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Wednesday
January 14, 1987

Briefings on How To Use the Federal Register—
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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 2 1/2 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: January 29; at 9 am.

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

RESERVATIONS: Mildred Isler 202-523-3517

PORTLAND, OR

WHEN: February 17; at 9 am.

WHERE: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Portland	503-221-2222
Seattle	206-442-0570
Tacoma	206-383-5230

LOS ANGELES, CA

WHEN: February 18; at 1:30 pm.

WHERE: Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.

RESERVATIONS: Call the Los Angeles Federal Information Center, 213-894-3800

SAN DIEGO, CA

WHEN: February 20; at 9 am.

WHERE: Room 2S31, Federal Building, 880 Front Street, San Diego, CA.

RESERVATIONS: Call the San Diego Federal Information Center, 619-293-6030

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Presidential Documents

Title 3—

The President

Proclamation 5597 of January 9, 1987

Martin Luther King, Jr., Day, 1987

By the President of the United States of America

A Proclamation

In celebrating the birthday of the Reverend Dr. Martin Luther King, Jr., we honor an American who recognized the great injustice of segregation and discrimination, and made it his life's purpose and toil to right those wrongs in favor of justice, freedom, equality, fairness, and reconciliation.

Because Dr. King eschewed violence, relying instead on his eloquence and the moral force of his convictions, the cause he led changed not only laws but hearts and minds as well. He braved imprisonment, violence, and threats because, as he said, "History has proven over and over again that unmerited suffering is redemptive." Martin Luther King, Jr., fell victim to the violence he fought so fervently—but his nonviolent quest had already altered our land irrevocably and for the better.

Dr. King's vision, as he said so often, was the fulfillment of the American dream. He explained this to the graduates of Lincoln University in 1961 when he quoted our Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" and said, simply, "This is the dream." Dr. King emphasized that this dream excludes no one from its promise and protection and that it affirms that every individual's rights are God-given and "neither conferred by nor derived from the state."

Martin Luther King, Jr., also expressed his vision in the eternal calls for justice, forgiveness, brotherhood, and love of neighbor recorded in Holy Writ. He frequently prayed, in the words of the prophet Amos, "Let justice roll down like waters and righteousness like a mighty stream."

Dr. King also appealed clearly and compellingly through moving accounts such as his description of a little girl marching with her mother who answered a policeman's question, "What do you want?" by replying, "Freedom." Said Dr. King, "She could not even pronounce the word, but no Gabriel trumpet could have sounded a truer note."

Every American knows the story of Dr. King's last sermon, given April 3, 1968, the night before his death. He said, expressing his credo, that he wasn't concerned about living a long life but about doing God's will. He'd been to the mountaintop, he said, and he'd seen the promised land. He said that America would reach that land, but added, "I may not get there with you." He concluded, "I'm happy, tonight. I'm not worried about anything. I'm not fearing any man. Mine eyes have seen the glory of the coming of the Lord."

Nearly five years before, Dr. King had spoken words of solace, of reconciliation, and of promise during his eulogy for the children who had died in the bombing of their Sunday school class. He said that we must not despair, nor become bitter, nor lose faith in each other. He said that death does not end the sentence of life but "punctuates it to more lofty significance." He told the children's parents that although their daughters had not lived long, they had lived well: "Where they died and what they were doing when death came will remain a marvelous tribute to each of you and an eternal epitaph to each of them." Surely Dr. King's courageous fight for justice, equality, and brotherhood will remain his lasting epitaph and his living legacy.

In a sermon on April 4, 1967, a year to the day before his murder, Dr. King quoted the famous lines from the poem, "The Present Crisis," by James Russell Lowell: "Once to every man and nation comes the moment to decide;/ In the strife of Truth with Falsehood, for the good or evil side; . . ." Dr. King did decide for the good, and the measure of his greatness is that his Nation thereupon did likewise.

By Public Law 98–144, the third Monday in January of each year has been designated as a public holiday in honor of the "Birthday of Martin Luther King, Jr."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 19, 1987, as Martin Luther King, Jr., Day.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of January, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87–874
Filed 1–12–87; 10:59 am]
Billing code 3195–01–M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421, 1438, 1476, and 1480

Program Availability; Disbursements and Maturity of Loans; and Approved Storage, Wheat, etc.

ACTION: Final rule.

SUMMARY: This final rule adopts without change, the interim rule published in the **Federal Register** on September 15, 1986 (51 FR 32624). The interim rule revised regulations at 7 CFR Part 1421, Grains and Similarly Handled Commodities, to provide for the extension of maturity dates of wheat, corn, barley, oats, rye, sorghum and soybean price support loans under such items and conditions as may be determined and announced by the Commodity Credit Corporation ("CCC"). In addition, the interim rule provided that under certain terms, commodities stored on the ground or in temporary storage may be considered eligible for price support. This final rule also amends 7 CFR Part 1421, 1438, 1476 and 1480 to delete obsolete program provisions.

EFFECTIVE DATE: January 14, 1987.

FOR FURTHER INFORMATION CONTACT: Jackie Stonfer, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013; Phone (202) 447-8481.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0087.

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

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

This final rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1521-1 and Executive Order 12291 and has been classified "not major." It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An interim was published in the **Federal Register** on September 15, 1986, at 51 FR 32624 which amended the regulations governing CCC loan maturity dates and approved farm storage. A comment period was provided through September 30, 1986. No comments were received with respect to the provisions contained in the interim rule.

The interim rule amended 7 CFR 1421.6 to provide that the final maturity date for price support loans made to producers with respect to feed grains, wheat, and soybeans may be extended under the terms and conditions determined and announced by CCC. Additionally, the interim rule amended 7 CFR 1421.7 to provide that, if determined and announced by CCC, approved storage for farm-stored loans may include on-ground storage and storage in temporary structures. This interim rule is adopted without change.

The regulations applicable to farm-stored flue-cured tobacco loans are set forth at 7 CFR 1421.400 through 1421.425. This final rule deletes the subpart applicable to the 1978 crop year, amends the authority citation for the subpart applicable to 1986 and subsequent crops of flue-cured tobacco, and deletes obsolete cross-references in this subpart. Obsolete cross-references are also deleted in 7 CFR 1421.1 through 1421.29.

Chapter XIV of Title 7 of the Code of Federal Regulations sets forth various programs administered by CCC. 7 CFR Parts 1438, 1476 and 1480 currently set forth regulations which are applicable to programs that are no longer conducted by CCC. Accordingly, this final rule deletes these obsolete provisions.

List of Subjects

7 CFR Part 1421

Grain, loan programs/agriculture, price support programs, warehouses.

7 CFR Part 1438

Commodity Credit Corporation Forests and Forest Products Loan Programs—Agricultural Price Support Programs, Warehouses.

7 CFR Part 1476

Special Indemnity Programs.

7 CFR Part 1480

Industrial Hydrocarbons and Alcohols Pilot Projects.

Final Rule

Accordingly, the regulations of Chapter XIV of Title 7 of the Code of Federal Regulations are amended as follows:

PART 1421—[AMENDED]

1. The interim rule published at 51 FR 32624, which amended 7 CFR Part 1421, is hereby adopted as final rule without change.

2. 7 CFR Part 1421 is further amended by:

§§ 1421.1, 1421.4, and 1421.22 [Amended]

A. In §§ 1421.1, 1421.4(b) and 1421.22(c)(2), deleting "flaxseed,".

* * * * *

§§ 1421.400—1421.406 [Amended]

B. Amending the table of contents and subpart leading to §§ 1421.400 through 1421.406 by deleting "1972" and inserting in lieu thereof "1986".

§ 1421.400 [Amended]

C. In § 1421.400, deleting "1972" and "1970" each place they appear and inserting in lieu thereof "1986".

D. Revising the authority citation to §§ 1421.400 through 1421.406 to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 106, 401, and 403 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1441, 1445, 1421, and 1425).

§§ 1421.420—1421.425 [Removed]

E. Removing the following subpart: Subpart—1978 Crop Farm-Stored Flue-Cured Tobacco Loan Supplement (§§ 1421.420 through 1421.425).

PARTS 1438, 1476 AND 1480 [REMOVED]

3. In chapter XIV of Title 7 of the Code of Federal Regulations, the following obsolete parts and all subparts contained therein are removed: Part 1438—Naval Stores; Part 1476—Special Indemnity Programs; and Part 1480—Industrial Hydrocarbons and Alcohols Pilot Projects.

Signed at Washington, DC, on January 6, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-772 Filed 1-13-87; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1786

Prepayment of REA Guaranteed Federal Financing Bank Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) is amending 7 CFR Chapter XVII by adding Part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. The new part establishes policies and procedures to implement the provisions of § 306(A) of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) (the "RE Act") dealing with the prepayment of certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA.

These regulations will implement § 306(A) of the RE Act and establish conditions under which REA guaranteed FFB loans may be prepaid by borrowers by paying the outstanding principal due. It also sets forth eligibility criteria to ensure that $2.0175 billion of prepayments are permitted during FY 1987 and such prepayment activity will be directed to those cooperative borrowers in the greatest need of the benefits associated with prepayment.

Additionally, the regulations provide that, after the cumulative amount of net proceeds from prepayments for FY 1987 exceeds $2.0175 billion, borrowers will not qualify for additional prepayments except in certain limited circumstances since the Secretary of the Treasury has determined that par prepayments of FFB loans have an adverse effect on the operation of the FFB.

EFFECTIVE DATE: December 20, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 4064, South Building, U.S. Department of Agriculture, Washington, DC. 20250, telephone (202) 382-1265.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby amends 7 CFR Chapter XVII by adding a new part concerning the prepayment of FFB indebtedness.

This regulation is issued in conformity with Executive Order 12291, Federal Regulations. It will not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.* (1976) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034 (November 14, 1985), this program is excluded from the scope of Executive Order 12373 which requires intergovernmental consultation with state and local officials.

Background:

On November 26, 1986, REA published a Proposed Rule to add a new part to 7 CFR Chapter XVII. This Final Rule sets forth the REA policy and procedures to implement section 306(A) of the RE Act which permits a REA-financed electric or telephone system to prepay an FFB loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance), if:

(a) The loan outstanding on July 2, 1986;

(b) Private capital, with the existing loan guarantee, is used to replace the loan; and

(c) The borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

No sums in addition to the payment of the outstanding balance may be charged as a result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund, or REA.

The regulations establishes eligibility criteria to ensure that the $2.0175 billion of mandated loan prepayment activity during FY 1987 will be for those cooperative borrowers in greatest need of the benefits associated with prepayment.

The regulations further state that in the opinion of the Secretary of the Treasury, par prepayments of FFB loans have an adverse effect on the operation of the FFB. Therefore, after $2.0175 billion of mandated prepayments only advances with a fixed interest rate exceeding 10 percent held by borrowers determined to be in greatest need will be refinanced.

Comments

In the proposed rule REA invited interested parties to file comments on or before December 11, 1986. Although some comments were received after that date all responses received have been considered in preparing the Final Rule. Thirty-one different organizations or groups commented on the proposed rule. They are:

(1) The National Rural Electric Cooperative Association (NRECA).

(2) The National Rural Utilities Cooperative Finance Corporation (CFC)
(3) The Central Bank for Cooperatives (CBC)
(4) Mid-West Electric Consumers Association (Mid-West)
(5) The Oklahoma Association for Electric Cooperatives (OK)
(6) South Dakota Rural Electric Association, Inc. (SDREA)
(7) Smith Barney (SB)
(8) Citicorp Investment Bank (Citicorp)
(9) Manufacturers Hanover Trust Company (Manufacturers)
(10) The Morgan Bank (Morgan)
(11) Allegheny Electric Cooperative, Inc. (Allegheny)
(12) Arkansas Electric Cooperative Corporation (AECC)
(13) Associated Electric Cooperative, Inc. (Associated)
(14) Arizona Electric Power Cooperative, Inc. (AEPCO)
(15) Basin Electric Power Cooperative (Basin)
(16) Cajun Electric Power Cooperative, Inc. (Cajun)
(17) Colorado-Ute Electric Association, Inc. (Colorado-Ute)
(18) Deseret Generation & Transmission Co-operative (Deseret)
(19) East Kentucky Power Cooperative (East Kentucky)
(20) Hoosier Energy REC, Inc. (Hoosier)
(21) Kansas Electric Power Cooperative (KEPCO)
(22) Oglethorpe Power Corporation (Oglethorpe)
(23) Plains Electric Generation and Transmission Cooperative, Inc. (Plains)
(24) Poudre Valley Rural Electric Association (Poudre Valley)
(25) Saluda River Electric Cooperative, Inc. (Saluda)
(26) Seminole Electric Cooperative Incorporated (Seminole)
(27) Soyland Power Cooperative, Inc. (Soyland)
(28) Tri-State Generation & Transmission Association, Inc. (Tri-State)
(29) Union Rural Electric Association, Inc. (Union)
(30) United Power Association (UPA)
(31) Western Farmers Electric Cooperative (Western Farmers)

For the purposes of discussion, the comments of these organizations have been categorized.

A number of organizations objected to the fact that prepayments of FFB loans in excess of $2.0175 billion are not permitted except in certain limited circumstances. They suggest that the regulations do not adequately support or explain the basis of this determination.

Responding to these comments, REA points out that section 306(A) of the RE Act delegates to the Secretary of the Treasury the authority to determine, in his opinion, whether a prepayment pursuant to the statute has an adverse effect on the operation of the FFB. The United States Department of the Treasury has informed REA that any par prepayment has an adverse effect on the operation of the FFB. Consequently, Treasury has determined that no par prepayments will be permitted under section 306(A) in addition to the $2.0175 billion determined to be eligible under section 306(A)(d)(1) except where the Administrator recommends that a borrower otherwise determined to be eligible based on greatest need be allowed to prepay all of its long-term FFB loans with an interest rate greater than 10.0 percent per annum.

The second major objection these organizations had to the proposed rule was the fact that neither "wholesale rate disparity" nor "consumer density" was included in the criteria for determining eligibility under section 306(A)(d)(2). The statute requires REA to establish eligibility criteria to ensure that the $2.0175 billion of mandated prepayments are directed to the *cooperative borrowers* in the greatest need, not the *customers* in the greatest need. Many factors such as "rate disparity", "consumer density", or "the depressed farm economy" could have an adverse impact on borrowers' financial condition; instead of listing such "causes" REA has chosen to consider the result of these factors as eligibility criteria. Therefore, we believe that "rate disparity" and "consumer density", etc. are included in "whether a borrower is in default or near default to the Government" or "whether a borrower will be unable to meet the financial tests contained in its mortgage".

A third major objection is that the regulations generally limit the amount of FFB loans that may prepaid pursuant to section 306(A) advances with a long-term fixed interest rate greater than 10.0 percent per annum. Section 306(A) requires the Administrator to establish eligibility criteria that insures that the $2.0175 billion of statutory mandated prepayments be directed to those cooperative borrowers in the *greatest need of the benefits associated with prepayment* (emphasis added). REA believes the "benefits associated with prepayment" pursuant to section 306(A) is the ability for borrowers who have been determined to be eligible pursuant to § 1786.5(a) to prepay their FFB loans without premium. Because the premium normally required in connection with a prepayment is a function of the interest rate and the maturity date of the advance being prepaid, the borrowers in greatest need for the benefits associated with prepayment under these regulations are those otherwise eligible borrowers with long-term advances at a high interest rate. Therefore, REA believes that the restriction relating to long-term advances with an interest rate greater than 10.0 percent is consistent with the statute.

Many organizations commented on an apparent inconsistency between § 1786.6(8) which requires evidence to be submitted that the benefits of prepayment will not be used to reduce rates, and the statute that permits prepayment if the "savings from prepayment will be passed on to customers". Section 1786.6(8) of the final regulations is being changed to indicate that only those borrowers that request consideration for prepayments under section 306(A)(d)(2) will be required to submit such evidence. In REA's opinion it is inappropriate for rates be reduced by a borrower when it is in default, near default, or will be unable to meet its financial tests under its mortgage to REA.

Most organizations also objected to the provisions of the proposed regulations which restricts the transferability and assignability of the private note. Section 306(A) permits the Administrator to establish restrictions on transfer and assignment to ensure that the private note will not, ". . . unreasonably compete with the marketing of obligations of the United States." "Pooling" in accordance with § 1786.4(c)(8)(ii) is one method to ensure that such competition will not occur. REA is unable to anticipate all potential financing structures available to borrowers who prepay pursuant to these regulations. Therefore, § 1786.4(c)(8)(i) allows borrowers who have received REA approval of their prepayment request to submit specific loan documentation dealing with the assignment issue for review by REA with the concurrence of the Secretary of the Treasury prior to consummating the prepayment. The final regulations are being revised to clarify this intent.

In general, the remaining comments relate to the restrictions contained in the regulations dealing with the qualifications of "lenders" and terms and conditions of the private notes used to prepay the borrowers' outstanding FFB loans. In drafting the proposed regulations, REA incorporated these restrictions in order to permit prepayments without increasing the loan guarantee exposure and risk to REA. Section 306(A) of the RE Act states that REA is to utilize "the existing guarantee" in connection with the new loan(s); it does not provide REA with authority under section 306(A) to increase its loan guarantee exposure or risk.

Responding to the concerns that these restrictions will adversely affect the marketability of the private loans and

the flexibility of borrowers to maximize the savings associated prepayments, REA has modified certain provisions of the regulations where such modifications do not increase loan guarantee exposure of REA. These modifications are summarized as follows:

(a) A new definition of "Financially Viable Lender" has been added to enable letters of credit, guarantees, or other credit support to be substituted for "the capital and surplus requirement of $50 million."

(b) Language has been added to the definition of "Guarantee" stating that the Guarantee is an obligation supported by the full faith and credit of the United States as specified in 7 U.S.C. 938.

(c) Section 1786.4(b) has been changed to permit a broader scope of lenders to qualify to make "Private Loans" pursuant to these regulations and to allow such lenders to contract for loan servicing. The 90 percent limit on loan participations has been dropped. Such participations must be consistent with the provisions of § 1786.4(c)(8).

(d) The regulations have been revised to permit more flexibility in the number of "Guarantees" that the Administrator may endorse in connection with "Private Loans".

(e) The terms and conditions of the "Private Notes" have been revised to permit either a variable interest rate or a fixed interest rate. To ensure that prepayments pursuant to these regulations will improve the financial condition of the borrower, the final regulations require that for the life of the loan the interest rate, whether fixed or variable, be at least 50 basis points less than the dollar weighted average interest rate on the portion of the FFB loan being prepaid.

(f) REA's right to accelerate the private loan has been clarified in § 1786.4(c)(9).

(g) The restriction of financing of "Fees" has been modified to permit "Fees" to be included in the interest component of the "Private Loan" provided that the net effective interest rate on the "Private Loan" including such "Fees" meets the tests contained in § 1786.4(c)(2). Additionally, the final regulations permit a lender to obtain subordinated security for a loan made to finance "Fees".

(h) The requirement to submit a 10-year financial forecast contained in § 1786.6(b)(7) has been changed to require that the financial forecast be based upon the borrower's projected operations prior to the proposed prepayment.

(i) Section 1786.6(b) has been revised to permit applications to be submitted to REA before final loan commitment has been obtained by the borrower.

(j) Section 1786.7(f) has been revised to clarify that the obligation of the borrower to reimburse REA for any amounts that REA pays under the "Guarantee" shall be secured under the "Mortgage".

(k) Section 1786.8, *Forms* has been revised to move provisions relating to REA acceleration of the "Private Note" to § 1786.4(c)(9).

List of Subjects in 7 CFR Part 1786

Administrative practice procedure, Electric utilities, Telephone utilities, Guaranteed Loan Program—Energy, Guaranteed Loan Program—Telephony.

In view of the above, REA amends 7 CFR Chapter XVII by adding Part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

Sec.
1786.1 Purpose.
1786.2 Policy.
1786.3 Definitions.
1786.4 Qualifications.
1786.5 Eligibility for prepayment under section 306(A)(d)(2).
1786.6 Application procedure.
1786.7 Settlement procedure.
1786.8 Forms.
1786.9 Access to records of lenders.
1786.10 Loss, theft, destruction, multilation or defacement of REA guarantee.
1786.11 Other prepayments.

Authority: 7 U.S.C. 901–950b; Title 1, Subtitle B, Pub. L. 99–509; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

§ 1786.1 Purpose.

This subpart contains the general regulations of the Rural Electrification Administration (REA) for implementing section 306(A) of the Rural Electrification Act of 1936, as amended (RE Act) permitting, in certain circumstances, loans made by the Federal Financing Bank (FFB) and guaranteed by the Administrator of REA to be prepaid by REA borrowers by paying the outstanding principal balance due on the FFB Loan, using private capital with the existing REA guarantees.

§ 1786.2 Policy.

It is the policy of REA to facilitate the prepayment of FFB loans in accordance with section 306(A) of the RE Act, to ensure that $2.0175 billion of statutorily mandated prepayments during FY 1987 be allocated on the basis of greatest need. Furthermore, consistent with the RE Act it is REA policy to carry out the objectives of the prepayment program without increasing the loan guarantee exposure to REA or the administrative burden on REA.

§ 1786.3 Definitions.

For the purposes of this part:

"Administrator" means the Administrator of REA.

"Documentation" means all or part of the agreements relating to a prepayment under this part, irrespective of whether REA is a party to each agreement.

"Existing Loan Guarantee" means a guarantee of payment issued by REA to FFB pursuant to the RE Act on or before July 2, 1986.

"Fees" means any fees, costs or charges, incurred in connection with obtaining the Private Loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees, printing costs, recording fees, trustee fees, overheads of the borrower, underwriting fees, capital stock purchases, or other equity investment requirements of the Lender.

"Financially Viable Lender" means a lender (a) which has a capital and surplus of at least $50 million; (b) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of $50 million; (c) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of $50 million from a lending institution with a capital and surplus of at least $50 million or (d) has other credit support, in form and substance satisfactory to the Administrator, in the amount of $50 million.

"FFB" means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

"FFB Loan" means one or more advances on or before July 2, 1986, by FFB on a promissory note executed by a borrower and guaranteed by REA pursuant to section 306 of the RE Act (7 U.S.C. 936).

"Guarantee" means the original endorsement, in the form specified by REA which is executed by the Administrator and shall be an obligation supported by the full faith and credit of the United States and incontestible except for fraud or misrepresentation of which the holder had actual knowledge at the time in became a holder.

"Lender" means the organization making and Servicing the Private Loan which is to be guaranteed under the provisions of this part and used to

prepay the FFB Loan. The term "Lender" does not include the FFB, or any other Government agency.

"Loan Guarantee Agreement" means the written contract by and among the Lender, the borrower and the Administrator setting forth the terms and conditions of a Guarantee issued pursuant to the provisions of this part.

"Mortgage" means the mortgage and security agreements by and among the borrower and REA, as from time to time supplemented, amended and restated.

"Private Loan" means the loan which is to be guaranteed under the provisions of this Part and used to prepay an FFB Loan.

"Private Note" means the note, bond or other obligation evidencing indebtedness created by the Private Loan.

"REA" means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

"RE Act" means the Rural Electrification Act of 1936 (7 U.S.C. 901–950b), as amended.

"Service" or "Servicing" means the following activities:

(a) The billing and collecting of the Private Loan payments for the borrower;

(b) Notifying the Administrator promptly of any default in the payment of principal and interest on the Private Loan and submitting a report, as soon as possible thereafter, setting forth the Lender's views as to the reasons for the default, how long the Lender expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;

(c) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, Loan Guarantee Agreement, or related security instruments, or conditions of which the Lender is aware which might lead to nonpayment, violation or other default; and

(d) Such other activities as may be specified in the Loan Guarantee Agreement.

§ 1786.4 Qualifications.

(a) *Borrowers.* To qualify to prepay an FFB Loan pursuant to this Part, the borrower must:

(1) Demonstrate that the FFB Loan was outstanding on July 2, 1986;

(2) Prepay the FFB Loan using private capital;

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship; and

(4) For prepayments to be made during FY 1987, be eligible to prepay pursuant to section 306(A)(d)(2) of the RE Act as determined in accordance with § 1786.5 of these regulations.

(b) *Lenders.* To participate in a borrower's prepayment of an FFB loan pursuant to this Part, the Lender must:

(1) Be a private legally organized lender;

(2) (i) Be subject to credit examination and supervision by either an agency of the United States or a state and be in good standing with its licensing authority and have met the requirements, if any, of licensing, lending and loan servicing in the state where the collateral for the loan is located; (ii) be a Financially Viable Lender; or (iii) be a trust administered by an entity meeting the requirements of (i) or (ii) of this paragraph; and

(3) Have the capability to adequately Service the Private Loan either by using its own resources or by contracting for such resources with a Financially Viable Lender. Under no circumstances may the borrower or an affiliate of the borrower Service the Private Loan.

A qualified Lender may participate out each Private Loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator. Generally, the Lender may utilize any financing structure it desires in obtaining funds to make the Private Loan, providing the Private Loan meets the requirements of § 1786.4(c) and such structure is consistent with the provisions of § 1786.4(c)(8).

(c) *Private Loans.* Private Loans, the proceeds of which are used exclusively to prepay FFB Loans, shall be eligible for a Guarantee under this Part. With respect to the prepayment of any one FFB Loan, the Administrator may endorse Guarantees evidencing Private Loans in increments not less than $30 million except where an FFB Loan being prepaid is less than $150 million in which case the Administrator may endorse Guarantees on not more than five Private Notes. Private Loans and Private Notes shall comply with the following:

(1) The principal amount of the Private Note may not exceed the outstanding principal balance of the FFB Loan being prepaid.

(2) For the life of the loan the interest rate, whether fixed or variable, on the Private Note shall be at least 50 basis points less than the dollar weighted average interest rate on the portion of the FFB Loan being prepaid. If a variable interest rate is selected the Private Note shall provide for prepayment without premium or penalty at each interest rate setting date.

(3) Principal payments shall commence on the first payment date following the closing of the Private Loan and shall be made either quarterly, semiannually, or annually.

(4) The Private Note shall provide for scheduled principal amortization at an annual rate not less than the annual amortization rate of the FFB Loan. The Private Note shall not provide for balloon or bullet payments.

(5) The term of the Private Note shall not exceed the shorter of (i) 34 years from the last day of the calendar year in which the first advance of funds was made under the FFB Loan or (ii) the final maturity date of the FFB Loan.

(6) The Private Note shall not provide for deferments of interest.

(7) The Private Note shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986.

(8) The Private Note shall not be transferable or assignable except (i) with the written approval of the Administrator or (ii) as an undivided pro rata interest in a pool of obligations no more than 80 percent of which (or a par value basis at any time over the life of the pool) may be made up of obligations guaranteed by the Administrator pursuant to the RE Act. The remainder of the pool shall be made up of obligations which shall not be guaranteed, collateralized or secured in any manner whatsoever, in whole or in part, directly or indirectly by an obligation of the United States Government or any of its agencies. In considering whether to approve a transfer or an assignment, the Administrator with the concurrence of the Secretary of the Treasury may consider whether the transaction is so structured as to ensure that the transfer or assignment will not unreasonably compete with the marketing of obligations of the Treasury. Furthermore, the Administrator, with the concurrence of the Secretary of the Treasury, may consider specific proposals dealing with the transfer or assignment of the Private Loan or Private Note after a borrower has received REA approval to make a prepayment pursuant to this Part and prior to the completion of the loan Documentation.

