please check the last year of formal schooling you completed.

☐ *8th Grade or less*

☐ *Some high school*

☐ *High school graduate or GED*

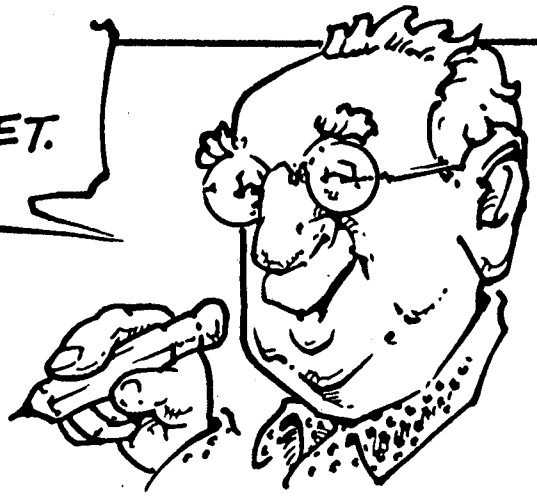
☐ *Trade or technical school*

☐ *College or higher*

cont.

PAPERWORK REDUCTION ACT NOTICE: This information is required to create a profile of benefit recipients and their financial patterns for use in marketing the Electronic Benefits Transfer program to unbanked recipients. Failure to furnish this information will hinder the efforts of the Government in eliminating the costly processing and mailing of benefit checks to unbanked recipients, by providing an alternative means to withdraw benefit payments via Automated Teller Machines.

ON THE LIST BELOW, PLEASE CHECK ALL THE BENEFITS YOU GET.

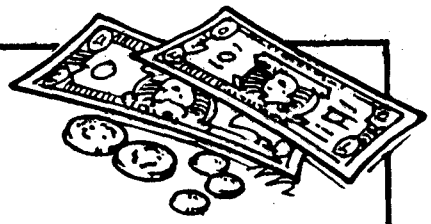


So the U.S. Treasury can serve you better, please help us decide if combining multiple payments into one payment would be more convenient for you. Please check all of the following benefits you receive.

- ☐ *Social Security (SSA)*
- ☐ *Railroad Retirement*
- ☐ *Supplemental Security Income (SSI)*
- ☐ *Aid to Families w/Dep. Children (AFDC)*
- ☐ *Black Lung Compensation*
- ☐ *Veteran's Compensation and/or Pension*
- ☐ *Unemployment Insurance*
- ☐ *Civil Service Retirement*
- ☐ *Federal Employees Retirement*
- ☐ *Food Stamps*
- ☐ *Private Pension*
- ☐ *Child Support*
- ☐ *Other*

WHERE DID YOU CASH YOUR LAST GOVERNMENT BENEFIT CHECK(S)?

- ☐ *At a bank, savings & loan or credit union*
- ☐ *At a check cashing service or currency exchange*
- ☐ *At a grocery or convenience store*
- ☐ *Friend or relative*
- ☐ *Landlord*
- ☐ *Other*



Did you pay to cash it? ☐ *NO* ☐ *YES*

How much did it cost you?

☐ *Less than $1.00* ☐ *$2–$3.00*

☐ *$1–$2.00* ☐ *$3.00–$5.00* ☐ *Other*_____

Have you ever used an Automated Teller Machine (ATM)/Cash Machine or a Point-of-Sale (POS) terminal (a smaller machine, that uses plastic cards, usually located at the check-out counter of a retail store)?

☐ *NO* ☐ *YES* → ☐ *Automated Teller Machine (ATM)* ☐ *Used Both*

☐ *Point-of-Sale (POS)*

Please check if you use:

☐ *A Bank Account(s)* ☐ *Credit Card(s)*

In the past six months, which of the following services have you used at each of these facilities?

	Banks/ Savings & Loans or Credit Union	*Check Cashing Services/Currency Exchange*	*Grocery, Convenience Stores*
Cash Checks	☐	☐	☐
Buy Money Orders	☐	☐	☐
Pay Bills	☐	☐	☐
Send Money	☐	☐	☐
Use ATM's	☐	☐	☐
Use POS	☐	☐	☐
Other	☐	☐	☐

Did you buy any money orders with some of your last monthly check? ☐ *NO* ☐ *YES – How many did you buy?*_____

How much was the fee for each money order? $_____

How do you pay bills such as rent, gas, electric, telephone?

☐ *Pay with checks* ☐ *Pay with money orders*

☐ *Pay with cash* ☐ *Other*_____

cont.

Your answers to the following questions will help us improve service to you.

a. Thinking about the benefit check you receive each month, which one feature would be the most important one to you? (Please check only one box)

- ☐ *The check would be delivered on time each month*
- ☐ *The check would never be lost or stolen*
- ☐ *There would be no charge to cash the check*

b. What do you think is the best source of information to let you and others know about any new services the government has to offer you?

☐ *Newspaper* ☐ *Inserts with check* ☐ *Friends*

☐ *Television* ☐ *Radio* ☐ *Other*_____

Would you like to suggest other ways the government could improve the way we deliver monthly payments to you?

_____

_____

_____

_____

THANK YOU FOR YOUR PARTICIPATION!

PLEASE MAIL THE COMPLETED FORM IN THE ENCLOSED ENVELOPE. NO STAMP IS NECESSARY.

BURDEN ESTIMATE STATEMENT: The estimated response time for filling out this survey is 10 minutes per respondent depending on individual circumstances. Comments concerning the accuracy of this time estimate and suggestions for reducing the burden associated with the time spent collecting this information should be directed to the Financial Management Service, Electronic Initiatives Branch, ATTN: Ron Rosenblum, Room 522B, 401 14th Street, S.W., Washington, D.C. 20227 and to the Office of Management and Budget, Paperwork Reduction Project (1510-xxxx), Washington, D.C. 20503. THIS ADDRESS SHOULD ONLY BE USED FOR COMMENTS AND/OR SUGGESTIONS CONCERNING THE AMOUNT OF TIME SPENT TO COLLECT THIS DATA. DO NOT SEND THE COMPLETED SURVEY TO THIS ADDRESS.

[FR Doc. 92-11211 Filed 5-12-92; 8:45 am]

BILLING CODE 4810-35-C

Public Information Collection Requirements Submitted to OMB for Review

Date: May 7, 1992.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0085.
Form Number: CF 247.
Type of Review: Extension.
Title: Cost Submission.
Description: Custom Form 247 used by importers to furnish cost information to Customs which is used in the valuation of imported merchandise. It is a guide for the importer to follow in compiling the cost elements supporting the entered values reported to Customs.
Respondents: Business or other for-profit, Small businesses or organizations.
Estimated Number of Responses: 22.
Estimated Burden Hours Per Response: 50 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 11,330 hours.
Clearance Officer: Ralph Meyer (202) 566-9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
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 Office.
[FR Doc. 92-11212 Filed 5-12-92; 8:45 am]
BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 7, 1992.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0043.
Form Number: ATF F 8 (ATF F 5310.11), Part II.
Type of Review: Extension.
Title: Application for Renewal of Firearms License.
Description: This form is filled by the licensee desiring to renew a Federal license beyond the expiration date. It is used to identify the applicant, locate the business premises, type of business conducted, and to determine the eligibility of the applicant.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 83,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Other (every 3 years).
Estimated Total Reporting Burden: 13,280 hours.
Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
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. 92-11213 Filed 5-12-92; 8:45 am]
BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 7, 1992.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1020
Form Number: IRS Form 1041-T
Type of Review: Extension
Title: Allocation of Estimated Tax Payments to Beneficiaries
Description: This form was developed to allow a trustee of a trust or an executor or an executor of an estate to make an election under IRC section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.
Respondents: Businesses or other for-profit.
Estimated Number of Responses/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—20 minutes.
Learning about the law or the form—4 minutes.
Preparing the form—21 minutes.
Copying, assembling, and sending the form to the IRS—17 minutes.
Frequency of Response: Annually, Other (when such election is made).
Estimated Total Reporting Burden: 1,030 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-11214 Filed 5-12-92; 8:45 am]
BILLING CODE 4830-01-M

United States Customs Service

[T.D. 92-47]

Customs Approval of Los Angeles Bunker Surveyors, Inc., as a Commercial Gauger

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

ACTION: Notice of Approval of Los Angeles Bunker Surveyors, Inc., as a Commercial Gauger.

SUMMARY: Los Angeles Bunker Surveyors, Inc., of Wilmington, California recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under part 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Los Angeles Bunker Surveyors, Inc. meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with part 151.13(f) of the Customs Regulations, Los Angeles Bunker Surveyors, Inc. is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, DC 20229 (202-566-2448).

Dated: May 7, 1992.

Ira S. Reese,

Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 92-11241 Filed 5-12-92; 8:45 am]

BILLING CODE 4820-02-M

United States Secret Service

Performance Review Board Members; Appointment

ACTION: Appointment of Performance Review Board (PRB) Members.

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1991, and ending June 30, 1992. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title:

Guy P. Caputo—Deputy Director, U.S. Secret Service

Hubert T. Bell—Assistant Director, Protective Operations (USSS)

George J. Opfer—Assistant Director, Inspection (USSS)

David C. Lee—Assistant Director, Administration (USSS)

Don A. Edwards—Assistant Director, Government Liaison & Public Affairs (USSS)

Michael S. Smelser— Assistant Director, Training (USSS)

H. Terrence Samway—Assistant Director—Protective Research (USSS)

Raymond A. Shaddick—Assistant Director, Investigations (USSS)

John J. Kelleher— Chief Counsel, U.S. Secret Service

FOR ADDITIONAL INFORMATION, CONTACT: Susan T. Tracey, Chief, Personnel Division, room 901, 1800 G Street, NW, Washington, DC 20223. Telephone No. 202-435-5635.

John W. Magaw,

Director.

[FR Doc. 92-11222 Filed 5-12-92; 8:45 am]

BILLING CODE 4810-42-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 93
Wednesday, May 13, 1992

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 Matter To Be Withdrawn From Consideration at an Agency Meeting and 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 the following matter will be withdrawn from the agency for consideration at the open meeting of the board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m on Tuesday, May 12, 1992, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.:

Memorandum and resolution re: Final amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which are designed to implement changes made by the Federal Deposit Insurance Corporation Improvement Act in the regulatory scheme for brokered deposits.

Notice is further given that the Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, May 14, 1992, in the Board Room on the sixth floor of the FDIC Building to consider the above matter and a memorandum and resolution proposing the withdrawal of an existing policy statement entitled "Brokered Funds."

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: May 11, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-11413 Filed 5-11-92; 2:55 pm]

BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on May 18, 1992. The meeting will commence at 7:00 a.m.

PLACE: The Marriott Suites Alexandria, 801 North St. Asaph Street, The Conference Center, Alexandria, Virginia 22314, (703) 836-4700.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of March 8, 1992 Meeting.
3. Consideration and Review of Budget and Expenses For the Six-Month Period Ending March 31, 1992.
4. Consideration and Review of Six-Month Projections for the Period of April 1, 1992 to September 30, 1992.
   a. Consideration of Need for Internal Budgetary Adjustments.
   b. Consideration of Reallocation of Fiscal Year 1992 Consolidated Operating Budget.
5. Consideration and Review of Building Contributions for Furniture and Equipment.
6. Consideration and Review of Build-Out Costs.
7. Consideration of Funding for Innovative and Meritorious Grants.
8. Consideration of Proposed Policy and Resolution on the Investment of Corporation Funds.
9. Consideration of Status Report on Funding of the Micronesian Legal Services Corporation.
10. Report on Management's Plan to Incorporate 1990 Census Data into Program Area Poverty Population Statistics for use by Congress and the Corporation in Making 1993 Grants.
11. Consideration of Proposed Guidelines for the Corporation's Annual Audit.
12. Consideration of Report on the Leasing of the Corporation's Current Headquarters Office Space.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 863-1839.

Date Issued: Mary 11, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92-11431 Filed 5-11-92; 3:21 pm]

BILLING CODE 7050-01-M

Corrections

Federal Register
Vol. 57, No. 93
Wednesday, May 13, 1992

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Delegation of Authority to Classify Sales or Purchases for Future Delivery as Bona Fide Hedging

Correction

In rule document 92-8513 beginning on page 12873 in the issue of April 14, 1992, in the third column, in the **EFFECTIVE DATE:**, "March 14, 1992." should read "April 14, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3389; FR-3151-N-01]

NOFA for the Public Housing Resident Management Program Technical Assistance

Correction

In notice document 92-8544 beginning on page 12970 in the issue of Tuesday, April 14, 1992, make the following correction:

On page 12971, in the third column, in the second full paragraph, in the sixth line, "$4,700,691" should read "$4,770,691".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-13]

Alteration of Transition Area; Warroad, MN

Correction

In rule document 92-9189 beginning on page 14476 in the issue of Tuesday, April 21, 1992, make the following corrections:

1. On page 14477, in the first column, in the second full paragraph, in the third line, "regulations" was misspelled.

2. On the same page, in the same column, in amendatory instruction 2, in the sixth line, "as amended" should read "is amended".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-14]

Proposed Control Zone Modification; DuPage Airport, St. Charles, IL

Correction

In proposed rule document 92-9182 beginning on page 14523 in the issue of Tuesday, April 21, 1992, make the following corrections:

1. On page 14524, in the 1st column, under **Comments Invited**, in the 12th line, after "energy-related" insert "aspects of the proposal. Communications should identify the airspace docket".

2. On the same page, in the same column, in the same paragraph, in the last line, "contract" should read "contact".

3. On the same page, in the second column, under **The Proposal**, in the first paragraph, in the second line, "§ 71.172" should read "§ 71.171".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2-86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

Correction

In proposed rule document 92-7791, beginning on page 12244 in the issue of Thursday, April 9, 1992, make the following corrections:

1. On page 12245, in the first column, in the **DATES** section, the date is corrected to read "September 8, 1992".

2. On the same page, in the second column, in the last line, "and" should read "had".

3. On page 12246, in the third column, in the third line remove "into such". In the same column, in the last paragraph, sixth line, "before" should read "after".

4. On page 12250, in the third column, in the first full paragraph, in the second line "during" should read "urging".

5. On page 12253, in the third column, under section C., second paragraph, fourth line, "board" should read "broad". In the seventh line "of" should read "to", and in the eighth line insert "interest in a security" after "security".

6. On page 12257, in the first column, in section B., first paragraph, fourth line from the end, remove the second "a". In the second paragraph, ninth line, "line" should read "lien". In section C., 1st paragraph, the 9th line, "food" should read "good", in the 17th line following "Securities" insert " Act of 1986.) The part 450 regulations include requirements".

7. On the same page, in the 2d column, in the 14th line insert "to" after "notice".

8. On page 12258, in the 3rd column, in the second full paragraph, in the 12th line, the 2d "or" should read "of", and in the next paragraph, in the 7th line insert, "a" between "of" and "single".

§ 357.3 [Corrected]

9. On page 12263, in the first column, in § 357.3(f), fourth line, "Depository" should read "Deposit".

§ 357.40 [Corrected]

10. On page 12266, in the first column, in § 357.40, in the first line insert "of cases" after "class".

§ 357.41 [Corrected]

11. On the same page, in § 357.41,in the second column, in the fourth line "care" should read "case".

§ 357.42 [Corrected]

12. On the same page, in the same column, in § 357.42(b), in the 10th line insert "other" after "any".

BILLING CODE 1505-01-D

federal register

Wednesday
May 13, 1992

Part II

Department of the Interior

Bureau of Indian Affairs

Interstate 5/88th Street Northeast Interchange Project Serving the Tulalip Indian Reservation, Snohomish County, Washington; Draft Environmental Impact Statement; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for the Interstate 5/88th Street Northeast Interchange Project Serving the Tulalip Indian Reservation, Snohomish County, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of DEIS and public hearing dates.

SUMMARY: This notice advises the public that a Draft Environmental Impact Statement (DEIS) is available for public review and that public hearings will be held regarding this document for the proposed construction of a full-diamond interchange as added access to Interstate 5 (I-5), an expanded road network and a park-and-ride lot at 88th Street Northeast in Snohomish County, Washington to improve traffic circulation on the Tulalip Reservation and throughout the nearby city of Marysville and surrounding Snohomish County, and to facilitate the tribe's economic development by providing direct freeway access to industrial and commercial properties located on the Tulalip Tribes Reservation. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR part 1503) to obtain comments on the DEIS from agencies and the public.

DATES: A public hearing on the DEIS will be held Wednesday, June 3, 1992, 7 p.m. at the Pilchuck High School Auditorium, 5611 108th Street Northeast, Marysville, Washington 98270.

An informal open house will be held prior to the hearing from 5 p.m. to 7 p.m. Plans, maps, environmental documents and other pertinent information will be on display, together with written comments received from interested agencies, groups and persons. Washington State Department of Transportation (WSDOT), Snohomish County Public Works Department and Tulalip Tribes personnel will be present to discuss tentative construction schedules, potential impacts of the proposed alternatives and to answer questions about the project.

The hearing site is accessible to the physically handicapped. Interpreters can be provided for persons with hearing impairments. Braille or taped information for people with visual impairments can also be provided. Please contact Richard F. Johnson, P. E. WSDOT, 15325 SE. 30th Place, Bellevue, Washington 98007-6568, telephone (206) 562-4400 by May 26 1992, so that appropriate arrangements can be made.

Written comments should be received on or before July 15, 1992 at the address listed below.

ADDRESSES: Comments and participation at the public hearing are solicited. Written comments should be directed to Mr. William Black, Superintendent, Puget Sound Agency, Bureau of Indian Affairs, Federal Building, 3006 Colby Avenue, Everett, Washington 98201.

Persons wishing copies of this DEIS should immediately contact the Tulalip Tribes, 6700 Totem Beach Road, Marysville, Washington 98271, Attention: Jim Cameron. Telephone (206) 653-0251. Copies of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies of the document.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Eggers, Area Environmental Officer, Portland Area Office, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, Oregon 97232-4169. Telephone (503) 231-2208 or FTS 429-2208.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, Department of the Interior, in cooperation with the Tulalip Tribes of Washington, the Washington Department of Transportation, the Federal Highway Administration, the Snohomish County Department of Public Works, the City of Marysville Department of Public Works, and the Snohomish County Public Transportation Benefit Area Corporation (Community Transit) has prepared a DEIS on the proposed construction of a full-diamond interchange on Interstate 5 at 88th Street Northeast (located approximately 29 miles north of Seattle, Washington at milepost 200.7 in Snohomish County), an expanded local road network, and a 350-stall park-and-ride lot in the northeast quadrant of the proposed interchange.

The purpose and need for this action is to provide crucial access to the Tulalip Reservation to support tribal economic development, the siting of U.S. Navy Support Facilities and a Business Park, and to provide vitally needed secondary access to the Reservation to significantly improve traffic circulation, emergency vehicle response time and business accessibility. At present, the Reservation's main entry/egress is the 4th Street Northeast Interchange which is operating at or above its design capacity and has been improved to its practical limits.

In addition to improving the level of service at both nearby interchanges (4th Street and 116th Street Northeast), construction of the I-5/88th Street Northeast Interchange Project will remedy traffic access and circulation impediments in the neighboring City of Marysville and surrounding county area. The proposed project is the key element in developing an easterly connector to State Route 9 and opening critically needed access to eastern Snohomish County.

Under the No Action Alternative (Alternative 1), the proposed improvements would not be constructed.

Under the Preferred Action Alternative (Alternative 2), a full-diamond interchange with east west access would be constructed on I-5 at 88th Street Northeast (milepost 200.7). East of I-5, 88th Street Northeast would be widened to four lanes with a two-way left turn lane. West of I-5, a new four-lane roadway would be constructed within the existing 88th Street Northeast right-of-way to 27th Avenue Northeast. Access to properties along 35th Avenue Northeast would be lost as a result of northbound on-ramp construction. To mitigate this impact, 36th Avenue Northeast would be extended north to connect with 90th Street Northeast. Community Transit has proposed to locate a 4-acre, 350-stall park-and-ride lot on the northeast corner of 88th Street Northeast and the new 36th Avenue Northeast frontage road.

Under Alternative 3, construction of a new half-diamond interchange would provide on- and off-ramps in the south half of the interchange and allow access only on the west side of I-5. The interchange would be located at milepost 200.8, about half way between the 4th Street Northeast and 116th Street Northeast interchanges. Right-of-way requirements for the northbound off-ramps would cause impacts to properties east of I-5. The 88th Street Northeast/35th Avenue Northeast intersection would be realigned as necessary to provide right-of-way for construction of the overcrossing.

Under Alternative 4, all non-local traffic generated by the proposed industrial/business park on the Reservation would be accommodated with on- and off-ramps constructed on both the north and south half of the interchange. Residential properties east of I-5 located within the right-of-way of the proposed on- and off-ramps would be impacted. The horizontal alignments of 88th Street Northeast and 35th Avenue Northeast would be altered to provide access to properties presently located along 35th Avenue Northeast. The realignment of 88th Street Northeast would impact properties within the

project area east of I-5. Because only west access to the proposed industrial/business park would be provided, the interchange would add minimal capacity to the existing road network east of I-5. The transportation facility proposed under this alternative would improve projected traffic circulation within the industrial/business park by allowing both north and south access to the facility from I-5. However, this alternative design would not significantly improve traffic circulation east of I-5 because traffic would still have to access I-5 from either the 4th Street or 116th Street Northeast interchanges. Because this alternative design would not significantly improve traffic circulation both east and west of I-5, it is not viable and will not be further evaluated in this DEIS.

Other government agencies and members of the public have contributed to the planning and evaluation of the proposals and to the preparation of this DEIS. The scoping process for the Interstate 5/88th Street Northeast Interchange Project EIS began with the publication of a Notice of Intent (NOI) in the May 13, 1991, **Federal Register.** Public scoping meetings were held on May 29 and 30, 1991, at the Tulalip Tribes Reservation and in the neighboring City of Marysville, Washington, to obtain input from Federal, State, local, and tribal agencies and the interested public. Specific issues of public concern were potential traffic impacts on neighboring land uses, regional and community growth, and wetland impact resulting from road and bridge construction. On April 22, 1992 an open house and informational meeting was held in the Pilchuck High School Auditorium in the City of Marysville. The principal issue of public concern at this meeting was the possible siting of a park-and-ride lot on 88th street Northeast immediately east of I-5.

Agencies and individuals are urged to provide comments on this DEIS as soon as possible. All comments received by the dates given above will be considered in preparation of the final EIS.

This notice is published pursuant to Sec. 1503.1 of the Council on Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et. seq.*), Department of Interior Manual (516 DM 1-6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: May 7, 1992.

Patrick A. Hayes,

Director, Office of Trust and Economic Development.