(9) The loan Documentation shall provide REA with the right to accelerate the Private Loan upon the occurrence of an Event of Default as that term is defined in the Mortgage at the earlier of (i) any date the borrower may prepay in accordance with the terms of the Private

Note, or (ii) the tenth anniversary date of the Private Note.

(10) The principal of Private Note shall not include amounts attributable to Fees associated with the Private Loan. Subject to the approval of the Administrator in connection with the development of loan Documentation, the interest rate on the Private Note may include amounts attributable to Fees if the net effective interest rate including such Fees meets the tests contained in § 1786.4(c)(2). The borrower, subject to the approval of REA, may finance the Fees with the proceeds of a loan. Such a loan will not be guaranteed by REA nor will REA share first mortgage security to enable another lender to obtain security for such a loan to the borrower. REA will consider providing subordinated mortgage security to a lender making a loan for Fees.

(11) Private Loans and Private Notes shall otherwise be in form and substance satisfactory to the Administrator.

§ 1786.5 Eligibility for prepayment under section 306(A)(d)(2).

(a) *Borrowers.* To be eligible to prepay under section 306(A)(d)(2) of the RE Act, the borrower must be a cooperative-type organization and be in the greatest need of the benefits associated with prepayment. The determination of eligibility rests solely within the discretion of the Administrator. In making the determination of eligibility, the Administrator will consider the following criteria:

(1) Whether the borrower's financial condition is such that the borrower will not be able to meet the financial tests set forth in its Mortgage;

(2) Whether the borrower is in default or near default on interest or principal payments due on loans made or guaranteed by REA, and is making a good faith effort to increase rates and reduce costs to avoid default;

(3) Whether the borrower is participating in a work out or debt restructuring plan with REA; and

(4) Whether the borrower received the approval of the Secretary of the Treasury to prepay FFB loans pursuant to the "Interim Regulations Governing Prepayments of Loans Made by the Federal Financing Bank and Guaranteed by the Rural Electrification Administration", 51 FR 28810, August 12, 1986.

(b) *Amounts of loans.* The amount of a borrower's FFB Loans that are eligible to be prepaid may be restricted to advances with a long-term maturity date and to those advances with an interest rate greater than 10.0 percent per annum.

(c) *Adverse effect on FFB.* The Secretary of the Treasury has determined pursuant to section 306(A)(c)(1) of the RE Act that par prepayments of FFB Loans have an adverse effect on the operation of the FFB. Consequently, Treasury has determined that no par prepayments will be permitted under section 306(A) in addition to the $2.0175 billion determined to be eligible under section 306(A)(d) except where the Administrator recommends that a borrower otherwise determined to be eligible based on greatest need be allowed to prepay all of its long-term FFB Loans with an interest rate greater than 10.0 percent per annum rather than part of such FFB Loans.

§ 1786.6 Application procedure.

(a) *Exception.* Any borrower that received the approval of the Secretary of the Treasury to prepay FFB loans pursuant to the "Interim Regulations Governing Prepayments of Loans Made by the Federal Financing Bank and Guaranteed by the Rural Electrification Administration", 51 FR 28810, August 12, 1986, shall be deemed to have complied with the Application Procedure set forth in this § 1786.6. Any such borrower shall be subject to and shall comply with all other provisions of this part.

(b) *Applications.* Each application to make a prepayment pursuant to this Part shall be recevied by the Area Director not less than 30 business days prior to the projected settlement date for the Private Loan and shall be on such forms as REA may prescribe. The application shall provide among other matters the following:

(1) Borrower's REA designation.

(2) Borrower's name and address.

(3) Listing of each FFB Loan advance to be prepaid by loan designation, REA account number, advance date, maturity date, original amount, and outstanding balance.

(4) Evidence that the borrower meets the qualification provisions of § 1786.4(a) of these regulations.

(5) A certification of the chief executive officer of the borrower stating that, "Any savings from the prepayment of Federal Financing Bank Loans pursuant to section 306(A) of the Rural Electrification Act of 1936, as amended [7 U.S.C. 936(A)] will be passed on to the customers of (insert the corporate name of the borrower) or used to improve the financial strength of (insert the corporate name of the borrower) in cases of financial hardship."

(6) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting REA approval of the prepayment.

(7) Evidence supporting its application for eligibility under § 1786.5 of this part, and a 10-year financial forecast of the borrower based on the borrower's projected operations without taking in account the proposed prepayment.

(8) In the case of borrowers desiring to make prepayments pursuant to section 306(A)(d)(2) of the RE Act evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or State regulatory body having jurisdication over the borrower's rates will not order a reduction in the borrower's revenue requirements as a result of the prepayment.

(9) Proposals for the Private Loan from one or more Lenders and evidence that the Lender(s) meet the qualifications provisions of § 1786.4(b). Borrowers may submit an application for prepayment prior to finalizing a loan commitment. In such cases a final loan proposal must be submitted to REA prior to development of documentation.

(10) Estimated/expected interest rate.

(11) Proposed amortization schedule.

(12) Plans for marketing the Private Loan.

(13) Estimate of Fees, and expenses, including any taxes.

(14) Servicing entity's name and address.

(15) Evidence that the borrower has received all approvals which can be obtained at the time of application and which are required under Federal or State law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(c) *Notification.* If a borrower's application has been approved, the Administrator will promptly notify the borrower, the Lender and FFB to that effect. If not approved the Administrator will promptly notify the borrower.

§ 1786.7 Settlement procedure.

(a) *General.* Private Loan settlements in connection with prepaying FFB Loans pursuant to this part shall be conducted in accordance with the provisions of this section.

(b) *Settlement date.* When REA is satisfied with the Documentation, the parties will schedule a settlement date. The Private Loan will be settled and the Guarantee delivered on a date and time mutually agreed upon among the parties not earlier than ten business days after receipt by REA of all final Documentation. REA reserves the right to limit the aggregate dollar amount of

and/or the number of prepayments or settlements that take place on any given day.

(c) *Place of settlement.* All Private Loan settlements will take place in Washington, DC, at a location of the borrower's choosing.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to REA through the Department of the Treasury account at the Federal Reserve Bank of New York in an amount suffcient to pay the outstanding principal of the FFB Loan plus accrued interest from the last payment date to and including the settlement date.

(e) *Substitute note.* In the event that a borrower does not prepay all FFB Loans evidenced by the same promissory note, the borrower will execute and deliver a substitute note to evidence its obligation to pay in accordance with its terms the remaining FFB Loans.

(f) *Documentation.* The following executed documents, opinions and material shall be delivered at the settlement:

(1) The Private Note.

(2) The Guarantee.

(3) The Loan Guarantee Agreement.

(4) Copy of the Private Loan agreement between the Lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or State law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligation secured by the Mortgage including the obligation of the borrower to reimburse REA for any amounts that REA may pay under the Guarantee.

(7) An approving opinion of the borrower's legal counsel to the effect that the Private Note is a valid and legally binding obligation of the borrower which is secured under the Mortgage, and the priority of the Mortgage, as amended pursuant to paragraph (f)(6) of this section, remains undisturbed. In the event that the borrower delivers a substitute note as required by paragraph (e) of this section, then a similar conclusion concerning such substitute note shall be contained in the opinion required under this paragraph.

(8) An approving opinion of the Lender's legal counsel to the effect that the Loan Guarantee Agreement is a valid and legally binding obligation of the Lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other Documentation required by the Lender.

(11) Copies of any other Documentation required by REA to ensure that the obligations of the borrower to reimburse REA for any amounts that REA pays under the Guarantee or may advance in connection with the Private Loan are adequately secured under the Mortgage.

§ 1786.8 Forms.

Guarantees and Loan Guarantee Agreements executed by REA pursuant to this part will be on forms prescribed by REA. Such forms will include, without limitation, additional details on Servicing, procedures for notifying REA of a default, the manner for requesting payment on a Guarantee. REA may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to § 1786.6(b)(5) of this part.

§ 1786.9 Access to records of lenders.

Upon request by REA the Lender will permit representatives of REA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the Lender pertaining to REA guaranteed loans. Such inspection and copying may be made during regular office hours of the Lender or any other time the Lenders and REA find convenient.

§ 1786.10 Loss, theft, destruction, mutilation, or defacement of REA guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the REA Deputy Administrator-Program Operations is authorized on behalf of REA to issue a replacement guarantee(s) for one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the Lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a Guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the Lender, or holder, the Lender will coordinate the activities of the party who seeks the replacement document and will submit the required documents to REA for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, requesting the replacement forms.

(ii) Legal name and address of lender of record.

(iii) Capacity of person certifying.

(iv) Full identification of the Guarantee, including the name of the borrower, date of the Guarantee, face amount of the evidence of debt purchased, date of evidence of debt and present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate.

(v) A full statement of circumstances of the loss, theft, or destruction of the Guarantee.

(vi) The Lender or holder, shall present evidence demonstrating current ownership of the Guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to REA (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to REA shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a State or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Electrification Administration. The bond shall be in an amount not less that the unpaid principal and interest. The bond shall save REA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1786.11 Other prepayments.

Nothing contained in this Part shall prohibit a borrower from making prepayments of FFB Loans in accordance with the terms thereof.

Dated: January 9, 1987.

Jack Van Mark,

Acting Administrator.

[FR Doc. 87-773 Filed 1-13-87; 8:45 am]

BILLING CODE 3410-15-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 620 and 621

Disclosure to Shareholders; Accounting and Reporting; Correction to Preamble

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction to preamble.

SUMMARY: The Farm Credit Administration (FCA) is correcting and clarifying the Supplementary Information for the final rule which amended provisions of Part 620 relating to annual reports to shareholders and Part 621 relating to nonaccrual loans. The final rule appeared in the **Federal Register** on November 21, 1986 (51 FR 42084) and was corrected on December 12, 1986 (51 FR 44783). The entire Supplementary Information of December 12, 1986, is being republished to provide continuity and clarity towards understanding the intent of the final regulation.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: On November 10, 1986, the FCA Board adopted amendments to § 620.3(j)(13)(i) relating to contents of the annual report to shareholders and § 621.2(a)(15)(iv) redefining criteria for nonaccrual loans.

A technical correction is made to § 620.3(j)(3)(i) by reinserting the work "that" at the end of the paragraph, which was inadvertently deleted in the amendment.

The amendment, as published on November 21, 1986 (51 FR 42084), incorrectly placed two paragraphs in § 621.2. Therefore, § 621.2 is corrected by relocating paragraphs (a)(11)(iii) and (a)(15)(iii) to the appropriate location within the regulation. In addition, a technical correction is made to § 621.2(a)(15)(iii) to clarify that a severely past due loan excepted from nonaccrual status only if it is adequately secured and in process of collection and fully collectable. This change makes the regulation consistent with the description of the action in the preamble that accompanied the initial publication of the regulation on March 13, 1986.

It should also be noted that the annual report disclosure requirements of § 620.3(j) apply only to loans made by an institution to family members and affiliates of persons who serve as officers or directors of the same institution.

The Board also restates and further clarifies its determination that, as a transitional matter, the FCA will not consider as a violation of § 620.3(j) the omission of a disclosure that would otherwise be required with respect to a senior officer or director who resigns or otherwise leaves office prior to July 1, 1987. For example, if disclosure with respect to an officer or director would otherwise be required in an annual report for the fiscal year ended December 31, 1986, such disclosure will not be required if the officer or director makes a binding commitment to the institution, prior to the time the report is printed and distributed to shareholders, to resign effective on or before July 1, 1987. The resignation of an officer or director after July 1, 1987, will not provide a basis for excluding from an annual report information for which disclosure is required under § 620.3(j).

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-797 Filed 1-13-87; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-191-AD; Amdt. 39-5516]

Airworthiness Directives: British Aerospace Model BAe-125-800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires the installation of reinforcing plates on the canopy upper rail at each Frame 2 intersection on certain British Aerospace Model BAe 125-800A and -800B series airplanes. This action is necessary because testing has revealed that cracking of the canopy upper rail is likely to occur, which could result in loss of structural integrity and loss of airplane pressurization.

DATES: Effective February 19, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include an airworthiness directive which requires modification of the fuselage canopy upper rail on certain British Aerospace Model BAe 125-800A and -800B series airplanes to prevent loss of structural integrity and airplane pressurization, was published in the **Federal Register** on September 24, 1986 (51 FR 33903).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the one comment which was received.

The commentor concurred with the NPRM.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 16 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $15,360.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($960). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 125-800A and -800B series airplanes, listed in British Aerospace Service Bulletin 53-59 (3031B), dated June 5, 1986, certificated in any category. Compliance is required prior to the accumulation of a total of 3,000 flight cycles, or within the next 90 days after the effective date of this AD, whichever occurs later. To prevent the possible rapid loss of cabin pressurization, accomplish the following, unless previously accomplished:

A. Modify the fuselage canopy upper rail in accordance with Section 2, "Accomplishment Instructions," of British Aerospace Service Bulletin 53-59-(3031B), dated June 5, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 19, 1987.

Issued in Seattle, Washington, on January 7, 1987.

Darrell M. Pederson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-745 Filed 1-13-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-182-AD; Amdt. 39-5515]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, that requires the replacement of trim control markings and placards. The FAA has determined that the existing trim control markings and placards are inadequate, and may result in an unsafe mis-trim condition.

DATES: Effective February 19, 1987.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of trim control markings and placards on certain Construcciones Aeronauticas S.A. (CASA) Model C-212, was published in the **Federal Register** on September 18, 1986 (51 FR 33062).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments which were received.

The two commenters, the manufacturer and one operator, both requested that the proposed compliance time of 6 months be extended, since the lead time necessary for ordering, delivery, and installation of the required parts is 8 to 9 months. The FAA has considered this information and has determined that safety will not be significantly affected if the compliance time is extended to 8 months after the effective date of this AD. The final rule has been revised accordingly.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Parts are estimated to cost $50 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,850.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($450). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes listed in CASA Service Bulletins 212-27-30 and 212-27-31, both dated October 23, 1985, certificated in any category. Compliance is required within 8 months after the effective date of this AD. To reduce the potential for a mis-trimmed takeoff, accomplish the following, unless previously accomplished:

A. Replace the trim control markings and placards in accordance with CASA Service Bulletins 212-27-30 (CC series airplanes) or 212-27-31 (CB series airplanes), both dated October 23, 1985, as applicable.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 19, 1987.

Issued in Seattle, Washington, on January 7, 1987.

Darrell M. Pederson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-746 Filed 1-13-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-228-AD; Amdt. 39-5514]

Airworthiness Directives; The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DCH-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland DHC-7 series airplanes, which requires inspection of the lower wing surface at the left and right flap track No. 4 canoe fairing location for fuel leaks, repair if necessary, and the application of a fuel containment coating. This amendment is prompted by reports that fuel tank leaks have been found, which allow fuel to enter the front landing light area. This condition, if not corrected, could result in a fire due to the heat generated when the landing light is operating.

DATES: Effective January 30, 1987.

ADDRESSES: The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. O'Neill, Propulsion Branch, ANE-174, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: On May 16, 1986, de Havilland Aircraft Company of Canada issued Service Bulletin 7-28-18, which addresses inspections, sealant repair, and modification of the fuel tanks on Model DHC-7 series airplanes to prevent fuel leakage into the front landing light bay. This action was prompted by an incident involving fuel leaking into the front landing light area on a Model DHC-7 airplane. Landing light temperatures can be sufficiently high enough to constitute an ignition source to fuel in the bay. This condition, if not corrected, could result in a fire.

The service bulletin describes successive inspections of the fuel tank sealant, consisting of an external inspection, an internal inspection, and a fuel tank modification. The external inspection requires removal of the lower wing canoe fairing and inspection of its "footprint" area for fuel leaks. The internal inspection involves repair of the sealant and a pressure check of the fuel tank. With the incorporation of Modification 7/2518, which involves application of a permanent fuel containment coating, full compliance is accomplished.

Transport Canada, which is the airworthiness authority of Canada, issued Airworthiness Directive CF-86-14 on September 26, 1986, making compliance with Service Bulletin 7-28-18 mandatory.

This airplane is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the canoe fairings of the left and right No. 4 flap track for fuel leaks, repair prior to further flight, if necessary, and eventual application of a permanent fuel containment coating (Modification 7/2518), in accordance with the service bulletin previously mentioned. Since de Havilland has not been able to classify the one reported occurrence as an isolated incident, all DHC-7 series airplanes are subject to the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to all Model DHC-7 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude a fuel fire in the wing landing light bay, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD, remove the canoe fairings of the left and right No. 4 flap track from the wing lower surface and conduct a visual inspection of the external wing skin exposed, in accordance with Paragraph 1 of the Accomplishment Instructions of de Havilland Aircraft Company of Canada Service Bulletin 7-28-18, dated May 16, 1986. If evidence of a fuel leakage is found, prior to further flight perform an internal inspection, repair, and

pressure test of the fuel tank in accordance with Paragraph 2 of the Accomplishment Instructions of that service bulletin.

B. Within 200 hours time-in-service after the effective date of this AD, install Modification 7/2518 in accordance with Paragraph 3 of the Accomplishment Instructions of de Havilland Aircraft Company of Canada Service Bulletin 7-28-18, dated May 16, 1986.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective January 30, 1987.

Issued in Seattle, Washington, on January 7, 1987.

Darrell M. Pederson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-747 Filed 1-13-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-46; Amdt. 39-5512]

Airworthiness Directives; Schweizer Aircraft Corp. Model SGS and SGU Series Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires certain Schweizer Aircraft Corp. tow-release installations installed on glider Models SGS and SGU series to be inspected to ascertain that the proper release arm has been mated with the tow-hook on the aircraft. Inspection will include wear limit measurements for determining if the hook and/or the release-arm can be repaired or replaced with new superseding parts. This AD is needed to prevent the possibility of an inadvertent tow-hook release during towing operations, resulting in a forced landing.

DATES: Effective January 21, 1987.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of January 21, 1987.

ADDRESSES: The technical information (Service Bulletin No. SA-001) and modification parts specified in this AD may be obtained from Schweizer Aircraft Corp., P.O. Box 147, Elmira, New York 14902, Telephone (607) 739-3821. A copy of the technical note is contained in the Rules Docket No. 86-ANE-46, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: C. Kallis, New York Aircraft Certification Office, Aircraft Certification Division, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, Telephone (516) 791-6428.

SUPPLEMENTARY INFORMATION: Reports have been received that the Schweizer R-200, 1A-218, 1B-221, and 10232A-1 tow-hooks used on Schweizer Aircraft Corp. Models SGU and SGS series gliders can inadvertently release the cable during towing without any input to the release handle by the glider pilot. Schweizer Aircraft Corp. has issued Service Bulletin No. SA-001, dated October 3, 1986, which calls for inspection of the tow-release installations, and possible repair or replacement with new parts. Premature release of the cable while towing one of these gliders may result in a forced landing. The FAA has examined the available information related to the issuance of the above service bulletin and has determined that the condition addressed by Schweizer's bulletin is an unsafe condition that may exist on the above type certificated gliders. Therefore, an AD is being issued to require inspection and possible repair or replacement of the tow-release installation parts.

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

Conclusion

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Schweizer Aircraft Corp.: Applies to all Schweizer gliders (including kit built), all serial numbers certificated in any category, and all models listed below:

SGU 1-7
SGS 2-8 (TG-2)
SGS 2-12 (TG-3)
SGU 1-19
SGU 1-20
SGU 1-21
SGU 2-22, 2-22A, 2-22C, 2-22CK, 2-22E, 2-22EK
SGS 1-23, 1-23B, 1-23C, 1-23D, 1-23E, 1-23F, 1-23G, 1-23H, 1-23H15
SGS 1-24
SGS 1-26, 1-26A, 1-26B, 1-26C, 1-26D, 1-26E
SGS 2-32
SGS 2-33, 2-33A, 2-33AK
SGS 1-34, 1-34R

SGS 1-35C
SGS 1-36 (Sprite)

Compliance is required as indicated unless already accomplished.

To prevent the possibility of the tow-hook inadvertently slipping out of the release-arm and releasing the tow-line, which could result in a forced landing, accomplish the following:

(a) Within the next 5 tow release actuations after the effective date of this AD, perform the following:

(1) Inspect the tow-release installation for proper part numbers, excessive wear, and possible rework or replacement of parts in accordance with Part 3A, 3B, and 3C in Schweizer Service Bulletin No. SA-001, dated October 3, 1986.

(2) Perform the operational check in accordance with Figure 4 in Schweizer Service Bulletin No. SA-001, dated October 3, 1986.

(b) Thereafter, at intervals not to exceed 100 hours time-in-service, accomplish the steps in Part 3B, and 3C, and Figure 4 in Schweizer Service Bulletin No. SA-001, dated October 3, 1986.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, Telephone (516) 791-6680.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Schweizer Service Bulletin No. SA-001, dated October 3, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not received this document from the manufacturer may obtain copies upon request to Schweizer Aircraft Corp., P.O. Box 147, Elmira, New York 14902, Telephone (607) 739-3821. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86-ANE-46, Room 311, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

This amendment becomes effective on January 21, 1987.

Issued in Burlington, Massachusetts, on December 30, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 87-748 Filed 1-13-87; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Review of Contract Market Designation Applications; Changes in Internal Processing Procedures and Temporary Waiver of Application Fees

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On September 24, 1981, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a notice that it had adopted an internal processing procedure regarding review of applications for contract market designation. 46 FR 47108. That procedure provided that applications for contract market designation would be considered withdrawn in the absence of an exchange response within ninety days of a Commission request for supplementation of the application.

The Commission is amending its internal processing procedures in light of several intervening events. These include the 1982 amendment to section 6 of the Commodity Exchange Act establishing a one-year statutory period for Commission review of applications for contract market designation, the 1983 imposition of fees for Commission review of applications for designation, and the Commission's experience with administering these provisions of the law. In order to provide more ready reference to this internal procedure, the Commission is including it as Appendix C to Part 5 of its regulations.

EFFECTIVE DATE: January 14, 1987.

FOR FURTHER INFORMATION CONTACT: J. Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-3201, 254-6990 respectively.

SUPPLEMENTARY INFORMATION:

I. Background

On September 24, 1981, the Commission published in the **Federal Register** a notice of its adoption of certain internal procedures regarding the processing of applications for designation as contract markets. 46 FR 47108. These procedures provide that, in the absence of an exchange response to a Commission request for supplementation of a designation application, the application would be treated as being withdrawn. The time period for a response was established at ninety days from the Commission's request. The Commission adopted this internal policy:

> [i]n an effort to accelerate the pace of review of applications for contract market designation. . . . These changes should help to assure that only contracts actively sought by an exchange are considered, and that contracts in which the exchange has lost interest do not consume staff time that can better be expended on other designation projects.

(47 FR at 47108.)

This internal processing procedure was adopted prior to the 1982 amendments to the Commodity Exchange Act.

During the Commission's 1982 reauthorization, section 6 of the Commodity Exchange Act was amended to provide for a one-year statutory time period for Commission review of applications for contract market designation. The one-year period could be stayed by the Commission where such applications were materially incomplete. This time limitation was adopted

> [i]n view of the importance of timely and informative government action. . . . The [Senate] Committee believes that the 1-year time period is adequate to perform satisfactory evaluation of proposed futures contracts.

(S. Rep. No. 384, 97th Cong., 2d Sess. 34 (1982).)

The Commission has had over four years experience in administering this section of the Act, as amended. Of necessity, the one-year period for designation application review, including the provision permitting the Commission to stay the running of the period for materially incomplete submissions, has added an element of formality to the designation review process. Nevertheless, as a result of internal procedures initiated by the Commission in response to the statutory deadline, the average review period of applications for futures contract market designation during fiscal year 1986 was well under one-year (8.2 months). Moreover, the average review period for option applications was 4.7 months.[1]

[1] Although all applications have been approved prior to or on the statutory review deadline, in several cases the total elapsed time between an application's submission and its approval has exceeded one year. This is because the review period has been tolled where applications for contract market designation have been materially incomplete, or the application has been voluntarily stayed by an exchange after submission to the Commission. In several complex designation applications, the Commission has been required to notify a board of trade of deficiencies more than once.

In addition, subsequent to its adoption of the original processing procedure the Commission also adopted fees for its review of designation applications. Initially, this included an opportunity for exchanges to withdraw pending applications for contract market designation without payment of the applicable fee (48 FR 38216 (August 23, 1983)). A second period to withdraw pending applications without payment of the fee provided the exchanges an opportunity to adjust to a new fee structure. 49 FR 27933 (July 9, 1984). Nevertheless, at the present time the Commission continues to experience an increasing backlog of pending applications as exchanges file proposed contracts and subsequently fail to take the actions necessary to complete them.

The Commission's experience with its ninety-day period for exchange response has been that it is too short a period to separate reliably those contracts no longer of interest to the submitting exchanges from those contracts which may involve complex issues requiring a longer response time. Accordingly, the Division routinely has granted extensions to exchanges requiring more than ninety days to respond and supplement their applications. Thus, the internal processing procedure failed to achieve its intent to speed the designation process by requiring prompt exchange responses. In contrast, the general goal of speeding the designation process has been better achieved by procedures adopted under the twelve-month statutory time period for Commission review. And, to the extent the ninety-day internal procedure has required both the exchanges and the Commission routinely to extend deadlines, that procedure has resulted in unnecessary paperwork. Accordingly, the Commission believes that revision of the ninety-day internal processing procedure is necessary.

Nevertheless, the Commission believes that an open-ended designation application process is administratively inefficient, especially in light of the time restraints imposed upon Commission review. In the absence of a limitation on the time during which designation applications can remain pending while awaiting exchange action the backlog of pending contract market designation applications continually increases. As of December 31, 1986, there were 33 pending futures and option designation applications. Of these, there were 12 contracts for which no exchange correspondence had been received for over one year and 14 applications without exchange responses for over nine months.

Such a backlog is administratively burdensome because an exchange may elect, at any time and without warning to the Commission, to supplement such an application and thereby renew the running of the statutory review period. However, after a lengthy hiatus in an application's processing, the staff familiar with that application may have been reassigned or may have left the agency's employ. Moreover, cash market or other factors may have changed since the initial application was submitted. Thus, significant additional resources may be necessary to complete such an application in the remaining review period. A growing backlog, therefore, has the potential for seriously disrupting the Commission's workflow in this area and thereby hamper consideration of those applications in which the exchanges maintain an active interest and have provided complete information in a timely fashion.

II. The Revised Procedure

In light of the above, the Commission is amending its internal processing procedure for applications for contract market designation. Such applications will be deemed withdrawn if no written response or supplementation on the merits is received by the Commission within one year from (1) the date of a Commission letter staying the one-year review period because the application is materially incomplete or (2) from the date of a voluntary stay of the review period by an exchange which wishes to supplement or amend its application. Such a withdrawal results in the forfeiture of the designation application fee and terminates the Commission's statutory review period for that application. The exchange, however, will be credited with the designation application fee for a subsequent designation application for substantially the same commodity futures or option contract filed within one year of the date of withdrawal of the original application. No crediting of the one-year statutory review period will be provided for the new application for designation.

The Commission believes that a one-year period is sufficient in all cases to remedy any deficiencies noted in a designation application, including the most complex. Thus, the failure of an exchange to complete its application within a year of notification or voluntary stay clearly is indicative of the exchange's lack of intent to proceed with such an application. Moreover, this time-period is reflective of that required for Commission review of designation applications.

The Commission emphasizes that a *pro forma* response will not constitute a response for purposes of this procedure. Responses must be comprehensive and substantive in nature and must, at a minimum, affirmatively move an application close to resolution of all substantial outstanding issues. However, a satisfactory response for purposes of this procedure does not preclude additional tolling of the statutory review period.

III. Pending Applications

The current practice of extending stays of the review period upon request will continue for those applications pending on the effective date of the new internal processing procedure. Such requests must be made to the Commission within forty-five days prior to the expiration of one year from the initial date of the stay of the application's review period. If for a particular contract the due date for a requested extension is April 14, 1987, or earlier, such requests must be filed on or before April 14, 1987. Such requests must be made pursuant to the action of an exchange's governing body and should indicate the exchange's intent to complete the application process.[2] Any pending applications for which no such extension request is received will be treated as withdrawn. As with newly filed applications, under this procedure exchanges will receive a waiver of the application fee for a withdrawn application which is resubmitted within one year of the date of withdrawal. The Commission will further review the status of the applications pending on the effective date of the new processing policy at a later time.

IV. Related Matters

A. Regulatory Flexibility Act

The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). The requirements of the Regulatory Flexibility Act, therefore, do not apply to contract markets. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the action taken herein will not have a significant economic impact on a substantial number of small entities.

[2] Although an expression of intent to complete the application is sufficient for time extension requests for previously submitted contracts, such a summary filing, as indicated above, will not be sufficient under the policy to keep newly filed applications active.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*, imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined in that Act. This internal processing procedure does not impose any additional, nor does it in any way alter existing, paperwork burdens on the public.

C. Administrative Procedure Act

The Administrative Procedure Act requires that notice and an opportunity to comment be provided to the public before agencies adopt final regulations, except where interpretive rules or general statements of policy or rules relating to agency organization, procedure or practice are involved, or where the agency finds for good cause that such notice and comment is impractical, unnecessary or contrary to the public interest. 5 U.S.C. 553(b). The Commission is adopting a general statement of policy relating to agency procedure with respect to the processing of designation applications. The Commission believes that it is in the public interest to make it effective upon publication.

List of Subjects in 17 CFR Part 5

Contract markets, Designation applications, Fees for applications for contract market designation.

In consideration of the foregoing, the Commission hereby amends Part 5 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

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

Authority: 7 U.S.C. 6c, 7, 7a, 8, 12a.

2. Appendix C is added to Part 5 to read as follows:

Appendix C—Internal Procedure Regarding Period for Response By Exchanges

(a) Response Period

The failure of an exchange to provide a substantially complete, substantive response within one year from the date of a written Commission notice of the material incompleteness of an application for contract market designation, or to supplement such an application within one year from the date of a voluntary agreement to do so, will be deemed to constitute the withdrawal of such an application. Such a withdrawal results in forfeiture of the designation application fee and terminates the Commission's statutory review period for that application. The applicable fee for designation applications will be waived for a period of one year from the date of the application's withdrawal where the withdrawn designation application, or a substantially identical application, is refiled within that period. A refiled designation application will be treated as a new application in all other respects.

(b) Pending Applications

For all applications pending on the effective date of this procedure, requests for a further stay of the tolling period must be made by the governing board of the exchange within forty-five days prior to the expiration of a year from the date of the stay. *Provided however*, that in no event shall such a request be required before April 14, 1987. Such requests for a further stay should affirm the exchange's intention to complete the designation applications for which the stay is being requested. Such requests should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Those pending applications for which no such request is received will be subject to the procedures contained in paragraph (a), above.

Issued in Washington, DC this Wednesday of January 7, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-624 Filed 1-13-87; 8:45 am]

BILLING CODE 6351-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 5H5464/R865; FRL-3140-3]

Animal Feed Tolerance for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Proply]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation to permit the combined residues of the herbicide [2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites in or on the feed commodities peanut soapstock and sunflower meal. This regulation to establish a maximum permissible level for the combined residue of the herbicide in or on the commodity was requested pursuant to a petition by BASF Wyandotte Corp.

EFFECTIVE DATE: January 14, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 245, CM No. 2, Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 7, 1985 (50 FR 31917), which announced that BASF Wyandotte Corp., P.O. Box 181, 100 Cherry Hill Rood, Parsippany, NJ 07054, had filed feed additive petition 5H5464 with EPA proposing to amend 21 CFR Part 561 by establishing a regulation permitting the combined residues of the herbicide 2-[1-3(ethoximino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as parent) in or on the feed commodities peanut soapstock at 75.0 parts per million (ppm) and sunflower meal at 20.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related final rule document (PP Nos. 3F2904 and 5F3234/R864) establishing tolerances on alfalfa hay, alfalfa forage, peanuts, peanut hulls, sunflower seeds, and soybean hay appearing elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the regulation is sought. The nature of the residue is adequately understood for the purpose of establishing the feed additive tolerances. Adequate analytical methodology is available for enforcement purposes in the Pesticide Analytical Manual, Volume II (gas chromatography using a sulfur-specific flame photometric detector). It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 751 (7 U.S.C. 136 et seq.)). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register,** file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

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

(Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(c)))

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests.

Dated: December 29, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, Part 561 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

2. In § 561.430, by adding and alphabetically inserting the following commodities, to read as follows:

§ 561.430 2-[1-(Ethoxylmino)butyl]-5-[2-ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one.

* * * * *

Commodity	Parts per million
* * * * *	
Peanut soapstock	75.0
* * * * *	
Sunflower meal	20.0
* * * * *	

[FR Doc. 87-451 Filed 1-13-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 43

[Department Regulation 108.857]

Visas; Documentation of Immigrants Under Section 314 of Pub. L. 99-603

AGENCY: Department of State.

ACTION: Interim rule.

SUMMARY: This interim rule adds Part 43 to Title 22, Code of Federal Regulations, to implement section 314 of the Immigration Reform and Control Act of 1986, Pub. L. 99-603. Section 314 provides for the issuance, in Fiscal Years 1987 and 1988, of 5,000 immigrant visas each year to aliens who qualify as nonpreference immigrants under section 203(a)(7) of the Immigration and Nationality Act after the effective date of Pub. L. 99-603, signed by the President on November 6, 1986. The rule will favorably affect aliens who are natives of countries "adversely affected" by the enactment of Pub. L. 89-236, provided they qualify under section 203(a)(7) of the INA. Such aliens will be given preference in the issuance of the special 5,000 immigrant visas during Fiscal Years 1987 and 1988.

EFFECTIVE DATE: The effective date of this interim rule is January 14, 1987. The Department will consider written comments submitted on or before February 18, 1987, and reserves the right to make necessary modifications to the interim rule in the light of those comments.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC 20520 (202) 663-1184.

SUPPLEMENTARY INFORMATION: Section 314 of Pub. L. 99-603 establishes a separate annual numerical limitation of 5,000 for Fiscal Years 1987 and 1988. (The use of the term "immigrant visa numbers" in section 314 instead of the term "immigrant visas" or the word "visas" marks the first statutory usage of this term, which has been used administratively by the Department of State for many years in connection with the administration of the numerical limitations on immigration.) Usage of the immigrant visa numbers authorized by section 314 is not subject to the world-wide annual limitation of 270,000 set forth in section 201 of the Immigration and Nationality Act, but is subject to the foreign state and dependent area limitations set forth in section 202 of the Act.

Aliens entitled to compete for immigrant visa numbers under section 314 are aliens described in section 203(a)(7) of the Act—nonpreference immigrants. Section 314 directs that the visa numbers be made available to such aliens in the same manner as visa numbers under the world-wide limitation of 270,000 are made available to nonpreference immigrants, with two exceptions—

(1) Visa numbers shall first be made available to aliens who are natives of foreign states the immigration of whose natives was "adversely affected" by the enactment of Pub. L. 89-236; and

(2) Within groups of applicants, visa numbers shall be made available "strictly in the chronological order in which the applicants qualify after the effective date" of section 314.

Section 212(a)(14)—the labor certification requirement—is not applicable to applicants for visas under section 314. Otherwise, the provisions of the Act relating to the processing and adjudication of immigrant visa applications generally apply to cases under section 314.

In order to understand the import of section 314 it is necessary to refer to Pub. L. 89-236, the Act of October 3, 1965. That act, which did not have a short title, made a series of fundamental changes in the system of numerical limitations on immigration and in the preference system which determines which aliens qualify to compete for immigration to the United States. At the time of its enactment, it was generally considered to be a momentous step, the first fundamental reform of our immigration system since the establishment of numerical restrictions on immigration in 1921. Briefly, the major provisions of Pub. L. 89-236 were—

(1) Abolition of the national origins quota system which had existed since the 1920s and its replacement by an overall numerical limitation of 170,000, with a per country ceiling of 20,000 for those countries which had been subject to the national origins quotas;

(2) Substantial revision of the preference system to give greater emphasis to family relationships (74% of the limitation instead of 50% of quotas) and to include a specific preference for refugees;

(3) Expansion of the Western Hemisphere immigration system to include all independent Western Hemisphere countries instead of only those independent as of 1952 and the prospective (effective July 1, 1968) application of an annual limitation of 120,000 on Western Hemisphere immigration (but without a preference system or per country ceilings); and

(4) Establishment of an affirmative labor certification requirement (applicant excludable unless certified by the Secretary of Labor to be admissible) for immigrants who were not refugees and did not have a qualifying relationship to a U.S. citizen or permanent resident.

Further amendments to the Act in 1976, 1978 and 1980 have established a single world-wide system based on the 1965 system but have provided a

separate system for the admission of refugees. In general, it may be said that Pub. L. 89–236 established the current system of legal migration to the United States.

Under the system preceding enactment of Pub. L. 89–236 certain countries had large, or relatively large, quotas. The five countries with the largest quotas were the United Kingdom, Germany, Ireland, Poland and Italy, with quotas ranging from over 65,000 to about 5,700. At the other extreme, nearly 80 countries had the minimum quota of 100 each. Many of the latter group were countries which had little demand for immigration, even within the small quota, but India, Jamaica, Korea and the Philippines were also in that group. Chinese were subject to a racial quota of 105. The Chinese quota was racial since it applied to any immigrant who was at least 50% Chinese by race, regardless of country of birth.

Operationally, prior to the enactment of Pub. L. 89–236 an alien who desired to register for immigration under the nonpreference portion of the applicable quota could do so by informing a consular officer in writing of his or her desire to immigrate to the United States and by furnishing enough personal information—name, date and place of birth and current address—to permit the consular officer to create a file record of the alien. Implementing regulations during that period specified that the receipt of any such communication was to be recorded by month, day, year and, if practicable, by hour and minute and that the date so recorded constituted the alien's priority date for consideration for allocation of a nonpreference quota number. The applicable provision of law required that nonpreference applicants be considered in the order of registration.

Pub. L. 89–236 required a fundamental change in the processing of nonpreference applicants. The applicable provision of law—203(a)(8) from 1965 to 1980; 203(a)(7) since 1980—requires that nonpreference applicants be processed "strictly in the chronological order in which they qualify." Moreover, the nonpreference class is one of the classes of immigrants to whom section 212(a)(14)—the labor certification requirement—applies and it has become an affirmative requirement, rather than the negative requirement it had been prior to the enactment of Pub. L. 89–236. It was recognized that certain types of nonpreference immigrants—e.g.; retired persons—would not seek to enter the U.S. labor market after admission and, thus, that the labor certification requirement would not logically apply to them. Accordingly, the Department promulgated regulatons defining certain classes of immigrants to whom the labor certification requirements were not applicable.

In addition, it was determined that the use of the word "qualify" in the nonpreference provision made it legally impermissible and administratively impractical to continue the former system of registering nonpreference immigrants on the basis of a simple statement of intention to immigrate. The Department developed the current procedures and requirements under which, in order to qualify as a nonpreference immigrant, an alien must either obtain a labor certification or establish that he or she is a member of one of the classes to which the labor certification requirement does not apply, as defined in Departmental regulations. An alien's priority date for consideration as a nonpreference immigrant is the date on which the alien takes whichever of those two alternative steps fits his or her situation. The Department's regulations concerning these matters have existed in Part 42 of this title for more than twenty year.

With this background in mind, the Department has undertaken to implement the provisions of section 314 of Pub. L. 99–603. The first issue to be addressed was the date of implementation. Section 314 was a last-minute addition to Pub. L. 99–603. Its text first appeared in the report of the conference committee in October 1986. It was not the subject of consideration by any committee of either house of the Congress at any time during the six-year period of consideration of immigration reform which culminated in the enactment of Pub. L. 99–603. While the intent and purpose of section 314 is the same as that of a number of prior bills (none of which have been enacted) including H.R. 2606, 99th Congress, its actual text is so radically different from any of the prior bills that they offer no guidance in the implementation of section 314. Thus, the Department had to determine how to implement this section without the benefit of any prior consideration or discussion. Statistical data had to be compiled and considered, comments from consular offices abroad had to be solicited, received and evaluated, administative arrangements for possible methods of implementation had to be considered, evaluated and analyzed for cost. Moreover, since this is a program that must be administered on a worldwide basis, it was necessary for the Department to coordinate implementation with over 200 U.S. posts and missions aboard; failure to implement the program promptly and efficiently could create foreign policy difficulties for the U.S. and would potentially prejudice the opportunities of potential beneficiaries. The Department considers that the timing of implementation established by these regulations is reasonable and is without prejudice to the interests of potential beneficiaries of section 314. Notwithstanding the imperatives that demand emergency effective registration dates, however, the Department will consider written comments received before February 18, 1987 and reserves the right to make any necessary modifications.

The next issue to be addressed was the determination of which foreign states had been "adversely affected" by the enactment of Pub. L. 89–236. The Department considers it clear from the plain language of the statute that the intent of this section is to identify those foreign states from which immigration has declined since the enactment of Pub. L. 89–236. Several methods exist for measuring whether such declines occurred. One method would involve comparing quota number usage prior to enactment with immigrant visa number usage since enactment. Another method would involve comparing total immigrant admissions prior to enactment with total immigrant admissions since enactment. After carefully considering a number of possible alternatives, the Department selected the formula set forth in the definition contained in 22 CFR 43.2; this formula involves comparing total admission figures prior to the enactment of Pub. L. 89–236 with total admission figures since enactment. This formula appears to be the most appropriate one since—

(1) Using total admission figures, as opposed to numerically-limited admissions only, allows for consideration of possible adverse effects of the ceiling of 120,000 imposed on Western Hemisphere immigration by Pub. L. 89–236, since prior to that time Western Hemisphere countries were nonquota countries and had no numerically-limited immigration;

(2) Using averages of relatively long measuring periods produces more reliable statistical data as it reflects patterns over time rather than relying on any single year (which could be aberrational); and

(3) The measuring periods selected, as described in § 43.2, represent, respectively, all full fiscal years under the Act's original national origins quota system and all full fiscal years for which final verified figures exist since

abolition of the national origins quota system.

For the purposes of this regulation, the Department has decided that dependent areas subject to the separate limitation of 600 set forth in section 202(b) of the Act will be treated as separate entities because the limitation for dependent areas, which was 100 prior to the enactment of Pub. L. 89-236, was raised to 200 by that Act and to 600 by a subsequent amendment. It is not only equitable to treat them as separate entities rather than to consider them with the governing country, but it also gives a truer indication of the actual effect of Pub. L. 89-236.

On the basis described above, the following foreign states and dependent areas are "adversely affected countries" within the meaning of the definition in § 43.2—Albania (57), Algeria (17), Argentina (566), Austria (1740), Belgium (1701), Bermuda (9), Canada (17,798), Czechoslovakia (873), Denmark (845), Estonia (185), Finland (318), France (1945), the Federal Republic of Germany (18,038), the German Democratic Republic (5117), Great Britain and Northern Ireland (9384), Guadaloupe (18), Hungary (3805), Iceland (19), Indonesia (816), Ireland (5353), Italy (7638), Japan (562), Latvia (368), Liechtenstein (5), Lithuania (481), Luxembourg (58), Monaco (3), the Netherlands (3479), New Caledonia (4), Norway (1858), Poland (3019), San Marino (84), Sweden (1197), Switzerland (1004), and Tunisia (39). In each case, the number in parentheses is the amount by which the average rate of immigration after enactment of Pub. L. 89-236 declined from that in the period preceding enactment. This number will determine the annual numerical limitation on usage of visa numbers under section 314 by natives of that foreign state or dependent area. The Department has established this system of numerical limitations for the adversely affected countries in order to ensure that a disproportionate share of the available visa numbers under section 314 is not preempted by natives of a foreign state or dependent area whose decline in average immigration was marginal in size.

The next issue to be addressed was the question of qualifying to compete for visa numbers under section 314. As has been described above, since 1965 nonpreference immigrants have been required to obtain a labor certification or establish that the labor certification requirement does not apply to them in order to qualify and the order in which they qualify is determined by the date on which they take one of those two steps. Section 314(c) prohibits using this procedure for applicants for visas under section 314 because it provides that section 212(a)(14)—the labor certification requirement—shall not apply in determining the eligibility of an alien to receive a visa under section 314. In considering what alternative to adopt, the Department considered that the intent of this provision appears to be principally to allow a small number of aliens to immigrate on broadly the same basis as existed prior to the enactment of Pub. L. 89-236. Based upon that conclusion, the Department determined that it was most appropriate to establish a registration system similar to that which existed for nonpreference immigrants prior to the enactment of Pub. L. 89-236 and to consider applications for visas under section 314 chronologically on the basis of such registrations. This system is described in §§ 43.3 and 43.4.

Another issue relates to whether natives of countries which were not adversely affected by Pub. L. 89-236 should be allowed to register and compete for visa numbers under section 314. The literal language of section 314 clearly contemplates the possible issuance of visas under section 314 to aliens who are natives of countries which were not adversely affected by Pub. L. 89-236. On the other hand, section 314(b)(1) clearly requires that the visa numbers *first* be made available to natives of adversely affected countries. Moreover, there is no limit on the amount of numbers to be made available to such aliens. Clearly then, visa numbers can be made available to natives of non-adversely affected countries only after all demand by natives of adversely affected countries has been satisfied. Immediately after the conference committee report on Pub. L. 99-603 became public, but before the President signed the bill into law, the Department began to receive large numbers of inquiries, both domestically and abroad, concerning section 314. It soon became apparent, and is by now compellingly clear, that the number of aliens who are natives of adversely affected countries and who will register to compete for visas under section 314 will be so great that there is no serious possibility that any visa numbers under section 314 will at any time be available for natives of non-adversely affected countries who might have registered, if permitted to so so. Accordingly, the Department has restricted registration for immigrant visa numbers under section 314 to aliens who are natives of adversely affected countries. Allowing natives of other countries to register when there is no possibility that visa numbers will be made available to them would unfairly raise expectations which would never be realized and would greatly aggravate the administrative burden of implementing section 314.

Traditionally, aliens seeking to register or qualify as nonpreference immigrants have submitted appropriate documentation for this purpose to a consular office abroad, either directly or through the Department of Labor in certain cases. Initially, the Department envisioned that registrations for visa numbers under section 314 would be accomplished in this same manner. Quickly, however, reports from consular office in various countries made it clear that there would be an enormous rush to submit such registrations in person as soon as the registration period had been established. These reports predicted serious problems of physical security for consular personnel and premises and of crowd control. Moreover, the Department concluded that registration at individual posts abroad would enhance opportunities for fraud. In light of these concerns, the Department has determined that registration will be accomplished by mail only and that all applications for registration will be submitted to the Department of State at the postal address listed in § 43.3(b) within a limited time period. Once the applications have been received and recorded, they will be transmitted to the appropriate consular office abroad for the usual immigrant visa processing provided for in Part 42 of this chapter.

As provided in § 43.3(a), the registration period will commence on January 21, 1987, and terminate on January 27, 1987. To ensure as much fairness as possible in the allocation of the available visa numbers, applications received either prior to January 21 or after January 27 will not be considered. It is the Department's expectation that there will be more than a sufficient number of registrations received during this period to ensure enough applications for all of the 10,000 visa numbers which will be available during the two Fiscal Years to which section 314 applies. Should this prove not to be the case, the Department will have the authority under § 43.3(a) to establish a further registration period.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Compliance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553, relative to notice of proposed

rulemaking and delayed effective date is impracticable, *inter alia* because Congress in section 314 of Pub. L. 99-603 has provided the Department only an extraordinarily short time within which to plan, establish and execute a worldwide program that requires careful coordination with U.S. posts and missions abroad and which could, if not executed promptly and efficiently, create foreign policy difficulties for the United States. In addition, delays in execution of the program would severely prejudice the opportunities of potential beneficiaries. In particular, it is clear that any delay will make it administratively impracticable to issue the visas within the period specified by Congress. Finally, most of the provisions of this interim rule concerning which the Department has exercised its discretion are purely procedural in nature, e.g., the decision that applications must be made via mail at a central location in the United States was made for reasons of physical security of U.S. posts and missions abroad, to reduce the possibility of fraud, to make the program more equitable and to provide for the most efficient use of the Department's personnel. The program must be implemented as soon as possible.

List of Subjects in 22 CFR Part 43

Visas, Aliens, Immigration, Nonpreference immigrants.

In view of the foregoing, Part 43 is added to Chapter I, Subchapter E—Visas, of Title 22, Code of Federal Regulations, to read as follows:

PART 43—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER SECTION 314 OF PUB. L. 99-603

Sec.
43.1 General.
43.2 Definition.
43.3 Registration of applicants and priority date.
43.4 Control of numerical limitation.
43.5 Eligibility to receive a visa.

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847. Also sec. 314, 100 Stat. 3359, 3439, 8 U.S.C. 1153 Note.

§ 43.1 General.

Except as specifically provided in this Part, the provisions of the Immigration and Nationality Act, as amended, and of Part 42 of this chapter shall apply to application for, consideration of, and issuance or refusal of, immigrant visas under section 314 of Pub. L. 99-603.

§ 43.2 Definition.

The following definition shall be applicable to this part: "Adversely affected country" means a foreign state whose average annual rate of immigration to the United States during the period from July 1, 1966, to September 30, 1985, was less than its average annual rate of immigration to the United States during the period from July 1, 1953, to June 30, 1965. A foreign state's average annual rate of immigration to the United States during the periods described in the preceding sentence shall be determined by totaling the number of natives of the foreign state who were admitted to the United States for permanent residence, as reported in the Annual Reports of the Immigration and Naturalization Service, for each such period and dividing each total by the number of fiscal years in the period. For the purposes of this definition a colony or component or dependent area of a foreign state overseas from such foreign state shall be treated as a separate foreign state.

§ 43.3 Registration of applicants and priority date.

(a) *Limitations on registration.* An alien shall not be eligible to register under this section unless he is a native of an adversely affected country as defined in § 43.2 of this Part. Applications for registration will be accepted only from 12:01 a.m. January 21, 1987, until Midnight January 27, 1987. Applications received before January 21 or after January 27 will not be considered. If the Department thereafter determines that it is necessary to establish a further period for registration in order to ensure that the number of qualified applicants is sufficient to permit allocation of all immigrant visa numbers authorized by section 314 of Pub. L. 99-603, the Department will so provide by Public Notice in the **Federal Register**.

(b) *Place of registration.* Every alien who is a native of an adversely affected country who desires to register as an applicant for a visa under section 314 of Pub. L. 99-603 shall apply for registration by mail to: NP-5, P.O. Box 96097, Washington, DC 20090-6097, U.S.A. Hand-delivered applications, telegrams envelopes sent by registered mail, Federal Express or other courier services will not be accepted. Only one application may be submitted in each envelope and, in the event an envelope contains two or more applications, only the first application removed from that envelope will be accepted and processed.

(c) *Application for registration.* An applicant for registration under this section shall apply for registration by submitting the following information.—(1) Name; (2) date of birth; (3) place of birth (including city and county, province or other political subdivision, and country); (4) name(s), date(s) and place(s)(of birth of spouse and child(ren), if any; (5) mailing address; and (6) location of consular office nearest to current residence or, if in the United States, nearest to last foreign residence prior to entry into the U.S.

(d) *Derivative registration.* An application for registration submitted in accordance with paragraphs (a) and (b) of this section shall be considered to include automatically the spouse or child of the applicant, whether or not such spouse or child is named in the application if, in case of a spouse, the marriage to the applicant took place prior to the applicant's admission to the United States for permanent residence or, in the case of a child, the child is the issue of a marriage which took place prior to the applicant's admission to the United States for permanent residence.

(e) *Priority date.* An alien's priority date for consideration of his application under this part shall be the date, hour and minute (within the registration period or periods provided for in subsection (a) of this section) of the receipt and processing of the application by the Visa Office of the Department of State.

§ 43.4 Control of numerical limitation.

(a) *Centralized control.* Centralized control of the numerical limitation specified in section 314(a) of Pub. L. 99-603 is established in the Department. In order to effect this control the Department shall limit the number of immigrant visas and the number of adjustments of status that may be granted to aliens applying under section 314 of Pub. L. 99-603 to a number not to exceed 5,000 each in fiscal year 1987 and 1988 and not to exceed, in any month of either such fiscal year, 500 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Limitation for individual adversely affected country.* Within the limitations specified in paragraph (a) of this section, there shall be a numeral limitation on the issuance of immigrant visas and the granting of adjustment of status to natives of any individual adversely affected country. For each fiscal year the numerical limitation for any individual adversely affected country shall be the difference between its average annual rate of immigration during the period from July 1, 1953, to June 30, 1965 and its average annual rate of immigration during the period from July 1, 1966, to September 30, 1985, or 5,000, whichever is the lesser.

(c) *Allocation of immigrant visa numbers.* Within the numerical

limitations specified in paragraphs (a) and (b) of this section and based on the chronological order of priority dates of applicants as established as specified in § 43.3(e) of this part, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and the granting of adjustment of status.

§ 43.5 Eligibility to receive a visa.

The eligibility of an applicant for a visa under section 314 of Pub. L. 99–603 shall be determined as provided in the Immigration and Nationality Act and in Part 42 of this chapter except that the provisions of section 212(a)(14) of such Act shall not apply in determining an applicant's eligibility for such visa.

Dated: January 12, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87–890 Filed 1–13–87; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 18

Temporary Regulations Relating to the Tax Treatment of Conrail Public Sale

AGENCY: Department of the Treasury, Office of the Secretary.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to Part III of Subtitle A of Title VIII of the Omnibus Budget Reconcilation Act of 1986 (the "Act"). The temporary regulations provide rules relating to the determination for Federal income tax purposes of the deemed purchase price of the Consolidated Rail Corporation ("Conrail") as the result of the public offering of Conrail common stock pursuant to the Act (the "public sale") and the allocation of such amount as basis to the assets of Conrail immediately after the public sale. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations in the proposed rules section of this issue of the **Federal Register.**

DATE: These regulations are effective January 14, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Wessel, Office of Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Attention: XLC (202–566–4979, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulations to new Part 18 of Title 31 of the Code of Federal Regulations. The temporary regulations added by this document will provide for the determination for Federal income tax purposes of the deemed purchase price of Conrail's assets and the allocation of such amount as basis among those assets. These temporary regulations will remain in effect until superseded by later temporary or final regulations relating to these matters.