[FR Doc. 92-11162 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Wednesday
May 13, 1992

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status; Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Six Plants From the Kokee Region, Island of Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines six plants, *Chamaesyce halemanui* (no common name (NCN)), *Dubautia latifolia* (NCN), *Poa sandvicensis* (Hawaiian bluegrass), *Poa siphonoglossa (NCN), Stenogyne campanulata* (NCN), and *Xylosma crenatum* (NCN), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). These species are known only from the Kokee region of the island of Kauai, Hawaii. The six species have been variously affected and are threatened by one or more of the following: Habitat degradation by feral animals; competition for space, light, nutrients, and/or water from alien plant species; road or trail maintenance activities; and an increased potential for extinction and/or reduced reproductive vigor from stochastic events because of the small numbers of extant individuals and their restricted distributions. This rule implements the protection and recovery provisions provided by the Act for these plants.

EFFECTIVE DATE: June 12, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Joan E. Canfield, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

The island of Kauai is 627 square miles (sq mi) (1,624 sq kilometers (km)) in area (Armstrong 1983). The island was formed about six million years ago by a single shield volcano, whose caldera was 9 to 12 mi (15 to 20 km) in diameter, the largest caldera in the Hawaiian Islands (Macdonald *et al.* 1983). The remains of this caldera now extend about 10 mi (16 km) in length, forming the Alakai Swamp, an extremely wet, elevated tableland. Faulting and erosion on the western side of the Alakai Swamp have carved the deeply dissected Waimea Canyon, 10 mi (16 km) long and 1 mi (1.6 km) wide, its near-vertical cliffs well over 2,000 feet (ft) (600 meters (m)) high. The distribution of the six species in this final rule centers at Kokee, which lies just above the northern reaches of Waimea Canyon, with the wet Alakai Swamp to the east, steep cliffs of the Na Pali coast to the north, and drier leeward ridges to the west. Kokee is not a strictly defined area; in this document, "Kokee" refers to the boundary of Kokee State Park, roughly 8 sq mi (20 sq km) in area. To most conveniently delimit the greater part of the range of these species, "Kokee region" used here refers to the uplands (above 3,500 ft (1,070 m)) surrounding upper Waimea Canyon: on the west side of Waimea Canyon from Kauhao Valley northeast to the rim of Kalalau Valley, and south to Kohua Ridge on the canyon's east side, an area of about 15 sq mi (40 sq km).

The historical range of the six species in this final rule included leeward slopes on the west side of Waimea Canyon as far south as Lapa Ridge, north to the rim of Kalalau Valley, and on the east side of Waimea Canyon as far south as Olokele Canyon. That area is approximately 9 by 7 mi (14 by 11 km) in size, with plant localities ranging from 2,200 to 3,900 ft (670 to 1,190 m) in elevation. The currently known range of these species differs primarily from the historical range only on the east side of Waimea Canyon, where Kohua Ridge is now the southernmost locality. The present range is circumscribed by an area 5 by 6 mi (8 by 10 km), from 2,500 to 3,900 ft (760 to 1,190 m) in elevation, although most localities are above 3,500 ft (1,070 m). Hence, the range of these species may have been reduced by almost 50 percent.

In the Kokee region, the annual rainfall ranges from about 45 to 80 inches (in) (115 to 200 centimeters (cm)), with a sharp orographic gradient increasing to the east. The average annual temperature is about 62° F (17° C) (Armstrong 1983). These six species are primarily found on well drained, gently sloping to very steep, silty clay loam (Foote *et al.* 1972). The vegetation of the Kokee region is primarily mesic to wet forests dominated by 'ohi'a (*Metrosideros polymorpha*) and koa (*Acacia koa*). Because of the island's age, abrupt topography, and sharp climatic gradient, the native flora of the Kokee region is quite diverse, with a high proportion of locally endemic species.

Discussion of the Six Species

Chamaesyce halemanui was first collected in 1840 on Kauai by the U.S. South Pacific Exploring Expedition (Degener and Degener 1959b). In 1936, Edward Sherff named that specimen *Euphorbia remyi* var. *wilkesii*, and also named specimens from one collection from the Halemanu drainage both *E. halemanui* and *E. remyi* var. *leptopoda* (Koutnik 1987). Otto and Isa Degener and L. Croizat (Degener and Croizat 1936; Degener and Degener 1959a, 1959b) transferred all of those names to the genus *Chamaesyce*. In 1987, Daryl Koutnik reduced the two varieties listed above, and *E. remyi* var. *molesta* (Sherff 1938), to synonymy under *Chamaesyce halemanui*.

All collections and confirmed sightings of this species are from seven areas: Kauhao and Makaha valleys in Na Pali-Kona Forest Reserve; Mahanaloa Valley in Kuia Natural Area Reserve; the Halemanu drainage and near Waipoo Falls and Kokee Ranger Station in Kokee State Park; and Olokele Canyon on privately owned land (Hawaii Heritage Program (HHP) 1990a to 1990f). *Chamaesyce halemanui* is known to be extant at the Kauhao, Makaha, and Halemanu sites, all on State-owned land (HHP 1990c, 1990f; Timothy Flynn, National Tropical Botanical Garden (NTBG), pers. comm., 1990).

Chamaesyce halemanui is a scandent (climbing) shrub in the spurge family (Euphorbiaceae) with stems 3 to 13 ft (1 to 4 m) long. The egg-shaped to inversely lance-shaped leaves are decussate (successive pairs of leaves at right angles to the previous pair). The leaves are 1.6 to 5 in (4 to 13 cm) long and 0.4 to 1.8 in (1 to 4.5 cm) wide, with persistent stipules (small appendages at the base of the petioles (stem of the leaf)). Groups of flowers (cyathia) are in dense, compact, nearly spherical clusters or occasionally solitary in leaf axils. The stems of cyathia are about 0.08 in (2 millimeters (mm)) long, or if solitary, about 0.2 in (5 mm) long. The fruits are green capsules, about 0.1 in (3 mm) long, on recurved stalks, enclosing gray to brown seeds. *Chamaesyce halemanui* is distinguished from closely related species by its decussate leaves, persistent stipules, more compact flower clusters, shorter stems on cyathia, and smaller capsules (Koutnik 1987, Koutnik and Huft 1990).

Chamaesyce halemanui typically grows on the steep slopes of gulches in mesic koa forests at an elevation of 2,100 to 3,600 ft (660 to 1,100 m) (HHP 1990a, 1990e). Associated native species

include 'ohi'a, *Alphitonia ponderosa* (kauila), *Antidesma platyphyllum* (hame), *Coprosma* (pilo), *Diospyros* (lama), *Dodonaea viscosa* ('a'ali'i), *Elaeocarpus bifidus* (kalia), *Pisonia* (papala kepau), *Santalum freycinetianum* ('iliahi), and *Styphelia tameiameiae* (pukiawe) (HHP 1990a, 1990c, 1990e, 1990f; T. Flynn, pers. comm., 1990). Associated alien species include *Aleurites moluccana* (kukui), *Lantana camara* (lantana), *Psidium cattleianum* (strawberry guava), *Rubus arautus* (blackberry), and *Stenotaphrum secundatum* (St. Augustine grass) (HHP 1990e, 1990f; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Chamaesyce halemanui* is competition for space and light from alien plants: St. Augustine grass, lantana, and strawberry guava (T. Flynn, pers. comm., 1990; Joel Lau, HHP, pers. comm., 1990). Habitat degradation by feral pigs (*Sus scrofa*) (digging activity which destroys plants and leads to soil erosion and the invasion of alien plants) threatens the Kauhao and Makaha populations of this species (J. Lau, pers. comm., 1990). The 3 known populations, which extend over a distance of about 2 mi (3 km), contain an estimated 50 individuals (HHP 1990c, 1990f; T. Flynn, pers. comm., 1990; Steven Perlman, Hawaii Plant Conservation Center (HPCC), pers. comm., 1990). With such a small population size and restricted distribution, *C. halemanui* faces an increased potential for extinction resulting from stochastic events. This species' limited gene pool also constitutes a serious potential threat because of the possibility of depressed reproductive vigor.

Dubautia latifolia was first collected in the mountains of Kauai by the U.S. Exploring Expedition in 1840 (Carr 1982). Twenty-one years later, Asa Gray (1861) described that specimen as *Railliardia latifolia* (an orthographic error for *Railliardia latifolia*, as Sherff pointed out in 1935), in reference to its broad leaves. In 1936, David Keck transferred the name to the genus *Dubautia*. Sherff published the name *Railliardia latifolia* var. *helleri* in 1952, which Gerald Carr (1985) considered only a phenological variant not worthy of taxonomic recognition. All collections and confirmed sightings of this species are from six areas: Makaha and Awaawapuhi valleys in Na Pali-Kona Forest Reserve, Nualolo Trail and Valley in Kuia Natural Area Reserve, Halemanu in Kokee State Park, along Mohihi Road in both Kokee State Park and Na Pali-Kona Forest Reserve, along the Mohihi-Waialae Trail on Mohihi and Kohua ridges in both Na Pali-Kona Forest Reserve and Alakai Wilderness Preserve, and Kaholuamanu on privately owned land (Carr 1982; HHP 1990h to 1990m; T. Flynn, pers. comm., 1990). *Dubautia latifolia* is known to occur at all but the Halemanu and Kaholuamanu sites (T. Flynn, J. Lau, and S. Perlman, pers. comms., 1990). The species is now known only from State-owned land.

Dubautia latifolia is a diffusely branched, woody vine in the aster family (Asteraceae) with stems up to 26 ft (8 m) long and occasionally up to 3 in (7 cm) in diameter near the base. The paired, egg- to oval-shaped leaves are 3 to 7 in (8 to 17 cm) long and 1 to 3 in (2.5 to 7 cm) wide. The leaves are conspicuously net-veined, with the smaller veins outlining nearly square areas. The distinct petioles are usually about 0.2 in (5 mm) long. The inflorescences comprise a large aggregation of very small, yellowflowered heads. The fruits are dry seeds, usually about 0.2 in (5 mm) long. A vining habit, distinct petioles, and broad leaves with conspicuous net veins outlining squarish areas separate *Dubautia latifolia* from closely related species (Carr 1982, 1985, 1990).

Dubautia latifolia typically grows on gentle to steep slopes on well drained soil in semi-open, diverse montane mesic forest dominated by koa with 'ohi'a, at an elevation of 3,200 to 3,900 ft (975 to 1,200 m) (Carr 1982, 1990; HHP 1988; HPCC 1990a). Less often, this species is found in either closed forest, conifer plantations, or 'ohi'a-dominated forest, and as low as 2,800 ft (850 m) in elevation (HHP 1988, 1990j, 1990k; HPCC 1990a). The most common associated native species are kauila, *Athyrium sandwicensis*, *Bobea* ('ahakea), *Conposma waimeae* ('olena), *Dicranopteris linearis* (uluhe), *Hedyotis terminalis* (manono), *Ilex anomala* (aiea), *Melicope anisata* (mokihana), *Psychotria mariniana* (kopiko), and *Scaevola* (naupaka kuahiwi) (Carr 1982; HHP 1990g, 1990h, 1990j to 1990m). Associated alien species include blackberry, strawberry guava, *Acacia mearnsii* (black wattle), *Acacia melanoxylon* (Australian blackwood), *Erigeron karvinshianus* (daisy fleabane), *Hedychium* (ginger), *Lonicera japonica* (honeysuckle), *Myrica faya* (firetree), and *Possiflora mollissima* (banana poka) (Carr 1982; HHP 1990g, 19901; HPCC 1990d; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Dubautia latifolia* is competition from alien plants. Banana poka, a vine now invading four of *D. latifolia's* six diffuse populations, is the most serious threat (Carr 1982, 1985). Blackberry, honeysuckle, black wattle, Australian blackwood, ginger, daisy fleabane, and strawberry guava are other alien species that dominate the habitat of and/or threaten *D. latifolia* (HHP 1990g, 1990h, 1990k, 1990m; HPCC 1990a, 1990d; T. Flynn, pers. comm., 1990). Habitat degradation by feral pigs currently threatens four populations of *D. latifolia* (HHP 1990m; T. Flynn and J. Lau, pers. comms., 1990). Black-tailed deer (*Odocoileus hemionus columbianus*) threaten two populations through trampling that destroys plants and disturbs the ground, leading to soil erosion and favoring the invasion of alien plants; predation by deer is also a probable threat (HHP 1989; HPCC 1990e; S. Perlman, pers. comm., 1990). Vehicle traffic and road maintenance constitute a potential threat to several *D. latifolia* individuals that overhang a State park road. This species suffers from a seasonal dieback that could be a potential threat (Gerald Carr, University of Hawaii, pers. comm., 1990).

Since at least some individuals of *D. latifolia* require cross-pollination, the wide spacing of individual plants (e.g., each 0.3 mi (0.5 km) apart) may pose a threat to the reproductive potential of the species (Carr 1982). The very low seed set noted in plants in the wild indicates a reproductive problem, possibly flowering asynchrony (G. Carr, pers. comm., 1990). Seedling establishment is rather rare in the wild (Carr 1982), presumably due to limited reproduction. The estimated 40 individuals of *D. latifolia* known to be extant are spread over a total distance of about 6.5 by 2.5 mi (10.5 by 4 km) (Carr 1982; HHP 1990h, 1990j; to 1990m; S. Perlman, pers comm., 1990), comprising a limited gene pool that constitutes a potential threat to the species.

Probably the earliest collection of *Poa sandvicensis* was that of Horace Mann and William Brigham from "above Waimea" in 1864 or 1865 (Hillebrand 1888). This species was first described as *Festuca sandvicensis* by H.W. Reichardt in 1878, based on collections from Halemanu. Ten years later, William Hillebrand (1888) described Mann and Brigham's specimen, along with other material, as *Poa longeradiata*. In 1922, Albert Hitchcock combined these and additional collections under the name *Poa sandvicensis*.

All collections and confirmed sightings of this species are from six areas: the rim of Kalalau Valley in Ka Pali Coast State Park; Halemanu and

Kumuwela Ridge/Kauaikinana drainage in Kokee State Park; Awaawapuhi Trail in Na Pali-Kona Forest Reserve; Kohua Ridge/Mohihi drainage in both the Forest Reserve and Alakai Wilderness Preserve; and Kaholuamanu on privately owned land (HHP 1990n, 1990p, 1990q; HPCC 1990b; Hitchcock 1922; T. Flynn, pers. comm., 1990). *Poa sandvicensis* is known to be extant at the Kalalau, Awaawapuhi, Kumuwela/Kauaikinana, and Kohua/Mohihi localities; it is therefore currently known only from State-owned land. Hillebrand's (1888) questionable reference to a Maui locality is most likely an error.

Poa sandvicensis is a perennial grass (family Poaceae) with densely tufted, mostly erect culms (stems) 1 to 3.3 ft (0.3 to 1 m) tall. The short rhizomes (underground stems) form a hardened base for the solid, slightly flattened culms. The leaf sheaths are closed and fused, but may split with age. The toothed ligule (appendage where leaf sheath and blade meet) completely surrounds the culm and has a hard tooth extending upward from the mouth of the sheath. The leaf blades are 4 to 8 in (10 to 20 cm) long, and up to 0.2 in (6 mm) wide. The flowers occur in complex clusters with lower panicle (primary) branches up to 4 in (10 cm) long. The lemmas (inner bracts) have only a sparse basal tuft of cobwebby hairs. The fruits are golden brown to reddish brown, oval grains. *Poa sandvicensis* is distinguished from closely related species by its shorter rhizomes, shorter culms which do not become rush-like with age, closed and fused sheaths, relatively even-edged ligules, and longer panicle branches (O'Conner 1990).

Poa sandvicensis grows on wet, shaded, gentle to usually steep slopes, ridges, and rock ledges in semi-open to closed, mesic to wet, diverse montane forest dominated by 'ohi'a, at an elevation of 3,400 to 4,100 ft (1,035 to 1,250 m) (HHP 1990n to 1990q; HPCC 1990b). Associated native species include koa, kopiko, manono, naupaka kuahiwi, pilo, *Cheirodendron* ('olapa), and *Syzygium sandwicensis* ('ohi'a ha) (HHP 1990n, 1990p, 1990q; HPCC 1990b; T. Flynn, pers. comm., 1990). Associated alien species include blackberry, banana poka, ginger, and daisy fleabane (HHP 1990p; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Poa sandvicensis* is competition from alien plants. Daisy fleabane is the primary alien plant threat to the Halalau population of *P. sandvicensis* (T. Flynn, pers. comm., 1990). Blackberry threatens the Awaawapuhi, Kalalau, and Kohua Ridge populations (HHP 1990q; T. Flynn, pers. comm., 1990). Banana poka and ginger also threaten the Awaawapuhi population (HHP 1990p). Erosion caused by pigs currently threatens the Kohua Ridge population, and both pigs and goats (Caprus hircus) (which trample plants, cause erosion, and promote the invasion of alien plants) threaten the Kalalau population (HHP 1990m; HPCC 1990b; T. Flynn and J. Lau, pers. comms., 1990). State forest reserve trail maintenance threatens the trailside Awaawapuhi population (HHP 1990p). While about 40 individuals of *P. sandvicensis* are known from 4 populations spread over a distance of about 5 by 2 mi (8 by 3 km), 80 percent of the plants are concentrated at 1 major site (HHP 1990n, 1990q; T. Flynn, pers. comm., 1990). This species is therefore subject to an increased potential for extinction resulting from stochastic events, because a single event could extirpate 80 percent of the known individuals. The small population size with its limited gene pool also constitutes a serious potential threat.

Poa siphonoglossa was first collected in 1910 by Abbe Urbain Faurie, and was described two years later by E. Hackel (1912). According to Hitchcock (1922), one of the two specimens on which Hackel based his description was actually *poa mannii*. While the localities for Faurie's two specimens are confused, the specimen that Hitchcock designated as the type was most likely collected at an elevation of about 3,000 ft (1,000 m) above Waimea town, possibly near Kaholuamanu (Hitchcock 1922).

All collections and confirmed sightings of *Poa siphonoglossa* are from two sites: Kohua Ridge in Na Pali-Kona Forest Reserve, and near Haholuamanu on privately owned land (HHP 1990r). *Poa siphonoglossa* is only known to be extant on Kohua Ridge, on State-owned land.

An additional *Poa* specimen sharing characteristics of both *P. siphonoglossa* and *P. mannii* was collected in 1988 by David Lorence from Kaulaula Valley in Puu Ka Pele Forest Reserve (David Lorence, NTBG, pers. comm., 1990). Lorence and other local botanical authorities believe that the two species are conspecific, representing different growth stages. Even if the two names are combined, the plant remains extremely rare, since *Poa mannii* has not been collected since 1916 (O'Conner 1990). O'Conner (1990) treats *P. siphonoglossa* and *P. mannii* as distinct species.

Poa siphonoglossa differs from *P. sandvicensis* principally by its longer culms, lack of a prominent tooth on the ligule, and shorter panicle branches. *Poa siphonoglossa* has extensive tufted and flattened culms that cascade from banks in masses up to 13 ft (4 m) long. The naked, rush-like older culms have bladeless sheaths; the sheaths do not split with age. The ligule has no hard tooth. The flat, loosely packed leaf blades are usually less than 4 in (10 cm) long and 0.1 in (3 mm) wide. The primary panicle branches are about 0.1 in (3 cm) long. The lemmas lack cobwebby hairs. The fruits are reddish brown and oval. Short rhizomes, long culms, closed and fused sheaths, and lack of a tooth on the ligule separate *P. siphonoglossa* from *P. mannii* and other closely related species (O'Conner 1990).

Poa siphonoglossa typically grows on shady banks near ridge crests in predominantly native mesic 'ohi'a forest between about 3,300 and 3,900 ft (1,000 to 1,200 m) in elevation (HHP 1990r, : Hitchcock 1922). Associated species include the natives 'a'ali'i, manono, *Melicope* (alani), and *Vaccinium* ('ohelo), and the alien blackberry (HHP 1990r). The population from Kaulaula Valley, whose characteristics are similar to both *P. siphonoglossa* and *P. mannii*, grows on a steep, shady slope in koa forest with occasional 'ohi'a at an elevation of 2,900 ft (890 m) (D. Lorence, pers. comm., 1990). Associated species include pukiawe, *Carex meyenii*, *Carex wahuensis*, and *Wilkesia gymnoxiphium* (iliau) (T. Flynn, pers. comm., 1990).

The primary threat to the survival of *Poa siphonoglossa* is habitat degradation by pigs and deer. The Kohua Ridge population of this species may be at risk due to erosion caused by pigs (J. Lau, pers. comm., 1990), and the presence of both pigs and deer may threaten the Kaulaula population (T. Flynn, pers. comm., 1990). Predation by deer is also a potential threat there. The alien blackberry invading Kohua Ridge constitutes a probable threat to that population (HHP 1990r). *Poa siphonoglossa* (including the Kaulaula population) numbers fewer than 30 known individuals located at 2 populations about 6 mi (10 km) apart (HHP 1990r; T. Flynn, pers. comm., 1990). A limited gene pool and potential for one disturbance event to destroy the majority of known individuals are serious threats to this species.

Stenogyne campanulata was discovered in 1986 by Steven Montgomery on sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley on Kauai. The species is known only from that single population. In 1989, Stephen Weller and Ann Sakai described the plant as a new

species, naming it for the flowers' bell-shaped calyces. Known only from State-owned land, *S. campanulata* is restricted to Na Pali Coast State Park.

Stenogyne campanulata is a member of the mint family (Lamiaceae), described as a vine with four-angled, hairy stems. The hairy leaves are broadly oval, about 2 in (5 cm) long and 1 in (3 cm) wide. The flowers occur in clusters of about 6 per leaf axil. The very broadly bell-shaped, hairy calyces are about 0.5 in (13 mm) long, with teeth that are 0.1 in (3 mm) long and 0.2 in (5 mm) wide at the base. The petals are fused into a straight, hairy, white tube about 0.5 in (13 mm) long, with short purple lobes. The fruits of this species have not been seen, but the fruit of all other members of this genus are fleshy nutlets. *Stenogyne campanulata* is distinguished from closely related species by its large and very broadly bell-shaped calyces that nearly enclose the relatively small, straight corollas, and by small calyx teeth that are half as long as wide (Weller and Sakai 1990).

Stenogyne campanulata grows on the rock face of a nearly vertical, north-facing cliff at an elevation of 3,560 ft (1,085 m) (Weller and Sakai 1990; T. Flynn and S. Perlman, pers. comms., 1990). The associated shrubby vegetation includes the native species *Artemisia australis* ('ahinahina), *Lepidium serra* ('anaunau), *Lysimachia glutinosa*, *Perrottetia sandwicensis* (olomea), and *Remya montgomeryi*, and alien blackberry and daisy fleabane (T. Flynn, pers. comm., 1990).