Introduction

Section 8021 of the Act generally provides that, for Federal income tax purposes, Conrail shall be treated as a new corporation ("new Conrail") which purchased all of its assets as of the beginning of the day after the date of the public sale (the "purchase date") for an amount equal to the deemed purchase price. The deemed sale of assets to new Conrail takes place as of the date the initial public offering is closed. The deemed purchase price is the sum of: (i) An amount equal to the gross proceeds received pursuant to the public sale, grossed-up to account for certain Conrail common stock that will be held by the Conrail ESOP as of the purchase date (the "tentative deemed purchase price"), and (ii) certain other adjustments under regulations prescribed by the Secretary. The deemed purchase price is then allocated to the assets held by new Conrail on the purchase date under a modified residual allocation method.

Determination of Deemed Purchase Price

The tentative deemed purchase price of the assets of new Conrail is equal to the gross amount received from purchasers by the underwriters pursuant to the public sale (the "gross proceeds"), adjusted to account for the common stock of Conrail held by the Conrail ESOP as of the purchase date ("qualified minority stock"). The common stock of Conrail that new Conrail is obligated to contribute or distribute under section 4024(f) (1) and (3) of the Act, whether held by Conrail or Conrail Equity Corporation as of the purchase date, will not be treated as outstanding stock and therefore will not be accounted for in determining the percentage (by value) of the common stock of Conrail sold in the public sale. The adjustment to the gross proceeds therefore requires the determination of the relative value of the stock issued pursuant to the public sale as compared with the value of such stock plus the value of the qualified minority stock. Such relative value, expressed as a percentage, is then divided into the amount of the gross proceeds to determine the tentative deemed purchase price for a one percent interest in the assets of new Conrail as of the purchase date. This amount is then multiplied by 100 percent to determine the tentative deemed purchase price for all of the assets of new Conrail as of the purchase date.

For purposes of determining the deemed purchase price, the tentative deemed purchase price is increased to account for the liabilities of Conrail immediately before the purchase date ("old Conrail"). The deemed purchase price will be redetermined if, following the close of new Conrail's first taxable year, an event occurs that constitutes an "other relevant item," as described in 31 CFR 18.0(c)(3)(ii).

Allocation of Deemed Purchase Price

The allocation of the deemed purchase price as basis among new Conrail's assets generally shall be made in accordance with the temporary regulations prescribed under section 338(b) of the Internal Revenue Code of 1954 (as such regulations were in effect on the date of the enactment of the Act). *See* §1.338(b)–2T (26 CFR Part 1).

Section 1.338(b)–2T(b) (26 CFR Part 1) identifies four classes of assets. "Class I assets" are cash, deposits in banks, and similar cash items. "Class II assets" are certificates of deposit, United States government securities, certain marketable stocks and securities, foreign currency, and similar items. "Class IV assets" are intangible assets in the nature of goodwill and going concern value. All assets not described above are "Class III assets." Solely for purposes of allocating the deemed purchase price as basis to the assets of new Conrail, accounts receivable and materials and supplies are deemed under the Act to be Class I assets, and commercial paper and certain repurchase agreements are deemed under the regulations to be Class II assets.

As a general rule, a proportionate method of allocation is prescribed for the allocation of basis within each class of assets, although a residual method of allocation is prescribed for the allocation among the asset classes, as described below. The amount of the deemed purchase price allocated as basis to any asset, other than Class IV assets, cannot exceed its fair market value. For this purpose as well as for purposes of allocating basis among assets within a class, the fair market

value of certain assets is deemed to be their book value, that is, the amount reported as the net book value of old Conrail's assets for financial accounting purposes.

In general, the deemed purchase price, after reduction by the amount of Class I assets, is allocated among Class II assets of target in proportion to their fair market values as of the purchase date, then among Class III assets in such proportion, and, finally, to Class IV assets. Thus, the deemed purchase price is allocated as basis within each class of assets to the extent of the fair market value of the assets in the class, with any remaining amount allocated to the next class of assets.

Because of the need for immediate guidance to the public, the Department of the Treasury has found it impractical to issue these temporary regulations either with the notice and public comment procedures under 5 U.S.C. 553(b) or the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act and Executive Order 12291

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Assistant Secretary (Tax Policy) has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these temporary regulations is Thomas Wessel, Office of Tax Legislative Counsel, Office of Tax Policy, Treasury Department. However, personnel from other offices of the Treasury Department participated in developing the regulations, both on matters of substance and style.

For the reasons set forth in the preamble, Title 31, Subtitle A, of the Code of Federal Regulations is amended as follows:

1. Part 18 is added to read as follows:

PART 18—TEMPORARY REGULATIONS RELATING TO THE TAX TREATMENT OF CONRAIL PUBLIC SALE

Sec.

18.0 Tax treatment of Conrail public sale.

Authority: Sec. 8021, Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, 100 Stat. 1874.

§18.0 Tax treatment of Conrail public sale.

(a) *Scope.* Subtitle A of Title VIII of the Omnibus Budget Reconciliation Act of 1986 (the "Act") provides that, for Federal income tax purposes, new Conrail shall be treated as a new corporation that purchased all of the assets of old Conrail as of the purchase date for an amount equal to the deemed purchase price. This section provides rules for determining the Federal income tax treatment of new Conrail in connection with the public sale of Conrail common stock pursuant to the Act. The rules contained in this section are applicable only to the tax treatment of Conrail resulting from the public sale and no inferences should be made with respect to the tax treatment of Conrail or of any other taxpayer in other transactions.

(b) *Applicable rules.* Except as hereinafter provided, the determination of the deemed purchase price for old Conrail's assets and the allocation of such amount as basis to the assets of new Conrail as of the purchase date shall be based upon the rules adopted in the temporary regulations issued under section 338(b) of the Internal Revenue Code. (Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986). See §§1.338(b)-1T, 1.338(b)-2T and 1.338(b)-3T (26 CFR Part 1). As provided in the following paragraphs, several modifications of those rules shall be applicable to the tax treatment of the deemed asset sale. No inference from such special rules shall be made with respect to the tax treatment of Conrail or any other taxpayer in any other transactions.

(c) *Computation of deemed purchase price.*—(1) *Tentative deemed purchase price.* The tentative deemed purchase price is an amount equal to the gross amount received from purchasers by the underwriters pursuant to the public sale as adjusted to account for the qualified minority stock. The tentative deemed purchase price equals such gross amount received pursuant to the public sale multiplied by a fraction—

(i) The numerator of which is 100 percent, and

(ii) The denominator of which is a percentage equal to the ratio that the value of the Conrail common stock sold in the public sale bears to the value of such stock plus the value of the qualified minority stock. For purposes of this subdivision (c)(1)(ii), each share of Conrail common stock shall be deemed to have the same value.

(2) *Qualified minority stock*—(i) *Defined.* The term "qualified minority stock" means only the Conrail common stock held by the Conrail ESOP as of the purchase date. For this purpose, the following stock shall not be treated as qualified minority stock:

(A) Any Conrail common stock that Conrail is obligated under sections 4024(f)(1) and (3) of the Act to contribute to the ESOP, or to distribute to persons who are or were ESOP participants, as of the purchase date, and

(B) Any common stock that may be held by the Conrail Equity Corporation as of the purchase date.

(ii) *Treatment of certain contributions or distributions.* Any contribution or distribution of Conrail common stock pursuant to Conrail's obligation under sections 4024(f)(1) and (3) of the Act, shall be treated as satisfying the conditions of section 162 and shall not be treated as an amount paid that is described in section 263(a).

(3) *Deemed purchase price.* The deemed purchase price is computed by making appropriate adjustments to the tentative deemed purchase price for the liabilities of old Conrail and other relevant items.

(i) *Liabilities included in the deemed purchase price.* The liabilities that may be included in the deemed purchase price as of the purchase date are only those described in §1.338(b)-1T(f)(2)(i) (26 CFR Part 1). Liabilities that are initially excluded from the deemed purchase price under the preceding sentence may be taken into account in redetermining the deemed purchase price only at the time and to the extent such an adjustment would be permitted under §§1.338(b)-1T(f)(2)(ii) and 1.338(b)-3T (26 CFR Part 1).

(ii) *Other relevant items.* As provided in §§1.338(b)-1T(g) and 1.338(b)-3T(a) (26 CFR Part 1), other relevant items may arise only from events that occur after the close of new Conrail's first taxable year. Any events that occur before the close of new Conrail's first taxable year are taken into account for purposes of determining the deemed purchase price as if they had occurred on the purchase date. The only events that may constitute another relevant item are the change in a contingent liability of old Conrail to one which is fixed and determinable and reductions in liabilities of Conrail (and the liabilities to which its assets are subject) that were taken into account in determining the deemed purchase price. No other adjustments shall be made to the tentative deemed purchase price, including, but not limited to, any adjustment in respect of the various statutory obligations under the Act to which new Conrail will be subject or to reflect additional proceeds that might have resulted if the sale of Conrail

common stock had occurred in another manner.

(iii) *Deemed asset sales by old Conrail's subsidiaries.* The rules of section 338(h)(3)(B) and §1.338–4T(c)(3) (26 CFR Part 1) shall apply to the deemed acquisition of the assets of old Conrail's subsidiaries. Thus, each of old Conrail's subsidiaries shall be treated as a new corporation (and a subsidiary of new Conrail) that purchased all of its assets as of the purchase date for an amount equal to the portion of the deemed purchase price allocated to the stock of such subsidiary pursuant to paragraph (d) of this section, as adjusted for liabilities and other relevant items of the subsidiary.

(4) *Redetermining the deemed purchase price following the close of new Conrail's first taxable year.* Other relevant items (within the meaning of subdivision (3)(ii) of this paragraph (c)) are accounted for in redetermining the deemed purchase price and the related allocation of such amount (as basis) to new Conrail assets following the close of new Conrail's first taxable year in accordance with the rules applicable to the redetermination of adjusted grossed-up basis in accounting for adjustment events under §1.338(b)–3T (26 CFR Part 1). For this purpose, an "acquisition date asset," as defined in §1.338(b)–3T(b)(2)(v), means any asset held by new Conrail on the purchase date.

(d) *Allocation of deemed purchase price (as basis) among assets of new Conrail*—(1) *In general.* Except as expressly provided in subparagraph (2), the deemed purchase price shall be allocated as basis among the assets of new Conrail in accordance with the temporary regulations prescribed under section 338(b). *See* §1.338(b)–2T (26 CFR Part 1). Therefore, the deemed purchase price is first reduced by the amount of Class I assets owned by new Conrail on the purchase date. The remaining amount is then allocated among Class II assets owned by new Conrail on the pruchase date in proportion to their relative fair market values. The amount allocated to any Class II asset may not, however, exceed the fair market value of such asset. The amount of the deemed purchase price in excess of the amounts allocated to Class I and Class II assets is then allocated among Class III assets owned by new Conrail on the purchase date also in proportion to their relative fair market values and subject to the fair market value limitation. The amount, if any, remaining after the allocations to the Class I, Class II, and Class III assets is allocated finally to Class IV assets.

(2) *Special rules.* The following special rules and conventions apply to the deemed asset sale:

(i) *Class I and Class II assets.* Notwithstanding the definitions in §1.338(b)–2T(b)(1) and (2)(ii) (26 CFR Part 1),

(A) Accounts receivable and materials and supplies owned by new Conrail shall be deemed to be Class I assets and the amount of the deemed purchase price allocable to those assets shall be their respective book values, and

(B) Commercial paper and repurchase agreements (within the meaning of section 1058(b)) shall be deemed to be Class II assets.

(ii) *Pension plan.* Any interest of Conrail in any qualified plan that satisfies the requirements of section 401(a) on the purchase date shall be deemed to have no fair market value and no portion of the deemed purchase price shall be allocated (as basis) to such interest.

(iii) *Recorded and unrecorded assets.* Except for the assets identified in paragraph (d)(2)(iv) of this section, the allocation of the deemed purchase price to Class I, Class II and Class III assets under this paragraph (d) shall be restricted solely to those tangible and intangible assets identified on old Conrail's most recently audited financial statement submitted to the Interstate Commerce Commission as of the purchase date ("Conrail's financial statement"). Thus, except for the assets identified in paragraph (2)(iv) of this section, no portion of the deemed purchase price shall be allocated to any Class I, Class II or Class III asset that is not identified on that financial statement. In addition, no portion of the deemed purchase price shall be allocated to any asset listed on Conrail's financial statement that is not treated as an asset owned by Conrail for Federal income tax purposes.

(iv) *Safe harbor leases.* The deemed acquisition by new Conrail of old Conrail's interest in any agreements characterized as leases under section 168(f)(8) that properly continue to be so characterized shall be subject to the rules of § 5c.168(f)(8)–2(a)(7) (26 CFR Part 5c), and such agreements shall be treated as Class III assets. For this purpose, the fair market value of such agreements is equal to the book value of the property that is subject to those agreements. Accordingly, to the extent the deemed purchase price is allocated to such agreements under this paragraph (d), such amount shall first be allocated to the lessor's obligation to Conrail to the extent of the unpaid balance of the obligation. Any excess over such unpaid balance shall be allocated between any leasehold interests and purchase options in proportion to their relative fair market values.

(v) *Class III assets.* For purposes of allocating the deemed purchase price to Class III assets of new Conrail and determining the fair market value limitation, except as provided in paragraph (d) (2)(iv) of this section, the fair market value of all tangible assets, including land, and any intangible assets shall be deemed to be their respective book values.

(e) *Disallowance of certain deductions.* No deduction shall be allowed to new Conrail for any amount that is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale pursuant to Conrail's obligation under section 4024(e) of the Act ("past service liability"). Conrail's past service liability as of the purchase date, however, shall be included in the deemed purchase price as a liability of old Conrail under paragraph (c) of this section. Accordingly, the disallowance of a current deduction for Conrail's past service liability shall not prohibit a deduction to new Conrail for the recovery of the basis in its assets that is attributable to such liability.

(f) *Definitions.* For purposes of this section—

(1) *Book value.* The term "book value" means the amount reported as the net book value of old Conrail's assets for financial accounting purposes in its most recently audited financial statement submitted to the Interstate Commerce Commission as of the date of the public sale. For this purpose, the term net book value means the book value, net of the related reserve. Notwithstanding the book value of old Conrail's assets as determined under the preceding sentences of this paragraph (f)(1) of this section, the term book value shall not take into account the book value for any asset that old Conrail is not considered to own for Federal income tax purposes.

(2) *Conrail.* The term "Conrail" means the Consolidated Rail Corporation and, as the context may require, any corporation that was a subsidiary of Conrail. A subsidiary of Conrail means any corporation in which Conrail owns stock meeting the requirements of section 1504(a)(2).

(i) *Old Conrail.* The term "old Conrail" means Conrail, immediately before the purchase date.

(ii) *New Conrail.* The term "new Conrail" means Conrail, on the purchase date and for all periods thereafter. New Conrail shall be treated as unrelated to old Conrail for all purposes.

(3) *Date of the public sale.* The date of the public sale shall be the date on which the initial public offering is

closed. For purposes of applying section 338 and the regulations thereunder (including §§ 1.338-4T(c)(3) and 1.338(b)-1T(f) (26 CFR Part 1)), the "acquisition date" is the date of the public sale.

(4) *Deemed asset sale.* The term "deemed asset sale" means the deemed purchase of old Conrail assets by new Conrail as described in paragraph (a) of this section.

(5) *Liabilities.* The liabilities of Conrail include only the liabilities of old Conrail (and the liabilities to which its assets are subject).

(6) *Public sale.* The term "public sale" means the sale of stock in Conrail pursuant to a public offering under the Act. If there is more than one public offering under the Act, such term means the sale pursuant to the initial public offering under the Act. Any sales of stock subsequent to the initial public offering shall be disregarded for purposes of determining the deemed purchase price under paragraph (c) of this section.

(7) *Purchase date.* The term "purchase date" means the beginning of the day after the date of the public sale.

J. Roger Mentz,

Assistant Secretary (Tax Policy).

January 6, 1987.

[FR Doc. 87-758 Filed 1-9-87; 12:07 pm]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3134-1]

Approval and Promulgation of Implementation Plans; Illinois

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

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a site-specific revision to the Illinois State Implementation Plan (SIP) for volatile organic compounds (VOC) as it applies to American Can Corporation's (American Can) Hoopeston facility, which is located in Hoopeston, Illinois. This SIP revision would allow American Can additional time to reformulate the coatings used in manufacturing cans until December 31, 1987. This action is taken in response to a May 6, 1985, request from the State of Illinois.

EFFECTIVE DATE: This final rulemaking becomes effective February 13, 1987.

ADDRESSES: Copies of this revision to Illinois SIP are available for inspection at:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses:

Public Information Reference Unit, EPA, 401 M Street SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604; (312) 886-6031.

SUPPLEMENTARY INFORMATION: On May 8, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a revision to its ozone SIP for American Can's Hoopeston facility located in Hoopeston, Illinois. This SIP revision is in the form of a January 24, 1985, Opinion and Order of the Illinois Pollution Control Board (IPCB), PCB 84-106. It grants American Can a compliance date extension for VOC control requirements from October 1, 1984, until December 31, 1987, and provides a legally enforceable compliance program.

On May 28, 1986, USEPA published a notice of proposed rulemaking proposing to approve the variance request for American Can (15 FR 19222). During the 30-day public comment period, USEPA received no comments.

Under the existing federally approved SIP, each of American Can's side seam spray coating operations is subject to a limit of 5.5 pounds of VOC per gallon (lbs of VOC/gal), the emission limitation contained in Rule 205 (n)(1)(B)(v) of Chapter 2: Air Pollution, of the Illinois Pollution Control Board Rules and Regulations. In addition, each of American Can's end-sealing compound operations is subject to the 3.7 lbs of VOC/gal emission limitation contained in IPCB Rule 205(n)(1)(B)(vi). Final compliance with these emission limitations was required by December 31, 1982. The SIP revision extends the date for final compliance by American Can to December 31, 1987.

Although the present VOC emissions from American Can's side seam and end-sealing compound operation do not indicate a RACT level of control,[1] USEPA is approving this final SIP revision extending compliance for the following reasons: (1) American Can is located in Vermilion County, which is, and has always been designated as an attainment area for the pollutant ozone, (2) this final SIP revision does not include a permanent relaxation or a compliance date extension past 1987 and (3) approval of this final SIP revision will not interfere with the maintenance of the ozone NAAQS. With this approval, the waiver from the requirement of one year of preconstruction ozone monitoring required by the Prevention of Significant Deterioration (PSD) regulations is terminated for Vermilion County until December 31, 1987.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Carbon monoxide, Hydrocarbons.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

[1] USEPA's policy on approving compliance date extensions for controlling VOC emissions from certain can manufacturing processes in nonattainment areas was published in the March 10, 1982, Federal Register (47 FR 10293). The policy states that USEPA will approve compliance date extensions for control of VOC emissions from can coating operations in those cases where the extension will facilitate the expeditious conversion to low solvent technology. These extensions may be granted for a period up to December 31, 1985, where an expeditious, legally enforceable compliance program has been developed. In addition, an approvable compliance date extension must be consistent with the reasonable further progress (RFP) requirements of the Clean Air Act and must not prevent the area from attaining the ozone national ambient air quality standard by the area's attainment date.

USEPA has not issued subsequent general guidance allowing extensions past 1985 nor has the Agency indicated that (1) 3.7 lbs of VOC/gal no longer constitutes reasonably available control technology (RACT) for high fat resistant end sealing compounds or that (2) 5.5 lbs of VOC/gal no longer constitutes RACT for side sealing operations.

Dated: December 18, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.720 is amended by adding new paragraph (c)(68) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(68) On May 8, 1985, the Illinois Environmental Protection Agency submitted a variance until December 31, 1987, from Illinois Rule 205(n)(1)(b)(v) and Rule 205(n)(1)(b)(vi), for American Can Corporation's Hoopeston, Illinois facility in the form of a January 24, 1985, Opinion and Order of the Illinois Pollution Control Board (PCB 84–106).

(i) *Incorporation by reference.* (A) A January 24, 1985, Opinion and Order of the Illinois Pollution Control Board (ICPB), PCB 84–106. This is a variance until December 31, 1987, for the coating reformulation programs at American Can Corporation's Hoopeston facility located in Hoopeston, Illinois.

[FR Doc. 87–798 Filed 1–13–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A-3 FRL-3134-5]

Approval and Promulgation of Implementation Plans; Approval of a Revision to the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving an amendment to Philadelphia's Regulation VII (Control of Emissions of Nitrogen Oxides from Stationary Sources) as a revision of the Pennsylvania State Implementation Plan (SIP). This amendment will exempt all fuel burning equipment installed before June 1, 1984 from complying with Regulation VII. The State of Pennsylvania requested that EPA approve this SIP revision in a letter dated March 28, 1986.

EFFECTIVE DATE: This action will be effective March 16, 1987, unless notice is received by February 13, 1987, that adverse or critical comments will be submitted.

ADDRESSES: Notice of adverse or critical comments may be submitted to Joseph W. Kunz, Chief, PA/WV Section, at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM11)

Philadelphia Air Management Services, 500 S. Broad Street, Philadelphia, PA 19146, Attn: William Reilly

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, Washington, DC

Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Donna Abrams of EPA, Region III's Air Programs Branch at (215) 597–9134.

SUPPLEMENTARY INFORMATION: EPA approved Philadelphia's Regulation VII as part of the Pennsylvania State Implementation Plan in 1976 (41 FR 8965). On March 28, 1986, EPA received a request from the Secretary of the Pennsylvania Department of Environmental Resources (DER) to exempt three 50 MW General Electric (GE) turbine units from the Philadelphia Electric Company's (PECO) Port Richmond plant from the provisions of Section II of Regulation VII. The three units to be exempted were installed in 1974 and are only operated about 600 hours per year. If these units complied with Regulation VII their total nitrous oxide emissions would be 35–50 tons per year (TPY). Their emissions average 200 TPY and are not expected to exceed 200 TPY for the life of the turbines. PECO has been operating these units under a delayed compliance order with the City since they were installed, so they have never complied with Regulation VII.

The NO_x control strategy necessary for the GE units to comply with Regulation VII was not available at the time of installation. Such technology is now available, but would cost PECO over $5 per pound of NO_x controlled to install. The capital cost to control NO_x emissions from the three GE units is about $4 million, with an annual operating and maintenance cost of $995,000 per year from 1986 to 1998, the end of the 25 year period of useful turbine life.

EPA has decided to approve this exemption as a revision of the Pennsylvania SIP for the following reasons:

1. All NO_x monitors in the Philadelphia area show attainment of the National Ambient Air Quality Standards (NAAQS) for NO_x and Pennsylvania is an attainment area for NO_x. Additionally, the closest monitor to PECO is measuring 68% of the standard.

2. PECO has reduced NO_x emissions at their Richmond plant over 90% and their city wide NO_x emissions by over 80% since 1974. Total NO_x emissions in Philadelphia were reduced over 50% in the same peirod.

3. Since these peak-load units are only operated 600 hours per year, EPA does not believe it is economically feasible for PECO to invest an initial capital cost of $4 million plus an annual O&M cost of nearly $1 million to comply with the existing Regulation VII.

4. The City-Wide NO_x emissions for 1984 are estimated at 46,000 tons per year and the increase in NO_x emissions resulting from this revision would constitute less than 1% of this value.

Summary of Action

This revision exempts all fuel burning units installed prior to June 1, 1984, from the provisions of Section II of Regulation VII. The only units this revision will affect are the three GE turbines mentioned above.

Miscellaneous

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen dioxide, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 18, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52, Subpart NN of the Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2020 is amended by adding paragraph (c)(65) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c)* * *

(65) An amendment to Philadelphia Air Management's Regulation VII, submitted by the Secretary of the Pennsylvania Department of Environmental Resources on March 28, 1986. The amendment exempts fuel burning units installed before June 1, 1984, from the provisions of Regulation VII (Control of Emissions of Nitrogen Oxides from Stationary Sources).

(i) *Incorporation by reference.* (A) Air Management RegulationVII, Control of Emission of Nitrogen Oxides from Stationary Sources, adopted on April 9, 1985.

[FR Doc. 87–796 Filed 1–13–87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL-3141-8; TN-029]

Approval and Promulgation of Implementation Plans, Tennessee; Nonregulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 9, 1986, the State of Tennessee submitted six Board Orders for approval by EPA. Four Board Orders will be addressed at a later date. They are Board Order 6–86, Certificate of Alternate Control for Batesville Casket Company; 8–86, Carbon Monoxide Control Plan for Memphis Shelby County; 9–86, Certificate of Alternate Control for Bryce Corporation; 10–86, Variance for Bryce Corporation. The Board Orders that are approved today are 7–86 and 11–86. The first is a revision to the State Implementation Plan (SIP) affecting how air resources are allocated between competing interests and to what extent air resources may be used. The second is a temporary operating permit for Refined Metals Corporation.

DATE: This action will be effective on March 16, 1987, unless notice is received by February 13, 1987, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, GA 30365

Library, Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV at the above address and telephone number (404) 347–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: Board Order 7–86 is a revision to the SIP designed to allocate remaining air resources between competing interests in the remaining air quality. The revision is designed to prohibit the usage of more than 70% of remaining air resources in most of the state without the approval of the Tennessee Air Pollution Control Board. As part of the adopted procedure, permits for minor sources that have a significant air quality impact, require public notice.

Board Order 11–86 is a temporary operating permit for Refined Metals Corporation. The permit for Refined Metals expired June 12, 1986. Ambient air lead violations were recorded around the plant before the permit expired. EPA felt that it was appropriate for the company to continue to operate while the Memphis-Shelby County agency evaluated the situation. The expired permit was included in the SIP for lead as the federally enforceable emission limit. Therefore, the temporary permit must be included in the SIP for lead as the replacement for the expired permit. The permit was issued with the same conditions as the expired permit. Once the nonattainment situation is resolved, a permanent permit will be issued.

Final Action

Since Board Orders 7–86 and 11–86 are consistent with EPA policy and requirements, they are hereby approved. The public should be advised that this action will be effective March 16, 1987. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I hereby certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Incorporation by reference.

Dated: December 23, 1986.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(74) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(74) Board Orders 7–86 and 11–86 were submitted on May 9, 1986, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Board Order 7–86, which became State-effective on April 16, 1986.

(B) Board Order 11–86, and temporary operating permit for Refined Metals Corp., permit No. 0212–OIP, which became State-effective on April 16, 1986.

(ii) Other material—none.

[FR Doc. 87–785 Filed 1–13–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2904, PP 5F3234/R864; FRL-3140-2]

Pesticide Tolerance for 2-[1-(Ethoxyimino)Butyl]-5-[2-Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety in or on the raw agricultural commodities soybean hay at 10 parts per million (ppm), alfalfa hay and forage at 40 ppm, peanuts at 25 ppm, peanut hulls at 5 ppm, and sunflower seeds at 7 ppm. This regulation was requested by BASF Corp. and establishes the maximum permissible level for residues of the herbicide in or on these raw agricultural commodities.