Habitat degradation by feral goats is the primary threat to the survival of *Stenogyne campanulata* (T. Flynn, pers. comm., 1990). The restriction of this species to virtually inaccessible cliffs suggests that predation by goats may have eliminated it from more accessible locations. Such predation remains a potential threat because goats may limit seedling establishment in more accessible areas and if they reached existing plants, losses could occur (T. Flynn, pers. comm., 1990). Feral pigs have disturbed vegetation in the vicinity of the only known population (T. Flynn, pers. comm., 1990). Erosion caused by goats or pigs exacerbates the potential threat of landslides to this population (T. Flynn, pers. comm., 1990). Daisy fleabane and *Rubus argutus* (blackberry) are the primary alien plants threatening *Stenogyne campanulata* (T. Flynn and S. Perlman, pers. comms., 1990; HPCC 1990c). *Stenogyne campanulata* is estimated to number 50 plants at the very most, all of which are concentrated at a single site (T. Flynn, pers. comm., 1990). The small size of the single known population and its restricted distribution (probably well under 500 sq ft (45 sq m) in area) are serious potential threats to the species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance such as a landslide could destroy all known extant individuals.

Xylosma crenatum was first collected in 1917 by Charles Forbes on the west side of the Waimea drainage basin. However, the collection was misidentified as *Hibiscus waimeae* (HHP 1990s). Over 50 years later (in 1968), Robert Hobdy made the second collection of this plant, along the banks of Mohihi Stream at the edge of the Alakai Swamp. Finally in 1972, Harold St. John recognized the plant as a distinct species, and named it *Antidesma crenatum*, after the rounded teeth along the leaf edges (St. John 1972). In 1976, St. John transferred the name to the genus *Xylosma*.

All collections subsequent to 1968 and confirmed sightings of *Xylosma crenatum* are from two sites: along upper Nualolo Trail in Kuia Natural Area Reserve and along Mohihi Road between Waiakoali and Mohihi drainages in Na Pali-Kona Forest Reserve (HHP 1990s, 1990t; T. Flynn, pers. comm., 1990; Robert Hobdy, State Division of Forestry and Wildlife (DOFAW), pers. comm., 1990). *Xylosma crenatum* is apparently extant only at the latter site (R. Hobdy and J. Lau, pers. comms., 1990). This species is found only on State-owned land.

Xylosma crenatum is a dioecious (unisexual) tree in the flacourtia family (Flacourtiaceae), growing up to 46 ft (14 m) tall, and with dark gray bark. The somewhat leathery leaves are oval to elliptic-oval, about 4 to 8 in (10 to 20 cm) long and 2.5 to 4 in (6.5 to 10 cm) wide, with coarsely toothed edges and moderately hairy undersides. The female flowers (male flowers have not been described) occur in clusters of 3 to 11 per leaf axil. The four oval sepals are about 0.1 in (2.5 mm) long; petals are absent. The young berries are oval to elliptic-oval and about 0.3 in (7 mm) long (mature fruits have not been seen). More coarsely toothed leaf edges and hairy undersides of the leaves distinguish *Xylosma crenatum* from the other Hawaiian member of this genus (St. John 1972, Wagner *et al.* 1990).

Xylosma crenatum is known from diverse koa/'ohi'a montane mesic forest at an elevation of about 3,200 to 3,500 ft (975 to 1,065 m), sometimes along stream banks or within a planted conifer grove (HHP 1990t; St. John 1972; R. Hobdy, pers. comm., 1990). Associated species include the native manono and *Athyrium sandwicensis* and alien strawberry guava (HHP 1990t).

The three historical populations of *Xylosma crenatum* have apparently been reduced to one female individual and no regeneration is evident at the site (J. Lau, pers. comm., 1990). However, since half-mature fruits have been observed at least twice on this individual (J. Lau *in litt.*, 1990), successful reproduction may be possible. These immature fruits are either the product of asexual reproduction (apomixis or parthenocarpy) or of sexual reproduction with an as yet undiscovered male plant within pollinating distance. Because no surveys for this species have been conducted in its rather inaccessible habitat, it is hoped that additional research will reveal the presence of more individuals, including male plants. In any case, the total size of the population is probably very limited. Furthermore, a single human-caused or natural environmental disturbance (such as continued bulldozing during maintenance activities along the adjacent State forest reserve road) could easily destroy the only known individual of the species (J. Lau, pers. comm., 1990). *Xylosma crenatum* is also threatened by competition from alien plants, particularly strawberry guava, as well as the conifers dominating the only known site (HHP 1990t). In addition, feral pigs may threaten this species (T. Flynn, pers. comm., 1990).

Previous Federal Action

Federal action on these plant species 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 in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Dubautia latifolia* (as *D. latifolia* var. *latifolia*), *Poa sandvicensis*, and *Xylosma crenatum* (as *Antidesma crenatum*) were considered to be endangered. 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) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41

FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Chamaesyce halemanui, Dubautia latifolia, Poa sandvicensis,* and *Xylosma crenatum.* 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.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). 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) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), and September 27, 1985 (50 FR 39525), including *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Dubautia latifolia, Poa sandvicensis,* and *Poa siphonoglossa* as Category 1 candidates. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. *Xylosma crenatum* was included as a Category 2 candidate species on both notices, meaning that the Service had some evidence of vulnerability, but not enough data to support a listing proposal at the time. In the latest notice of review, published on February 21, 1990 (55 FR 6183), all six of the species included in this final rule were considered Category 1 candidates. *Stenogyne campanulata* was not included in prior notices, since it was not discovered until 1986.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. 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, 1988, and 1989.

On September 26, 1990, the Service published in the **Federal Register** (55 FR 39301) a proposal to list *Chamaesyce halemanui, Dubautia latifolia, Poa sandvicensis, Poa siphonoglossa, Stenogyne campanulata,* and *Xylosma crenatum* as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program, reports from the Hawaii Division of Forestry and Wildlife, and observations of botanists and naturalists. The Service now determines *Chamaesyce halemanui, Dubautia latifolia, Poa sandvicensis, Poa siphonoglossa, Stenogyne campanulata,* and *Xylosma crenatum* to be endangered species with the publication of this rule.

Summary of Comments and Recommendations

In the September 26, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information relevant to a final decision on the listing proposal. The public comment period ended on November 27, 1990. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. The original advertising order for the legal notice that the Service is required to publish in a local newspaper was lost, which required the reopening of the comment period. A notice was published in The Garden Island on January 10, 1991, and in the **Federal Register** on December 26, 1990 (55 FR 53014) reopening the comment period until February 25, 1991 and inviting general public comment. Two comments were received, from conservation organizations that offered additional information and, in one case, supported listing the six species as endangered. New information received has been incorporated into this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Chamaesyce halemanui, Dubautia latifolia, Poa sandvicensis, Poa siphonoglossa, Stenogyne campanulata,* and *Xylosma crenatum* should be classified as endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Chamaesyce halemanui* (Sherff) Croizat and Degener (NCN), *Dubautia latifolia* (A. Gray) Keck (NCN), *Poa sandvicensis* (Reichardt) Hitchc. (Hawaiian bluegrass), *Poa siphonoglossa* Hack. (NCN), *Stenogyne campanulata* Weller and Sakai (NCN), and *Xylosma crenatum* (St. John) St. John (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The flora of the Kokee region is considered very vulnerable because of past and present land management practices, including grazing, deliberate alien plant and animal introductions, water diversion, and recreational development (Wagner *et al.,* 1985). Feral animals have made the greatest overall impact, altering and degrading the vegetation and habitats of the Kokee region.

Cattle (*Bos taurus*) were introduced to Kauai by the 1820s and were allowed to run wild (Joesting 1984). Cattle not only feed on native vegetation, but trample roots and seedlings, cause erosion, and promote the invasion of alien plants by creating new sites for colonization, and by spreading seeds in their feces and on their bodies (Scott *et al.,* 1986). In addition, cattle trails provide new routes for feral pigs to expand their range (*e.g.,* into the Alakai Swamp) (Paul Higashino, The Nature Conservancy of Hawaii, pers. comm., 1981). Kokee was leased for cattle grazing in the 1850s (Ryan and Chang 1985). Large cattle ranching operations were underway on both flanks of Waimea Canyon by the 1870s, with many animals wandering into the upper forests. Feral cattle were common at Halemanu in Kokee at this time (Joesting 1984). Concerned over the destruction of upland forests by cattle and goats, Augustus Knudsen, the district forester and cattle rancher on the west side of Waimea Canyon, built a 2 mi (3 km) fence in 1898 near the southwest corner of what became Kokee State Park in 1952 (Daehler 1973b). Knudsen had begun eliminating cattle from the northern (Kokee) side of this boundary in 1882. Three of the six Kokee plant species in this rule historically occurred within 0.5 mi (0.8 km) of this boundary on the Kokee side. Most of the Kokee region, as far southwest as Knudsen's boundary fence, was given forest reserve status (Na Pali-Kona

Forest Reserve) in 1907 to protect the watershed from further erosion by feral animals and to ensure the future water supply for lowland use (Daehler 1973a). At that time, Knudsen described the area south of the boundary fence as grazing land outside any true forest (Daehler 1973b). One of the plants in this rule (*P. siphonoglossa*) occurs in this area, which in 1938 was designated Puu Ka Pele Forest Reserve and described as unsuitable for grazing because of excessive soil erosion (Daehler 1973b). On the east side of Waimea Canyon, efforts were underway by 1904 to eliminate cattle from the uplands, including the Alakai Swamp (Daehler 1973a). In 1916 considerable damage by cattle to the forests around the Alakai Swamp was reported (Daehler 1973a). Stray unbranded ranch stock still roamed the forests of Kokee and Puu Ka Pele in the 1960s (Tomich 1986). The State-owned portion of the Alakai Swamp was designated a Wilderness Preserve in 1964. Today, very few if any cattle remain within the range of the six plant species.

Feral goats have inhabited the drier, more rugged areas of Kauai since the 1820s (Cuddihy and Stone 1990). Like cattle, feral goats consume native vegetation, trample roots and seedlings, cause erosion, and promote the invasion of alien plants (Scott *et al.* 1986). They have denuded many ridges of Waimea Canyon, including areas within the historical distribution of *Dubautia latifolia, Poa sandvicensis,* and *P. siphonoglossa* (Daehler 1973a). During dry periods, goats venture into wet areas, including the Kokee region (Scott *et al.* 1986). They have degraded the forests at the drier edge of the Alakai Swamp, which lie within the present range of the six species in this rule (Scott *et al.* 1986). Although the State attempted to remove goats when the forest reserve was established in 1907, these animals are now managed by the State as a game species, with a limited hunting season (Daehler 1973a, Tomich 1986). Goats are considered a serious threat to the lower and drier outlying sections of the Kokee region (HHP and DOFAW 1989), coinciding roughly with the lower elevation limit of the six species in this rule. The primary threat to *Stenogyne campanulata* is habitat degradation by feral goats (T. Flynn, pers. comm., 1990). While browsing on vegetation, goats disturb the ground, accelerating erosion and creating sites for invasion by more aggressive alien plant species. The restriction of *Stenogyne campanulata* to virtually inaccessible cliffs suggests that predation by goats may have eliminated the species from more accessible locations, as is the case for many rare plants of the Na Pali region. Goats also threaten the Kalalau population of *Poa sandvicensis,* 0.3 mi (0.5 km) from the *Stenogyne* site (T. Flynn, pers. comm., 1990).

Feral pigs have inhabited forests of Kauai for at least 100 years (Cuddihy and Stone 1990). Pigs consume native plants, destroy vegetation by rooting and trampling, cause severe erosion, and spread alien plant seeds in their feces (Scott *et al.* 1986). Pig activity promotes the establishment of alien plants by creating open spaces and increasing soil fertility with their feces; without the disturbance and increase in nutrients, many native species would have an advantage because endemic species often are better adapted to less disturbed sites with poorer soils (Stone 1985).

Because pigs typically expand their range in forested areas by following trails made by other animals or human beings, their ingress into areas of native vegetation has been aided by various human activities (Culliney 1988). Cattle trails helped open the Alakai Swamp to pig traffic (Paul Higashino, The Nature Conservancy, pers. comm., 1981). The sandalwood trade that flourished on Kauai between about 1810 and 1840 created innumerable minor trails, as Hawaiians dragged the logs on their backs down to Waimea on the southern coast from throughout the upland forests (Anonymous 1978, Joesting 1984). To provide irrigation for the expanding sugar cane industry in the lowlands, the extensive Kokee/Kekaha ditch and water diversion system was built in the 1920s. Access roads and trails to and along the ditch and tunnels enabled feral pigs to gain new access to Kokee's native forests (Culliney 1988). The food source provided by plum trees (*Prunus cerasifera* X *P. salicina*) planted in Kokee State Park during the 1930s has attracted greater concentrations of pigs to the general vicinity of several of the species in this rule.

Currently, pigs are recognized as the primary feral animal threat to the upland forests of the Kokee region (HHP and DOFAW 1989), common in both wet and mesic areas. At least five of these species are threatened by habitat degradation by feral pigs. Fresh pig sign was noted in November, 1989, and May, 1990, throughout the area of Kohua Ridge where populations of *Poa sandvicensis, P. siphonoglossa,* and *Dubautia latifolia* are located (HHP 1990m; J. Lau, pers. comm., 1990). At this steep site, erosion caused by pig activity is a present threat to the two *Poa* species (J. Lau, pers. comm., 1990). The extensive erosion scars on lower Kohua Ridge are expanding and gradually moving upslope toward these two species (J. Lau, pers. comm., 1990). Similarly, by increasing erosion, pig activity would exacerbate the potential threat of landslides to the only known population of *Stenogyne campanulata* on the nearly vertical rim of Kalalau (T. Flynn, pers. comm., 1990). Just 0.3 mi (0.5 km) from the *Stenogyne* population, there was considerable pig damage to vegetation adjacent to a population of *Poa sandvicensis* in May, 1990 (T. Flynn, pers. comm., 1990). For *Dubautia latifolia,* pigs constitute a definite threat at the Awaawapuhi population and are known to have caused damage near the Nualolo population (HHP 1989; J. Lau, pers. comm., 1990). Pig sign has been reported from within 200 yards (180 m) of one *D. latifolia* individual in the Mohihi Road population, and from near the Kauhao and Makaha populations of *Chamaesyce halemanui* (T. Flynn and J. Lau, pers. comms., 1990). Pigs are a potential threat to the Kaulaula population of *Poa siphonoglossa* and may also threaten the only known individual of *Xylosma crenatum* (T. Flynn, pers. comm., 1990).

Black-tailed deer were first introduced to the forests of western Kauai in 1961 (Culliney 1988). The estimated 350 animals now occupy dry to mesic, alien-dominated forests up to an elevation of 4,000 ft (1,220 m), including the lower distributional range of these 6 Kokee plant species (Cuddihy and Stone 1990). Like other feral ungulates, deer feed on and trample native vegetation. Deer trails and loss of vegetation from deer foraging activities can cause erosion. Deer are a serious threat to the lower and drier outlying sections of the Kokee region (HHP and DOFAW 1989). Deer also are known to range into the wettest portion of the Kokee area during dry periods, constituting a potential threat to the wet forest habitat (Scott *et al.* 1986). Light to moderate damage by deer was reported from the vicinity of the Nualolo population of *Dubautia latifolia* in 1989 (also a former site of *Xylosma crenatum*) (HHP 1989). Deer occur in the area of the Kaulaula population of *Poa siphonoglossa* and the Makaha population of *Dubautia latifolia,* constituting a potential threat (HPCC 1990a; T. Flynn and S. Perlman, pers. comms., 1990).

In November 1982, Typhoon Iwa caused locally extensive damage to the forest canopy in many parts of Kauai, including numerous areas in the Kokee region. The vicinity of the *Dubautia latifolia* site (and former *Xylosma*

crenatum site) along Nualolo Trail was one such area (R. Hobdy, pers. comm., 1990). Since the Nualolo population of *Xylosma crenatum* was not found during a recent survey of the Kuia Natural Area Reserve, it seems likely that the typhoon destroyed the two 40 ft (12 m) individuals that had constituted that population (HHP 1989). Typhoon Iwa's damage to the forest canopy also greatly exacerbated the invasion of fast-growing, light-loving alien plants, which pose a major threat to the native plants of the Kokee region (Wagner *et al.* 1985). Along Nualolo Trail, banana poka, strawberry guava, and blackberry have shown the greatest growth response, threatening *Dubautia latifolia* and other native species (HHP 1989, 1990j).

Of the six species in this rule, *Dubautia latifolia* is most seriously threatened by competition from alien plants. Primary among these is banana poka, an aggressive vine introduced to Kokee about 50 years ago, now constituting a major infestation (Carr 1985, Smith 1985). Banana poka kills trees by smothering their canopies with its heavy vines. Once the trees fall, the increased sunlight in the understory favors other fast-growing alien species over native plants (Cuddihy and Stone 1990). With its climbing habit, *D. latifolia* occupies a niche similar to banana poka, often growing in close proximity to the aggressive vine (Carr 1982). Banana poka is therefore considered a serious competitor and threat to *D. latifolia* (Carr 1982). Along with banana poka, alien species such as honeysuckle, black wattle, Australian blackwood, ginger, and strawberry guava dominate the habitat of and threaten the Mohihi Road population of *D. latifolia* (HHP 1990g; T. Flynn, pers. comm., 1990). Alien species are also increasing at the site of the Awaawapuhi population of *D. latifolia* (HHP 1990h). Banana poka and blackberry are invading the Mohihi-Waialae Trail and Makaha populations of this species as well, with blackberry overgrowing the latter area (HHP 1990k, 1990m; HPCC 1990a). Over the past 40 years, blackberry has invaded much of the native wet and mesic forests of Kokee, where it forms dense thickets that compete with native understory species (Cuddihy and Stone 1990, Daehler 1973a). Blackberry threatens the Kalalau population of *Poa sandvicensis* (T. Flynn, pers. comm., 1990), and is invading the westernmost section of the Kohua Ridge population of *P. sandvicensis* and an adjacent population of *P. siphonoglossa* (HHP 1990q, 1990r). Banana poka and ginger, as well as blackberry, threaten the Awaawapuhi population of *P. sandvicensis* (HHP 1990p). The Halemanu population of *Chamaesyce halemanui* is threatened by St. Augustine grass, whose thick growth prevents regeneration of this native tree (T. Flynn, pers. comm., 1990). The other two populations of *C. halemanui* are threatened by lantana and strawberry guava (J. Lau, pers. comm., 1990). Alien plants, particularly strawberry guava, are increasing at the only known site of *Xylosma crenatum* (HHP 1990t). Daisy fleabane is the primary alien plant threat to *Stenogyne campanulata* and the Kalalau population of *Poa sandvicensis* (T. Flynn, pers. comm., 1990).

Several potentially threatening alien plant species were originally introduced deliberately for reforestation or timber utilization. These include conifers (such as the grove surrounding the only known *Xylosma crenatum* individual); firetree, planted on Waimea Canyon's eastern drainages; and karaka nut (*Corynocarpus laevigata*), one of the alien species aerially broadcast over the Kokee region in the 1920s (Daehler 1973a, Wagner *et al.* 1985). While these species do not directly threaten the six species in this rule, they may possibly have crowded out former populations, and eventually could invade extant populations. Marijuana (*Cannabis sativa*) is cultivated in the Kokee region, and that activity is considered a management threat to Kuia Natural Area Reserve, where *Chamaesyce halemanui* and *Dubautia latifolia* occur (HHP and DOFAW 1989). Native vegetation is destroyed when areas are cleared for marijuana cultivation. More significantly, other alien species are inadvertently introduced into the forest from soil and other material brought to the site. After the site is abandoned, it forms a locus for the spread of alien species (Medeiros *et al.* 1988).

Construction of water collection and diversion systems that began in the 1920s for the lowland sugar cane industry damaged the vegetation of Kokee (Wagner *et al.* 1985). Since the Kokee ditch and tunnel system and its access roads run through habitat of four of the six species in this rule (particularly *Xylosma crenatum*), it may possibly have destroyed former populations of those species. The ditch system created new routes for the invasion of alien plants and animals into intact native forest (Culliney 1988). Recreational development, concentrated in the 4,640 acre (1,880 hectare) Kokee State Park, has had an equally significant impact on the native vegetation (Wagner *et al.* 1985). Vacation cabins have existed in Kokee for well over a century. The construction and use of an extensive system of hiking, hunting, fishing, and horse trails (45 mi (72 km) in total) has resulted in the direct destruction of some habitat, and has accelerated the rate of erosion and the spread of alien plants and animals enormously (Wagner *et al.* 1985). Three of the species in this rule are currently threatened by road or trail maintenance activities. State forest reserve road maintenance threatens the sole known individual of *X. crenatum*. Freshly bulldozed dirt was noted immediately adjacent to this plant in November, 1989 (J. Lau, pers. comm., 1990). Forest reserve trail maintenance threatens the Awaawapuhi population of *Poa sandvicensis*. The single clump comprising that population had been cut back to the base by trail clearing, but was resprouting as of September, 1989 (HHP 1990p). Several individuals of *Dubautia latifolia* overhang a State park road, and have been injured by passing vehicles. Road maintenance constitutes a potential threat to these plants.

While fire has been suggested as a threat to *Dubautia latifolia* (Center for Plant Conservation 1990, St. John 1981), experienced field botanists with the most direct knowledge of this species believe that the potential for fire within the mesic habitat of this species is quite low (T. Flynn, J. Lau, and S. Perlman, pers. comms., 1990). The same applies to the other five species in this rule.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity and could seriously affect several of these species. For five of the species, disturbance to sites by trampling during recreational use (hiking, for example) could promote erosion and greater ingress by competing alien species. The site of the only known individual of *Xylosma crenatum* is relatively accessible. Overutilization is not a factor for *Stenogyne campanulata*, due to the virtually inaccessible location of the only known population. However, trampling of more accessible nearby areas would promote erosion and increased alien plant invasion. *Chamaesyce halemanui*, *Dubautia latifolia*, *Poa sandvicensis*, and *P. siphonoglossa* are also subject to potential erosion and weed ingress.

C. Disease or Predation

Although there is no evidence of predation on these species, none of them are known to be unpalatable to goats or deer. Predation is therefore a probable threat at sites where those animals have been reported. Predation by goats is considered a probable threat to *Stenogyne campanulata* and *Poa sandvicensis* (T. Flynn, pers. comm., 1990). The restriction of *S. campanulata* to inaccessible cliffs suggests that predation by goats may have eliminated the species from more accessible locations. Predation by deer potentially threatens *Dubautia latifolia* and *Poa siphonoglossa*. No threat of predation has been reported for *Chamaesyce halemanui* or *Xylosma crenatum*. No evidence of disease is known for any of the species in this rule except perhaps *Dubautia latifolia*, where a seasonal blackening and dieback of shoot tips could potentially be caused by a disease; however, it may instead be a natural phenological phenomenon (G. Carr, pers. comm., 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

All of the known populations of the six plant species in this rule are located on State-owned land, either in forest reserves (five species), parks (four species), a natural area reserve (one species), or a wilderness preserve (two species). State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, section 195D–4(a)) states, "Any species of aquatic life, wildlife, or land 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 (HRS, section 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these six plant species will therefore reinforce and supplement the protection available to the species under State law. The Federal Act will also offer additional protection to the six species, because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of any 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 number of populations and of individual plants of these species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals of these species. *Xylosma crenatum* epitomizes the problem of small numbers of extant individuals. For this dioecious species, only one female tree is known and no regeneration is evident at the site (J. Lau, pers. comm., 1990). However, since half-mature fruits have been observed at least twice on this individual (J. Lau *in litt.*, 1990), successful reproduction may be possible. These immature fruits are either the product of asexual reproduction or of sexual reproduction with an as yet undiscovered male plant within pollinating distance. *Stenogyne campanulata* numbers approximately 50 plants at the very most, concentrated at a single site (T. Flynn and S. Perlman, pers. comms., 1990). *Poa siphonoglossa* numbers fewer than 30 known individuals at 2 populations (including the Kaulaula population that also exhibits characteristics of *P. mannii*) (HHP 1990r; T. Flynn, pers. comm., 1990). Although about 40 individuals of *Poa sandvicensis* are known from 4 populations, 80 percent of the plants are concentrated at 1 major site (HHP 1990n, 1990q; T. Flynn, pers. comm., 1990). The approximately 50 known individuals of *Chamaesyce halemanui* are distributed fairly evenly between 3 populations, 2 of them reported to include seedlings as well as mature trees (HHP 1990c, 1990f; T. Flynn, pers. comm., 1990). Most *Dubautia latifolia* populations consist of fewer than 6 plants, often widely scattered (e.g., each 0.3 mi (0.5 km) apart). Individual localities are typically 270 to 1,600 sq ft (25 to 150 sq m) in area (Carr 1982). Only about 40 individuals of *D. latifolia* are known to be extant, also comprising a limited gene pool (Carr 1982; HHP 1990g to 1990m; S. Perlman, pers. comm., 1990).

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 issue this final rule. Based on this evaluation, the preferred action is to list *Chamaesyce halemanui, Dubautia latifolia, Poa sandvicensis Poa siphonoglossa, Stenogyne campanulata*, and *Xylosma crenatum* as endangered. Total numbers of known individuals of these 6 species range from a low of 1 (*Xylosma crenatum*) to an estimated high of 50 (*Stenogyne campanulata* and *Chamaesyce halemanui*). These species are threatened by one or more of the following: competition from alien plants; habitat degradation by feral pigs, goats, and deer; and trail and road maintenance. Small population size makes these species particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these six species 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 is not being designated for these species for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the six species in this rule. The publication of descriptions and maps required when critical habitat is designated would increase the degree of threat to these species from possible take or vandalism and therefore could contribute to their decline and increase enforcement problems. The listing of these species as endangered publicizes the rarity of the plants and thus can make them attractive to researchers, curiosity seekers, or collectors of rare plants. As a result of its nearly inaccessible location, *Stenogyne campanulata* does not appear to be threatened by potential vandalism. However, actions of nearby curiosity seekers could result in increased erosion or cause landslides. Because the known distributions of all six species are on State-owned land and there are no known or anticipated Federal actions for the areas in which the plants are located, designation of critical habitat would have no known benefit to these species. All involved parties and landowners have been notified of the general location and importance of protecting the habitat of these species. Protection of the species' habitat will be addressed through the recovery process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time because such designation would increase the degree of threat from

vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. 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 State 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)(2) requires Federal agencies to insure 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. As none of these species are on Federal land and no Federal activities are currently anticipated in the area, no section 7 consultations or impact on activities of Federal agencies are anticipated as the result of this rule.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the six plants from the Kokee region, 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 with respect to any endangered plant 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 these species in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy listed plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a 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 trade permits would ever be sought or issued because the species are 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, 4401 N. Fairfax Drive, room 432-ARLSQ, Arlington, Virginia 22203-3507 (703/358-2104 or FTS 921-2104; FAX 703/358-2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, 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

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Dr. Joan E. Canfield, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 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, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, 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:						
*	*	*	*	*	*	
Dubautia latifolia	None	U.S.A. (HI)	E	464	NA	NA
*	*	*	*	*	*	
Euphorbiaceae—Spurge family:						
*	*	*	*	*	*	
Chamaesyce halemanui	None	U.S.A. (HI)	E	464	NA	NA
*	*	*	*	*	*	
Flacourtiaceae—Flacourtia family:						
*	*	*	*	*	*	
Xylosma crenatum	None	U.S.A. (HI)	E	464	NA	NA
*	*	*	*	*	*	
Lamiaceae—Mint family:						
*	*	*	*	*	*	

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Stenogyne campanulata	None	U.S.A. (HI)	E	484	NA	NA
•	•	•	•	•	•	•
Poaceae—Grass family:						
•	•	•	•	•	•	•
Poa sandvicensis	Hawaiian bluegrass	U.S.A. (HI)	E	484	NA	NA
Poa siphonoglossa	None	U.S.A. (HI)	E	484	NA	NA
•	•	•	•	•	•	•

Dated: April 28, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-10984 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-55-M

---

50 CFR Part 17

RIN 1018—AD52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Geranium Arboreum (Hawaiian Red-Flowered Geranium)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a plant, *Geranium arboreum* (Hawaiian red-flowered geranium), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This species grows primarily in gulches between 5,000 to 7,000 feet (ft) (1,525 to 2,135 meters (m)) in elevation on the northern and western slopes of Haleakala, east Maui, Hawaiian Islands. The greatest immediate threats to the survival of this species are habitat disturbance by domestic and feral cattle and feral pigs, and competition from naturalized, exotic vegetation. This rule implements the protection and recovery provisions provided by the Act for this species.

EFFECTIVE DATE: June 12, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Geranium arboreum was first collected by Charles Pickering and William Brackenridge of the U.S. Exploring Expedition on Haleakala, Maui, on February 26, 1841 (Funk 1988a, 1988b). Asa Gray was given the task to prepare a report on all of the foreign plants collected by the expedition. Of the two volumes he produced concerning these specimens, only one was published, and in it *Geranium arboreum* was described as a new species (Gray 1854). In 1956, Degener and Greenwell changed the plant's name to *Neurophyllodes arboreum;* however, Gray's placement of the plant in *Geranium* is accepted by other botanists (Funk 1988b). Today about 300 individuals are known (Funk 1988b); these are found chiefly in the Polipoli Springs and Hosmer Grove—Puu Nianiau areas on the western and northwestern slopes, respectively, of Haleakala. About 250 plants occur on State-owned land within the Xula Forest Reserve, the remainder are mostly in Haleakala National Park, The Nature Conservancy's Waikamoi Preserve, or on Haleakala, Kaonoulu, or Erehwon Ranch lands (Funk 1982, 1988b; Hawaiian Heritage Program 1991).

Geranium arboreum, in the Geranium family, is a much branched, spreading, woody shrub about 6 to 12 ft (1.8 to 3.7 m) tall. The leaves are thin, bright green, broad and rounded at the base, tapering toward the end, and about 1 to 1.5 inches (in) (2.5 to 3.8 centimeters (cm)) long. Each leaf has five to nine main veins, and has edges notched with tooth-like projections. The flower petals are red, about 1 to 1.5 in (2.5 to 3.8 cm) long; the upper three petals are erect, the lower two reflexed, causing the flower to appear curved (Wagner *et al.* 1990). Due to this flower shape, this species is the only one in the genus which appears to be adapted to bird pollination (Funk 1982, 1988b).

The original range and abundance of the species is unknown; however, late 19th and early 20th century collections indicate that it once grew on the southern slopes of Haleakala, and that its distribution on the northern slopes extended beyond its presently known range. Today, isolated populations of *Geranium arboreum* grow in steep, narrow canyons on the north and west outer slopes of Haleakala between 5,000 and 7,000 ft (1,525 to 2,135 m) in elevation in an area that is roughly 9 miles (mi) (14 kilometers (km)) in length, and 0.15 mi (0.25 km) in width. The environment of these gulches is damp, shaded part of the day, and protected, contrasting with the generally drier climate of the surrounding area. The moist habitat apparently is due to fog drip and run-off. The plants appear to obtain a significant amount of their water requirements by "combing" moisture out of the drifting fog (Funk 1982). Vegetation in the ravines is often quite dense, and consists of mostly medium-sized woody shrubs, introduced grasses and weeds, and mixed ferns (Funk 1982). *Geranium arboreum* occurs in small isolated populations in the gulches and is a minor component of the vegetation. The habitat of nearby and surrounding areas is subalpine dry forest or mesic scrub land; a few *Geranium arboreum* individuals grow near areas that have been converted to agricultural uses such as pasture land or experimental tree plots.

The greatest immediate threat to the survival of this species is the encroachment and competition from naturalized, exotic vegetation, chiefly grasses and trees. Soil disturbances, caused by trampling of cattle and rooting by feral pigs, also are a major threat as they destroy plants and facilitate the encroachment of competing species of naturalized plants. Other less important threats include browsing by cattle; fires; and, in the Polipoli Springs area, pollen from exotic pine trees. At certain times of the year, pine pollen completely cover the stigmas of the geraniums, precluding any fertilization by its own species (Funk 1982, 1988b). The small number of individual plants increases the potential for extinction from stochastic events, and the limited gene pool may depress reproductive vigor.

Federal action on this plant 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 in the United States. This report, designated as

House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Geranium arboreum* was considered endangered. 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) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Geranium arboreum*. 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.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required all proposals over two 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) withdrawing the 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 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Geranium arboreum* was treated as a category 1 candidate for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The latter was the case of *Geranium arboreum* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Geranium arboreum* 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 in the **Federal Register** 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, 1988, 1989, and 1990.

On January 23, 1991, the Service published in the **Federal Register** (56 FR 2490) a proposal to list *Geranium arboreum* as endangered. This proposal was based primarily on information supplied by a status report and a doctoral dissertation by Evangeline Funk, and observations by botanists. The Service now determines *Geranium arboreum* to be endangered with the publication of this rule.

Summary of Comments and Recommendations

In the January 23, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information relevant to a final decision on the listing proposal. The public comment period ended on March 25, 1991. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the "Maui News" on February 1, 1991. Two letters of comment were received, one from 'The Nature Conservancy, the other from the National Park Service; both supported listing the species. Additional information included in the Park Service's letter has been incorporated into this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Geranium arboreum* should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The five factors and their application to *Geranium arboreum* A. Gray (Hawaiian red-flowered geranium) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

It is likely that the entire area supporting *Geranium arboreum* has been grazed by domestic or feral cattle. Ground disturbing activities associated with grazing by cattle or rooting by pigs have degraded the habitat that supports *Geranium arboreum* and may be responsible for some of the reduction in the species' range. When pigs forage, their rooting activity disrupts several inches of the soil surface and uproots plants, especially seedlings. The ground disturbance associated with the activities of cattle and pigs results in the increased erosion of the *Geranium* habitat, and favors the rapid invasion by exotic species. Probably the single greatest threat to the remaining *Geranium arboreum* is competition from naturalized, exotic plants, particularly grasses such as Yorkshire fog (*Holcus lanatus*) and, to a lesser extent, naturalized trees such as wattle (*Acacia mernsii*) and firetree (*Myrica faya*); these exotic species invade and become established in disturbed areas. Introduced grasses occupy sites where *Geranium arboreum* seedlings normally would grow; the grasses form dense sod-like mats, and prevent seedlings of other species from becoming established (Funk 1988b). Fires represent an additional potential threat to the species and its habitat; a fire in the Polipoli Springs area in 1984 destroyed four *Geranium* plants.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not known to be a factor; however, unrestricted scientific collecting or excessive visits resulting from increased publicity could seriously affect the species. *Geranium arboreum* is attractive and could become the subject of increased collection in the future.

C. Disease or Predation

Occasional browsing by cattle has been observed, but it is infrequent and is not considered a major threat. Recently, a naturalized population of rabbits was discovered in the northwest corner of Haleakala National Park, approximately 1 mi (2 km) from a population of *Geranium arboreum*. Although at present the rabbits are selective in their foraging, favoring the shoots and bark of mamane (*Sophora chrysophylla*) and grasses, in the predator-poor upper elevations of Haleakala, a rapid increase in the rabbit population could adversely impact the entire vegetation of the area.

D. The Inadequacy of Existing Regulatory Mechanisms

Most of the known extant *Geranium arboreum* plants grow in the Polipoli Springs area which is within the

boundaries of the State-owned Kula Forest Reserve. State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, due to limited personnel, the regulations are difficult to enforce. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of this plant on private land. However, Federal listing automatically invokes listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. Hawaii's Endangered Species Act (HRS, sect. 195D-4(a)) states, "Any species of wildlife or plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act 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 (section 195D-5(c)). Funds for these activities could be made available under section 6 of the Act (State Cooperative Agreements). Listing of this plant therefore reinforces and supplements the protection available to the species under State law. The Federal Act also will offer additional protection to the species, because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

A very small proportion of the individuals of *Geranium arboreum* occur on land managed by the National Park Service. Although the Park Service does offer protective management to sensitive resources, the small percentage of plants that potentially receive this management does not substantially reduce the degree of threat faced by the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

A large part of the annual reproductive effort is effectively lost when pollen released from pine trees in the Polipoli forestry plantings completely covers the stigmas of the *Geranium* growing in that area. The windborne pine pollen forms a mechanical barrier, blocking the reception of *Geranium* pollen, thus reducing the annual reproductive success of this species (Funk 1988b). However, as *Geranium arboreum* has a longer flowering period than do the introduced pine trees, some pollination and resultant seed production does occur.

Approximately 300 individuals remain in about 21 sites, each of which contains between 1 and 25 individuals. The small number of extant plants in these populations makes the species more vulnerable to certain threats. The limited gene pool may result in depressed reproductive vigor, although there is no evidence that there is such a problem today, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the known extant individual plants.

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 issue this final rule. Based on this evaluation, the preferred action is to list *Geranium arboreum* as endangered. Only about 300 individuals remain in the wild, and these face threats from habitat degradation and competition from exotic species of plants, as well as other lesser factors. Because this species is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act. Critical habitat is not being designated for this plant for the reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to the species. All but a few individuals grow on Federal or State land; government agencies and the few private land owners can be alerted to the presence of the plant without the publication of critical habitat descriptions and maps. The publication of descriptions and maps required when critical habitat is designated would increase the degree of threats to this plant from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plant and, thus, can make it more desirable to researchers, curiosity seekers, or collectors of rare plants. All involved parties and major land owners have been notified of the general location and importance of protecting the habitat of this species. Protection of the habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for *Geranium arboreum* is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. 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)(2) of the Act requires Federal agencies to insure 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. Although some individuals occur on land managed by the National Park Service, it is unlikely that actions by this agency would adversely affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Geranium arboreum* 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 with respect to any endangered plant, 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 any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage or destroy endangered plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a 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 trade permits would ever be sought or issued because the species 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, 4401 North Fairfax Drive, room 432-ARLSQ, Arlington, Virginia 22203-3507 (703/358-2104 or FTS 921-2104; FAX 703/358-2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, 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

Funk, E.J. 1982. Unpublished status survey of *Geranium arboreum* A. Gray (Hawaiian red-flowered geranium). U.S. Fish and Wildlife Service. 34 pp.

Funk, E.J. 1988a. The notes of William Brackenridge made during his Sandwich Islands sojourn 1840-1841. Hawaiian Botanical Society Newsletter 27(1): 3-35.

Funk, E.J. 1988b. Distribution, population structure and reproductive biology of a narrow endemic species: *Geranium arboreum* A. Gray. Doctoral dissertation, University of Hawaii. 200 pp.

Gray, A. 1854. United States Exploring Expedition during the years 1838, 1839, 1840, 1841, 1842, under the command of Charles Wilkes, U.S.N. Botany, vol. 15, Phanerogamia, part 1. C. Sherman, Philadelphia. 315 pp.

Hawaii Heritage Program. 1991. Element Occurrence Record for *Geranium arboreum*, PDGER02010.006, dated June 5, 1991, Honolulu. Unpubl. 2 pp.

Wagner, W.L., D.R. Herbst, and S.H. Sohmer. 1990. Manual of the flowering plants of Hawaii. Bishop Mus. Spec. Publ. 83. University of Hawaii Press and Bishop Museum Press, Honolulu. 1853 pp.

Author

The primary author of this final rule is Dr. Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 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, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding a new family "Geraniaceae—Geranium family," in alphabetical order, 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					
*	*	*	*	*	*	
Geraniaceae—Geranium family:						
Geranium arboreum	Hawaiian red-flowered geranium.	U.S.A. (HI)	E	465	NA	NA
*	*	*	*	*	*	

Dated: May 1, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-10985 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-55-M

---

50 CFR Part 17

RIN 1018—AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Stenogyne kanehoana (No Common Name), a Hawaiian plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a plant, *Stenogyne kanehoana*, to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This species is known only from one small population located on the island of Oahu, Hawaii. The greatest immediate threat to the survival of this species is the encroachment and competition from naturalized, exotic vegetation. The extremely small size of the population also is a considerable threat as the limited gene pool may repress reproductive vigor, or a single environmental disturbance could destroy the only known remaining individuals. This rule implements the protection and recovery provisions afforded by the Act for this plant.

EFFECTIVE DATE: June 12, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Stenogyne kanehoana was first collected on the east ridge of Puu Kanehoa, Waianae Mountains by Harold St. John in 1934. Otto Degener collected it in the same area in 1939, and, along with Earl Sherff, described the taxon (Sherff 1941), naming it after the type locality. All subsequent collections have been from the same area which is near the summit of the ridge connecting Puu Kanehoa with Puu Hapapa to the north and Puu Kaua to the south, a distance totaling approximately 1.75 miles (2.8 kilometers). Today one population consisting of two to four plants remains under a canopy of mesic forest trees on a ridge leading to the summit of Puu Kanehoa (Center for Plant Conservation (CPC) 1989; Hawaii Heritage Program (HHP) 1988, 1989a, 1989b; Hawaii Plant Conservation Center (HPCC) 1990; Obata 1977; St. John 1981; Joel Lau, HHP, pers. comm., 1989; John Obata, HPCC, pers. comm., 1989; Steven Perlman, HPCC, pers. comm., 1989; Steven Weller, University of California at Irvine, pers. comm., 1989). The plants occur on privately-owned land.

Stenogyne kanehoana is a scandent vine in the mint family (Lamiaceae) with stems weakly 4-angled, hairy, and 3 to 6 feet (1 to 2 meters) long. The leaves are oppositely arranged and are narrowly ovate to oblong-ovate, thin but densely hairy, about 4 inches (in) (10 centimeters (cm)) long and 1.5 in (3.5 cm) wide. The flowers are in clusters of 3 to 6 per leaf axil; the petals are fused into a strongly curved tube about 1 to 1.5 in (2.7 to 4.2 cm) long, white or pale yellow with short pink corolla lobes. The fruit consists of 4 fleshy black nutlets (Weller and Sakai 1990). *Stenogyne kanehoana* is distinguished from the only other member of the genus occurring on Oahu, *S. kaalae*, primarily by the size and color of its flowers. The flowers of *S. kanehoana* are large, white to yellow, and tipped in pink, while those of *S. kaalae* are small and deep purple. *Stenogyne kanehoana* occurs on an open ridge top in mesic forest. Associated species include o'hia (*Metrosideros polymorpha*), koa (*Acacia koa*), 'ie'ie (*Freycinetia arborea*), and uluhe (*Dicranopteris linearis*).

The greatest immediate threat to the survival of this species is habitat degradation and competition for space, water, light, and nutrients by naturalized, alien vegetation (HPCC 1990; Obata, pers. comm., as cited by Weller and Sakai 1990). The extremely small number of individual plants and their restricted distribution increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy all known individuals. Other potential threats which have been suggested include fire and deforestation (St. John 1981), but, at present, these probably are not serious threats to the species.

Federal government action on this species began with the publication by the Service of an updated notice of review for plants on December 15, 1980 (45 FR 82479). *Stenogyne kanehoana* was included in that publication as a category 1 candidate for Federal listing, meaning that the Service has on file substantial information on biological vulnerability and threats to support preparation of a listing proposal. The species also was included as a category 1 candidate species in the September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183), notices of review. On January 23, 1991, the Service published in the **Federal Register** (56 FR 2493) a proposal to list *Stenogyne kanehoana* as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program, the Center for Plant Conservation, and the observations of botanists and naturalists. The Service now determines *Stenogyne kanehoana* to be an endangered species with the publication of this rule.

Summary of Comments and Recommendations

In the January 23, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information relevant to a final listing decision. The public comment period ended on March 25, 1991. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in "The Honolulu Advertiser" on February 2, 1991. Two letters of comment were received, both from conservation organizations which supported the listing of the taxon.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Stenogyne kanehoana* should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The five factors and their application to *Stenogyne kanehoana* Degener and Sherff (no common name) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Encroachment and competition from naturalized, exotic plants probably is the single greatest threat to this species (HPCC 1990). Koster's curse (*Clidemia hirta*) has recently invaded the *Stenogyne kanehoana* habitat; this aggressive, rapidly spreading bush probably is the single greatest threat to the species (J. Lau, pers. comm., 1989). This species forms a dense understory, shading other plants and hindering plant regeneration. Lantana (*Lantana camara*) also is common in the area along with some Christmas berry (*Schinus terebinthifolius*) (S. Weller, pers. comm., 1989). Christmas berry is a fast-growing alien plant that is able to form dense thickets, displacing other plants. It also may release a chemical that inhibits the growth of other species (Smith 1985). All of the above three species have invaded former native habitat in Hawaii to the exclusion or detriment of the native vegetation. Fires and deforestation have been suggested as potential threats to the *Stenogyne*, but these probably are not serious threats at the present.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a factor, but unrestricted scientific collecting or excessive visits by individuals interested in seeing rare plants could result from increased publicity and could seriously affect the species. Disturbance to the area by trampling would promote greater ingress by competing exotic species.

C. Disease or Predation

Disease or predation are not known to be factors threatening this species.