EFFECTIVE DATE: January 14, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Room 243, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued notices published in the **Federal Register** that announced that BASF Wyandotte Corp., P.O. Box 181, 100 Cherry Hill Road, Parsippany, NJ 07054, proposed amending 40 CFR 180.412 by establishing tolerances for the combined residues of the herbicide 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as parent) in or on the following raw agricultural commodities:

Pesticide petition No.	Crops	Parts per million (ppm)	FEDERAL REGISTER citation
3F2904	Alfalfa, forage	20.0	July 13, 1983 (48 FR 32078).
	Alfalfa, hay	20.0	
	Soybean, forage.	20.0	
	Soybean, hay	20.0	
5F3234	Peanuts	25.0	August 7, 1985 (50 FR 31916).
	Peanut hulls	5.0	
	Sunflower seeds.	7.0	

No comments were received in response to these notices of filings.

The petitioner subsequently amended pesticide petition 3F2904 by submitting a revised Section F proposing tolerances for alfalfa forage and hay at 40 ppm, soybean hay at 10 ppm, and milk at 0.05 ppm and withdrawing the proposed tolerances for soybean forage. The tolerance of 0.05 ppm for milk is already published; therefore, there is no potential increase in risk to humans from the revised proposal, and no period of public comment is needed. Currently, there is an established tolerance of 10 ppm in or on soybeans.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several acute studies, a 6-month feeding study with dogs fed dosages of 0, 2.0, 20.0, and 200 milligrams per kilogram of body weight per day (mg/kg/day) with a no-observable-effect level (NOEL) of 2.0 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT); a 2-generation reproduction study with rats fed 0, 2, 6, 18, and 54 mg/kg/day with no reproductive effects observed at 54 mg/kg/day (HDT) and a NOEL of 18 mg/kg/day; a teratology study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 240 mg/kg/day (HDT) and a maternal NOEL of 40 mg/kg/day; a teratology study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a teratogenic NOEL of 160 mg/kg/day; and mutagenic studies including recombinant assays and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (negative at concentrations of chemical to 100 percent) and host-mediated assay (mouse) with *S. typhimurium* (negative at concentrations of chemical to 100 percent) and a host-mediated assay (mouse) with *S. typhimurium* negative at 2.5 grams (gm/kg/day) of chemical.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 2.00 mg/kg/day and using a hundredfold safety factor is calculated to be 0.02 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.003975 mg/day (1.5 kg). The current action will utilize 6.9 percent of the ADI. Published tolerances utilize 19.875 percent of the ADI.

A related final rule (FAP 5H5464/R865) appearing elsewhere in this issue of the **Federal Register** establishes animal feed additive tolerances on peanut soapstock and sunflower meal.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes of this tolerance rule. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatography using a sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are therefore set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections

are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

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

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 29, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, Part 180 is amended as follows:

1. The authority citation continues to read as follows:

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

2. In § 180.412, by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

* * * * *

Commodity	Parts per million
Alfalfa, forage	40.0
Alfalfa, hay	40.0
* * * * *	
Peanuts	25.0
Peanuts, hull	5.0
* * * * *	
Soybean, hay	10.0
Sunflower seeds	7.0
* * * * *	

[FR Doc. 87-450 Filed 1-13-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 22, and 25

[Gen. Dockets 84-1231, 84-1233, and 84-1234]

Cellular Communications Systems and Land Mobile Matters

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration; extension of period for oppositions and replies.

SUMMARY: This Order extends the time period in which to file oppositions and replies in response to eight petitions for reconsideration of the *Report and Order* in General Dockets 84-1231, 84-1233, and 84-1234. It is necessary to extend the filing period due to the extent and complexity of the issues presented in the petitions.

DATES: Oppositions may now be filed on or before January 15, 1987; replies may now be filed on or before January 30, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Spectrum Engineering Division, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554, (202) 653-8116.

SUPPLEMENTARY INFORMATION: The Final Rule action (Report and Order) in this proceeding was published on October 22, 1986, 51 FR 37398.

Federal Communications Commission

In the matter of amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, General Docket No. 84-1231 RM-4812; amendment of Parts 2, 15, and 20 of the Commission's Rules and Regulations to Allocate Frequencies in the 900 MHz Reserve Band for Private Land Mobile Use, General Docket No. 84-1233 RM-4829; amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, General Docket No. 84-1234 RM-4247.

Order Extending Time For Oppositions and Replies

Adopted: December 24, 1986.

Released: January 12, 1987.

By the Office of Engineering and Technology:

1. The Commission has received a *Motion to Extend Filing Dates*, filed by the National Aeronautics and Space Administration (NASA). NASA, in its filing, requests that the time for responding to petitions for reconsideration of the *Report and Order* in the above-captioned proceedings be extended to January 20, 1987, for oppositions and February 20, 1987, for replies.

2. NASA requests additional time to file oppositions because of the extent and complexity of the frequency allocation issues presented in the petitions for reconsideration, as well as the intervening holiday period. NASA further states that counsel representing the Aviation Parties, the MSS applicants, Land Mobile Communications Council, Associated Public Safety Communications Officers, Inc., and Airfone, Inc., have authorized NASA to state their support of, or their consent to, such an extension of time. Ten petitions for reconsideration were filed.

3. The Commission concurs with NASA's assessment that an extension of time is desirable to allow the frequency allocation issues raised in the petitions to be fully explored. However, we wish to move expeditiously on the petitions, and we do not find it necessary to grant the full extension requested. We believe that all relevant issues can be fully addressed in a somewhat shorter time frame. Accordingly, we will extend the time for filing oppositions to January 15, 1987, and the time for filing replies to January 30, 1987, except for the petitions filed by Autotel Communications Network (Autotel) and General Electric Co. (GE). The Autotel and GE petitions focus only on relatively minor licensing issues related to the Private Land Mobile Service. Because the issues raised by Autotel and GE are straightforward, we see no reason to extend the time for response to the Autotel and GE petitions.

4. This action is taken pursuant to authority found in sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 302 and 303, and pursuant to §§ 0.31 and 0.241 of the Commission's Rules.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87-814 Filed 1-13-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Puerto Rican Plants; Peperomia wheeleri and Banara vanderbiltii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines two Puerto Rican plants, *Peperomia wheeleri* (Wheeler's peperomia) and *Banara vanderbiltii* (Palo de Ramon), to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Peperomia wheeleri* is endemic to seasonal semievergreen open forests on granodiorite boulders along the north coast of Culebra Island, Puerto Rico. The species is endangered by destruction of its habitat through deforestation and the activities of feral and domestic animals. *Banara vanderbiltii* is endemic to semievergreen forests of the karst region of northern Puerto Rico, where a single population of six plants survives. The species is endangered by deforestation for limestone quarrying and yam cultivation. This final rule will implement the Federal protection and recovery provisions afforded by the Act for both plants.

EFFECTIVE DATE: February 13, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, Kilometer 5.1, Carretera 301, P.O. Box 491, Boqueron, Puerto Rico 00622, and at the Service's Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. David Densmore at the Caribbean Field Office address (809/851-7297) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/331-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

Peperomia wheeleri was discovered by Britton and Wheeler during their visit to Culebra Island in 1906. The plants were taken alive to the New York Botanical Garden and the species described from living material. The type specimen was collected from plants at the Garden. The species was not collected from the wild again until 1980 (Vivaldi and Woodbury 1981a).

Peperomia wheeleri is an evergreen, hairless, fleshy herb reaching 3 feet (1 meter) in height, with clusters of minute flowers in spikes 4-6 inches (10-15 centimeters) long. The species is locally abundant, but restricted to large granodiorite boulders found on the north slopes of Monte Resaca within the Municipality of Culebra, Puerto Rico. Although the boulder substrate extends over much of the north side of Culebra Island, deforestation and grazing have eliminated or substantially altered the original vegetation. Within the remaining forested areas, foraging by escaped domestic fowl has destroyed or threatens to destroy the humus overlaying the boulders, thus altering the microhabitat required by *Peperomia wheeleri*. The remaining population of this species is located almost entirely within the 375 acre (152 hectare) Monte Resaca Unit of the Culebra National Wildlife Refuge. The number of surviving individuals is difficult to estimate, and nothing is known about the species' regeneration or population dynamics.

Banara vanderbiltii was discovered by Amos Arthur Heller in 1899, and named in honor of Cornelius Vanderbilt, who financed his collection in Puerto Rico. The first specimens were collected at Catano and Martin Pena, near the present metropolitan area of San Juan, but have not been found at these locations since that time. *Banara vanderbiltii* was not collected again until the 1950's, when two trees were found in the limestone hills west of Bayamon. These trees were subsequently destroyed when the area was cleared to plant yams, and the species was thought to be extinct. However, further investigation of the same general area yielded five young plants (Vivaldi and Woodbury 1981b). More recently, a sixth plant was found at this site.

Banara vanderbiltii is an evergreen shrub or small tree reaching 30 feet (10 meters) in height and 5 inches (12 centimeters) in diameter. The leaves are arranged alternately in a single plane, have a dentate margin, and are densely pubescent on both sides. The species is restricted to a single locality in the semievergreen forests of the limestone karst region of northern Puerto Rico, between Vega Baja and Bayamon. Expansion of human habitation in the San Juan area has been responsible for the destruction of other known populations, and the sole remaining population is threatened by continued development of adjacent areas. Nothing is known of the species' regenerative capacity, thus it is not clear whether the existing population is capable of maintaining or increasing its size.

Peperomia wheeleri and *Banara vanderbiltii* were recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). In August 1979, the Service contracted with Dr. Jose L. Vivaldi, a resident botanist of Puerto Rico, to conduct a status survey of plants considered to be candidates for listing as endangered or threatened in Puerto Rico and the Virgin Islands. Reports (Vivaldi and Woodbury 1981a, 1981b) and documentation resulting from this survey recommended that both *Peperomia wheeleri* and *Banara vanderbiltii* be proposed for listing as endangered species. The species were included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in a Notice of Review in the **Federal Register** (45 FR 82480) dated December 15, 1980. Both species were designated Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) and were retained in Category 1 in the November 28, 1983, update (48 FR 53640) of the 1980 notice and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found on October 13, 1983, October 13, 1984, and October 13, 1985, that the listing of *Peperomia wheeleri* and *Banara vanderbiltii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. In two separate documents the Service proposed in the **Federal Register** on April 10, 1986, to list *Peperomia wheeleri* (51 FR 12457) and *Banara vanderbiltii* (51 FR 12455).

Summary of Comments and Recommendations

In the two April 10, 1986, proposed rules and their associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, municipal governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment on *Peperomia wheeleri* were published

in the *San Juan Star* (in English) and in *El Nuevo Dia* (in Spanish) on May 5, 1986. Similar notices for the *Banara vanderbiltii* were published in the same two papers on May 5 and May 3, respectively. Four letters of comment were received and are discussed below. No public hearing was requested; therefore none was held.

Comments were received from an Assistant Secretary of the Puerto Rico Department of Natural Resources, the Administrator of the Botanical Garden of the University of Puerto Rico, a professional botanist in Puerto Rico, and a private citizen. All comments supported the proposed listings of *Peperomia wheeleri* and *Banara vanderbiltii*. However, the professional botanist, Dr. José Vivaldi, criticized the Service's decision not to designate critical habitat for these species. The reasons for this decision are stated below under "Critical Habitat".

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that both *Peperomia wheeleri* and *Banara vanderbiltii* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Peperomia wheeleri* Britton (Wheeler's peperomia) are as follows (a similar analysis follows for the other plant):

A. The Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range

Modification and destruction of habitat appear to be the most serious threats to *Peperomia wheeleri*. The species' habitat on Culebra Island has been largely modified or destroyed through deforestation, grazing by cattle and goats, and foraging by domestic fowl, thus eliminating the species throughout most of its former range. Few plants exist outside the boundaries of the Monte Resaca Unit of the Culebra National Wildlife Refuge, where measures are being taken to exclude livestock. However, until this work is complete and a management plan developed to protect *Peperomia wheeleri*, some additional losses of habitat and individuals are likely. Further deforestation within the Refuge is not expected to occur, although such activities along the Refuge boundaries could cause additional losses by altering the structure and microclimate of the forest edge.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Peperomia wheeleri is restricted to a very small area (375 acres, 150 hectares) and taking or vandalism could severely threaten this single locality if they were to occur. Increased publicity regarding the location of this plant could increase the chance of taking and/or vandalism occurring. The species is known to be in cultivation in at least one botanical garden. This plant has no known commercial value at this time.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species, although it is likely that some grazing or browsing of plants has occurred. Destruction of *Peperomia wheeleri* habitat by grazing is discussed above in Factor "A."

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Peperomia wheeleri* is not yet on the Commonwealth list. Federal listing will provide some protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research and management. All plants existing on National Wildlife Refuges are protected from collecting (50 CFR 27.51); the population of *Peperomia wheeleri* on Culebra National Wildlife Refuge is protected by this prohibition, to the extent that it is enforceable.

E. Other Natural or Manmade Factors Affecting its Continued Existence

There is insufficient information on the regenerative capacity of *Peperomia wheeleri* to determine whether the present populations will be maintained. The species' habitat requirements are poorly understood, although it appears that maintenance of the forest canopy and humus layer are minimal requirements.

These same five factors and their application to *Banara vanderbiltii* Urban (Palo de Ramon) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Modification of habitat or direct destruction of plants through deforestation appear to be the most serious threats to *Banara vanderbiltii*. The species has been extirpated by deforestation from all but one of the sites where it has been known to exist. The remaining plants occupy a site less that 165 square feet (16 square meters) in extent inside a stand of remnant forest and are less that 660 feet (200 meters) from a major highway. Further clearing, modificaiton of the forest edge, or encroachment by plant species adapted to disturbance could lead to reduced survivorship or extinction of *Banara vanderbiltii*.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of this species, but could become so in the future. The species occurs near inhabited areas, and could be removed or destroyed incidentally or deliberately. Cultivation of the species has not been attempted. This plant has no known commercial value at this time.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species, although threats to the young plants and fruits have not been studied.

D. The Inadequacy of Existing Regulatory Mechanisms

In the recent Commonwealth of Puerto Rico regulation that recognizes and provides protection for certain Commonwealth listed species, *Banara vanderbiltii* is listed as endangered, which extends legal protection in the form of criminal penalties for the destruction or removal of listed plant species from both public and private lands. Federal listing will further enhance its protection and possibilities for funding needed researh and management.

E. Other Natural of Manmade Factors Affecting its Continued Existence

Banara vanderbiltii is known to occur only as a single small, compact population. The species' restriction to specialized habitat, small geographically limited range, and population size on only six plants intensifies any adverse effects upon the population or habitat of this plant. Although the species has bisexual flowers, its regenerative

requirements are unknown. The fruits of this species have only recently been discovered by Service personnel, and the frequency or viability of fruit and seed production are unknown.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by both species in determining to make this rule final. Based on this evaluation, the preferred action is to list both *Peperomia wheeleri* and *Banara vanderbiltii* as endangered. Since there are relatively few individuals of both species remaining and there is a continuing risk of damage to the plants and/or their habitat, endangered status seems an accurate assessment of both species' conditions. It is not prudent to designate critical habitat because doing so would increase the risk to each species, as detailed below.

Critical Habitat

Section 4(a)(3) of the Act, 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 prudent for either species at this time. The populations of *Peperomia wheeleri* are sufficiently restricted (375 acres, 150 hectares) that unauthorized collecting or vandalism could significantly affect their numbers. *Banara vanderbiltii* is even more restricted to less than 200 square yards (200 square meters). Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. In addition, the Service believes that Federal involvement in the areas where these plants occur can be identified without designation of critical habitat. The populations of *Peperomia wheeleri* are located on a National Wildlife Refuge, and refuge personnel are aware of the plant's locations and management needs. All involved parties and landowners will be notified of the location and importance of protecting the habitat of *Banara vanderbiltii*. Protection of both these species' habitats will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to designate critical habitat for either *Peperomia wheeleri* or *Banara vanderbiltii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is 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 and were revised June 3, 1986 (51 FR 19926). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for either species, as discussed above.

At present, Federal involvement with *Peperomia wheeleri* is possible only where habitat or plants may be affected by actions of the U.S. Fish and Wildlife Service. This species may be later found on private lands. Federal involvement with *Banara vanderbiltii* is possible only where habitat or plants may be affected by actions of the Federal Highway Administration. In the event that the highway in the immediate vicinity of this population of this species is widened or realigned, proper protection and management planning will be needed to protect *Banara vanderbiltii*. Project engineers and work crews would need to be altered so that the plants are considered and their habitat protected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for either plant will ever be sought or issued since the species are rarely cultivated and are uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office (600 Broyhill Building), U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981a. Status report on *Peperomia wheeleri* Britton. Status report submitted to the U.S. Fish and Wildlife Service, Mayaguez, P.R. 30 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981b. Status report on *Banara vanderbiltii* Urban. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Mayaguez, P.R. 35 pp.

Author

The primary author of this final rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in a alphabetical order by family, 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					
*	*	*	*	*	*	*
Flacourtiaceae—Flacourtia family. *Banara vanderbiltii.*	Palo de Ramon	U.S.A. (PR)	E	254	NA	NA
*	*	*	*	*	*	*
Piperaceae—Pepper family: *Peperomia wheelen.*	Wheeler's peperomia	U.S.A (PR)	E	254	NA	NA
*	*	*	*	*	*	*

Dated: December 31, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-784 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 51222-6240]

Atlantic Sea Scallop Fishery

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing a Secretarial Amendment to (1) supersede Amendment 1 to the Fishery Management Plan for Atlantic Sea Scallops (FMP), (2) provide authority to the Director, Northeast Region, NMFS (Regional Director) to grant exemptions from the regulations for the conduct of experimental fishing operations beneficial to the sea scallop resource or fishery and (3) make a change in the sampling criteria used to measure compliance with the meat count standard. This action is intended to continue the management measures of the original FMP and facilitate the development of an alternative management program for the fishery.

EFFECTIVE DATE: December 30, 1986.

ADDRESS: Copies of the Secretarial Amendment are available from Richard H. Schaefer, Acting Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, Resource Policy Analyst, 671-281-3600 extension 331.

SUPPLEMENTARY INFORMATION:

Background

The FMP was prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The final rule implementing the FMP (47 FR 35990, August 18, 1982) established a maximum average meat count standard which may be specified between a range of 40 to 25 meats per pound (at increments of 5), with a corresponding minimum shell height requirement for sea scallops landed in the shell. Enforcement of this standard was limited up to and including the point of first transaction in the United States.

The Council prepared Amendment 1 to the FMP which was approved by the Administrator of NOAA on October 17, 1985. Amendment 1 established a minimum meat weight standard (the four-ounce standard) to replace a maximum average meat count standard and extended enforcement beyond the point of first transaction. Its purpose was to reduce the taking of small sea scallops.

The final rule implementing Amendment 1 (50 FR 46069, November 6, 1985) was to become effective on January 1, 1986. However, its effectiveness was delayed until December 29, 1986, by a series of emergency regulations which continued the management measures originally established in the FMP. A full discussion regarding the use of the emergency authority granted under section 305(e) of the the Magnuson Fishery Conservation and Management Act (Magnuson Act) can be found in the preamble of the proposed rule to implement this Secretarial Amendment (50 FR 40468, November 7, 1986).

At the request of the Council, the Secretary of Commerce (Secretary) prepared this Secretarial Amendment to supersede Amendment 1 and to include a provision for experimental fishing. In response to industry concerns, the Council has begun to explore alternative management measures, such as gear modifications and closed areas, to replace the maximum average meat count and shell height standards of the FMP. The Secretarial Amendment, which this rule implements, is intended to ensure that the Council has adequate time to develop and analyze alternative management measures that are appropriate and acceptable in meeting the objectives of the FMP. The experimental fishing provision of the Secretarial Amendment is intended to facilitate the Council's development of alternative measures.

This Secretarial Amendment establishes the meat count standard for shucked Atlantic sea scallops at 30 meats per pound and the shell height equivalent for scallops landed in the shell at 3½ inches.

Response to Public Comment

One written comment, from the Council, was received during the public comment period for this rule.

Comment: At its December meeting, the Council voted unanimously to eliminate the bipartite sampling criteria in the regulations which determine violation and establish the averaged meat count of all samples taken as the sole basis for determining a meat count violation. The Council requested that this change be made through this final rule. Currently the regulations at § 650.21(a) state that a violation results "if the number of meats in each of any three one-pound samples exceeds the standard, or if the averaged meat count for the entire sample group exceeds the standard."

Response: NOAA has adopted the Council's suggestion to establish a single sampling criterion for determining a meat count violation based upon the averaged meat count for the entire

sample group. NOAA believes that this change does not alter the intent of the FMP or Secretarial Amendment, which is for the meat count measure to represent a maximum average value on a trip basis. The change relieves a perceived restriction, that operationally, will have no effect on the implementation and administration of the FMP

Changes to the Proposed Rule

The final rule differs from the proposed rule in order to adopt the Council's request, as discussed above, by eliminating the language in § 650.21(a) which states that a sample group fails to comply with the standard "if the number of meats in each of any three one-pound samples exceeds the standard."

Additionally, the final rule has been changed to clarify that the exemption provision, in § 650.23, applies to management-oriented research, and not scientific research as defined in the Magnuson Act. In the final rule, the term "experimental fishing" has replaced the word "research" which was used in the proposed rule. NOAA has determined that this change does not alter the intent of the Council, NMFS, or the Secretarial Amendment.

For the reasons stated above, this final rule (1) supersedes the changes of Amendment 1 affecting §§ 650.1, 650.2, 650.7, 650.20, 650.21, and 650.22 and (2) adds a new § 650.23 providing authority to grant exemptions for experimental fishing purposes.

Classification

The Administrator of NOAA determined that the Secretarial Amendment is necessary for the conservation and management of the Atlantic Sea Scallop Fishery and that it is consistent with the Magnuson Act and other applicable law.

This action is categorically excluded, by NOAA Directive 02-10, from the requirement to prepare an environmental assessment.

The Administrator of NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The current regulatory measures of the FMP restored by this action and their impacts are not changed. This action continues the management measures under which the fishery had been operating.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because this action is simply a restoration of the regulatory measures originally in effect As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA, determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

The Assistant Administrator also finds, for continuity within the management program and to avoid any disruption within the industry, that it is impractical and contrary to public interest to delay for 30 days the effective date of the final rule as required under section 553(d) of the Administrative Procedure Act.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements

Dated: January 9, 1987

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 650 is amended as follows:

PART 650—[AMENDED]

1. The authority citation for 50 CFR Part 650 continues to read as follows:

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

2. The table of contents is amended by revising the titles of §§ 650.20 and 650.22, and adding a new § 650.23 title, to read as follows:

* * * * *

Sec.

650.20 Meat-count and shell-height standards.

* * * * *

650.22 Review of resource status: temporary adjustment of standards

650.23 Experimental fishing exemption.

3. In § 650.1, a sentence is added at the end of the paragraph, to read as follows:

§ 650.1 Purpose and scope.

* * * These regulations govern fishing for Atlantic sea scallops within that portion of the Atlantic ocean over which the United States exercises fishery management authority.

4. In § 650.2, the definitions for *Bag, Four-ounce standard,* and *Landed form* are removed; the definition of *Non-conforming Atlantic sea scallops* is revised, to read as follows:

§ 650.2 Definitions.

* * * * *

Non-conforming Atlantic sea scallops means scallops which do not meet the standards specified in § 650.20 of these regulations, unless such scallops have been certified (through a procedure specified by the Regional Director) to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

* * * * *

5. In § 650.7, paragraph (a) is revised, to read as follows:

§ 650.7 Prohibitions.

* * * * *

(a) To possess, at or prior to the first transaction in the United States, any non-conforming Atlantic sea scallops. All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.21, up to and including the first transaction in the United States.

6. Section 650.20 is revised, to read as follows:

§ 650.20 Meat-count and shell-height standards.

(a) Except as provided in paragraph (b) of this section, the meat count for shucked Atlantic sea scallops must not exceed 30 meats per pound; the corresponding minimum shell height is 3½ inches (89 mm).

(b) The Regional Director may temporarily adjust the meat count and shell height standards in accordance with the procedures and criteria provided in § 650.22.

7. Section 650.21 is revised, to read as follows:

§ 650.21 Compliance and sampling procedures.

Compliance with the specified meat-count and shell-height standards will be determined by inspection and enforcement up to and including the first transaction in the United States as follows:

(a) *Shucked meats.* The Authorized Officer will take one-pound samples at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten one-pound samples be examined as a sample group. A sample group fails to comply with the standard if the averaged meat count for the entire sample group exceeds the standard. The total amount of scallops in possession will be presumed in violation of this regulation if the sample group fails to comply with the standard.

(b) *Scallops in the shell.* The Authorized Officer will take samples of forty scallops each at random from the total amount of scallops in possession. The person in possesion of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of the number of scallops in the sample group are less than the shell height specified by the standard. The total amount of scallops in possession will be presumed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

8. Section 650.22 is revised, to read as follows:

§ 650.22 Review of resource status; temporary adjustment of standards.

(a) *Review of resource status.* The Regional Director will review the status of the Atlantic sea scallop resource on a continuing basis, and will, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require adjustment of the managment program, or amendment of the FMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Temporary adjustment of standards.* (a) The Regional Director may recommend that the standards contained in § 650.20 be adjusted, if he makes the finding required by paragraph (c) of this section after considering the information specified in paragraph (d) of this section.

(2) The standards can be adjusted only within a range from 25 to 40 meats per pound (with appropriate and consistent shell height adjustment), and may be adjusted by no more than 5 meats per pound by any one adjustment.

(3) The Regional Director will solicit and consider any recommendation of the Council regarding adjustment of standards, and, with the Council, will provide for public notice and comment, and hold a public hearing on the recommendation in conjunction with the Council meeting at which the recommenation is discussed.

(4) The Regional Director may modify his recommendation on the basis of comments from the Council or the public. After consideration of the full record, the Regional Director may adjust the stanadards contained in § 650.20, and will publish in the **Federal Register** notice of such change and the date when the adjusted standard will revert to a 30 meat count. Notice of any such adjustment will be mailed to each holder of a permit issued under § 650.4.

(5) Adjustments of the meat count and shell height standards may remain in effect for up to twelve months. No later than twelve months after the implementation of the most recent adjustment to the meat count and shell height standards, the Regional Director must review such adjustments. The Regional Director may renew the adjustment upon making a finding consistent with §650.22(c).

(c) *Criteria.* The Regional Director may adjust the standards specified in § 650.20 if he finds that:

(1) The objective of the FMP would be achieved more readily, or would be better served through an adjustment of the prevailing standards;

(2) The recommended alteration in the standards would not reduce expected catch over the following year by more than 5 percent from that which would have been expected under the prevailing standard;

(3) The recommended standards for meat count and shell height are consistent with each other; and

(4) Inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and those inconsistencies provide foreign fishermen with an advantage over domestic fishermen which can be demonstrated to adversely affect the domestic fishery; or analysis of the size distribution of sea scallops shows that more than 50 percent of the harvestable sea sallop biomass is at sizes smaller than those consistent with the prevailing standards and that a temporary relaxation of the standards would not jeopardize future recruitment to the fishery.