D. The Inadequacy of Existing Regulatory Mechanisms

There are no State laws or existing regulatory mechanisms at the present time to protect *Stenogyne kanehoana* or prevent its further decline. However, Hawaii's Endangered Species Act (HRS, section 195D–4(a)) states that "Any species of wildlife or 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 (section 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of this species will therefore reinforce and supplement the protection available to the plant under State law. The Federal Act also will offer additional protection to the species, because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction 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 number of individual plants of this species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy the only known extant population of the species. It has been stated that the species is not setting seed (CPC 1989, HPCC 1990) or at least is not successfully reproducing (HHP 1989).

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 issue this final rule. Based on this evaluation, the preferred action is to list *Stenogyne kanehoana* as endangered. Only two to four individuals remain in the wild, and these face threats from the encroachment and competition from exotic species of plants, especially lantana and Koster's curse, two particularly aggressive weeds. Because this taxon is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined by the Act. Critical Habitat is not being designated for this species for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to the species. The few known individuals are on privately-owned land zoned as conservation land; all involved parties and the landowner have been notified of the general location and importance of protecting this species' habitat. The publication of descriptions and maps required when critical habitat is designated would make *Stenogyne kanehoana* more vulnerable and increase enforcement problems. It would increase the degree of threat to this species from possible take or vandalism because *Stenogyne kanehoana* is an attractive plant and live specimens would be of interest to curiosity seekers or collectors of rare plants. Protection of the species' habitat will be addressed through the recovery process. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. 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 State 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)(2) of the Act requires Federal agencies to insure 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. No Federal involvement with *Stenogyne kanehoana* is anticipated.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all engangered plants. With respect to *Stenogyne kanehoana*, 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 with respect to any endangered plant, 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; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy endangered plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a 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 trade permits would ever be sought or issued because the species 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, 4401 North Fairfax Drive, room 432–ARLSQ, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2104; FAX 703/358–2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, 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

Center for Plant Conservation. 1989. Hawaiian priority A and B plants as of 27 September 1989. Jamaica Plain, Massachusetts. Unpubl. rept. 52 pp.

Hawaii Heritage Program. 1988. Element Occurrence Record for *Stenogyne kanehoana*, PDLAMIY0G0.003, dated November 17, 1988, Honolulu. Unpubl. 1 p.

Hawaii Heritage Program. 1989a. Element Occurrence Record for Stenogyne kanehoana, PDLAM1YOGO.005, dated February 23, 1989, Honolulu. Unpubl. 1 p.

Hawaii Heritage Program. 1989b. Element Occurrence Record for *Stenogyne kanehoana*, PDLAM1YOGO.002, dated March 1, 1989, Honolulu. Unpubl. 2 p.

Hawaii Plant Conservation Center. 1990. Accession data for *Stenogyne kanehoana*, 905053.000, dated February 22, 1990, Lawai, Kauai. Unpubl. 1 p.

Obata, J.K. 1977. Native plants: *in* Palmer, D.D. (ed.), Hawaiian plants—notes and news. Newslett. Hawaiian Bot. Soc. 16: 74–75.

St. John, H. (C.A. Corn, ed.). 1981. Rare endemic plants of the Hawaiian Islands. Hawaii, Dept. Land Nat. Resources, Honolulu, 74 unnum. pp.

Sherff, E.E. 1941. Additions to our knowledge of the American and Hawaiian floras. Field Mus. Nat. Hist., Bot. Ser. 22: 407–441.

Smith, C.W. 1985. Impact of alien plants on Hawai'i's native biota. Pp. 180–250 *in*: Stone, C.P., and J.M. Scott (eds.). Hawai'i's terrestrial ecosystems: preservation and management. Coop. Natl. Park Resources Stud. Unit, Univ. Hawaii, Honolulu.

Weller, S.G., and A.K. Sakai. 1990. *Stenogyne*. Pp. 831–843, *in*: Wagner, W.L., D.R. Herbst, and S.H. Sohmer. Manual of the flowering plants of Hawai'i. Bishop Mus. Spec. Publ. 83. University of Hawaii Press and Bishop Museum Press, Honolulu.

Author

The primary author of this final rule is Dr. Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 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, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Lamiaceae—Mint family:						
*	*	*	*	*	*	
Stenogyne kanehoana	None	U.S.A. (HI)	E	466	NA	NA
*	*	*	*	*	*	

Dated: April 30, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–10986 Filed 5–12–92; 8:45 am]

BILLING CODE 4310–55–M

federal register

Wednesday
May 13, 1992

Part IV

Department of Agriculture

Cooperative State Research Service

Special Research Grants; Water Quality Program (Nitrogen Testing) for Fiscal Year 1992; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants; Water Quality Program (Nitrogen Testing) for Fiscal Year 1992; Solicitation of Applications

Program Description

Purpose

Proposals are invited for competitive grant awards under the Special Research Grants, Water Quality Program for fiscal year 1992. This solicitation announces research problem areas which differ from those announced under the Special Grants Water Quality Program solicitation published in the **Federal Register** on November 19, 1991 (56 FR 58484).

The purpose of the research selected for support in response to this solicitation will be to focus upon soil and plant testing methods and adoption of improved practices to reduce nitrate that leach into water supplies. Proposals submitted in response to this solicitation are to be specifically focused on the evaluation and improvement of current tests for nitrogen availability to crops, as well as the development of new tests, and the adaptability and integration of these tests into farm-scale recommendations for nitrogen management. The targeted and focused Research Problem Areas and the levels of funding amounts and funding periods announced herein differ from those announced in the solicitation published in the **Federal Register** on November 19, 1991. Any proposals submitted under Research Problem Area 110 or 220 in the solicitation published on November 19, 1991, that were not funded but do target soil testing may be submitted for consideration under this solicitation. Maximum total funding amounts and maximum total funding periods for any resulting grants will be less than those funding amounts and funding periods of grants awarded as a result of the solicitation published on November 19, 1991.

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law 89-106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101-624 (7 U.S.C. 450i). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below.

Eligibility

Except where otherwise prohibited by law, proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals that qualify as responsible grantees under the criteria set forth in 7 CFR 3400.3(b), as amended (56 FR 58146, November 15, 1991). Proposals from scientists at non-United States organizations will not be considered for support.

Available Funding

A total of approximately $700,000 will be available in Fiscal Year 1992 for support of the problem areas listed below. Maximum total funding will be $60,000 per proposal for a funding period of two years. First year funding may not exceed $30,000, and second year funding will be subject to the availability of funds.

Section 734 of Public Law No. 102-142, an Act Making Appropriations for Rural Development, Agriculture and Related Agencies programs for the fiscal year ending September 30, 1992, and for other purposes, prohibits CSRS from using funds available for fiscal year 1992 to pay indirect costs on research grants awarded competitively that exceed 14 per centum of the total direct costs under each award.

Applicable Regulations

Regulations applicable to this program include the following: (a) The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, as amended (56 FR 58146, November 15, 1991) which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) The USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (e) New Restrictions on Lobbying, 7 CFR part 3018.

Research Problem Areas

General

The purpose of the proposed research to be supported is to enhance the ability to predict nitrogen availability to crops and to encourage the use of soil and plant testing. Proper sampling and testing with appropriate rates of application of commercial fertilizer, manure, cover crops, and other nitrogen sources can lead to the proper use of nitrogen and thus reduce the potential for nitrate contamination of surface and ground waters. Funds will be awarded to support research upon: The evaluation and/or improvement of currently used soil and plant nitrogen testing methods, the development of new and improved methods for such evaluation and testing, and the development of programs to encourage adoption of testing by increased numbers of consultants, producers and commercial applicators.

The following research problem areas will be supported:

1. Evaluate and improve current tests for nitrogen availability to crops. Proposals should address a range of application (soils and crops) of currently used tests. Proposals should also assess the amount of nitrogen not used or needed by the crop and evaluate the potential for leaching of the excess nitrogen into groundwater. Calibration, validation, and comparison of tests may be appropriate to the research.

2. Develop new tests for nitrogen availability to crops and for leaching potential. Proposals should focus on new technology which would improve accuracy, reduce costs, or reduce the time required to complete the test. Research to determine the range of application, validity, leaching potential, and comparison with other tests may be appropriate.

3. Integrate nitrogen tests for soils, plants, manures, and other organic materials into farm-scale recommendations. Proposals should address the region of adaptability and integration of state-of-the-art nitrogen tests into management plans for sustainable farming systems.

4. Incentives and barriers to adoption of improved nitrogen tests. Proposals should address methods to remove barriers and improve the rate of acceptance, adoption, and implementation of improved nitrogen tests.

Programmatic Contacts

For information regarding this program, please contact the following: Dr. Maurice L. Horton, Dr. Berlie L.

Schmidt, Dr. Birl Lowery, Fax No. (202) 401-1706, Phone No. (202) 401-4504.

Proposal Preparation

Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions governing the Special Research Grants Program, 7 CFR part 3400, may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250-2200, Telephone: (202) 401-5048.

Proposal Format

Section 3400.4(c) of the Administrative Provisions governing the Special Research Grants Program sets forth instructions for the preparation of grant proposals. The following requirements are in addition to or deviate from those contained in 7 CFR 3400.4(c). In accordance with 7 CFR 3400.4(c), to the extent that any of the following additional requirements are inconsistent or in conflict with the instructions at 7 CFR 3400.4(c), the provisions of this solicitation shall apply:

Grant application. Each copy of each proposal must include a Form CSRS-661, "Grant Application." One copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Be certain to list in Block #8 the number(s) assigned to the Research Problem Area(s) listed above that best describe the greatest emphasis of the proposed research. This will be the basis of grouping proposals and for determining training and experience needed by the peer review panelists who will evaluate each proposal. Form CSRS-661 and other required forms and certifications are contained in the Grant Application Kit.

Abstract and key words. The body of the proposal should be prefaced by an abstract and key words. The abstract is used to classify the proposal. Include factual, concise, and clear statements of proposed research as phrases or sentences. Limit abstract length to 10 lines, or less. Also provide 2 or 4 single or double key words that describe the research emphasis.

Proposal body. The proposal body must include the Title of Project, Objectives, Procedures, Justification (see note below), Literature Review (maximum of 2 pages), Current Research, Facilities and Equipment, Curriculum Vitae of Principal Investigator(s) and other Key Project Personnel (maximum of 2 pages per person), and Collaborative Arrangements (see note below).

Note: For the purpose of this solicitation, the Justification should describe the nitrogen testing and water quality problems, or potential problems, including where they occur and relevance to site-specific, watershed, regional, State, and national size scales. The expected application or use of resulting information should be explained, for example, value to the economy, methods of chemical analyses, need for specific models, basis of recommendations, understanding of processes, or relevancy to a specific soil testing program. In addition, proposers are encouraged to make Collaborative or Cooperative Arrangements with other institutions, organizations or agencies such as the Agricultural Research Service, Soil Conservation Service, Extension Service, U.S. Geological Survey, Environmental Protection Agency, and Economic Research Service through projects, such as Hydrologic Unit Areas, Management Systems Evaluation Areas (MSEA), Demonstration Sites, Farmstead Assessment and Area Studies.

Type and paper size. Type should be no smaller than 12 characters/inch, single-spaced on one side of 8½" × 11" paper. Total length of the proposal shall not exceed 20 pages, excluding forms (i.e., cover page, budget form, certifications).

Reduction by photocopying or other means for the purpose of meeting above stated page limits is not permitted. Attachments of appendices are not permitted. Proposals which do not fall within the guidelines of this solicitation will be eliminated from the competition and will be returned to the applicant as stated in Section 3400.14 of the Administrative Provisions governing the Special Research Grants Programs (7 CFR part 3400).

Budget Form CSRS-55. A copy of Form CSRS-55, along with instructions for completing it, is included in the Grant Application Kit. Applicants should note the special instructions shown below when completing Form CSRS-55:

Item D., "Nonexpendable Equipment." Applicants are strongly discouraged from requesting CSRS funds for the purchase of items of equipment under proposals submitted in response to this solicitation.

Item F., "Travel." The type and extent of travel and its relationship to project objectives should be described and justified. It should be noted that the terms and conditions of any grant awarded under this program will require Principal Investigators to participate in at least one annual regional or national research reporting, evaluation and planning workshop or conference, for the purpose of interstate, interagency and interdisciplinary coordination in this Federal-State jointly planned water quality program. Funds may be requested under this budget category for these workshop/conference costs.

Item I., "All Other Direct Costs." Subawards are to be shown on each budget sheet of the primary budget. Subawardee budgets should be provided on separate forms in the same detail. Proposed subawardees are strongly discouraged from requesting CSRS funds for the purchase of items of equipment under proposals submitted in response to this solicitation.

Item K., "Indirect Costs." The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14% of total direct costs. This limitation also applies to the recovery of indirect costs under any subawardee or subcontract budget.

Proposal Submission

What to Submit

Submit one (1) original and eight (8) unbound copies securely stapled in upper left corner. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

All copies of a proposal must be mailed in one package. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted.

Where and When to Submit

All proposals submitted through the regular mail must be postmarked by June 22, 1992, and must be sent to the following address: Proposal Services Branch, Awards Management Division, Office of Grants and Programs Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250-2200, Telephone: (202) 401-5048.

Hand delivered proposals must be submitted by June 22, 1992, to an express mail or courier service or brought to the following address (note that the zip code differs from that above): Proposal Services Branch, Awards Management Division, Office of Grants and Programs Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Telephone: (202) 401-5048.

Proposal Review, Evaluation, and Disposition

Review and Evaluation

Proposals will be evaluated for merit by a review group of scientists and technical specialists qualified in nitrogen chemistry and the use of nitrogen in sustainable agricultural systems.

The following review criteria will be used in lieu of those which appear in § 3400.15 of the Administrative Provisions governing the Special Research Grants Programs (7 CFR part 3400):

Review criteria	Maximum score
Importance of the Problem	
—Clear statement of the proposed research	40
—Importance of the research to production agriculture	
—Potential impact on water quality	
—Relevant related literature and/or research	
Scientific and Technical Quality	30
—Clear, concise and achievable objectives	
—Technical soundness of procedures	
—Feasibility of attaining objectives	
Ability to Achieve Objectives	20
—Necessary facilities, resources and personnel available	
—Resources requested are essential to conduct of research	
—Budget appropriate for proposed research	
—Adequate training and experience of investigators	
Technology Transfer	10
—Planned application and implementation of research results	
—Extension, transferability and publication of results	
Total	100

Review and recommendation for funding of all proposals will be accomplished in cooperation with CSRS' Sustainable Agriculture Program.

Disposition

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final rule-related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, on this 7th day of May 1992.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 92–11151 Filed 5–12–92; 8:45 am]

BILLING CODE 3410-22-M

federal register

Wednesday
May 13, 1992

Part V

Environmental Protection Agency

Hazardous Waste Management System; Notification Concerning the Basel Convention's Potential Implications for Hazardous Waste Exports and Imports; Notice

ENVIRONMENTAL PROTECTION AGENCY

[SW-FR 4132-5]

Harzardous Waste Management System; Notification Concerning the Basel Convention's Potential Implications for Hazardous Waste Exports and Imports

AGENCY: Environmental Protection Agency.

ACTION: Announcement of the entry into force of the Basel Convention.

SUMMARY: On May 5, 1992, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention) enters into force for the first twenty countries that have ratified it. The United States has not yet ratified the Basel Convention; therefore, U.S. requirements regarding imports and exports of hazardous waste remain unchanged. This information-only notice describes the development and major provisions of the Convention. It also discusses the potential impacts that requirements imposed by ratifying countries to implement the Convention may have on U.S. waste importers and exporters.

The complete text of the Basel Convention is included with this notice.

EFFECTIVE DATE: May 5, 1992.

FOR FURTHER INFORMATION CONTACT: For general information contract the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460 from 9 a.m. to 7:30 p.m. (EST), Monday through Friday, except for Federal holidays; Telephone (800) 424-9346 (toll free) or, in the Washington, DC, Metropolitan area at (703) 920-9810.

For information on specific aspects of this notice, contract Ms. Angela Cracchiolo, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, telephone (202) 260-4779.

SUPPLEMENTARY INFORMATION:

Outline

I. Basel Convention: Background
A. History of Development
B. Reasons for Development
C. Entry into Force of the Convention
1. 90 days after 20th Ratification
2. List of Ratifying Countries
D. Next Steps in Implementation of the Convention
1. Submission of Waste Lists to UNEP Interim Secretary
2. Meeting of the Conference of the Parties
II. Basel Convention: Summary of Provisions
A. Waste Coverage
B. Prohibitions on Shipments To and From Non-Parties
C. Prerequisites to Exporting
D. Notice and Consent
E. Exporting and Importing Country Responsibilities
F. International Cooperation
G. Tracking, Accidents, and Reporting
H. Ban on Shipments to Antarctica Treaty Area
III. Progress Towards U.S. Ratification of Basel
A. Basel Signed by U.S. On March 21, 1990
B. Importance of U.S. Ratification
1. Negotiation of Rules for Implementation and Related Protocols
2. Full Participation Only by Basel Parties
C. Procedure for U.S. Ratification of Basel
D. Proposed Legislation
IV. Existing International Agreements
A. U.S./Canada Bilateral Agreement
B. U.S./Mexico Bilateral Agreement
C. OECD Decision
V. Text of the Basel Convention

I. Basel Convention: Background

A. History of Development

The United Nations Environment Programme (UNEP) began working towards controlling international shipments of waste in 1982, pursuant to a 1982 UNEP Governing Council decision mandating the development of guidelines and principles for environmentally sound management of hazardous waste. At virtually the same time (1983), the Organization for Economic Cooperation and Development (OECD) Environment Committee's Waste Management Policy Group began working on a program to control transboundary movements of wastes. The United States has been an active participant in the activities of both OECD and UNEP.

Since 1984, OECD has adopted four legally binding Decisions for its members (the United States has agreed to all four Decisions). Briefly, these Decisions require OECD Members to:

1. Control international shipments via advance notification.

2. Develop an overall tracking system.

3. Require prior consent of receiving countries outside the OECD.

4. Define the scope of coverage for wastes that will be controlled.

In the interest of broader international involvement and commitment, OECD discontinued work in this area after a 1988 Decision [1] to defer to UNEP'S efforts. Much of OECD's early work, including the list identifying wastes to be covered by an international agreement, was adopted by UNEP without change.

Continuing development in this area, UNEP created the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes, which were adopted by the UNEP Governing Council in 1987. The Cairo Guidelines contained definitions, provisions for generation, transportation, and management of waste, monitoring and control, remedial action, recordkeeping, safety and contingency planning, liability and compensation. Countries would have the right to refuse a waste shipment if it could not be handled in an environmentally sound manner. However, the Cairo Guidelines were nonbinding and unenforceable guidelines that acted as a code of practice. Soon after their completion, UNEP began planning a convention which would go beyond the Cairo Guidelines by including effective and enforceable monitoring and control requirements to ensure environmentally sound management of transboundary movements of hazardous and other wastes. The Basel Convention was negotiated under UNEP beginning in 1988.

A conference of UNEP delegates met in Basel, Switzerland, in March 1989, at which time the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was concluded and opened for signature. A two-step procedure is involved in "activating" the Convention. Countries first sign the Convention, then once they have the authority and are prepared to implement its terms, they may ratify it.

B. Reasons for Development

There are two major reasons for the development of the Basel Convention. The first involves the increasing shortage of waste management capacity in several countries, leading to larger volumes of solid and hazardous waste movements across borders. Some countries generate such small quantities of hazardous waste that it is not economically efficient to build disposal facilities in these countries, therefore, their waste is exported.

A second issue that provided a major impetus for the development of Basel is the occurrence of several international incidents where wastes which may have been hazardous wastes in either the country of origin or the country of import have been indiscriminately

[1] *Decision on Transfrontier Movements of Hazardous Waste* C(88)90(Final), adopted by the Council on May 27, 1988.

dumped in developing countries, either with or without their consent. For example, in August 1986, the ship Khian Sea left Philadelphia loaded with 15,000 tons of municipal incinerator ash and set sail for Haiti, where it unloaded some of its cargo. The shipping papers accompanying the waste labeled the incinerator ash as bulk construction material and top soil ash fertilizer. After Haiti strongly opposed this action, the incident gathered international attention, particularly from the Pan-American Health Organization and the World Health Organization. The Khian Sea then left Haiti and began a two-year voyage around the world in search of a country that would accept its waste. After several additional refusals and several changes of the ship's name, the Khian Sea appeared in Singapore with a new name and empty cargo holds.

Another incident involved waste from Italy that was transported and unloaded in Nigeria, in a total of five shipments from August 1987 to May 1988. In 1988 the Nigerian government ordered the waste to be sent back to Italy. After a lengthy trip and many refusals from ports, the waste was finally retuned to Italy.

For developing or newly industrialized countries, the practice of importing waste can be a very profitable one, and there can be a strong incentive for individuals in developing countries to participate in this activity. However, developing and newly industrialized countries often have limited capacity or capability to ensure proper waste treatment and disposal. Illegally disposed wastes can cause contamination of ground water, surface water, soil, air, and biota. A study by UNEP and the World Health Organization on contamination of water, soil, and air concluded that the "degree of contamination is worse in [developing] countries and newly industrialized countries than it is in most of the developed ones." [2] The contamination of the environment in developing countries can directly affect the health of the people, cause them to relocate, and cause the loss of productive land, natural resources, and certain economic activities. The negotiators of the Basel Convention wanted to promote environmentally sound management of exported and imported wastes, especially in these developing countries.

To date, at least 83 countries, representing the African, Latin-Caribbean and Asian-Pacific regions have banned hazardous waste imports, and a number have adopted strict penalties for illegal imports.

c. Entry Into Force of the Convention

1. 90 Days After 20th Ratification

The Basel Convention was open for signature from March 22, 1989, through March 22, 1990. Fifty-three countries signed the Convention, including the United States. By signing the Convention, a country indicates that it agrees with the goals of the Convention and is moving towards ratification. Ratification signals a country's ability to implement the provision of the Convention. As of February 5, 1992, twenty countries had ratified the Convention. Ninety days after the twentieth ratification (May 5, 1992), the Basel Convention will enter into force, becoming effective for those twenty countries. For any country that ratifies the Convention after its entry into force, the Basel Convention will be effective for that country 90 days after the date it ratifies (Article 25).

2. List of Ratifying Countries

The following countries ratified the Basel Convention on or before February 5, 1992:

Argentina	Mexico
Australia	Nigeria
China	Norway
Czechoslovakia	Panama
El Salvador	Romania
Finland	Saudi Arabia
France	Sweden
Hungary	Switzerland
Jordan	Syria
Liechtenstein	Uruguay

On March 20, 1992, Poland became the twenty-first country to ratify the Convention; therefore, Basel will enter into force for Poland on June 18, 1992.

D. Next Steps in Implementation of the Convention

1. Submission of Waste Lists to UNEP Interim Secretary

Within six months of becoming a Party to the Convention, each Party must submit to the Secretariat a list of those wastes which it considers hazardous, other than those listed in Annexes I and II of the Convention. In addition to the wastes listed in the Convention, Basel provisions apply to any other wastes considered or defined as hazardous by its Parties.

2. Meeting of the Conference of the Parties

The Basel Convention requires that a meeting of the Conference of the Parties be held within one year of the Convention's entry into force to discuss implementation issues such as technical guidelines to ensure environmentally sound management. Adoption of procedural rules and determination of financial participation, as well as discussions on development of a liability protocol, will also be topics of the first meeting. The first meeting of the Conference of the Parties has not been scheduled, but the Interim Secretariat for the Basel Convention expects it to take place in Fall 1992.

II. Basel Convention: Summary of Provisions

The Basel Convention's main goal is to protect human health and the environment against the adverse effects that may result from mismanagement or careless international movements of hazardous and other wastes. The Convention seeks a reduction in waste generation, a reduction in transboundary waste movements consistent with environmentally sound and efficient waste management, and sets a standard of environmentally sound management for those waste movements that do occur. Wastes covered by the Convention include hazardous wastes, household wastes, and residues arising from the incineration of household wastes.

The Convention controls the transboundary movement of these wastes from one Party to another. Before a transboundary movement of hazardous or other wastes may occur, the exporting country must notify in writing the countries of import and transit and must obtain their consent. The shipment cannot proceed until the exporting country has received written consent from the importing country and any transit countries as well as confirmation of the existence of a waste management contract between the exporter and the importer. Both the exporting and importing countries are obligated to prohibit a transboundary movement if there is reason to believe that the waste will not be managed in an environmentally sound manner in the importing country.

In addition, Basel Parties are prohibited from exporting or importing covered waste to or from non-Parties except in cases in which separate government agreements exist which provide for environmentally sound management.

A. Waste Coverage

The Basel Convention defines *hazardous wastes* as:

• Wastes listed in Annex I (of the Basel Convention) unless they do not exhibit one or more of the

[2] "Third world has most chemical contamination," *Chemical & Engineering News*, October 3, 1988, pp. 8–9.

characteristics identified in Annex III, using national testing procedures, and

• Wastes considered to be or defined as hazardous by one or more of the exporting, importing, or transit Parties [3].

In addition, Basel covers "other wastes" (listed in Annex II), which are wastes from households and residues from the incineration of household waste.

Two waste streams are specifically excluded from coverage:

• Radioactive wastes covered by other international controls, and

• Wastes from ships covered by other international controls.

B. Prohibitions on Shipments To and From Non-Parties

The Convention prohibits transboundary movements of covered wastes between Parties and non-Parties. However, pursuant to Article 11, exports or imports of Basel wastes between Parties and non-Parties may occur if there is a separate pre-existing bilateral or multilateral agreement between those countries that is compatible with the environmentally sound management standard in Basel. Bilateral or multilateral agreements or arrangements that Parties enter into after the entry into force date of the Convention must not derogate from the environmentally sound management required under Basel.

The United States currently has two pre-existing bilateral agreements. One agreement is with Canada, to which the U.S. exports 68 percent of its total exported hazardous waste (1990), and the other is with Mexico, to which the U.S. exports 28 percent of its total exported hazardous waste (1990). In addition, on March 30, 1992, the Organization for Economic Cooperation and Development (OECD), of which the United States is a Member, adopted a multilateral Decision that allows for transboundary movements of waste for recovery.

C. Prerequisites to Exporting

The Convention requires that wastes be exported only if the exporting country does not have adequate disposal capacity, facilities, or disposal sites to dispose of the waste in an environmentally sound and economically efficient manner *or*, if the wastes are required as a raw material for recycling or recovery industries in the importing country.

[3] In the case of the United States, the Resource Conservation and Recovery Act (RCRA), as amended, is the domestic legislation that provides authority for EPA to identify hazardous wastes

D. Notice and Consent

Before an export may occur, the Convention requires that the exporting country notify the receiving country and any transit countries of the proposed movement of hazardous wastes or other wastes. (A transit country is one through which the waste shipment will travel en route to the importing country.) Upon receiving notice of a proposed shipment, the importing and transit countries may either consent to the shipment with or without conditions, deny permission, or request additional information. The waste shipment may be exported only after the importing and transit countries have consented. The exporting country must take actions to stop the export if it occurs without the written consent of the importing and transit country or under conditions discussed under paragraph E below.

E. Exporting and Importing Country Responsibilities

Both exporting and importing countries are responsible for prohibiting or stopping (if en route) transboundary shipments of waste if they have reason to believe that the waste will not be handled in an environmentally sound manner in the importing country. *Environmentally sound manner* is defined in the Convention as "taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes." Technical guidelines for environmentally sound management will be a topic for discussion at the first meeting of the Conference of the Parties (Article 4).

In addition, if a shipment cannot be delivered to the destination for which consent has been given, or is not accepted by the destination facility, the exporter has the responsibility for ensuring that the wastes are returned to the exporting country if alternative arrangements cannot be made for their environmentally sound disposal, consistent with all terms of the Convention, within 90 days, or another time-frame agreed upon by the countries concerned. The exporting country must also require that the exporter or generator take back any wastes illegally exported or must assume responsibility for the waste if the exporter or generator does not do so. If the disposer in the importing country committed the illegal act, then this obligation rests with the importing country. Where responsibility for the illegal movement cannot be determined, Parties are required to cooperate to ensure environmentally sound management.

F. International Cooperation

A fundamental principle of the Basel Convention is that Parties respect the import laws of other Parties. If a country has prohibited the import of certain wastes, and has notified other countries of that decision, Parties may not allow exports of prohibited wastes to that country.

All Parties have an obligation to cooperate with other Parties in developing technical guidelines for achieving environmentally sound management. This involves an obligation to share information on technical standards that will promote environmentally sound waste management. In addition, this commitment involves cooperation in monitoring the effects of certain waste management practices on human health and the environment. Parties also are required to cooperate in providing assistance to developing countries in implementing environmentally sound management practices.

G. Tracking, Accidents, and Reporting

The Convention includes requirements for tracking wastes through use of a "movement document," which must accompany the waste shipment from the point the transboundary movement begins to the point of disposal. (Disposal includes a subset of activities which may lead to recovery as well as final disposal under the Convention's terms.) In addition, shipments of waste must be packaged, labelled, and transported in conformance with international rules.

If an accident involving a waste shipment occurs during transportation or disposal that poses a risk to human health or the environment, the Convention requires that the responsible Parties inform potentially affected countries of the accident. In addition, Basel Parties must inform each other, through the Secretariat of the Convention, of changes in the authorities responsible for implementation of the Convention in their country, changes in the definition of hazardous waste, and decisions to prohibit or not consent to the import of certain wastes. Lastly, Parties must submit an annual report to the Secretariat. The report must include amounts and types of hazardous and other wastes exported and their destination, transit countries, and disposal method; amounts and types of hazardous and other wastes imported, their origin, and disposal method;

disposals that were not completed as planned; efforts to reduce waste exports; and other specified pieces of information.

H. Ban of Shipments to Antarctica Treaty Area

The Convention prohibits the export of hazardous or other wastes to the Antarctica Treaty Area (south of 60 degrees south latitude).

III. Progress Towards U.S. Ratification of Basel

A. Basel Signed by U.S. on March 21, 1990

United States' authority over the export of hazardous wastes is found in section 3017 of the Resource Conservation and Recovery Act (RCRA), which currently requires notice to, and consent from, an importing country prior to export of hazardous waste. In March 1989, President Bush announced he would seek legislation which would ensure that U.S. hazardous waste be exported only when an agreement exists with the importing country that ensure environmentally sound management of the waste. The United States Ambassador to the United Nations, Thomas Pickering, signed the Basel Convention on March 21, 1990, as part of the United States' new policy.

B. Importance of U.S. Ratification

1. Negotiation of Rules for Implementation and Related Protocols

Within one year of entry into force of the Convention, a first meeting of the Conference of the ratifying Parties will be held. It is anticipated that the first meeting will occur in Fall 1992. The purpose of the meeting will be to agree upon and adopt procedural and financial participation rules for the Parties and to consider other implementation issues, such as technical guidelines for environmentally sound management. Discussions may also included amendments or additional action needed to carry out the mission of the Convention, establishment of subsidiary bodies, and adoption of appropriate liability protocols.

2. Full Participation Only by Basel Parties

Non-Party countries, such as the U.S., and other interested parties may be represented as observers at meetings of the Conference of the Parties, and may be allowed courtesy participation in the negotiation process. However, non-Parties will not have the authority to vote on these issues and may face other constraints in fully representing their positions during the negotiations.

C. Procedure for U.S. Ratification of Basel

The United States Constitution requires that the Senate consent to the ratification of international treaties. In keeping with this requirement, President Bush transmitted the Basel Convention to the Senate for its advice and consent in May 1991. In addition, before ratification can occur, the U.S. government must have sufficient authority to implement the terms of the Convention. Current authority is lacking in several major areas, including:

- Authority to control exports or imports of certain Basel-covered wastes (*e.g.*, household waste and household incinerator ash);
- Authority to object to a shipment of waste leaving the U.S. if it has reason to believe the waste will not be managed in an environmentally sound manner, notwithstanding consent of the importing country.
- Authority to require the exporters bring illegal waste shipments back to the U.S. or the authority to assume such a responsibility should the exporter fail to do so.

An Administration bill and a number of other bills have been introduced into both Houses of Congress to increase EPA's authority over transboundary waste movements, consistent with provisions of the Convention.

D. Proposed Legislation

The following legislative proposals covering transboundary waste movements were introduced into the Congress in 1991:

1. "The Hazardous and Additional Waste Export and Import Act of 1991," introduced on behalf of the Administration into the Senate by Senator Chafee (S. 1082) and into the House of Representatives by Congressman Lent (H.R. 2398), May 1991.
2. "The Waste Export Control Act," (H.R. 2358), introduced into the House of Representatives by Congressman Synar and Wolpe, May 1991.
3. "The Waste Export and Import Prohibition Act," (H.R. 2580), introduced into the House of Representatives by Congressman Towns submitted H.R. 2580, June 1991.
4. "The International Hazardous Waste Disposal and Enforcement Act of 1991," (S. 1643), introduced into the United States Senate by Senator Akaka, August 1991.

In March 1992, as part of reauthorizing legislation for RCRA, Chairman Baucus of the Senate Environment and Public Works Committee, Environmental Protection Subcommittee, introduced into committee mark-up a section governing hazardous and additional waste imports and exports.

IV. Existing International Agreements

The authors of the Basel Convention recognized that some countries may be involved in pre-existing government-to-government arrangements regarding transboundary waste movements and that some countries may have difficulty ratifying the Convention before it entered into force. Thus, under article 11, upon entry into force of the Basel Convention, transboundary movements of covered waste between Basel Parties and non-Parties may continue to take place if there is an international agreement between these countries for those wastes, provided that the agreement is compatible with the environmentally sound management required under the Convention. The U.S. currently has a bilateral agreement with Canada and a bilateral agreement with Mexico. In addition, the U.S., as a member of the OECD, is bound by a multilateral arrangement for transboundary movements of recyclables within the OECD region. Therefore, after May 5, 1992, transboundary movements of Basel wastes may take place between selected Basel Parties and the U.S., but only pursuant to the bilateral or multilateral agreements or arrangements noted above.

A. U.S./Canada Bilateral Agreement

In 1986, the United States and Canada entered into a bilateral agreement concerning transboundary movement of hazardous waste. The 14-article agreement covers imports, exports, and transit movements. The agreement stipulates that:

1. The exporting country notify the importing country of a proposed export;
2. The designated authority has 30 days from the date of receipt of the notice to indicate consent or objection to the export;
3. If no objection is received within the 30-day period, the country of import is considered to have no objection to the export.

Also included in the U.S./Canada agreement are provisions which require that shipments conform to the regulations of the importing country; provisions for notification of transit shipments; requirements for cooperative efforts in monitoring to ensure compliance with regulations in both countries; and a provision for readmitting exports for any reason. Parties also may require that any transboundary movement of hazardous

waste be insured against damage to third parties.

B. U.S./Mexico Bilateral Agreement

Also in 1986, the U.S. and Mexico entered into a bilateral agreement for hazardous waste transboundary movements. The agreement allows the export of hazardous waste from Mexico into the United States for recovery or disposal, as well as transit shipments through the U.S. and Mexico. Since the import of hazardous wastes for disposal in Mexico is forbidden under Mexican Presidential decree, hazardous wastes may be exported to Mexico under the agreement only for the purpose of recycling.

The U.S./Mexico agreement requires the exporting country to provide a notification of intent to export hazardous waste to the importing country 45 days in advance of shipment; the consent or objection by the importing country must be reported in another 45 days. In contrast to the Canadian agreement, if a response from Mexico is not received within the prescribed time, consent is not implied. The bilateral agreement also references the requirement under the Mexican Maquiladora Program that hazardous wastes generated from raw materials admitted in bond be returned to the country of export of the raw materials. The Maquiladora Program was established to attract U.S. industries to Mexico to promote industrial development in that country. The liability provisions of the U.S./Mexico bilateral agreement call for the country of export to take action, within the limits of its legal authority, that will result in:

1. The return of the hazardous waste to the country of export;
2. The return, insofar as practicable, of the status quo ante of the affected ecosystem; and
3. The repair, through compensation, of damages caused to persons, property, or the environment.

C. OECD Decision

On March 30, 1992, the Council of the Organization for Economic Cooperation and Development (OECD) adopted a legally binding Decision on The Control of Transfrontier Movements of Wastes Destined for Recovery Operations. The OECD Member countries which adopted the Decision are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain Sweden, Switzerland, Turkey, United Kingdom, and the United States. The OECD Decision, which covers waste materials destined for recovery operations, is a preexisting arrangement under Article 11 of the Basel Convention. The OECD multilateral arrangement will allow for the U.S. to continue exporting and importing hazardous waste to and from other OECD Members, including those who are Basel Parties, for the purpose of recovery, after entry into force of the Basel Convention. However, the OECD arrangement does not cover wastes imported and exported for final disposal.

The OECD Decision requires Member countries to control transfrontier movements of hazardous wastes and ensure that adequate and timely information is transmitted from the exporting country to the importing country. The Decision requires that responsibility for the proper management of the waste, including the necessary re-exportation of waste, if safe disposal cannot be assured by the importing country, be specified in a contract between the exporter and the importer. Recognizing that Member countries would require time to implement the terms of the Decision within their domestic regulatory framework, yet desiring implementation of the Decision as quickly as possible, the OECD Council Decision was made effective on the date of its adoption. The U.S. expects to issue regulations implementing the Decision very shortly. Until such regulations become effective, all existing regulations regarding the export of hazardous wastes from the U.S. and imports of hazardous wastes to the U.S. remain in effect and enforceable. After May 5, 1992, exports to and imports from OECD Member countries for final disposal will cease if the OECD country has ratified the Basel Convention. OECD Members that have ratified Basel include: Australia, Finland, France, Norway, Sweden, and Switzerland.

Dated: May 5, 1992

Don R. Clay,

Assistant Administrator.

V. Text of the Basel Convention

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; Preamble

The Parties to this Convention,

Aware of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

Mindful of the growing threat to human health and the environment posed by the increased generation and complexity, and transboundary movement of hazardous wastes and other wastes,

Mindful also that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,

Convinced that States should take necessary measures to ensure that the management of hazardous wastes and other wastes including their transboundary movement and disposal is consistent with the protection of human health and the environment whatever the place of their disposal,

Noting that States should ensure that the generator should carry out duties with regard to the transport and disposal of hazardous wastes and other wastes in a manner that is consistent with the protection of the environment, whatever the place of disposal,

Fully recognizing that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory,

Recognized also the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries,

Convinced that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated,

Aware also that transboundary movements of such wastes from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment, and under conditions in conformity with the provisions of this Convention,

Considering that enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement,

Convinced that States should take measures for the proper exchange of information on and control of the transboundary movement of hazardous wastes and other wastes from and to those States,

Noting that a number of international and regional agreements have addressed the issue of protection and preservation of the environment with regard to the transit of dangerous goods,

Taking into account the Declaration of the United States Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by decision 14/30 of 17 June 1987, the Recommendations of the United Nations Committee on Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), relevant recommendations, declarations, instruments and regulations adopted within the United Nations system and the work and studies done within other international and regional organizations,

Mindful of the spirit, principles, aims and functions of the World Charter for Nature adopted by the General Assembly of the

United Nations at its thirty-seventh session (1982) as the rule of ethics in respect of the protection of the human environment and the conservation of natural resources,

Affirming that States are responsible for the fulfillment of their international obligations concerning the protection of human health and protection and preservation of the environment, and are liable in accordance with international law,

Recognizing that in the case of a material breach of the provisions of this Convention or any protocol thereto the relevant international law of treaties shall apply,

Aware of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes,

Aware also of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum,

Concerned about the problem of illegal transboundary traffic in hazardous wastes and other wastes,

Taking into account also the limited capabilities of the developing countries to manage hazardous wastes and other wastes,

Recognizing the need to promote the transfer of technology for the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on Promotion of the transfer of environmental protection technology,

Recognizing also that hazardous wastes and other wastes should be transported in accordance with relevant international conventions and recommendations,

Convinced also that the transboundary movement of hazardous wastes and other wastes should be permitted only when the transport and the ultimate disposal of such wastes is environmentally sound, and

Determined to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes,

Have Agreed as Follows:

Article 1

Scope of the Convention

1. The following wastes that are subject to transboundary movement shall be "hazardous wastes" for the purposes of this Convention:

(a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and

(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.

2. Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be other wastes for the purposes of this Convention.

3. Wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.

4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.

Article 2

Definitions

For the purposes of this Convention:

1. *Wastes* are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;

2. *Management* means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;

3. *Transboundary movement* means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;

4. *Disposal* means any operation specified in Annex IV to this Convention;

5. *Approved site or facility* means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;

6. *Competent authority* means one governmental authority designated by a Party to be responsible, within such geographical area as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in Article 6;

7. *Focal point* means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 15;

8. *Environmentally sound management of hazardous wastes or other wastes* means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

9. *Area under the national jurisdiction of a State* means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;

10. *State of export* means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;

11. *State of import* means a Party to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;

12. *State of transit* means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;

13. *States concerned* means Parties which are States of export or import, or transit States, whether or not Parties;

14. *Person* means any natural or legal person;

15. *Exporter* means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;

16. *Importer* means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;

17. *Carrier* means any person who carries out the transport of hazardous wastes or other wastes;

18. *Generator* means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;

19. *Disposer* means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes.

20. *Political and/or economic integration organization* means any organization constitutes by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;

21. *Illegal traffic* means any transboundary movement of hazardous wastes or other wastes as specified in Article 9.

Article 3

National Definitions of Hazardous Wastes

1. Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.

2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.

3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.

4. Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.

Article 4

General Obligations

1. (a) Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.

(b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.

(c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

2. Each Party shall take the appropriate measures to:

(a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

(c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

(e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;

(f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;

(g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;

(h) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic;

3. The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.

4. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.

5. A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.

6. The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement.

7. Furthermore, each Party shall: (a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations;

(b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;

(c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.

8. Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.

9. Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:

(a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or

(b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or

(c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.

10. The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.

11. Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment.

12. Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

13. Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.

Article 5

Designation of Competent Authorities and Focal Point

To facilitate the implementation of this Convention, the Parties shall:

1. Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.

2. Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.

3. Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.

Article 6

Transboundary Movement between Parties

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.

3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:

(a) The notifier has received the written consent of the State of import; and

(b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

4. Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions,

denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.

5. In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to the hazardous wastes only:

(a) By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply *mutatis mutandis* to the exporter and the State of export, respectively;

(b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or

(c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.

6. The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.

7. The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.

8. The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.

9. The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.

10. The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.

11. Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.

Article 7

Transboundary Movement from a Party through States which are not Parties

Paragraph 2 of Article 6 of the Convention shall apply *mutatis mutandis* to transboundary movement of hazardous wastes or other wastes from a party through a State or States which are not Parties.

Article 8

Duty to Re-import

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

Article 9

Illegal Traffic

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

(a) Without notification pursuant to the provisions of this Convention to all States concerned; or

(b) Without the consent pursuant to the provisions of this Convention of a State concerned; or

(c) With consent obtained from States concerned through falsification, misrepresentation or fraud; or

(d) that does not conform in a material way with the documents; or

(e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law, shall be deemed to be illegal traffic.

2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:

(a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) are otherwise disposed of in accordance with the provisions of this Convention,

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 90 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.

4. In case where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The parties shall co-operate with a view to achieving the objects of this Article.

Article 10

International Co-operation

1. The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.

2. To this end, the Parties shall:

(a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;

(b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;

(c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;

(d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound

management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;

(e) Co-operate in developing appropriate technical guidelines and/or codes of practice.

3. The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs a, b, c, and d of paragraph 2 of Article 4.

4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organizations is encouraged to promote, *inter alia*, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

Article 11

Bilateral, Multilateral and Regional Agreements

1. Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.

2. Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

Article 12

Consultations on Liability

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

Article 13

Transmission of Information

1. The Parties shall, whenever it comes to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those states are immediately informed.

2. The Parties shall inform each other, through the Secretariat, of:

(a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;

(b) Changes in their national definition of hazardous wastes, pursuant to Article 3;

and, as soon as possible,

(c) Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;

(d) Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;

(e) Any other information required pursuant to paragraph 4 of this Article.

3. The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information:

(a) Competent authorities and focal points that have been designated by them pursuant to Article 5;

(b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:

(i) The amount of hazardous wastes and other wastes exported, their category characteristics, destination, any transit country and disposal method as stated on the response to notification;

(ii) The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;

(iii) Disposals which did not proceed as intended;

(iv) Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;

(c) Information on the measures adopted by them in implementation of this Convention;

(d) Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;

(e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;

(f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;

(g) Information on disposal options operated within the area of their national jurisdiction;

(h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and

(i) Such other matters as the Conference of the Parties shall deem relevant.

4. The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considers that its environment may be affected by that transboundary movement has requested that this should be done.

Article 14

Financial Aspects

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.

2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

Article 15

Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.

4. The Parties at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine environment in the context of this Convention.

5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:

(a) Promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes and other wastes;

(b) Consider and adopt, as required, amendments to this Convention and its annexes, taking into consideration, *inter alia*, available scientific, technical, economic and environmental information;

(c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11;

(d) Consider and adopt protocols as required; and

(e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.