(d) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing any report or recommendation under this section. The Regional Director will also consider: reports and records maintained by fishermen and made available as a part of the fishery statistics program; other fishery statistics; and any other available information which increases understanding of prevailing conditions of the stock, the fishery, and the industry.

9. A new § 650.23 is added, to read as follows:

§ 650.23 Experimental fishing exemption.

(a) Upon the recommendation of the Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the sea scallop resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not

(1) Have a detrimental effect on the sea scallop resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

[FR Doc. 87-816 Field 1-9-87; 4:25 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 9
Wednesday, January 14, 1987

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

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 658

Revision of Farmland Protection Policy Act

January 8, 1987.

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA or Department) amends its rule for implementing the Farmland Protection Policy Act to require progress reports, enable governors to bring action to enforce the requirements of the Act, include a section omitted by clerical error, revise how Federal agencies apply the Act, and revise the definition of farmland. These amendments are necessary in order to comply with amendments to the Farmland Protection Policy Act (FPPA) made by Title XII of the Food Security Act of 1985, Pub. L. 99–198, December 23, 1985, and to clarify several provisions of the existing rule.

This rule will revise Part 658 of Title 7 of the Code of Federal Regulations.

DATE: Written comments on this proposed rule must be received on or before February 27, 1987.

ADDRESS: Send written comments to Sherman L. Lewis, Director, Conservation Planning and Application Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Sherman L. Lewis, Director, Conservation Planning and Application Division, Soil Conservation, P.O. Box 2890, Washington, DC 20013, telephone 202–382–1845.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and has been designated "non-major." The Assistant Secretary for Natural Resources and Environment has determined that this action will not have an economic impact on the economy of $100 million or more; result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This 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.*

This document has been prepared in the Office of the Assistant Secretary for National Resources and Environment, USDA, with the assistance of the Conservation Planning and Application Division of the Soil Conservation Service.

Following are the six amendments made to the rule as published on July 5, 1984 in the **Federal Register**, 49 FR 27724, and found in 7 CFR Part 658:

1. Section 658.4 is amended by adding a new paragraph (g), requiring federal agencies to return a copy of the Farmland Conversion Impact Rating Form (AD–1006) to the local Soil Conservation Service (SCS) field office after a decision relating to farmland conversion has been made by the Federal agency.

2. Section 658.7 is amended by adding a new paragraph (d), which requires each Federal agency to report to the Chief of the Soil Conservation Service by November 15 of each year on progress made during the prior fiscal year to implement paragraphs (a) and (b) of § 658.6.

3. Paragraph (b) of § 658.7, which was omitted by clerical mistake in the final published rule, is added.

4. Paragraph (d) of § 658.3 is revised to provide that where a State policy or program to protect farmland exists, the Governor of such a State may bring action in the Federal district court to enforce the requirements of the FPPA.

5. Paragraph (c) of § 658.3 is amended to provide that if, after consideration of the adverse effects and suggested alternatives, a landowner wants to proceed with conversion of prime or unique farmland, a Federal agency is not precluded from providing assistance for such conversion.

6. Paragraph (a) of § 658.2 is amended to provide that prime farmland "committed to urban development or water storage" includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

The first proposed revision is intended to comply with the amendment to the FPPA made by section 1255, Title XII, Pub. L. 99–198 (December 23, 1985), which requires USDA to make annual reports to Congress beginning January 1, 1987 on (a) the effects, if any, of Federal programs, authorities, and administrative activities with respect to the protection of United States farmland and (b) the results of the review of existing policies and procedures by all Federal agencies to determine where provisions thereof will prevent such units of the Federal government from taking appropriate action to comply fully with the FPPA. To meet these two annual reporting requirements, § 658.4 of the rule is amended by adding a new paragraph (g), requiring Federal agencies to return a copy of the Farmland Conversion Impact Rating Form (AD–1006) to the local SCS field office after a decision relating to farmland conversion has been made by the Federal agencies. The returned copy of the forms will be used by the SCS to make an annual report on Federal agency progress in implementing the FPPA.

Each SCS State office will report to the SCS National Headquarters where a national report to Congress will be prepared.

To meet the second reporting requirement concerning Federal agencies' review of their internal policy and procedures, the new rule will require Federal agencies to report to the Chief of SCS their progress in reviewing their policies and procedures related to farmland protection and make revisions as required.

The third revision would add paragraph (b) to § 658.6, setting out the requirements for each Federal agency, as appropriate, to develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policies of the FPPA. This section was not pubished in the final rule that was

published on July 5, 1984, as it was omitted by clerical mistake.

The fourth revision is required by section 1255 of Pub. L. 99–198, which amended the FPPA to permit the Governor of a State that has a policy or program to protect farmland to bring an action in the Federal district court of the district in which a Federal program is propsoed to enforce the requirements of the FPPA. Previously, the FPPA and 7 CFR 658.3(d) prohibited any action, either legal or equitable, by any State, unit of local government, or any person or class of persons challenging a Federal project, program, or other activity that may affect farmland.

The proposed amendment conforms to the amended FPPA and removes the terms "any state, unit of local government" from the general prohibition against causes of action and recognizes the right of the Governor of an affected State that has the program or policy to protect farmland to bring an action to protect such a program or policy under the FPPA.

The fifth amendment revises how Federal agencies apply the FPPA. In its present form § 658.3(c) provides:

> The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or nonfederal land, or in any way affect the property rights of owners of such land. The Act and these regulations do not provide authority for the withholding of Federal assistance to convert farmland to nonagricultural uses. In cases where either a private party or a nonfederal unit of government applies for Federal assistance to convert farmland to a nonagricultural use, the Federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that could avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the applicant wants to proceed with the conversion, the Federal agency may not, on the basis of the Act or these regulations, refuse to provide the requested assistance.

The first sentence of paragraph (c) sets forth the statement of limitation provided in section 1547(a) of the FPPA, 7 U.S.C. 4208(a). The second and final sentences of paragraph (c) reflect the fact that the FPPA does not expressly require or authorize the withholding of Federal assistance for the conversion of farmland. They were not intended to imply that the withholding of such assistance would constitute regulation of private or nonfederal land or be deemed to have an effect on related property rights, as that is clearly illogical and contrary to established case law.

In describing the intended effect of analogous legislation expressly providing for the withholding of federal assistance to convert wetlands, the Congress offered pertinent interpretive instruction: "It is intended that these provisions not be construed, nor implemented in any way to regulate the use of private or nonfederal land, or in any way affect the property rights of the owners of such lands. The Committee (of the Senate on Agriculture, Nutrition, and Forestry) intends to continue the policy expressed in the statement of limitations in the Farmland Protection Policy Act, Subtitle I, Pub. L. 97–98 (December 22, 1981)." Senate Report No. 145, 99th Congress, 1st Session, 303–304, reprinted in 1985, U.S. Code Cong. & Ad. News 1969–1970 (discussing the wetland conservation provisions of S. 1714 which, as adopted as amendments to H.R. 2100, were enacted as Subtitle C, Title XII of the Food Security Act of 1985, Pub. L. 99–198 [December 23, 1986], 16 U.S.C. 3812–3823).

Whereas the Food Security Act of 1985 expressly limits the providing of Federal assistance related to the conversion of wetlands, the FPPA is silent, leaving to the discretion of each affected Federal agency the determination of whether the providing or the denial of Federal assistance for farmland conversion will, in a given situation, comply with the policy and purpose of the FPPA.

Paragraph (c) of § 658.3, as presently written, may be misread as a limitation on the previously described discretion provided by Congress to Federal agencies. To prevent such misinterpretation and misapplication of the FPPA, the Department believes that paragraph (c) should be amended to recognize that discretion and the general process through which it is exercised.

In making a decision on whether or not to provide assistance to convert farmland, the Federal agency will take into consideration: The degree to which the conversion is irreversible; whether, in light of available alternatives, the conversion is necessary; whether the conversion is, to the extent practicable, compatible with state, local, and private programs and policies to preserve farmland; and whether the importance of preserving the Nation's farmland is outweighed by other national interests.

The FPPA requires each Federal entity to make determinations as to how the Act applies to its programs and activities, and make an annual report on progress in making that determination. The assessment of the adverse impacts of farmland conversion will be made by the assisting agency and alternatives will be suggested to the requesting landowner. Federal assistance, however, would not be absolutely precluded should the landowner decide to proceed with conversion. The decision of whether or not to provide such assistance will be made by the Federal agency, under its own policies and rules and in light of the facts presented by the request for assistance.

Likewise, the Department believes that Congress intended to allow a Federal agency to withhold assistance if the agency determined that alternative actions were available, and if providing assistance would contravene the FPPA. If a Federal agency decides to withhold assistance for conversion of farmland, the landowner may proceed with such conversion but without Federal assistance.

In complying with the FPPA as amended, each Federal agency will review current provisions of law, administrative rules and regulations, and policies and procedures applicable to it to determine whether any provisions will prevent that agency from taking appropriate action to comply fully with the FPPA and, as appropriate, develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the FPPA. Each Federal agency will also determine how to apply the Act once evaluations are made, alternatives are considered, and recommendations are made to landowners with regard to specific activities. The agencies will report annually to the Chief of the Soil Conservation Service regarding these activities and progress on revisions and determinations.

The last change in the amended rule is in the definition of prime farmland, specifically the "committed to urban" aspect of the definition. The present rule defines prime farmland committed to urban development or water storage as including "all such land that has been designated for commercial or industrial use or residential use that is not intended at the same time to protect farmland in (1) zoning code of ordinance adopted by a State or unit of local government (2) a comprehensive land use plan which has expressly been either adopted or reviewed in its entirety by the unit of local government in whose jurisdiction it is operative within 10 years proceeding implementation of the particular Federal project."

This definition presents three major problems:

(1) It is inconsistent with the definitions of prime farmland used in almost all other State and Federal programs which use the definition.

(2) It requires the SCS district conservationists to review local plans and land use regulations and make a subjective judgment as to whether a given location is committed to urban development and therefore not farmland. Many of the SCS district conservationists do not have the land use planning background required to make such decisions. In addition, the criteria of the rule are already designed to measure the extent to which a given site is committed to urban development.

(3) Finally, since the "committed to urban land" element only applies to the prime farmland definition, the present rule gives a higher degree of consideration to statewide and locally important farmland than to prime farmland to which such a limitation does not apply. Since prime farmland is the best land for production of agricultural crops, the rule may not be giving the highest degree of protection to the most important lands.

The definition of committed to urban development is being changed to "include all such land that received a combined score of 160 points or less from the Land Evaluation and Site Assessment criteria." This definition will correct the problems outlined above and further the use of the criteria for the intended purpose.

In making a determination as to whether a site is committed to urban development, the zoning and land use plans will be considered along with 12 other criteria that are designed to measure the degree to which a site is committed to urban development. The additional factors to be evaluated are: (1) The amount of land in nonurban use within a radius of 1.0 mile from where the project is intended; (2) the amount of the perimeter of the site that borders land in nonurban use; (3) the number of acres of the site that have been farmed in more than 5 of the last 10 years; (4) the protection provided to the site by other State and local programs; (5) the closeness of the site to an urban built-up area; (6) the closeness of the site to water lines, sewer lines, and/or other local facilities and to services designed to promote nonagricultural use; (7) the size of the farm in comparison with the average farm in the area; (8) creating nonfarmable land through development of the site; (9) having adequate supply of farm support services; (10) having onfarm investments; (11) the effects that converting the site has on other farmland in the area; and (12) the compatibility of the proposed use with other uses in the area. The application of the above criteria plus the land evaluation provides an objective technical determination of commitment to urban development.

The maximum score from the FPPA criteria is 260 points, 100 maximum points from the land evaluation part of the criteria, and 160 points from the site assessment part of the criteria. The number of points assigned to each item of the criteria increases as the condition changes from one that supports urban development to a condition that supports agriculture. Land that is not suitable for production of an agricultural crop will be rated "0". The number assigned for each soil type will increase as the land becomes more suitable for production of agricultural crops, and the best agricultural soil type in the area is rated 100 points.

The site assessment part of the criteria is rated the same as the land evaluation part. Sites located in the center of an urban area that is planned and zoned for nonurban use—with existing urban support services, no agricultural support services, and no off-site impact to agricultural areas next to the site—will be rated "0" points. As sites are evaluated that are further from urban areas, that are not planned or zoned for urban use, and that do not have urban support services but have agricultural support service where the conversion of the site to nonagricultural use would have an impact on other agriculture land in the area, the total score is increased so that the most rural farmlands in large farms that are in agricultural districts are rated 160 points. If this site also has the best agricultural soil type for the area, the total score would be 260 points. By using a cutoff score of 160 points, Federal agencies will never consider protecting even very rural lands unless the land in the site has some agricultural value and at least 1 point from the site asssessment score to get the score above 160 points. Also, protection will not be considered for the best farmland in the region if that land is surrounded by so much urban growth that less than 61 of the 160 points are assigned from the site assessment part of the criteria. In addition, land that is truly committed to urban development will never receive 160 points and, therefore, never be considered for protection from conversion.

By replacing the "committed to urban development" definition with the rating from the FPPA criteria, the decision will be based on objective technical considerations, rather than just the zoned or planned use designations that may be assigned to the lands.

List of Subjects in 7 CFR Part 658

Agriculture, Soil conservation, Farmland.

Accordingly, it is proposed that Part 658 of Title 7 of the Code of Federal Regulations, be amended as follows:

1. The authority citation for Part 658 is revised to read:

Authority: Secs. 1539–1549, Pub. L. 97–98, Stat. 1341–1344, as amended by Sec. 1255, Pub. L. 99–198, 99 stat. 1518 (7 U.S.C. 4201 et seq.)

2. Section 658.2 is amended by revising paragraph (a) to read as follows:

§ 658.2 Definitions.

(a) "Farmland" means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide or of local importance. "Prime farmland" does not include land already in or committed to urban development or water storage. Prime farmland "already in" urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Prime farmland "committed to urban development or water storage" includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

* * * * *

3. Section 658.3 is amended by revising paragraphs (c) and (d) to read as follows:

§ 658.3 Applicability and exemptions.

* * * * *

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or nonfederal land, or in any way affect the property rights of owners of such land. In cases where either a private party or a nonfederal unit of government applies for federal assistance to covert farmland to a nonagricultural use, the federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistrance requested and develop alternative actions that would avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the landowners want to proceed with conversion, the federal agency, on the basis of the analysis set forth in § 658.4 and any additional internal policies or procedures, may provide or deny the requested assistance.

(d) Section 1548 of the Act, as amended, 7 U.S.C. 4209, states that the Act shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a federal project, program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall affored any basis for such an action.

However, the Governor of an affected State, where a State policy or program exists to protect farmland, may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 1541 or the FPPA, 7 U.S.C. 4202, and regulations issued pursuant to that section.

4. Section 658.4 is amended by adding a new paragraph (g) to read as follows:

§ 658.4 Guidelines for use of criteria.

* * * * *

(g) To meet reporting requirements of seciton 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, a copy of the farmland conversion impact rating Form AD-1006 shall be retured by the Federal agency to the SCS field office after a final decision on the project has been made.

5. Section 658.7 is amended by adding two new paragraphs (b) and (d) to read as follows:

§ 658.7 USDA assistance with Federal agencies' reviews of policies and procedures.

* * * * *

(b) Section 1542(b) of the Act, 7 U.S.C. 4203 states, "each department, agency, independent commission, or other unit of the Federal government, with assistance of the Department of Agriculture, shall, as appropriate, develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy of this subtitle."

* * * * *

(b) To meet reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, each Federal agency shall report to the Chief of the Soil Conservation Service by November 15th of each year on progress made during the prior fiscal year to implement sections 1542 (a) and (b) of the Act, 7 U.S.C. 4203 (a) and (b).

Joseph W. Haas,

Associate Chief, Soil Conservation Service.

[FR Doc. 87-654 Filed 1-13-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-210-AD]

Airworthiness Directives; British Aerospace Aircraft Group Model BAC 1-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to BAC 1-11 200 and 400 series airplanes, that would require a change to the Airplane Flight Manual (AFM) limiting operation when only one air conditioning system is serviceable. This action is necessary because, in switching electrical power as defined in the AFM, electrical smoke and fire procedures can cause shutdown of the remaining air conditioning system. This condition, if not corrected, could cause loss of airplane pressurization.

DATES: Comments must be received no later than March 6, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-210-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-210-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which exists on BAC 1-11 airplanes. British Aerospace has determined that, if the procedures in the Airplane Flight Manual for electrical smoke or fire are followed when operating with only one air conditioning system serviceable, loss of that system may result. This condition, if not corrected, could result in the inability to maintain cabin pressure. The manufacturer has issued, and the CAA classified as mandatory, telegraphic Campaign Wire 21-CW-PM-5930, dated June 10, 1986, which describes a change in the Airplane Flight Manual and Operations Manual procedures to limit the airplane to a maximum altitude of 25,000 feet when operating on one air conditioning system, or when using the procedure for electrical smoke or fire with both air conditioning systems operating. When using this procedure with only one air conditioning system operating, the crew would be required to descend to 15,000 feet and open the ram air valve.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this

model registered in the United States, an AD is proposed that would require the Airplane Flight Manual change previously described. British Aerospace Modification 21-PM5930 to the electrical system, when incorporated, relieves the limitation defined in paragraph A.2. of the proposed rule.

It is estimated that 67 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to revise the AFM and accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,680.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to BAC Model 1-11 Series 200 and 400 airplanes, certificated in any category. Compliance is required within 90 days after the effective date of this AD. To prevent loss of pressurization as a result of conducting the procedures for electrical smoke or fire, accomplish the following, unless previously accomplished:

A. Modify the Airplane Flight Manual and notify flight crews as follows. This may be accomplished by inserting a copy of this AD in the Airplane Flight Manual:

1. In section 3, Page 12A, add:

"In the event that the procedure for electrical smoke or fire has to be carried out when both pneumatic and both air conditioning systems are operative, the subsequent busbar switching actions will result in the loss of one air conditioning system. Therefore, reduce aircraft altitude to 25,000 feet or below, as soon as practicable."

2. In section 3, Page 12A, add:

"In the event that the procedure for electrical smoke or fire has to be carried out with either pneumatic or either air conditioning system inoperative, reduce aircraft altitude to 15,000 feet or below, as soon as practicable, and open the ram air valve."

3. In section 4, Page 49, add:

"Should a pneumatic or an air conditioning system fail above 25,000 feet, reduce aircraft altitude to 25,000 feet or below, as soon as practicable."

B. The limitation defined in paragraph A.2., above, may be removed after BAe Modification 21-PM5930 to the electrical system is incorporated.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 7, 1987.

Darrell Pederson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-749 Filed 1-13-87; 8:45 am]

BILLING CODE 4910-13-M

TENNESSEE VALLEY AUTHORITY

18 CFR Ch. XIII

Alternative Program for Sharing Patent-Related Income

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) is issuing this notice to advise the public that it intends to promulgate regulations providing for an alternative program for sharing patent-related income received by TVA from inventions made by inventors who were employed by TVA at the time the invention was made and whose names appear on licensed inventions. This notice is required under Section 14 of the Stevenson-Wydler Act of 1980, as recently amended by the Federal Technology Transfer Act of 1986, for any Federal agency which desires to implement such an alternative program.

FOR FURTHER INFORMATION CONTACT: George Dilworth, Jr., 400 West Summit Hill Drive, EP D45, Knoxville, Tennessee 37902, (615) 632-2871.

SUPPLEMENTARY INFORMATION: The new section 14 of the Stevenson-Wydler Act requires Federal agencies to pay at least 15 percent of the royalties or other income received on account of any invention to its inventor(s) if the inventor(s) was an employee of the agency at the time the invention was made. This requirement became effective immediately upon enactment on October 20, 1986, and remains in effect unless an agency publishes a notice of intent in the **Federal Register** within 90 days of the date of enactment indicating its election to create an alternative plan. This is intended to serve as such notice.

TVA's alternative plan will be implemented by the formal issuance of regulations fulfilling the requirements of the new section 14(a)(1)(ii) of the Stevenson-Wydler Act. These requirements included:

(1) The guarantee of a fixed minimum payment, plus a percentage royalty share in excess of an established threshold amount, to each inventor, for each year that the agency receives royalties from that inventor's invention:

(2) The provision of total payments to all such inventors which shall exceed 15 percent of total agency royalties received in any given fiscal year; and

(3) The provision of appropriate incentives from royalties for laboratory employees who contribute substantially to the technical development of a licensed invention between the time of filing the patent application and the licensing of the invention.

Pursuant to section 14(a)(1)(ii) of the Stevenson-Wydler Act, TVA chooses not to pay qualifying inventors the mandatory 15-percent share unitl October 20, 1988, or the date of the promulgation of the alternative plan regulations, whichever is earlier. TVA

will make appropriate payments to qualified inventors retroactively to October 20, 1986, and will not expend any royalty income from an invention until the inventor's portion is ultimately paid.

January 8, 1987.

W. F. Willis,

General Manager.

[FR Doc. 87-753 Filed 1-13-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Consolidation of Cleveland and Akron, OH, Ports of Entry; Proposed Designation of Akron, OH, as a Customs Station

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

ACTION: Proposed rule.

SUMMARY: This document proposes to consolidate the ports of entry of Cleveland and Akron, Ohio, and to designate Akron, Ohio, as a Customs station. The consolidated port would be known as the Cleveland port of entry and would be within the Cleveland district. The Akron station would be supervised by the Cleveland port. The proposal, if adopted, would allow more efficient use of Customs personnel, facilities, and resources. This would be accomplished by transferring the administrative functions of the Akron port to the Cleveland district oficice, and by eliminating some positions from the Akron port. The consolidated port boundaries would consist of the total area within the existing boundaries of both ports.

DATE: Comments must be received on or before March 16, 1987.

ADDRESS: Written comments (preferably in triplicate) should be addressed to, and may be inspected at, the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control (202-566-9425).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service field organization currently consists of seven geographical regions further divided into districts, with ports within each district. Customs ports of entry are locations (seaports, airports, or land border ports) where Customs officers or employees are assigned to accept entries of merchandise, collect duties, clear passengers, vehicles, vessels, and aircraft, examine baggage, and enforce the Customs, and related laws.

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

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

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

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs is proposing to consolidate the ports of entry of Cleveland and Akron, Ohio, and proposing to designate Akron, Ohio, as a Customs station. The consolidated port would be known as the Cleveland port of entry and be within the Cleveland district. The Akron station would be supervised by the Cleveland port.

The proposal would permit relocation of the Akron port administrative functions to the Cleveland district office. The current Akron port offices are located less than one hour's drive from the Cleveland district office. The administrative staff at Akron is not currently fully utilized because of limited workload volume. The new consolidated port boundary would consist of the total area within the existing boundaries of both ports. The Cleveland port consists of all of Cuyahoga County, Ohio. The Akron port consists of all of Summit County, Ohio, and Lake Township in Stark County, Ohio. The port consolidation would result in savings of approximately $110,000 per year.

The proposed staffing at the Akron station would consist of two Customs inspectors, the same number currently assigned to the port. The positions of Port Director, Customs Aid, and Clerk Typist, could be eliminated. Elimination of these positions would have no immediate impact on any identifiable segment of the public; it is merely an administrative reorganization. Entry releases and entry summaries could still be filed at Akron.

If this proposal is adopted, the list of Customs regions, districts, and ports of entry, and the list of Customs stations, as set forth in §§ 101.3(b) and 101.4(c), Customs Regulations (19 CFR 101.3(b), 101.4(c)), will be amended to reflect the consolidation of the ports and the designation of a Customs station.

Exective Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by section 3 of that E.O. are not required. Similarly, this document is not subject to the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) and the regulatory analysis and other requirements of 5 U.S.C. 603 and 604 are not applicable.

Customs routinely establishes, expands, or consolidates ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing, expanding, or consolidating port limits in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

List of Subjects in 19 CFR Part 101

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

Proposed Amendments

It is proposed to amend Part 101, Customs Regulations (19 CFR Part 101), as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

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

§ 101.3 [Amended]

2. It is proposed to amend the list of regions, districts, and ports of entry in § 101.3(b) as follows:

In the North Central Region-Chicago, Ill., under the column headed "Ports of entry", in the listing for CLEVELAND, OHIO, the number "77-232" would be removed and the number of the T.D.

which adopted this proposal inserted in its place. Further, the listing for Akron, Ohio, would be removed.

§ 101.4 [Amended]

3. It is proposed to amend the list of Customs districts, stations, and ports of entry having supervision, in § 101.4(c) as follows:

By adding "Akron, Ohio" in the column headed "Customs stations" immediately opposite "Cleveland, Ohio" in the column headed "District", and by adding "Cleveland" on the same line in the column headed "Ports of entry having supervision". The existing listings of Customs stations in the Cleveland district would drop down one line, but remain as listed.

Comments

Before adopting these proposals, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael Schmitz,

Acting Commissioner of Customs.

Approved: December 30, 1986.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87-752 Filed 1-13-87; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

Providing Information and Claiming Rewards

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) authorizes the Secretary of the Interior to pay any person, with certain exceptions, an amount equal to not more than 10 percent of each recovered royalty or other payment owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf, recovered as a result of information provided by such person. The Minerals Management Service (MMS) is proposing regulations covering receipt of information from informants and claims for rewards.

DATE: Comments must be received on or before March 16, 1987.

ADDRESS: Written comments, suggestions, or objections regarding the proposed rule should be mailed or delivered in triplicate to: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, P.O. Box 25165, MS 628, Building 85, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, (303) 231-3432 in Lakewood, Colorado.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Dennis C. Whitcomb, Minerals Management Service, Lakewood, Colorado.

The legislative history of the FOGRMA contained in H.R. 97-859, Section 118, September 23, 1983, states as follows:

> The bill provides a reward to an informant for information which leads to the recovery of royalties or other payments owed to the United States. The amendment, patterned after the rewards provided by the Internal Revenue Service, specifically authorizes the Secretary to pay up to 10 percent of amounts recovered as a result of the information provided to the Secretary by any person except an officer or employee of the United States. The Committee intended this provision to be an incentive to keep others honest and encourage the reporting of any suspected violations or nonpayment of royalties.

The reward provisions are in section 113 of the FOGRMA (30 U.S.C. 1723). They apply only to amounts recovered on Federal leases and do not apply to monies recovered on Indian leases. Section 306 of the FOGRMA authorizes the appropriation of such sums as may be necessary to carry out the provisions of the Act, including the payment of rewards with respect to Federal leases under section 113. Funds must be appropriated before payment of any reward. The reward provisions of this rulemaking would apply only to Federal leases unless funds are specifically authorized and appropriated for payment of rewards on Indian leases.

In accordance with the legislative intent, MMS structured these proposed rules similarly to the reward provisions of the Internal Revenue Service (IRS) as contained in section 7623 of Title 26 of the Code of Federal Regulations (26 CFR Part 7623) and section 9300 of the Internal Revenue Manual.