6. The United Nations, its specialized agencies, as well as any State not party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

7. The Conference of the Parties shall undertake three years after the entry into force of this Convention, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information.

Article 16

Secretariat

1. The functions of the Secretariat shall be:

(a) To arrange for and service meetings provided for in Articles 15 and 17;

(b) To prepare and transmit reports based upon information received in accordance with Articles 3, 4, 6, 11 and 13 as well as upon information derived from meetings of subsidiary bodies established under Article 15 as well as upon, as appropriate, information provided by relevant intergovernmental and non-governmental entities;

(c) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;

(d) To ensure the necessary coordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(e) To communicate with focal points and competent authorities established by the Parties in accordance with Article 5 of this Convention;

(f) To compile information concerning authorized national sites and facilities of Parties available for the disposal of their hazardous wastes and other wastes and to circulate this information among Parties;

(g) To receive and convey information from and to Parties on;

—sources of technical assistance and training;

—available technical and scientific know-how;

—sources of advice and expertise; and

—availability of resources

with a view to assisting them, upon request, in such areas as:

—the handling of the notification system of this Convention;

—the management of hazardous wastes and other wastes;

—environmentally sound technologies relating to hazardous wastes and other wastes, such as low- and non-waste technology;

—the assessment of disposal capabilities and sites;

—the monitoring of hazardous wastes and other wastes; and

—emergency responses;

(h) To provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them to examine a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes or other wastes with the relevant notification, and/or the fact that the proposed disposal facilities for hazardous wastes or other wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner. Any such examination would not be at the expense of the Secretariat;

(i) To assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;

(j) To co-operate with Parties and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and

(k) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by UNEP until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15.

3. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organizations which have signified their willingness to carry out the secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

Article 17

Amendment of the Convention

1. Any Party may propose amendments to this Convention and any Party to a protocol may propose amendments to that protocol. Such amendments shall take due account, *inter alia*, of relevant scientific and technical considerations.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting, and shall be submitted by the Depository to all Parties for ratification, approval, formal confirmation or acceptance.

4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that protocol present and voting at the meeting shall suffice for their adoption.

5. Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depository. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depository of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted the amendments to the protocol concerned, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.

6. For the purpose of this Article, *Parties present and voting* means Parties present and casting an affirmative or negative vote.

Article 18

Adoption and Amendment of Annexes

1. The annexes of this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:

(a) Annexes to this Convention and its protocols shall be proposed and adopted according to the procedure laid down in Article 17, paragraphs 2, 3 and 4;

(b) Any Party that is unable to accept an additional annex to this Convention or an

annex to any protocol to which it is party shall so notify the Depository, in writing, within six months from the date of the communication of the adoption by the Depository. The Depository shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;

(c) On the expiry of six months from the date of the circulation of the communication by the Depository, the annex shall become effective for all Parties to this Convention or to any protocol concerned, which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, *Inter alia*, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol enters into force.

Article 19

Verification

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

Article 20

Settlement of Disputes

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through means mentioned in the preceding paragraph, the dispute, if the parties to the dispute agree, shall be submitted to the International Court of Justice or to arbitration under the conditions set out in Annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.

3. When ratifying, accepting, approving, formally confirming or acceding to this Convention, or at any time thereafter, a State or political and/or economic integration organization may declare that it recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:

(a) submission of the dispute to the International Court of Justice; and/or

(b) arbitration in accordance with the procedures set out in Annex VI.

Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

Article 21

Signature

This Convention shall be open for signature by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations in Basel on 22 March 1989, at the Federal Department of Foreign Affairs of Switzerland in Berne from 23 March 1989 to 30 June 1989, and an United Nations Headquarters in New York from 1 July 1989 to 22 March 1990.

Article 22

Ratification, Acceptance, Formal Confirmation or Approval

1. This Convention shall be subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to formal confirmation or approval by political and/or economic integration organizations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of formal confirmation or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who will inform the Parties of any substantial modification in the extent of their competence.

Article 23

Accession

1. This Convention shall be open for accession by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

3. The provisions of Article 22, paragraph 2, shall apply to political and/or economic integration organizations which accede to this Convention.

Article 24

Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention shall have one vote.

2. Political and/or economic integration organizations, in matters within their competence, in accordance with Article 22, paragraph 3, and Article 33, paragraph 2, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote in their member States exercise theirs, and vice versa.

Article 25

Entry into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.

2. For each State or political and/or economic integration organization which ratifies, accepts, approves or formally confirms this Convention or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on the ninetieth day after the date of deposit by such State or political and/or economic integration organization of its instrument of ratification, acceptance, approval, formal confirmation or accession.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a political and/or economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 26

Reservations and Declarations

1. No reservation or exception may be made to this Convention.

2. Paragraph 1 of this Article does not preclude a State or political and/or economic integration organizations, when signing, ratifying, accepting, approving, formally confirming or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.

Article 27

Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may

withdraw from the Convention by giving written notification to the Depositary.

2. Withdrawal shall be effective one year from receipt of notification by the Depositary, or on such later date as may be specified in the notification.

Article 28

Depository

The Secretary-General of the United Nations shall be the Depository of this Convention and of any protocol thereto.

Article 29

Authentic Texts

The original Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

In Witness Whereof the undersigned, being duly authorized to that effect, have signed this Convention.

Done at _____ on the _____ day of _____.

Annex I

Categories of Wastes to be Controlled

Waste Streams

Y1 Clinical wastes from medical care in hospitals, medical centers and clinics
Y2 Wastes from the production and preparation of pharmaceutical products
Y3 Waste pharmaceuticals, drugs and medicines
Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals
Y5 Wastes from the manufacture, formulation and use of wood preserving chemicals
Y6 Wastes from the production, formulation and use of organic solvents
Y7 Wastes from heat treatment and tempering operations containing cyanides
Y8 Waste mineral oils unfit for their originally intended use
Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions
Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment
Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish
Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives
Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or new and whose effects on man and/or the environment are not known
Y15 Wastes of an explosive nature not subject to other legislation
Y16 Wastes from production, formulation and use of photographic chemicals and processing materials
Y17 Wastes resulting from surface treatment of metals and plastics
Y18 Residues arising from industrial waste disposal operations

Wastes Having as Constituents

Y19 Metal carbonyls
Y20 Beryllium; beryllium compounds
Y21 Hexavalent chromium compounds
Y22 Copper compounds
Y23 Zinc compounds
Y24 Arsenic; arsenic compounds
Y25 Selenium; selenium compounds
Y26 Cadmium; cadmium compounds
Y27 Antimony; antimony compounds
Y28 Tellurium; tellurium compounds
Y29 Mercury; mercury compounds
Y30 Thallium; thallium compounds
Y31 Lead; lead compounds
Y32 Inorganic fluorine compounds excluding calcium fluoride
Y33 Inorganic cyanides
Y34 Acidic solutions or acids in solid form
Y35 Basic solutions or bases in solid form
Y36 Asbestos (dust and fibres)
Y37 Organic phosphorous compounds
Y38 Organic cyanides
Y39 Phenols; phenol compounds including chlorophenols
Y40 Ethers
Y41 Halogenated organic solvents
Y42 Organic solvents excluding halogenated solvents
Y43 Any congenor of polychlorinated dibenzo-furan
Y44 Any congenor of polychlorinated dibenzo-p-dioxin
Y45 Organohalogen compounds other than substances referred to in this Annex (e.g., Y39, Y41, Y42, Y43, Y44).

Annex II

Categories of Wastes Requiring Special Consideration

Y46 Wastes collected from households
Y47 Residues arising from the incineration of household wastes

Annex III

List of Hazardous Characteristics

UN class [1]	Code characteristics
1	H1 Explosive An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
3	H3 Flammable liquids The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapor at temperatures of not more than 60.5°C, closed-cup test, or not more than 65.6°C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.)
4.1	H4.1 Flammable solids Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
4.2	H4.2 Substances or wastes liable to spontaneous combustion Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.
4.3	H4.3 Substances or wastes which, in contact with water emit flammable gases

UN class [1]	Code characteristics
	Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.
5.1	H5.1 Oxidizing Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.
5.2	H5.2 Organic Peroxides Organic substances or wastes which contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
6.1	H6.1 Poisonous (Acute) Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
6.2	H6.2 Infectious substances Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.
8	H8 Corrosives Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.
9	H10 Liberation of toxic gases in contact with air or water Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
9	H11 Toxic (Delayed or chronic) Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
9	H12 Ecotoxic Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
9	H13 Capable, by any means, after disposal, of yielding another material, e.g., leakage, which possesses any of the characteristics listed above.

[1] Corresponds to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/REV.5, United Nations, New York, 1988).

Tests

The potential hazards posed by certain types of wastes are not yet fully documented; tests to define quantitatively these hazards do not exist. Further research is necessary in order to develop means to characterize potential hazards posed to man and/or the environment by these wastes. Standardized tests have been derived with respect to pure substances and materials. Many countries have developed national tests which can be applied to materials listed in Annex I, in order to decide if these materials exhibit any of the characteristics listed in this Annex.

Annex IV

Disposal Operations

A. Operations Which do not Lead to the Possibility of Resource Recovery, Recycling, Reclamation, Direct Re-use or Alternative Uses

Section A encompasses all such disposal operation which occur in practice.

D1 Deposit into or onto land, (e.g., landfill, etc.)
D2 Land treatment, (e.g., biodegradation of liquid or sludgy discards in soils, etc.)
D3 Deep injection, (e.g., injection of pumpable discards into walls, salt domes or naturally occurring repositories, etc.)
D4 Surface impoundment, (e.g., placement of liquid or sludge discards into pits, ponds or lagoons, etc.)
D5 Specially engineered landfill, (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
D6 Release into a water body except seas/oceans
D7 Release into seas/oceans including seabed insertion
D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A
D9 Physico chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A, (e.g., evaporation, drying, calcination, neutralisation, precipitation, etc.)
D10 Incineration on land
D11 Incineration at sea
D12 Permanent storage (e.g., emplacement of containers in a mine, etc.)
D13 Blending or mixing prior to submission to any of the operations in Section A
D14 Repackaging prior to submission to any of the operations in Section A
D15 Storage pending any of the operations in Section A

B. Operations Which May Lead to Resource Recovery, Recycling, Reclamation, Direct Re-use or Alternative Uses

Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section A.

R1 Use as a fuel (other than in direct incineration) or other means to generate energy
R2 Solvent reclamation/regeneration
R3 Recycling/reclamation of organic substances which are not used as solvents
R4 Recycling/reclamation of metals and metal compounds
R5 Recycling/reclamation of other inorganic materials
R6 Regeneration of acids or bases
R7 Recovery of components used for pollution abatement
R8 Recovery of components from catalysts
R9 Used oil re-refining or other reuses of previously used oil
R10 Land treatment resulting in benefit to agriculture or ecological improvement
R11 Uses of residual materials obtained from any of the operations numbered R1–R10
R12 Exchange of wastes for submission to any of the operations numbered R1–R11
R13 Accumulation of material intended for any operation in Section B

Annex V A

Information To Be Provided on Notification

1. Reason for waste export.
2. Exporter of the waste.[1]
3. Generator(s) of the waste and site of generation.[1]
4. Disposer of the waste and actual site of disposal.[1]
5. Intended carrier(s) of the waste or their agents, if known.[1]
6. Country of export of the waste Competent authority.[2]
7. Expected countries of transit Competent authority.[2]
8. Country of import of the waste Competent authority.[2]
9. General or single notification.
10. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit).[3]
11. Means of transport envisaged (road, rail, sea, air, inland waters).
12. Information relating to insurance.[4]
13. Designation and physical description of the waste including Y number and UN number and its composition [5] and information on any special handling requirements including emergency provisions in case of accidents.
14. Type of packaging envisaged (eg. bulk, drummed, tanker).
15. Estimated quantity in weight/volume.[6]
16. Process by which the waste is generated.[7]
17. For wastes listed in Annex I, classifications from Annex II: hazardous characteristic, N number, and UN class.
18. Method of disposal as per Annex III.
19. Declaration by the generator and exporter that the information is correct.
20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed

in an environmentally sound manner in accordance with the laws and regulations of the country of import.

21. Information concerning the contract between the exporter and disposer.

Notes

[1] Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.

[2] Full name and address, telephone, telex or telefax number.

[3] In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.

[4] Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.

[5] The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.

[6] In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.

[7] Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

Annex V B

Information To Be Provided on the Movement Document

1. Exporter of the waste.[1]
2. Generator(s) of the waste and site of generation.[1]
3. Disposer of the waste and actual site of disposal.[1]
4. Carrier(s) of the waste [1] or his agent(s).
5. Subject of general or single notification.
6. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste.
7. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated).
8. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable).
9. Information on special handling requirements including emergency provision in case of accidents.
10. Type and number of packages.
11. Quantity in weight/volume.
12. Declaration by the generator or exporter that the information is correct.
13. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties.
14. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.

Notes

The information required on the movement document shall where possible be integrated in one document with that required under transport rules. Where this is not possible the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instructions as to who is to provide information and fill-out any form.

[1] Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

Annex VI

Arbitration

Article 1

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

Article 2

The claimant party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to paragraph 2 or paragraph 3 of Article 20 and include, in particular, the Articles of the Convention the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

Article 3

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

Article 5

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of the Convention.

2. Any arbitral tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.

Article 6

1. The decisions of the arbitral tribunal both on procedure and on substance, shall be taken by majority vote of its members.

2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of protection.

3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

4. The absence or default of a party in the dispute shall not constitute an impediment to the proceedings.

Article 7

The tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

Article 9

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 10

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.

3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

[FR Doc. 92-11113 Filed 5-12-92; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
May 13, 1992

Part VI

Department of Education

Technology, Educational Media and Materials for Individuals With Disabilities Program; Notices

DEPARTMENT OF EDUCATION

Technology, Educational Media, and Materials for Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces final funding priorities for fiscal years 1992 and 1993 for the Technology, Educational Media, and Materials for Individuals with Disabilities Program. This program is administered by the Office of Special Education Programs. The Secretary announces these priorities to ensure effective use of program funds and to direct funds to areas of identified need during fiscal years 1992 and 1993.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3095—M/S 2313–2640), Washington, DC 20202. Telephone: (202) 732–1099. Deaf and hearing impaired individuals may call (202) 732–6153 for TDD services.

SUPPLEMENTARY INFORMATION: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities. In creating part G, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

These priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of academic achievement called for by the National Education Goals. Specifically, National Education Goal 1 calls for all children to start school ready to learn, and National Education Goal 3 calls for American students to demonstrate competency in challenging subject matter and to learn to use their minds well.

The publication of these final priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the Notice of Proposed Priorities, published on January 28, 1992 (57 FR 3260–3264), six respondents commented on the priorities for the Technology, Educational Media, and Materials Program for Individuals with Disabilities. No changes were made based on the comments. Only minor technical and editorial changes have been made. An analysis of the comments to the proposed priorities follows.

Comments on Priorities 1 and 2

Comment: One commenter recommended that both priority 1 "Innovative Applications of Technology to Enhance Experiences in the Arts for Children with Disabilities" and priority 2 "Studying How the Design of Software and Computer-Assisted Media and Materials Can Enhance the Instruction of Preschool Children with Disabilities" could be enhanced by requiring all funded projects to conduct their activities in integrated settings.

Discussion: As written, priorities 1 and 2 do not exclude an applicant from including children with disabilities in integrated settings. The Secretary believes that to require all applicants to conduct activities in integrated settings would be overly prescriptive.

Changes: None.

Comments on Priority 2: Studying How the Design of Software and Computer-Assisted Media and Materials Can Enhance the Instruction of Preschool Children with Disabilities.

Comment: One commenter suggested that for priority 2 one year might be a very short time frame to work on.

Discussion: The priority as written is not limited to a one year time frame. As stated in the notice, applicants may request up to 24 months of funding in their proposals.

Changes: None.

Comment: One commenter stated that it is important to think about what schools already have in place, and that it should not be assumed that people will buy hardware along with the product. The commenter felt that people may want software that matches their existing hardware.

Discussion: The priority as written does not presume that people will buy hardware along with the product. The priority is designed to evaluate existing software for young children with disabilities which presumes the software matches the hardware used by teachers.

Changes: None.

Comment: One commenter recommended that various options should be considered such as SEGA Genesis games that have MAC-like capabilities for $100, and that video game technology may be an option. In addition, the commenter recommended that a market perspective might be very useful for this effort.

Discussion: The Secretary agrees that building on existing capabilities can enhance the impact of priorities designed to develop actual software. Examining existing software and recommending guidelines for potential development may include consideration of such software and hardware as the SEGA Genesis games. As written, the priority requires the involvement of developers and publishers from the beginning of the projects, and the Secretary believes that involvement will ensure a market perspective.

Changes: None.

Comments on Priority 3: Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology

Comment: One commenter recommended that the following three questions be added:

(1) In what ways did the use or application of technology enhance opportunities for interaction between children with disabilities and their nondisabled peers?

(2) In what ways did the use or application of technology result in classroom placement in a regular classroom?

(3) What are the implementation conditions that would result in enhanced integrated placement and learning situations?

Discussion: The three questions suggested by the commenter are encompassed in the questions already stated in the "Project Design" section of the priority. Opportunities for interaction with nondisabled peers and placement in regular classrooms are encompassed in the "other benefits" referred to in the third question in the proposed priority. Implementation

conditions that result in enhanced integrated placement and learning situations are encompassed in the fifth question in the proposed priority, which refers to implementation conditions and outcomes. The questions stated in the priority are intended to provide direction to the projects without being overly restrictive. They are deliberately general and inclusive.

Changes: The questions in the priority have been expanded to clarify that the questions suggested by the commenter are included.

Comment: One commenter urged the Department to require funding one of the four projects under priority 3 to a target group of children with speech and motor challenges. The commenter felt that children with speech and motor challenges constitute a population that is dramatically benefitting from technology intervention, and the funding of projects targeted at those groups would provide empirical data needed by school districts nationwide. Another commenter recommended that every effort be made to ensure that projects that focus on low incidence populations such as visually disabled and motorically impaired are not "shut out" of the competition just because these children are fewer in number in the school population, and the perceived impact is considered to be low.

Discussion: The need for research on the benefits of technology applies to all special education populations. The Secretary does not believe it is appropriate to impose preset quotas or limits for projects targeted at specific types of disabilities. Projects are funded on the basis of evaluation criteria which allow applicants to discuss the importance and impact of their projects in relation to specific types of disabilities. Reviewers score applications based on their response to the evaluation criteria, and it has been the experience of the Department that low incidence populations are not automatically "shut out" of any competition.

Changes: None.

Comment: Four commenters recommended that assistive devices should be included under the rubric of "innovative instructional technology" which they say is the focus of priority 3. If assistive devices or technology is prohibited, three of the four commenters pointed out that a large portion of disabled youngsters (e.g., blind, visually impaired, and motorically impaired) could be excluded from any projects which may be funded.

Discussion: The stated topic of this priority is innovative uses of technology to improve the education and learning potential of children with disabilities. Assistive technology may be included under innovative uses of technology. As written, the priority is broad enough to include study of assistive devices and technology.

Changes: None.

Comment: Two commenters recommended that projects should not be limited to sites where advanced, innovative technology is already in place. The commenters felt that the Department should encourage applicants to develop concepts and strategies which may not as yet be found in the schools, but which could prove to be very beneficial to disabled children.

Discussion: The Technology, Educational Media, and Materials for Individuals with Disabilities Program supports a range of projects, some of which involve the development of new concepts and strategies which are not found in schools. However, the Secretary believes the specific purposes of priority 3 (to demonstrate, evaluate, and document the uses of technology under optimal conditions) will be served in the most cost effective manner if projects are conducted in sites where innovative technology is already sufficiently available and accessible.

Changes: None.

Priorities

The Secretary establishes the following priorities for the Technology, Educational Media, and Materials for Individuals with Disabilities Program, CFDA No. 84.180. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary gives an absolute preference under this program to applications that respond to one of the following priorities; that is, the Secretary selects for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Innovative Applications of Technology to Enhance Experiences in the Arts for Children with Disabilities (CFDA 84.180D)

Issue

The quality of life is based on more than the acquisition of factual knowledge and the development of vocational skills; it includes experiences that maximize human potential and provide self-fulfillment. One important avenue to this enrichment can be found in the arts. Through artistic expression and appreciation, students gain a broader and deeper understanding of human culture and the significance of their own imagination.

In the past, the creativity and self-expression of individuals with disabilities have often been untapped due to sensory, motor, or cognitive barriers. Alternatively, new technologies offer the potential to enable and enhance artistic experiences, and related learning and development, for children with disabilities. However, these technologies have neither been sufficiently adapted to special needs, nor made readily available, to adequately provide opportunities for artistic enrichment.

For example, specialized input and output devices have become available to enable access to computers by individuals with various disabilities. Such products could be integrated with other hardware, software, and peripheral devices (e.g., braille printers, speech synthesizers, and touch pads) to produce graphic or musical output. Translation of acoustic signals into visual stimuli, or visual images into sound, offer exciting possibilities in the arts for individuals with sensory impairments. Artificial intelligence, robotics, expert systems, multi-media controllers, speech recognition and synthesis, alternative input or output mechanisms, and other emerging technologies present a seemingly limitless palette for creative solutions to previously limiting conditions. Innovative technologies can be developed, modified, or adapted to encourage the creativity, self-expression, and participation in artistic experiences by children with disabilities.

The school, home, and community experiences of children with disabilities would be greatly enriched by improving technologies to support learning and expression through the arts and increasing their accessibility to students, parents, teachers, and related services personnel. Expanding artistic opportunities would contribute to healthy development and learning in childhood, and strengthen the foundation for transition to adult life and experiences.

Purpose

Section 661 of the Individuals with Disabilities Education Act (IDEA) supports projects to advance the availability, quality, and use of technology, media, and materials in the education of children with disabilities. The purpose of this priority is to fund grants for the development, modification, or adaptation of innovative technologies to enhance experiences in the arts for children with disabilities. For this competition, the

arts are defined as synonymous with what are generally called the fine arts, and include but are not limited to the following: Music, painting, drawing, graphics, photography (including film and video), sculpture, dance, and drama.

Activities

Each project must engage in multiple activities to develop, evaluate, refine, and disseminate a prototype application of innovative technology in the arts that addresses particular needs of children with disabilities. The planned activities must also include production of supplemental materials to foster effective implementation by teachers, related services staff, and parents, in school, home, or community settings. The outcome of each project must be a marketable prototype, including supplemental materials, along with active exchange, dissemination, and use of findings from the project.

(1) Specific Objectives

Each project must provide for the development, modification, or adaptation of innovative technology, and address the specific needs of particular groups of children with disabilities to enhance their experiences in the arts. The application of technology must provide a means for expression through the arts, and must also provide an opportunity for learning and appreciation. The project must reflect the judgment and knowledge of specialists in the arts and special education service providers and recipients. Benefits and outcomes in other areas of learning, development, and socialization must also be provided.

(2) Develop Prototype Application and Supplemental Materials

Each project must develop, modify, or adapt innovative technology to enhance the child's direct experience in artistic expression. The technological application must include an implementation package that incorporates guidelines, related materials, and training to support its integration into artistic activities in school, home, or community settings.

(3) Evaluation

Field tests must be designed and conducted to both: (a) Measure and document outcomes and benefits, including solutions to specific needs, with groups of children with particular disabilities, and (b) formatively evaluate the prototype application, guidelines, related materials, and training provided to foster effective use.

(4) Refinement of the Final Product

Results of the evaluations must be utilized to refine the prototype and supplemental materials, in order to produce a marketable prototype with needed guidelines, training approaches, and related materials.

(5) Dissemination

Dissemination must be designed and conducted to publicize the findings from the evaluations; to stimulate interest in the product from teachers, administrators, arts education specialists and associations, and other program providers; to encourage investment from the private sector; and to draw attention to the arts as an important area for the development of the full human potential of children with disabilities.

Time Frame

The Secretary will approve grants with a project period of 24 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. Activities in the first year must include prototype and supplemental material development, and design of field tests and dissemination. Evaluation may begin in the first year, if that is feasible. Activities in the second year must include training and completion of evaluation, product refinement (prototype and materials), and dissemination.

Product

The outcome of each project must be a marketable prototype of an application of innovative technology to enhance experiences in the arts for children with disabilities, along with supplemental materials to support its implementation, and active exchange, dissemination, and use of findings from the project to encourage adoption of the technology.

Priority 2: Studying How The Design of Software and Computer-Assisted Media and Materials Can Enhance The Instruction of Preschool Children With Disabilities (CFDA 84.180F)

Issue

Instructional technology seems a promising tool to enhance the learning processes of young children (ages three through five) with disabilities. Preliminary evidence indicates that the use of software and computer-assisted media and materials based on sound developmental and educational principles has the potential to provide young children with disabilities early opportunities and experiences in thinking and problem solving strategies that are the foundation and building blocks that enable future learning. The use of the phrase "software and computer-assisted media and materials" is used broadly to refer not only to traditional software but also to the use of newer technologies such as videodisc and multimedia. Effectively designed software and computer-assisted media and materials also have potential to aid preschool teachers and related service professionals and to enhance the development and learning of preschool children with disabilities. Yet, while there is a body of research regarding micro-computer-based instruction in schools, little of it has been implemented with preschool children. The recent application of microcomputers with preschool children has not yet produced a body of literature on development and learning gains by preschoolers as a result of technology use.

Instructional technology is most effective when it is both age- and content-appropriate. Finding and selecting appropriate software and computer-assisted media and materials for young children presents a dilemma. Despite advances in our knowledge about how young students with disabilities in early stages of development process information, finding a match between those elements and currently available software and computer-assisted media and materials is problematic. Developmental, cultural, and learning differences among children, readiness to learn new concepts, and the appropriate sequencing of concepts all require consideration in selection of software and computer-assisted media and materials.

Even if teachers did have ready access to age-appropriate material, they still face the problem of how to integrate available software and computer-assisted media and materials into their instruction and interventions. Some computer-assisted media and materials may be difficult to use or have no accompanying materials to serve as a guide. Therefore, potentially effective designs need to maximize the learning capabilities of children, and the instructional goals of teachers by making the technology relevant to their instructional approach, easy to use, and adaptable to individual children's needs.

Purpose

This priority will provide support for up to five projects to study the potential of the design of software and computer-assisted media and materials to enhance the development, learning, and instruction of young (3–5) children with disabilities. Projects must study design

elements of existing software and computer-assisted media and materials that could be adapted to the special developmental, learning, and instructional needs of young children with disabilities, and must document evidence of its effectiveness in meeting these needs.

Activities

Analyze Needs of Children and Preschool or Day Care Professionals

The projects first must identify and conduct a comprehensive analysis of the learner characteristics (sensory, cognitive, and physical) of a disability. The projects then must analyze the developmental, learning, and instructional needs of young children with disabilities and the diversity of instructional approaches used by teachers and related services personnel. Each project must develop, pilot, and implement reliable and valid methods for determining needs and translating them into design specifications. The projects must also analyze the context of the setting in which the technology is to be used and the design features and components that should be present to meet the needs.

Analyze Existing Software and Computer-Assisted Media and Materials

Based on the documented needs and learning characteristics of young children, the instructional approaches of teachers and related service professionals, and the contextual features of the setting, the projects will analyze features of existing software and computer-assisted media and materials that have potential for being adapted to enhance the development, learning, and instruction of young children with disabilities. The projects must develop and test their criteria for assessing the feasibility and utility of the design features of existing software and computer-assisted media and materials. Each project must develop a methodology for identifying existing software design features to analyze their feasibility and potential. Based on these analyses, an initial list of design specifications must be developed and mapped against current designs of software and computer-assisted media and materials.

Evaluate The Design Features of Software and Computer-Assisted Media and Materials

Field tests must be conducted to measure and document the contribution of the design features of the software and computer-assisted media and materials to the development, learning, and instruction of young children with disabilities. In testing various design features, the projects will study how well the software computer-assisted media and materials enhance the development, learning, and instruction of young children of the specified disability group; how the features enhance teacher effectiveness and meaningful instruction; how effectively and smoothly these features can be integrated into existing interventions or instruction; any specific training necessary to foster their effective use; and the potential for such design features to be incorporated into future publisher products. In evaluating the existing software, or computer-assisted media and materials, multiple methodologies must be used to address the evaluation questions.

Guidelines

The projects will develop and field test guidelines for practitioners and guidelines for developers and publishers. Guidelines for practitioners must assist them in selecting software computer-assisted media and materials by specifying design features of software computer-assisted media and materials having the potential to enhance the instruction, development, and learning of young children with disabilities. Identifying design features will provide guidance to practitioners in selecting software computer-assisted media and materials to meet the needs of young children with disabilities. These guidelines must also include project findings regarding the development and learning needs of children with disabilities, the design specifications needed to address these needs, the intervention and instructional needs of teachers, and the enhancements such designs would make. Guidelines for developers and publishers of software and computer-assisted media and materials must specify the design features that align with the needs of young children with disabilities. These guidelines also must provide needed design guidance for future efforts to develop software and other computer-assisted media and materials.

To ensure that the guidelines are consistent with the developmental, learning, and instructional needs of the children with disabilities and with instructional and intervention needs, teachers and related service professionals must be involved throughout the analysis and guideline development process. In addition, persons with publishing and developing experience must be involved from the beginning in identifying instructional design features as well as providing feedback on potential market feasibility of various design configurations.

Collaboration

Projects must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than that achieved by any single project. Projects must budget for two trips each year to Washington, DC, one of them to be at the time of the annual Research Project Directors' meeting in July and the other to be scheduled during the remainder of the year for this purpose.

Products and Dissemination

Projects must develop: (1) A set of guidelines to assist practitioners, and (2) a set of guidelines for developers and publishers of software computer-assisted media and materials. Projects must also collaborate and participate in the development and dissemination of joint findings across projects.

Priority 3: Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology (CFDA 84.180E)

This priority will fund grants that demonstrate and evaluate the benefits from innovative uses of technology in optimally supportive settings to improve the education and expand the learning potentials of children with disabilities.

Issue

Advocates for technological innovation want to challenge preconceptions about the potential functioning of children with disabilities, both in the classroom and in the world beyond. Numerous studies in the research literature, as well as accounts in the popular press, have described the apparent utility of various innovative technologies for the instruction of children, in both special and general education. Some examples include word processing and desk-top publishing, computer-assisted instruction and assessment, hypermedia (i.e., computer control of multiple media), local area networks and networked instructional management systems, telecommunications and distance learning, and various video-based systems (e.g., VCR's, cam-corders, interactive laser-disc or cd-rom).

Simultaneously, other reports have identified and examined an array of organizational, professional, and material factors that promote or impede the optimal use and impact of technological innovations in education.

These factors include, for example: The availability of special training and ongoing technical assistance for staff; administrative support and staff involvement in planning and implementing innovations; availability, accessibility, and suitability of equipment and materials; and congruence between the nature of the innovative application and the curricular and instructional needs of the students.

Related studies have shown that the needs of students with disabilities are sometimes ignored during school or district planning for technology acquisition. Equipment and resources are often unavailable or inadequate to meet the special needs of these students. Typically, special and general education staff have neither collaborated in decision making, nor been offered the particular guidance, training, or technical support necessary to make the most efficient or appropriate use of innovative educational technologies.

These conditions do not provide fair examinations or demonstrations of the potential benefits of new approaches for children with disabilities in the full range of educational settings. Lacking compelling and convincing examples of the potential value of technological enhancements in education, many administrators and teachers are understandably reluctant about adopting these new approaches. There is growing concern that the schools could pull back and lose interest in technological innovations before their full potential can be realized.

Even where successful examples of technology-assisted education have been conducted in particular classrooms, schools, or districts, additional evaluation is necessary to examine and document the features that contribute to effective use of innovative technologies. Refinement and modeling of such innovations are needed to provide compelling and convincing evidence of the benefits to be derived from these technology innovations.

Purpose

The purpose of the projects is to demonstrate, evaluate, and document innovative uses of technology, under optimal conditions, to improve the education of children with disabilities. Each project must concentrate on a specific application of technology, or combination of applications, that special educators and researchers believe can expand the learning accomplishments of children with disabilities. The targeted skills must be clearly defined and the evaluation must document: (1) The relative impact on educational improvement resulting from use of the technology, and (2) the methods and materials required for successful implementation of the innovative approach. Study sites must be schools or school districts where administrators and teachers have committed themselves to improving education through exploration of innovative approaches, and to a planned effort that incorporates staff development, material resources, monitoring, and evaluation. Projects must determine the benefits of technology use, as well as the observed limitations or areas where technological approaches show marginal utility.

Project Design

The grantees must design a full-scale implementation, or expand an existing implementation, of particular instructional applications of innovative technology, incorporating material and human resources that are expected to demonstrably enhance the learning of children with disabilities. Planning and management of the innovation must involve participation by both administrators and teachers. Staff must receive appropriate training and technical support. Materials and equipment must not only be sufficiently available and accessible but, to the degree possible, they must be state-of-the-art so that the impact of the technological innovation can be heightened. Over the course of each project, some of these resources must be varied (or timed)—across groups of participants—to provide comparison measures for various implementation features.

The particular procedures, features, resources, and practices that contribute to effective implementation of specific applications of technology and media must be determined. Projects must address some or all of the following questions:

- What are the skills, competencies, knowledge, behaviors, or concepts that are addressed and affected through this application of technology?
- What is the learning benefit for children with disabilities that is associated with the innovative approach?
- What other benefits can be attributed to use of the innovative approach, e.g., in student motivation, enrichment, self-concept, socialization, integrated placement?
- What is the impact on teachers and classroom management (i.e., do technologies enhance the individualized tailoring of instruction for students with disabilities in integrated settings)?
- Under what implementation conditions (amount of staff preparation, adequacy of resources, etc.) can different positive outcomes for children be anticipated?
- With what types or levels of disability, age, grade, and particular instructional needs, is a particular application most appropriately used?
- What are the particular features of material resources (hardware, software, peripherals, supplies, etc.) that enhance/inhibit the success of the approach?

Methods

The project must conduct qualitative or quantitative evaluations, or both, to establish the benefits, as well as identify the limitations of the technological innovations. The evaluations must be used to refine approaches and document benefits and limitations.

Each project must conduct three distinct stages of operation:

(1) Planning of the implementation, including collaboration among staff; design of evaluation activities; acquisition of necessary equipment; initial training; baseline measures (pre-implementation).

(2) Full-scale implementation (may be in stages); technical assistance; monitoring, documentation, and initial analyses; formative evaluation and refinement of approaches.

(3) Continued implementation; final evaluations and refinements; documentation of visibly compelling demonstrations of the utility and effectiveness of technological innovations in instruction; dissemination of video, materials, implementation guidelines, and reports.

An additional six-month option, to be funded at the Department's discretion, must be included in the proposed project. This option period, if funded, would be used to provide for collaboration, and dissemination activities, including a meeting of the grantees in Washington, DC.

Collaboration

Applicants may form teams, e.g., of researchers and practitioners, to address the requirement that the project be conducted in the context of ongoing instructional programs in school district settings. "Challenge grants" including matching or in-kind contribution of state-of-the-art equipment or materials from, for example, vendor groups or associations are encouraged.

Four grants are planned, each targeting one or more specific applications of innovative technology for instruction of children with disabilities. Projects must cooperate in sharing conceptual frameworks and developing similar understandings of

outcomes. In order to facilitate such cooperation, projects must budget for one group meeting each year. In addition, projects must budget to attend the annual two-day research project directors meeting held in Washington, DC each year. These meetings will allow the projects to develop coherent conceptions of optimal implementations of instructional technology, to be communicated to practitioners, researchers, and decision makers.

Products and Dissemination

These projects must provide in-depth documentation of effective innovative uses of technology for educating children with disabilities. By focusing on particular technology uses, and by providing the human and material resources that would optimize effects, the projects are intended to provide compelling and convincing evidence of the educational value of technology. Documentation must clearly define and scrutinize the benefits of particular approaches and conditions, as well as their limitations. To ensure that the information obtained in this project is shared with practitioners, dissemination plans and products must target administrators and teachers. To make the information directly useful and usable, dissemination materials must present concrete examples, specific procedures, and instructions for adaptation to other settings. To heighten the visibility of specific applications of technology, video-recording must provide additional documentation and supplement the other cogent, concise, and highly usable materials for dissemination. Copies of all dissemination products must be provided to the two centers on technology sponsored by the Office of Special Education Programs (Center to Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children with Disabilities and the Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities).

(Catalog of Federal Domestic Assistance Number: 84.180, Technology, Educational Media and Materials for Individuals with Disabilities Program)

Program Authority: 20 U.S.C. 1461.

Dated: April 10, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-11160 Filed 5-12-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.180]

Technology, Educational Media and Materials for Individuals With Disabilities Program for Fiscal Year 1992; Inviting Applications for New Awards

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

Eligible Applicants: The eligible applicants are institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 333.

Applications Available: May 20, 1992.

Priorities: The priority in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

This program supports AMERICA 2000, the President's strategy for moving the nation toward the National Education Goals, by improving our understanding of how to enable children and youth with serious emotional disturbance to reach the high levels of academic achievement called for by the National Educational Goals and by encouraging the creation of communities where learning can happen.

TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR INDIVIDUALS WITH DISABILITIES PROGRAM

[Application Notices for Fiscal Year 1992]

Title & CFDA No	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated size of award(s)	Estimated number of awards	Project period in months
Innovative applications of technology to enhance experiences in the arts for children with disabilities (CFDA 84.180D).	June 11, 1992	August 11, 1992	$1,000,000	[1] $200,000 per year	Up to 24	
Studying how the design of software and computer-assisted media and materials can enhance the instruction of preschool children with disabilities (CFDA 84.180F).	June 11, 1992	August 11, 1992	$1,800,000	[2] $360,000 for 2 yrs	5	Up to 24
Demonstrating and evaluating the benefits of educational innovations using technology (CFDA 84.180E).	June 11, 1992	August 11, 1992	$3,597,000	[3] $449,625 for 2 yrs.	8	Up to 36

[1] Amount listed is the estimated funding level for the first 12 months of the project. In the second year, projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

[2] Amount listed is the estimated funding level for the entire 24 months of the projects.

[3] Amount listed is the estimated funding level for the first 24 months of the projects. In the third year, projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level

For Applications or Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3524), Washington, DC 20202. Telephone: Linda Glidewell (202) 732-1099. Deaf and hearing impaired individuals may call (202) 732-6153.

Program Authority: 20 U.S.C. 1461.

Dated: May 7, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-11161 Filed 5-12-92; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
May 13, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for the Campo Solid Waste Management Project on the Campo Indian Reservation, San Diego County, CA; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for the Campo Solid Waste Management Project on the Campo Indian Reservation, San Diego County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Extension of comment period for the DEIS.

SUMMARY: This notice advises the public that the comment period for the Draft Environmental Impact Statement (DEIS) for a proposed lease of a portion of the Campo Indian Reservation for development of a solid waste management project has been extended. The comment period for the DEIS will now end on June 8, 1992, instead of the original deadline date of May 8, 1992. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR part 1503) to obtain comments on the DEIS from agencies and the public.

DATES: Written comments should be received on or before June 8, 1992, and should be directed to Mr. Ronald M. Jaeger, Area Director, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825.

There will be no additional Public hearings.

FOR FURTHER INFORMATION CONTACT: Mr. Donald B. Knapp, Environmental Quality Specialist, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Telephone (916) 978-4703.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to § 1503.1 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Department of the Interior Manual (516 DM 1-6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Patrick A. Hayes,

Director, Office of Trust and Economic Development.

[FR Doc. 92-11243 Filed 5-12-92; 8:45 am]

BILLING CODE 4310-02-M

Reader Aids

Federal Register

Vol. 57, No. 93

Wednesday, May 13, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

18797-19062.....1
19063-19248.....4
19249-19362.....5
19363-19514.....6
19515-19790.....7
19791-20024.....8
20025-20190.....11
20191-20394.....12
20395-20626.....13

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
92-12 of January 31, 1992.....19077
No. 92-24 of April 27, 1992.....20025
Executive Orders:
5327 (Amended by PLO 6926).....19092
12769 (See Final rule of April 30).....20376
12800 (See Interim rule of April 30).....20373
12803.....19063
12804.....19361
Proclamations:
6425.....19067
6426.....19357
6427.....19359
6428.....19363
6429.....19371
6430.....20191
6431.....20391
6432.....20393
6433.....20395
6434.....20397

5 CFR

410.....19515
432.....20041
532.....19791
752.....20041
890.....19373
Proposed Rules:
532.....19820

7 CFR

2.....19791
905.....19518
1211.....18797
1900.....19520
1910.....19520
1943.....19520
1955.....19520, 19526
Proposed Rules:
110.....20380
1093.....19554
1096.....20209
1098.....20210
1427.....20211

9 CFR

77.....20193
Proposed Rules:
91.....19555
381.....19460

10 CFR

2.....20194
170.....19458
171.....19458
Proposed Rules:
34.....20430
170.....20211
171.....20211

11 CFR

Proposed Rules:
200.....20430

12 CFR

202.....20399
203.....20399
205.....20399
213.....20399
226.....20399
227.....20399
1609.....19500
Proposed Rules:
607.....19405
618.....19405
700.....18836
701.....18837
910.....20061
934.....19556

13 CFR

121.....18808

14 CFR

25.....19220
39.....19079, 19081, 19249, 19374, 19529-19532, 19797-19802, 20198
71.....19083, 19250, 19376, 19803, 19804, 20044, 20401, 20572
73.....19251
91.....19350
97.....18811, 18812
121.....19220
135.....19220
Proposed Rules:
Ch. I.....19407, 19556
39.....18840, 18849, 19265, 19266, 20063, 20213
71.....18954, 19408, 19821, 20064, 20067, 20215-20219, 20433, 20572
73.....19409, 20066
255.....19821

15 CFR

770.....19334, 19335, 19805
771.....19334, 19335
773.....18815, 19334
774.....18817, 19334, 19335
775.....19335
779.....18817
785.....19805
799.....18819

16 CFR

456 18822

17 CFR

15 20402
140 20572

18 CFR

271 19252

21 CFR

5 18823
176 20200
312 19458
520 19084
1308 ..... 18824, 19534

Proposed Rules:

5 19410
20 19410
100 19410
101 19410
105 19410
130 19410
355 19823
356 20434
601 19456

22 CFR

211 19760

Proposed Rules:

120 19666
122 19666
123 19666
124 19666
125 19666
126 19666
127 19666
130 19666

23 CFR

Proposed Rules:

750 19824

24 CFR

20 20200
963 20184

25 CFR

Rules:

502 20145

26 CFR

1 19253
602 19253

Proposed Rules:

1 ..... 19556, 20145
301 ..... 19828, 19831

27 CFR

Proposed Rules:

4 19267

28 CFR

0 19377

Proposed Rules:

40 19557

29 CFR

5 19204
1910 19262

Proposed Rules:

5 19207
2200 20220

30 CFR

901 20045
914 20048
944 20051

31 CFR

12 19377

Proposed Rules:

357 20572

33 CFR

100 ..... 19085, 19086, 20054, 20403
165 ..... 18825, 19086, 20404

Proposed Rules:

100 18850
110 19831
117 ..... 18852, 19833-19835
165 20435

34 CFR

Proposed Rules:

303 18986

36 CFR

1220 19806
1238 19806

Proposed Rules:

1191 19472

37 CFR

310 19052

38 CFR

20 20055

39 CFR

111 20405
3001 20409

Proposed Rules:

111 19698

40 CFR

52 19378
60 19262
61 19262
80 ..... 19535, 20202
86 19535
271 ..... 18827, 19087, 19807, 20055, 20056, 20422
721 20423
799 18829

Proposed Rules:

52 ..... 19271, 20068
80 20234
82 19166
117 20014
264 18853
265 18853
302 20014
355 20014
721 20437
763 20438

42 CFR

405 19089

43 CFR

Public Land Orders:

4522 (Amended by PLO 6926) 19092

44 CFR

59 19539
61 19539
62 19539
64 ..... 18830, 18833
65 ..... 19379, 19381
67 19542
75 19539

Proposed Rules:

67 19598

45 CFR

402 19385

46 CFR

Proposed Rules:

540 19097
560 19583
580 19583
581 ..... 18855, 19102

47 CFR

Ch I 18857
0 19386
1 19366
15 19093
61 20206
73 ..... 19095, 19809, 19810
80 19552
90 19811

Proposed Rules:

1 20238
73 ..... 19095, 19836, 19837
90 ..... 20069, 20070

48 CFR

Ch. I 20372
22 20373
25 ..... 20375, 20376
26 20376
31 20376
52 ..... 20373, 20375, 20376
53 20376
1649 19387

49 CFR

Ch. X 19812
107 20424

Proposed Rules:

Ch. X 20442
571 18859
1023 20072
1035 20442

50 CFR

17 ..... 19813, 20580-20592
656 19095
661 19388
663 20058
672 ..... 18834, 19552, 20325
675 ..... 19819, 20207, 20325

Proposed Rules:

17 ..... 19585, 19837-19856, 20073, 20325
20 ..... 19863, 19865
23 20443
625 19874
646 19874

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 May 1, 1992