A new § 218.30 would be added to Subpart A of Title 30 of the Code of Federal Regulations (30 CFR 218.30) to provide for the receipt of information and for informants to claim rewards. The proposed regulation provides for the payment of a reward only for information that would not have been discovered during the normal course of an audit or investigation. Also, the value of the information furnished in relation to the facts developed by the investigation would be taken into account in determining whether a reward should be paid and, if so, the amount thereof. The information must be voluntarily given and upon the informant's own initiative to qualify for a reward. The Director, MMS, will determine whether a reward will be paid and, if so, the amount thereof.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this rule is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1980

The information collection requirements contained in 30 CFR 218.30 have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the OMB.

National Environmental Policy Act of 1969

The Department of the Interior (DOI) determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 [42 U.S.C. 4332 (2)(C)].

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Oil and gas

exploration, Public lands-mineral resources.

Under authority of the Secretary of the Interior contained in 30 U.S.C 1751, 30 CFR Part 218 is proposed to be amended as set forth below:

Dated: December 10, 1986.

James E. Cason,

Acting Assistant Secretary— Land and Minerals Management.

SUBCHAPTER A—ROYALTY MANAGEMENT

PART 218—[AMENDED]

For the reason set forth in the preamble, it is proposed that the following amendments be made to 30 CFR Part 218.

1. The authority citation for Part 218 is revised to read as follows:

Authority: 25 U.S.C. 396, *et seq.*, 25 U.S.C. 396a. *et seq.*, 25 U.S.C. 2101, *et seq.*, *30 U.S.C. 181, et seq.*, 30 U.S.C. 351, *et seq.*, 30 U.S.C. 1001, *et seq.*, 30 U.S.C. 1701, *et seq.*, 43 U.S.C. 1301, *et. seq.*, 43 U.S.C. 1331, *et seq.*, and 43 U.S.C. 1801, *et seq.*

2. A new § 218.30 is added to Subpart A of Part 218 to read as follows:

§ 218.30 Providing information and claiming rewards.

(a) *General.* (1) If a person has any information that could lead to the recovery of royalty or other payments owed to the United States with respect to any oil and gas lease on Indian or Federal lands or the Outer Continental Shelf, such information may be provided to MMS in accordance with this paragraph. The MMS is authorized, under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1723, to pay a reward for information with respect to Federal leases. Funds must be appropriated before payment of any reward. Unless funds are specifically authorized and appropriated, MMS is not authorized to pay a reward for information provided on Indian leases. Criteria and procedures covering claims for and payment of rewards are provided in paragraphs (b), (c) and (d) of this section.

(2) If a person has any information he or she believes would be valuable to MMS, that person ("informant") should submit the information in writing, in the form of a letter, mailed or delivered in person to the Director, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, or to the Director's designated representative. Although written communications are preferred, oral information will be accepted.

(3) The informant should provide all data he or she has with respect to royalty or other payments owed. The information provided should include: Identification of the alleged debtor; the source of the informant's knowledge of royalties or other payments owed; the date, if known, of the indebtedness; and any other information that could be used to establish the indebtedness. All information received by MMS from persons providing information will be considered "highly confidential" and will not be disclosed to any individual except on a "need to know" basis in the performance of official duties.

(b) *Claim For Reward.* (1) Any informant who provides information that could lead to the recovery of royalty or other payments may file a claim for reward, unless the person is:

(i) A present or former officer or employee of the United States Government who received the information in the course of official duties; or

(ii) A present or former officer or employee of a State or Indian tribe who received the information in the course of official duties; or

(iii) A person who received the information in the course of official duties acting pursuant to a contract authorized by the FOGRMA.

(2) A claim for reward is not acceptable if filed on behalf of a claimant by his or her agent under power of attorney. However, an agent may provide MMS with information for an unidentified informant, to be evaluated and used by MMS as it deems appropriate. The informant's identity will ultimately have to be disclosed if the informant intends to file a claim for reward so that MMS can report the reward as taxable income to the Internal Revenue Service. An executor, administrator, or other legal representative of a deceased informant may file a claim on behalf of such deceased informant if, prior to his or her death, the informant was eligible to file a claim under this section. The representative must attach to the claim evidence of authority to file it.

(3) To file a claim for reward the informant must:

(i) Notify the Director, MMS, or the person to whom the information was reported, that he/she is claiming a reward.

(ii) Request an "Application for Reward for Original Information" (Form MMS–4280). This form provides for information to enable MMS to determine and pay rewards, to control reward applications, and to report a claimant's reward as taxable income to the Internal Revenue Service.

(iii) File a claim for reward by completing Form MMS–4280, sign it with his or her true name, and mail or deliver it in person to the Director or to the Director's designated representative. If the informant provided the information in person, the claim should include the name and title of the person to whom the information was reported and the date that it was reported.

(4) If the informant used an identity other than his or her true name when the information was originally reported, the person should attach proof to the claim that he or she is the person who gave the information. The MMS does not disclose the identity of its informants to unauthorized persons.

(c) *Basis for Rejection of Claims.* No reward will be paid to a claimant in the following circumstances:

(1) Where the information originally furnished was deemed unworthy of initiating an investigation, but at some later date the records of the lessee are examined without reference to the information furnished. The claim will be rejected on the basis that the information did not cause the investigation nor did it, in itself, result in any recovery.

(2) A reward will not be allowed for information that would have been discovered during the normal course of an audit or investigation.

(3) Where an informant furnishes only the name and address of a lessee with no further information being given with respect to the alleged violation, he or she would not ordinarily be entitled to consideration for a reward. However, if the information results in the collection of a deficiency in sufficient amount to warrant a nominal reward, such a reward may be granted.

(4) Unless the informant's true identity is disclosed.

(5) Until after all of the royalties, penalties or other payments owed are collected and no longer subject to dispute.

(6) Unless funds are appropriated for the payment of rewards. Funds must be specifically authorized and appropriated for the payment of any rewards for information provided on Indian leases.

(d) *Basis for Allowance of Claims.* (1) The value of the information furnished in relation to the facts developed by the investigation will be taken into account in determining whether a reward shall be paid and, if so, the amount thereof. Information must be voluntarily given and upon the informant's own initiative to warrant the allowance of a reward. Information secured by representatives of MMS from witnesses and others in the course of their investigative

activities does not constitute a basis for reward. will be allowed and, if so, the

(2) In determining whether a reward amount thereof, consideration will be given to any corresponding adjustment(s) which will result in potential savings to the lessee for other leases owned by the lessee or an affiliate of the lessee. An example of such an adjustment is a reduction in royalty payment on a different lease as the result of a revised allocation under a unitization or communitization agreement or from an offshore pipeline system. Rewards otherwise allowable will be reduced or rejected by reason of such offsetting adjustments.

(3) If several claims filed by one informant are considered in one recommendation, the reward, if any, may be allowed on one claim and the others may be closed by reference.

(4) Where an informant has provided information and filed a claim for reward with respect to royalty reports of one lessee for several leases, no reward will be granted with respect to an individual lease which has been examined until examination of all leases involved has been completed. Because the possibility exists that adjustments made to the reports for the open leases may result in offsetting adjustments, no reward will be allowed until the overall results of the information are evaluated.

(e) *Amount and Payment of Reward.* (1) The Director, MMS will determine whether a reward will be paid and, if so, the amount thereof. In making this decision, the information provided will be evaluated in relation to the facts developed by the resulting investigation. Claims for reward will be paid in proportion to the value of information furnished voluntarily and on the informant's own initiative with respect to recovered royalties or other payments. The amount of reward will be determined as follows:

(i) For specific and responsible information that caused the investigation and resulted in recovery, the reward will be 10 percent of the first $75,000 recovered, 5 percent of the next $25,000, and 1 percent of any additional recovery. The total reward cannot exceed $100,000.

(ii) For information that caused the examination and was of value in determining royalty or other payments due, although not specific, and for information that was a direct factor in recovering royalty or other payments, the reward will be 5 percent of the first $75,000 recovered, 2½ percent of the next $25,000, and ½ percent of any additional recovery. The total reward cannot exceed $100 000.

(iii) For information that caused the investigation but was of no value in determining royalty or other payments due, the reward will be 1 percent of the first $75,000 recovered and ½ percent of any additional recovery. The total reward cannot exceed $100,000.

(2) Rewards will be paid only if monies are appropriated for that purpose. Subject to appropriations, payments will be made as soon as possible after collection of the amounts owed by the lessee. The reward payment to an informant will be net of Federal and State income tax in accordance with withholding guidelines of the Internal Revenue Service and the applicable State(s).

(3) A decision by the Director, MMS, either denying a reward or establishing the amount of any reward, is final and may not be appealed to the Interior Board of Land Appeals in accordance with the provisions of 30 CFR Part 290.

[FR Doc. 87-744 Filed 1-13-87; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 18

Basis of Assets Following the Initial Public Offering of Consolidated Rail Corp. Stock Pursuant to the Omnibus Budget Reconciliation Act of 1986

AGENCY: Department of the Treasury, Office of the Secretary.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Treasury Department is issuing temporary regulations that add a new Part 18 to Title 31 of the Code of Federal Regulations to provide certain rules under the Omnibus Budget Reconciliation Act of 1986 (the "Act") for the Federal income tax treatment of the Consolidated Rail Corporation ("Conrail") resulting from the public offering of its stock under the Act. In particular the rules provide for the determination of the deemed purchase price for the assets of Conrail and the allocation of such amount as basis to Conrail's assets. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed by March 16, 1987.

ADDRESS: Send comments and requests for a public hearing to: Assistant Secretary (Tax Policy), Attention: X (Tax Treatment of Conrail), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Thomas Wessel, Office of Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220 (Attention: XLC) or telephone 202-566-4979 (not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add a new Part 18 of Title 31 of the Code of Federal Regulations. The final regulations that are proposed to be based on the temporary regulations would provide guidance on the determination for Federal income tax purposes of the deemed purchase price of Conrail's assets and the allocation of such amount as basis among those assets. The final regulations would be promulgated pursuant to of Part III of Subtitle A of Title VIII of the Act (Pub. L. 99-509; 100 Stat. 1874). The text of the temporary regulations is published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the scope and purpose of the regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Treasury Department has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Assistant Secretary (Tax Policy) has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Assistant Secretary (Tax Policy). All comments will be available for public inspection and copying. A public hearing may be held upon written request to the Assistant Secretary (Tax

Policy) by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Thomas Wessel, Office of Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury. However, other personnel from the Treasury Department participated in developing the regulations, both on matters of substance and style.

J. Roger Mentz,

Assistant Secretary (Tax Policy).

January 6, 1987.

[FR Doc. 87-759 Filed 1-9-87; 12:07 pm]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[OAR-FRL-3142-3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Florida; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: EPA is giving notice that the public comment period for the notice of proposed rulemaking published October 28, 1986 (FR 39400), regarding the proposed approval of the Florida section 111(d) plan for Total Reduced Sulfur (TRS) emissions, is being extended an additional 60 days to January 28, 1987. EPA is taking this action in response to a request for such an extension.

DATE: Comments are now due on or before January 28, 1987.

ADDRESS: Send comments to, Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Stuart D. Perry, telephone (404) 347-2864 or FTS 257-2864.

Dated: December 30, 1986.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87-789 Filed 1-13-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-06; Notice 4]

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Passenger Car Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This notice supplements a pending notice of proposed rulemaking (NPRM) to establish a new Standard No. 135, *Passenger Car Brake Systems.* That standard would replace Standard No. 105, *Hydraulic Brake Systems,* as it applies to passenger cars. This rulemaking grew out of NHTSA's efforts to harmonize its standards with international standards. After reviewing the comments on the NPRM, the agency developed the alternative test conditions and performance requirements in this notice and now seeks comments on them.

DATES: Comments must be received on or before October 13, 1987. The proposed addition of the new standard to the Code of Federal Regulations would become effective 30 days after publication of a final rule in the **Federal Register.** As of that date, manufacturers would have the option of complying with the new standard instead of Standard No. 105. Compliance with the new standard would become mandatory on September 1 of the year five years after publication of the final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4803).

SUPPLEMENTARY INFORMATION: On May 10, 1985, NHTSA published in the **Federal Register** (50 FR 19744) a notice of proposed rulemaking (NPRM) to establish a new Standard No. 135, *Passenger Car Brake Systems,* which would replace Standard No. 105, *Hydraulic Brake Systems,* as it applies to passenger cars. The agency stated that the new standard would differ from the existing one primarily in that it contains a revised and shortened test procedure based on a draft harmonized international procedure developed by the United Nations Economic Commission for Europe (ECE).

NHTSA indicated that it believed the new standard would ensure the same level of safety for the aspects of performance covered by Standard No. 105, while improving safety by addressing some additional safety issues. For the first time, the agency proposed to establish adhesion utilization requirements, for the purpose of ensuring stability during braking under all conditions of traction, including wet roads. The agency also proposed that a number of Standard No. 105's tests not be included in the new standard, because it believed the tests are no longer necessary to ensure safety. These tests include the water recovery test, the 30 mph effectiveness tests, and the full final effectiveness test. NHTSA stated that adoption of the standard would result in cost savings, both because manufacturers would find it easier to build and test the same braking systems for installation in cars to be sold in different parts of the world, and because compliance costs would be reduced by the shorter test procedure.

As discussed by the NPRM, the agency used the following approach in developing its proposal:

> * * * NHTSA carefully evaluated a proposed harmonized test procedure and tentative performance requirements developed by an ad hoc committee of the ECE, as well as Standard No. 105. Performance data for vehicles tested according to these two procedures, and various other available data were also evaluated. Evaluation of any braking standard must include consideration of two major components: The test procedure and actual performance requirements. The test procedure of a braking standard consists primarily of numerous stops under various test conditions. Single vehicles are required to be capable of going through the entire test procedure while meeting specified performance requirements, e.g., stopping distances.
>
> To the extent that the ECE draft harmonized test procedure adequately addressed aspects of performance covered by Standard No. 105, the agency tentatively adopted the ECE draft procedure for the proposal. Where the ECE draft contained requirements addressing aspects of performance not covered by Standard No. 105, the agency evaluated the appropriateness of proposing such requirements. Finally, where the ECE draft did not cover aspects of performance subject to the requirements of Standard No. 105, the

agency evaluated the appropriateness of retaining or deleting such requirements.

During this process, the agency recognized that major deviations from the ECE draft harmonized test procedure, other than at or near the end, could reduce the usefulness of test data accumulated from tests run according to that procedure, for purposes of harmonization. As a vehicle goes through the test procedure, there are cumulative effects on the vehicle's braking performance. If NHTSA were to adopt a standard with major changes to the early part of the harmonized test procedure, the rest of the test procedure might no longer be comparable in terms of stringency to the original ECE draft. To the extent that changes are made only at or near the end of the harmonized procedure, the earlier parts of the test procedure remain comparable.

In considering specific performance requirements, the agency largely focused on the current levels established by Standard No. 105. Those performance requirements have now been in effect for a decade and have not caused manufacturers any significant difficulty. The requirements have been justified in the past, and NHTSA does not believe that they should be reduced in stringency. The bulk of the proposed standard's test procedure is consistent with the ECE draft.

Adoption of the proposed standard would be a major step toward harmonization and would make it much easier for manufacturers to build vehicles for the world market.

While the agency has sought to propose requirements that are similar in stringency to those of Standard No. 105, it should be emphasized that the issue of what levels of performance for the proposed standard are equivalent to Standard No. 105 is a difficult one. Test procedures can significantly affect the stringency of performance requirements, both by the sequence of testing, i.e., the cumulative effects noted above, and by the various test conditions. As discussed below, the test procedure for the proposed standard is significantly different from that of Standard No. 105, making comparisons fairly difficult. The agency has devoted considerable effort to the task of estimating equivalent levels of stringency, including conducting a test program. The proposed performance requirements have been compared to the requirements of Standard No. 105 using several different methods for determining equivalent levels of stringency, each of which has several advantages and disadvantages. The different methods and their results are discussed in the agency's Regulatory Evaluation. . . . (50 FR 19745–19746)

Comments on the NPRM were received from the ECE's Group of Rapporteurs on Brakes and Running Gear (GRRF), which developed the ECE harmonized test procedure and tentative performance requirements; specific member nations of the ECE; and manufacturers and industry groups. Virtually all of the commenters have been involved, directly or indirectly, in ECE's harmonization process. The commenters addressed numerous aspects of NHTSA's proposal. A detailed summary of comments has been placed in the docket (Docket 85–06–NOI–025).

The GRRF comment, which was approved by delegates from more than a dozen nations as well as a number of industry organizations, expressed disappointment that NHTSA did not adopt the specific ECE harmonized test procedure and performance requirements, contained in GRRF/R.88. Test procedure for an international passenger car braking regulation," as the basis for the NPRM. The GRRF stated that it regards R.88 as a sufficient compromise between the European braking regulation (Regulation 13) and Standard No. 105. That organization emphasized that while R.88 may delete or reduce some of Standard No. 105's requirements, it also adds some new requirements which were never in Standard No. 105, especially requirements relating to the distribution of braking between axles. The GRRF also stated that R.88 includes no relaxations compared with Regulation 13 and that every change represents an increase in severity. That organization stated that it has already been decided that Regulation 13 will be retained for those nations and car models not interested in harmonizing with the United States, and that "(a)ny further demands from the NHTSA for more severe requirements could create substantial opposition in Europe, and jeopardize the entire harmonization effort." The CRRF provided specific comments on a number of the individual test procedures and performance requirements proposed for Standard No. 135, and indicated a number of areas where it believes compromises are possible.

One ECE nation, Denmark, did not agree with the GRRF Comment. It stated that it is of the opinion that the original intention of harmonization was to ensure that the level of safety was maintained in the harmonized set of rules, and in no circumstance would be less stringent than the standards being harmonized. That nation stated that it believes these intentions are reflected in NHTSA's NPRM for Standard No. 135.

With the exception of Denmark, virtually all commenters expressed significant opposition to various aspects of the proposal, while supporting the concept of brake harmonization.

Many commenters argued that the proposed standard was significantly more stringent than both R.88 and Standard No. 105. The Motor Vehicle Manufacturers Association (MVMA) argued that the question of safety need should be addressed within the framework of "total package equivalency" that considers the variety of factors that contribute to overall braking safety performance rather than focusing on direct comparison of individual requirements of a harmonized standard with each corresponding requirement of Standard No. 105.

Numerous commenters argued that the addition of adhesion utilization requirements would make it more difficult to meet stopping distance requirements that are equivalent to those of Standard No. 105. Commenters also argued that longer stopping distances should be provided to account for changes in a number of test conditions, such as reduced burnish. Several countries specifically stated that they do not agree with the 65 m stopping distance proposed for the cold effectiveness tests. Canada recommended that to take care of the possible effects of meeting the adhesion utilization requirements, the distance should be changed to 70 m. Other countries, including the United Kingdom, the Federal Republic of Germany, and Sweden, indicated they could probably accept some compromise between the 65 m stopping distance proposed in the NPRM and the 77 m stopping distance proposed by the GRRF, although they did not suggest a specific figure. A number of other proposed requirements were also cited as being more stringent than those of R.88 and/or Standard No. 105.

Numerous commenters also objected to aspects of the proposed test procedure that differ from R.88. A number of these objections, including those relating to the proposed adhesion utilization requirements, reflect the inherent difficulties of producing a harmonized brake standard that is appropriate both for the United States' self-certification system and Europe's type approval system. Under the type approval system, vehicles are approved or disapproved by governmental authorities based on information submitted to them by the manufacturers and on vehicle testing conducted by the government. In the United States, the government does not engage in approving or disapproving vehicles with respect to safety performance. Under the National Traffic and Motor Vehicle Safety Act, manufacturers conduct their own testing or analysis and must certify that their vehicles comply with applicable safety standards.

While the need to determine compliance is common to both type approval and self-certification systems, there is a greater need under the latter system for specificity concerning all

aspects of a test procedure. If some test procedures are only very generally defined under a type approval system, issues concerning whether a manufacturer has followed reasonable test procedures in obtaining data can be resolved as part of the approval process. In the United States, however, where there is no approval process, a manufacturer must be able to determine on its own that its vehicles are in compliance. In order to do this, the manufacturer must know all aspects of the test procedure that may be followed by the government for purposes of enforcement. The Safety Act includes a requirement that safety standards must be objective, in order to enable manufacturers to ensure that their vehicles are in compliance.

In the case of the proposed adhesion utilization requirements, NHTSA proposed a specific method for determining each vehicle's adhesion utilization rather than proposing Europe's calculation method, in light of the Safety Act's requirement that standards be objective. The European method involves calculating the theoretical adhesion utilization of a vehicle, as designed, but does not include a method for determining whether an individual production vehicle actually meets adhesion utilization requirements. Also, Europe does not specifically define the method for obtaining much of the input data needed to determine the theoretical adhesion utilization. The European governments strongly objected to the proposed test for determining an actual vehicle's adhesion utilization, however, because of the increased burdens of conducting such a test for type approval, as compared to the calculation method.

The European governments also objected to the inclusion of certain tests which are in Standard No. 105 but not in Europe's braking regulation. While the governments argued that they do not see a need for these tests, their objections were in part grounded on the burdens of conducting the tests for type approval. Similarly, those governments objected to inclusion of a pre-burnish test, in part because they prefer manufacturers to submit vehicles for type approval whose brakes have already been burnished. If Europe adopted a pre-burnish test, the burden of burnishing the vehicle's brakes would fall on the governments instead of the manufacturers.

The strong negative reaction of almost all commenters clearly indicates that the proposal would not achieve NHTSA's goal of harmonization. The European governments made it clear that they would not adopt a brake standard with many of the test conditions and performance requirements included in the proposal.

In light of the comments, NHTSA has carefully considered further the extent to which changes, consistent with the need for safety, can be made in the proposal to promote harmonization. Among other things, the agency has reconsidered whether additional tests, not included in the ECE draft but carried over to the NPRM from Standard No. 105, can be deleted. NHTSA has also reconsidered the proposed performance requirements, both with respect to what levels are equivalent to those of Standard No. 105 and whether requirements as stringent as those of Standard No. 105 are appropriate.

The result of this process is a significantly revised proposal, which the agency believes can achieve the goals of harmonization while being fully consistent with the need for safety. While this preamble, together with that for the NPRM, discusses the more significant differences between the proposal and Standard No. 105, commenters are encouraged to carefully compare the regulatory texts.

Adhesion Utilization

The purpose of adhesion utilization requirements is to ensure that a vehicle's brake system is able to utilize whatever adhesion is available at the tire-road interface in such a way that a stable stop can be made within a specified distance. Adhesion utilization is addressed to some extent by Standard No. 105's (and the proposed standard's) service brake effectiveness requirements; since stops must be made within specified distances without leaving a lane of specified width. All of those stops are made on a high friction surface, however. Standard No. 105 does not include any requirements concerning stops made on lower friction surfaces, such as wet roads. NHTSA has, however, always emphasized the importance to safety of good braking performance on surfaces such as wet or icy roads. In establishing the current version of Standard No. 105, the agency stated that until performance requirements are made effective in this area, it assumes that manufacturers will design their vehicles for safe braking performance on all types of road surfaces. See 37 FR 17971 (September 2, 1972).

While NHTSA indicated in the past that it might establish performance requirements in this area, the proposal to establish specific adhesion utilization requirements at this time was an integral part of the harmonization effort. Europe's braking regulation includes adhesion utilization requirements, and the GRRF included the requirements in R.88.

The adhesion utilization requirements proposed in the NPRM were in many respects similar to those of R.88. The requirements were expressed in terms of plots on a graph of the amount of adhesion utilized at each axle of the vehicle to produce a given level of deceleration. Using a specified test procedure, the adhesion utilized was to be graphically compared to the level of adhesion available at the tire/road interface. Four adhesion utilization curves were to be plotted, representing the front and rear axle brake performance at each of two load conditions.

Two basic performance requirements were proposed. First, none of the curves could cross an upper line for coefficients of friction between 0.2 (a low friction surface) and 0.8 (a high friction surface). The purpose of that requirement was to ensure that, on all road surfaces from very slippery to dry, one axle is not overbraked with respect to another. Put another way, that requirement would limit the amount that the performance of an individual axle could deviate from theoretically ideal brake balance. The effect of the overbraking of one axle with respect to the other would be to reduce the overall braking efficiency of the vehicle and make wheel lock-up at the axle more likely. Second, for all deceleration rates between 0.15 g (a mild stop) and 0.8 g (a severe stop), the curve for the front axle was required to be above that for the rear axle. The purpose of this requirement was to ensure stability of the vehicle by requiring the front axle to have a greater adhesion utilization than the rear axle. In practical terms, this would mean that if a driver applied the brakes hard enough to get wheel lockup, the front brakes would be the first to lock. Since locked wheels always tend to lead, the vehicle would skid but would remain stable, i.e., heading forward. However, if the rear wheels were to lock first, there could be a spin-out since those wheels would tend to lead.

While the basic adhesion utilization performance requirements proposed in the NPRM are similar to R.88, as is the methodology of using adhesion utilization curves, the proposal for a practical method to determine the adhesion utilization of actual vehicles represented a major departure from R.88 and Europe's braking regulation. As indicated above, Europe uses a calculation method to determine the adhesion utilization of a vehicle as designed. Manufacturers submit their

calculations to governmental authorities, and the governments then approve or disapprove the vehicle based on a review of those calculations and, in some cases, some type of check testing of actual vehicles. While Europe has found the calculation method for determining adhesion utilization to be appropriate under its type approval system, NHTSA cannot adopt that method as part of a safety standard. The Safety Act requires that standards be objective, in order that a manufacturer can self-certify that each vehicle meets all applicable standards.

Unlike the calculation method for determining adhesion utilization, the practical test proposed in the NPRM for determining a vehicle's adhesion utilization is objective. Commenters argued, however, that the proposed test and alternative practical tests such as using road transducer pads, torque wheels, and chassis dynamometers, are unsuitable for a regulation because they are either too time consuming, too cumbersome, or require extensive and expensive test facilities and equipment that are not generally available. Some commenters suggested as an alternative that NHTSA consider adopting a simple test, along the lines of one used by Sweden, as a check on the curves required by the European regulation.

While NHTSA is not taking a position at this time concerning whether the practical test proposed in the NPRM or the alternative tests noted above may be "suitable" for a safety standard, it is persuaded that adoption of those tests would not facilitate harmonization and therefore should not be considered as part of this rulemaking.

As an alternative, NHTSA is proposing simple practical tests which would help ensure adhesion utilization performance, along the lines of the intent behind, and consistent with, Europe's brake regulation. When tested in the lightly loaded and fully loaded conditions on surfaces with skid numbers of 20 and 50, a car's rear wheels would not both be permitted to lock prior to both front wheels being locked. This requirement would address stability and would help ensure the performance covered by Europe's requirement that the adhesion utilization curve for the front axle must be above that for the rear axle.

The two surfaces selected for this test were chosen because they represent two relatively common conditions under which wheel lockup may occur. A skid number of 20 is typical of snowy conditions, and a skid number of 50 is typical of a wet roadway in somewhat degraded condition. The test is not run on a surface with higher skid number because on such a surface the peak coefficient of friction would probably exceed 0.8, the upper limit beyond which the ECE adhesion requirements do not apply.

NHTSA recognizes that testing at only two points will not totally ensure stability throughout the range of 0.15 to 0.8g. However, to gain additional information by road test would complicate the procedure and make it more difficult and time consuming to conduct. The proposed tests would help ensure adequate adhesion utilization performance, without imposing burdensome test requirements.

NHTSA is also proposing low coefficient stopping distance requirements on a surface with a skid number of 20. These requirements would address braking efficiency and would help ensure the performance covered by Europe's requirement that none of the adhesion utilization curves can cross an upper line for peak coefficients of friction between 0.2 and 0.8. Based on the limited test data obtained to date, the agency is proposing a stopping distance requirement of 40 m (131 ft), from a test speed of 50 km/h (31.1 mph), for this test.

NHTSA is not proposing to include Europe's calculation method for determining adhesion utilization, for the reasons discussed above. For those countries which specify the calculation method, inclusion of the simple practical tests would not be burdensome and would serve the purpose of a vehicle check on the curves required by the calculation method.

Effectiveness Requirements

A crucial test of a vehicle's brake system is its effectiveness in bringing the vehicle to a quick and controlled stop in an emergency situation. In the NPRM, as is already the case for Standard No. 105, NHTSA proposed to test a vehicle's braking system in both a pre-burnish (or new) condition and after burnish, i.e., in a broken-in condition.

Commenters objected to inclusion of a pre-burnish test for several reasons. The ECE does not include a pre-burnish test and sees no need for the test. Moreover, as indicated above, inclusion of the test by European governments would prevent them from obtaining vehicles whose brakes have already been burnished for type approval. The argument was presented that there is no evidence of accidents caused by "green," i.e., new, brake linings, although no supporting data were provided. Some commenters noted that data do show that new vehicles are more likely to be involved in traffic accidents, but it was suggested that this over-representation is due to factors other than brake performance, such as drivers' lack of familiarity with the vehicle.

Some commenters argued that, for some vehicles, Standard No. 105's pre-burnish test is more difficult to meet than those tests which apply to burnished brakes and may compromise a vehicle's lifetime braking performance. GM stated the brake output and balance parameters which it chooses to meet the pre-burnish test result in longer post-burnish stopping distances than if design decisions were guided by the burnished brake performance considerations. Along the same lines, MVMA argued that it is unrealistic to compromise vehicle braking performance for 99 percent of a vehicle's life just to meet the pre-burnish test.

NHTSA is unaware of any evidence that Standard No. 105's pre-burnish test requires manufacturers to compromise post-burnish stopping distance. The agency agrees, however, that for some brake designs there may be a tradeoff between pre-burnish stopping distance and post-burnish stopping distance.

Given the relatively short period of time that vehicles' brakes remain in a pre-burnished condition, NHTSA is persuaded that inclusion of the pre-burnish test is not necessary for safety. The agency notes that it stated in the NPRM that vehicles may be driven for many miles in a pre-burnished state. The statement should more accurately have indicated that many vehicles may be driven for many miles in a significantly less burnished condition than that obtained from Standard No. 105's burnish procedure.

As discussed below, the burnish procedure proposed by this notice differs from that of Standard No. 105, in that a lower initial brake temperature and a lower deceleration rate are specified. The proposed test conditions are more similar to typical driving than those of Standard No. 105, and the agency does not believe that many vehicles will be driven for long periods of time in a significantly less burnished condition than that obtained from the proposed burnish procedure.

NHTSA notes here that while the proposed burnish procedure would result in a more typical burnish condition than that of Standard No. 105, the stopping distances attained after the less severe burnish will likely be somewhat longer than those attained under Standard No. 105. As discussed below, this factor is relevant in determining what stopping distances for the harmonized standard are equivalent to those of Standard No. 105.

The post-burnish tests, which are referred to as cold effectiveness tests in the proposed standard. address the stopping distance capability of a vehicle during typical emergency braking situations that occur over most of the vehicle's life. The tests are conducted under both fully loaded and lightly loaded conditions.

NHTSA has long stressed the importance to safety of stopping distance. In the past, the agency has presented analysis using the Indiana Tri-Level study to conclude that relatively small changes in stopping distance could result in a significant impact on the number of accidents. The agency has also compared the speeds at which vehicles with different stopping distance capabilities would be travelling at different points in time, assuming the vehicles' maximum stopping distance capabilities were utilized. See 46 FR 61893 (December 21, 1981). The agency emphasized in the Preliminary Regulatory Evaluation that it believes Standard No. 105 has been successful, in toto, in substantially upgrading brake performance. and that an effort was accordingly made to ensure that the proposed standard offers an equivalent level of stringency in order that safety performance not be compromised.

Numerous commenters, both from the industry and other governments, opposed the proposed stopping distance of 65 m for the fully loaded and lightly loaded cold effectiveness tests as being too stringent. Some commenters argued that 65 m did not represent the equivalent stopping distance of Standard No. 105 for those tests. It was noted that the agency's direct conversion of Standard No. 105's fully loaded stopping distance, which accounted only for the change in speed, was 66.6 m rather than 65 m.

Commenters also argued that the proposed stopping distances do not account for a number of changes in test conditions other than speed, as compared to Standard No. 105. Reduced burnish, narrower lane, fewer attempts for the test driver to achieve the required stopping distance, and prohibition of any wheel lock during a test stop were cited by the commmenters.

NHTSA believes there is merit to the argument that 65 m may be too stringent for the cold effectiveness tests. The agency notes first that while the direct conversion method of comparing stopping distances results in 66.6 m for the fully loaded test and 63.3 m for the lightly loaded test, the NPRM included stopping distances of 65 m for both tests as part of being consistent with Europe's approach of specifying the same stopping distance for both conditions. There is no question that the 65 m distance for the fully loaded test is more stringent than 66.6 m.

NHTSA also believes, in light of the different test conditions, that stopping distances obtained by the direct conversion method are more stringent than those of Standard No. 105. The agency recognized this issue at the time of the NPRM and used several methods for estimating Standard No. 105 equivalency. Among other things, NHTSA compared the results of cars tested both to the Standard No. 105 and harmonized procedures and also considered compliance data.

These data are of limited use in comparing the stringency of the stopping distances proposed in this notice since, as discussed elsewhere in this notice, the agency is proposing a number of changes to the NPRM's test procedure that could affect stopping distances. The agency notes that some of these changes appear to narrow the differences between the test procedures.

NHTSA is in the process of testing about 20 cars to both Standard No. 105 and the revised test procedure proposed in this notice, and the results of that testing should help resolve this issue. Prior to the conclusion of that testing, it is NHTSA's engineering judgment that the test results will indicate that a stopping distance longer than the direct conversion result, on the order of 70 m for the fully loaded cold effectiveness test, is equivalent in stringency to that of Standard No. 105. In other words, the agency believes that the same car tested according to the SNPRM test procedure will take longer to stop than when tested to the Standard No. 105 test procedure. Since the same car is being tested in both cases, any differences in stopping distance would be due solely to differences between the test procedures, such as reduced level of burnish, higher test speeds, and prohibition of wheel lockup during testing. Thus, the different stopping distance is an artifact of the different test procedures and does not represent any change in agency position regarding the stopping distance required for motor vehicle safety, i.e., there is no "real" change in either stopping distance requirement or actual performance since in both test procedures the vehicle is being tested to its limits. Hence, even though the stopping distance requirement "appears" to be lengthened, there would not be any degradation of safety, as the vehicles would continue to perform in "real-world" situations as they do currently.

NHTSA is therefore proposing a stopping distance of 70 m for the fully loaded cold effectiveness test of the harmonized standard. Consistent with Europe's philosophy of specifying the same stopping distance requirement for both load conditions, the agency is also proposing a 70 m stopping distance requirement for the lightly loaded test. NHTSA recognizes that the requirement will in almost all cases be easier to meet in the lightly loaded condition, but also believes that the new adhesion utilization requirements will preclude the possibility of designing a vehicle for shorter fully loaded stopping distances at the expense of lightly loaded performance. Other stopping distances in the standard, which are a function of the cold effectiveness requirements, have also been adjusted accordingly. The agency wishes the public to note that this value, as stated above, is dependent on the results of the ongoing testing of vehicles to both Standard No. 105's requirements and those proposed by this notice. Thus, the 70 m value, although believed to be reflective of the record in this proceeding to date, may be adjusted when the above-mentioned testing is completed. The agency will docket the test results for the 20 cars tested to Standard No. 105 and the SNPRM test procedure when the data become available.

A number of commenters argued that stopping distances longer than those equivalent to Standard No. 105 should be provided in light of adhesion utilization requirements. Those commenters argued that there is a tradeoff between stopping distance and adhesion utilization, and that it is therefore more difficult to meet stopping distance requirements when adhesion utilization requirements must also be met.

While there is a theoretical tradeoff between stopping distance and stability, Standard No. 105's stopping distances are not so short that they preclude brake designs with good balance. In establishing Standard No. 105, the agency did not "trade off" stability for stopping distance. Some requirements were specified to ensure stability. Moreover, as discussed above, the agency stated that until performance requirements were established to ensure good braking performance on surfaces such as wet or icy roads, it assumed that manufacturers would design their vehicles for safe braking performance on all types of road surfaces.

Many cars built for sale in the United States today meet both Standard No. 105 and Europe's adhesion utilization requirements. The agency notes that while new cars sold in this country are not required to meet any particular adhesion requirements, the defect

remedy provisions of the National Traffic and Motor Vehicle Safety Act do place a responsibility on manufacturers to build safe cars.

In the NPRM, NHTSA stated that it believes the vast majority of cars could meet the proposed adhesion utilization requirements with either no changes or relatively minor changes. The agency noted that manufacturers might choose to meet the requirements for some cars by, among other things, using such technology as variable proportioning valves. Manufacturers are using this technology on an increasing number of cars and light trucks, particularly for vehicles whose configurations make it more difficult to achieve good stability and short stopping distance using older technology.

While some manufacturer commenters cited certain cars which do not meet the requirements proposed in the NPRM and indicated that required design changes would be more than changing brake linings, no specific information was provided that indicated that the agency's conclusions stated above are incorrect. These commenters did not identify the types of changes that may be necessary to meet the proposed requirements, the number of vehicles that would be affected, or the costs involved. A number of commenters argued that it would be easier to meet the adhesion utilization requirements if stopping distance requirements are relaxed. However, the fact that there is a clear safety need for good adhesion utilization, i.e., stable brake performance on wet and icy roads, does not obviate the continuing safety need for short stopping distances. The agency believes that cars of all configurations can be designed to meet both the stopping distance requirements and adhesion utilization requirements proposed by this notice. NHTSA also notes that GM's comment indicates that dropping the pre-burnish test would make it easier to achieve shorter post-burnish stopping distances.

As discussed above, NHTSA is now proposing different adhesion utilization requirements than those of the NPRM, in light of comments that the NPRM test procedure for determining adhesion utilization would not facilitate harmonization. The simple practical tests now being proposed may be easier to meet than the requirements of the NPRM, and it is believed that the majority of cars already meet the proposed requirements.

To the extent that any manufacturer commenters continue to oppose maintaining stopping distances of equivalent stringency to Standard No. 105 in light of adhesion utilization, the agency requests that the commenters provide specific data concerning which of their vehicles do not meet the proposed adhesion utilization requirements, the specific types of changes that would be required for each such vehicle, e.g., lining changes, larger front brakes, variable proportioning valves, and estimates of the costs of those changes on an individual vehicle and fleet basis. The agency also requests quantitative estimates of the effect these changes would have on stopping distances.

NHTSA notes that GM submitted a comment which related to adhesion utilization and raised objections to certain of the agency's enforcement proceedings. That company alleged that Standard No. 105 places top priority on stopping distance while the NHTSA Office of Defects Investigation (ODI) is placing its priority on assuring that vehicles are front biased in a manner similar to that prescribed by European regulations. GM argued that this creates a conflict which places brake designers in the untenable position of being called upon to provide brakes which are "less responsive to driver needs than is desirable and achievable." That company also stated that the braking performance of certain of its cars which meet both Standard No. 105 and Europe's braking regulation have been challenged by ODI and argued that the brake harmonization rulemaking process should be used to reach "a regulatory solution to the differences between FMVSS and ECE requirements, the differences between NHTSA Rulemaking and Office of Defects Investigations priorities, and the conflicts between these legal requirements and good overall brake design practice."

Several observations can be made about GM's allegations. First, any suggestion that Standard No. 105 emphasizes stopping distances at the expense of stability is simply erroneous. Some of Standard No. 105's requirements were specifically intended to ensure stability of the vehicle while stopping and, as discussed above, NHTSA has always emphasized the importance to safety of good braking performance on surfaces such as wet or icy roads. See 37 FR 17971 (September 2, 1972). Second, contrary to GM's allegation, there is no conflict between NHTSA's Offices of Rulemaking and Enforcement with respect to the relative importance of stopping distance and stability. Moreover, the agency strongly disagrees that Standard No. 105, Europe's brake regulation, and/or NHTSA's enforcement policies create any conflicts with respect to good brake design practice. Third, as the agency recognized in the NPRM, there are limitations to any possible single adhesion utilization test, since brake balance, like most other aspects of braking performance, can change in use over time. While adhesion utilization requirements can help ensure reasonable performance for new vehicles, a vehicle meeting such requirements could become unsafe over time if the brake balance significantly changed. Regardless of the length or complexity of a particular brake regulation, no manufacturer can rely solely on compliance with a regulation as meeting its obligation under the National Traffic and Motor Vehicle Safety Act to produce vehicles without safety related defects. As indicated in the NPRM, however, by using sound engineering judgment, manufacturers can design vehicles in such a manner that good brake balance will be maintained over a vehicle's lifetime. Regardless of the outcome of this particular rulemaking, NHTSA will continue to enforce against safety related defects.

NHTSA notes that the proposed stopping distance requirements are expressed in the form of an equation. For the cold effectiveness stopping distance, the equation would provide that stopping distance (in meters) must be less than or equal to $0.07V+0.0063V^2$, where V refers to velocity (in km/h). The first part of the equation, the 0.07V term, accounts for brake system reaction time and appears in all of the proposed stopping distance formulas. In the NPRM, the reaction time was 0.05V. Tne agency increased the term to 0.07V based on a review of data for actual reaction times for a number of vehicles. The second part of the equation, $0.0063V^2$, is derived from a mean fully developed deceleration rate. The specified performance criterion, however, is not the deceleration rate but the stopping distance.

High Speed Effectiveness

The cold effectiveness tests would be conducted at a speed of 100 km/h (62.1 mph) and therefore test a vehicle's braking capability near the high end of the speeds normally encountered during ordinary driving. Cars are sometimes driven at much higher speeds, however, and both Standard No. 105 and Europe's braking regulation include high speed effectiveness requirements.

As in the NPRM, NHTSA is proposing that a vehicle would be tested at a speed representing 80 percent of its maximum speed. The agency is proposing a different stopping distance

equation, however. In addition to changing the reaction time from 0.05V to 0.07V, the second part of the equation is changed from $0.0067V^2$ to $0.0070V^2$. This change maintains the relationship that the mean fully developed deceleration rate for this test is based on 90 percent of that required for the cold effectiveness test, but reflects the proposed change in the cold effectiveness performance requirement. Thus, somewhat longer stopping distances are being proposed for this test. This would also make the test more comparable in stringency to R.88.

It is difficult to directly compare the stringency of Standard No. 105's high speed requirements and the proposed requirements because of differences in the test procedures. Standard No. 105 includes an 80 mph stopping distance requirement as part of its cold effectiveness test (referred to in that standard as the second effectiveness test), and 80, 95 and 100 mph stopping distance requirements as part of its fourth effectiveness test. Since the fourth effectiveness test is conducted near the end of that standard's test sequence, after the fade test, it includes somewhat longer stopping distances than the second effectiveness test. At 80 mph, the stopping distance proposed in this notice would be 410 feet, which would be 27 feet longer than Standard No. 105's second effectiveness test or five feet longer than that standard's fourth effectiveness test. However, for 95 mph and 100 mph, the proposed stopping distances would be 35 feet and 41 feet, respectively, shorter than those of Standard No. 105's fourth effectiveness test. Unlike the proposed standard. Standard No. 105 has no stopping distances for speeds above 100 mph.

NHTSA tentatively believes that the proposed requirements would meet the safety need for high speed effectiveness requirements. To the extent that these requirements might be less stringent than Standard No. 105 for vehicles which are tested at 80 mph, the agency does not believe that there would be any impact on safety. NHTSA notes that use of the relationship that the mean fully developed deceleration for this test is based on 90 percent of that required for the cold effectiveness test takes into account the fact that the test applies to cars with very high speeds. When a car is tested at a speed well above 100 mph, it may have a lower average deceleration than when tested at 62.1 mph for the cold effectiveness tests. However, test data indicate that a car tested at a speed of 80 mph is likely to have approximately the same average deceleration as when tested at 62.1 mph. Thus, the agency believes that vehicles tested at 80 mph will in fact have better performance at 80 mph than is specified by this test, and that actual vehicle performance for the vehicles will not be changed by the apparent reduction in stringency as compared to Standard No. 105.

Partial System Failure

In the NPRM, as is already the case for Standard No. 105, NHTSA proposed stopping distance requirements for conditions of circuit failure, power assist failure, antilock failure, and variable proportioning valve failure. The agency also proposed to adopt a requirement for brake performance with the engine off, as is included in the present ECE regulation.

If part of the service brake system or engine should fail, it is crucial that the vehicle's brake system still be able to bring the vehicle to a controlled stop in a reasonable distance. The agency is continuing to propose requirements in all of these areas. As discussed below, however, there are a number of differences in the requirements being proposed by this notice as compared to the NPRM.

A. Circuit and Power Assist Failure

NHTSA is now proposing a stopping distance of 165 m (540 feet) from a test speed of 100 km/h, as compared to 155 m (509 feet) in the NPRM. The stopping distance formula would be $0.07V+0.0158V^2$, as compared to $0.05V+0.0150V^2$. This change maintains the relationship in the NPRM and in R.88 that the mean fully developed deceleration rate for this test is based on 40 percent of that required for the cold effectiveness test, but reflects the proposed changes in the equation for the cold effectiveness performance requirement.

Numerous commenters argued that the requirements proposed in the NPRM are more severe than Standard No. 105. The agency agrees with those commenters and, based on its engineering judgment, is now proposing somewhat longer stopping distances. The agency believes that the longer stopping distances for these tests would make the tests more comparable in stringency to both R.88 and Standard No. 105.

It is difficult to directly compare the stringency of Standard No. 105's circuit and power assist failure requirements and the proposed requirements because of a significant difference in maximum allowable pedal force. Standard No. 105 specifies a maximum force of 150 pounds, while the harmonized proposal would permit only 113 pounds (500N). As a general matter, the stopping distance of a vehicle improves as greater pedal force is applied. Maximum allowable pedal force is a limiting factor in some partial failure and most inoperative power assist tests conducted under Standard No. 105, and the reduced pedal force specified by the harmonized proposal would thus result in somewhat longer stopping distances. It is not possible, however, to quantify a precise relationship between stopping distance and pedal force. The relationship between these factors is non-linear, varies among vehicle models, and depends upon various parts of the vehicle, including tires and brake system components.

B. Engine Failure

NHTSA is proposing slightly shorter stopping distances for brake performance after engine failure, as compared to the NPRM (70 m versus 72 m).

Standard No. 105 does not include a comparable requirement. The agency explained in the NPRM that since engine failure is a relatively common occurrence, it believes this is a reasonable requirement. The new proposal is in agreement with the philosophy of R.88 and Regulation 13 that the performance requirement for this test should be same as that for the cold effectiveness test. For the NPRM, the agency proposed that this requirement be based on a mean fully developed deceleration rate of 90 percent of that required for the cold effectiveness test, rather than 100 percent. This was done because test data showed that with the cold effectiveness stopping distance set at 65 m, a 100 percent rate would have created difficulties for some vehicles in meeting this requirement. With the cold effectiveness requirement lengthened to 70 m, NHTSA believes that the engine off requirement can be set at 100 percent, as it is in the ECE documents. NHTSA believes that the requirement now being proposed will meet the need for safety in this area, while promoting harmonization.

C. Antilock and Variable Proportioning Value Failure.

In light of comments, this proposal separates antilock and variable proportioning valve failure requirements into different sections to reflect the differing designs and functions of these subsystems. Also, differing performance requirements are being proposed for functional and structural failures. Longer stopping distances are being proposed

for structural failures in light of comments, that vehicles with some structural failures cannot meet the same stopping distances as for functional failures. The proposed changes would make these requirements more similar to R.88.

For antilock functional failure, NHTSA is proposing a stopping distance of 86 m from a test speed of 100 km/h. This compares to a stopping distance of 80 m in the NPRM. The change maintains the relationship in the NPRM that the mean fully developed deceleration rate for this test is based on 80 percent of that required for the cold effectiveness test, but reflects the proposed changes in the equation for the cold effectiveness performance requirement. For antilock structural failure, the agency is proposing a stopping distance of 165 m, the same stopping distance as is being proposed for circuit and power assist failure.

For variable proportioning valve functional failure, the agency is proposing a stopping distance of 112 m from a test speed of 100 km/h. In the NPRM, the agency proposed a stopping distance of 80 m. This distance has been lengthened based on docket comments indicating that such short distances are not attainable for many vehicles with failed proportioning valves. The new proposed distance is based on a mean fully developed deceleration rate that is 60 percent of that required for the cold effectiveness test. For variable proportioning valve structural failure, the agency is proposing a stopping distance of 165 m, the same as for antilock functional failure.

Standard No. 105 specifies the same performance requirements for antilock and variable proportioning valve failure as for circuit failure. Thus, the stopping distances being proposed for antilock and variable proportioning valve functional failure are shorter than those of Standard No. 105, while the stopping distances for structural failure are somewhat longer. The agency believes that the more stringent requirements, for functional failures are justified, based on the greater likelihood of that type of failure occurring.

Fade and Recovery

The purpose of the fade and recovery tests is to ensure adequate braking capability during and after exposure to the high brake temperatures caused by prolonged or severe use. Such temperatures are typically experienced in long, downhill driving. As in the NPRM, NHTSA is proposing a heating sequence, a hot stop test, a cooling sequence and a recovery stop test. There are a number of differences between the specific requirements of the NPRM and this notice, however, which are discussed below.

In the NPRM, two alternative heating sequences were proposed, both of which differed from R.88. The agency noted that in vehicle tests, the R.88 heating sequence produced brake temperatures more than 100 degrees F. lower than Standard No. 105's second fade test procedure. The temperatures produced by Standard No. 105's procedure had previously been verified as being representative of the temperatures experienced by vehicles traveling in mountainous areas. NHTSA explained that it is particularly concerned about this difference because the relationship between temperatures and fade is not a linear one. For a given brake lining, there is a "knee" in the curve, above which degradation due to fade is much more pronounced. If that "knee" occurred at a temperature between those produced by the R.88 test procedure and Standard No. 105 test procedure, a vehicle's braking system could meet the R.88 requirements but still experience a sharply increased propensity to fade during mountain descents.

One of, the NPRM's heating sequences was based on a Society of Automotive Engineers (SAE) recommended practice. The agency noted that the proposed sequence produces temperatures similar to those of the Standard No. 105 procedure, and also stated that it believes that it produces a temperature cycle that more closely approximates an actual mountain descent than either Standard No. 105 or the R.88 test procedure.

The European governments objected to this first heating sequence as being completely new and different, which could not be accepted. Industry commenters objected that the test sequence is difficult and extremely lengthy to perform.

The NPRM's alternative heating sequence was similar in form to R.88 but shortened the time interval between snubs from 45 seconds to 30 seconds. NHTSA stated that it believed this would result in temperatures that compare with those obtained in Standard No. 105. The agency noted, however, that a problem with this alternative is that some cars are not powerful enough to accelerate to the 120 km/h test speed in the time interval permitted.

Commenters argued that this second alternative is significantly more stringent than Standard No. 105. Chrysler, for example, submitted data indicating that on one test, the end-of-heating cycle lining temperatures were 290 degrees F. and 90 degrees F. higher on the front and rear brakes, respectively, than for similar vehicles tested to Standard No. 105's second fade test.

In light of the comments, NHTSA is deleting the first alternative heating sequence and is now proposing that the time interval of the other be increased from 30 seconds to 40 seconds. An initial evaluation of data from tests of 19 cars, using the total energy input to the brake system in average horsepower for the entire test, indicates that a 40 second time interval between snubs results in outputs for the test vehicles which are closer to the energy output of the Standard No. 105 fade sequence. The average horsepower for the Standard No. 105 sequence was 5.936, while the average horsepower using the 40 second interval was 5.818. By comparison, the average horsepower was 7.758 for a 30 second interval, 6.649 for a 35 second interval, and 5.172 for a 45 second interval. The 40 second interval will also permit vehicles with small displacement engines and high overall gearing to meet the test speeds needed to conduct this test.

In light of the reduced heating temperatures, NHTSA is now proposing a somewhat shorter stopping distance for the hot stop test. The agency had proposed a longer stopping distance in the NPRM, as compared to the percentage of the cold effectiveness test stopping distance used in R.88, because of the higher temperatures. The agency is now proposing that the required stopping distance would be the shorter of 86 m from a test speed of 100 km/h (80 percent of the mean fully developed deceleration required for cold effectiveness), or 60 percent of the deceleration achieved on the shortest fully loaded cold effectiveness stopping distance. These requirements are in agreement with the percentages proposed by the GRRF.

For recovery performance, NHTSA is proposing to maintain an over-recovery limit but to increase that limit from 120 percent to 150 percent of the deceleration achieved on the shortest fully loaded cold effectiveness stopping distance. The 150 percent limit is based on docket comments, and the agency believes that it is still more stringent than Standard No. 105. The agency is also proposing to increase the number of stops from one to two, to offset the no single-wheel lockup requirement, minimize driver effects, and decrease test variability.

Parking Brake Requirements

As in Standard No. 105 and in the NPRM, NHTSA is proposing to require that the parking brake be able to hold the vehicle when it is parked on a specified gradient and a force not exceeding a specified amount is applied to the parking brake. There are several differences between the specific requirements of this notice and the NPRM, however, which are discussed below.

The agency explained in the NPRM that the static parking brake test is a pass/fail type of test, i.e., the parking brake either holds the vehicle or it does not. Hence, the test conditions determine the stringency of the performance requirement. Two conditions are of primary importance, the gradient and the allowable control force. The two are interrelated in that, for the same parking brake system, it is generally true that the higher the force that is applied to the control, the steeper the gradient on which the vehicle can be held in place.

In the NPRM, NHTSA sought to maintain the same level of stringency for the static parking brake test as that of Standard No. 105. The agency proposed a less stringent gradient, 20 percent instead of 30 percent, in line with R.88. To offset that change and thereby maintain the existing level of stringency, the agency also proposed more stringent, i.e., lower, allowable control forces, 500N (113 pounds) for foot-operated parking brake systems instead of 125 pounds and 320N (72 pounds) instead of 90 pounds for hand-operated parking brake systems.

In light of comments and to make the proposal more similar to R.88, NHTSA is now proposing a hand control force limit of 400N (90 pounds). The foot control force limit would remain at 500N.

In comparing this proposal to Standard No. 105, the agency notes that Standard No. 105 permits automatic transmission cars equipped with a parking pawl to have the parking pawl engaged for purposes of holding on a 30 percent grade. If this option is selected, the car must also hold on a 20 percent grade without using the parking pawl. Under this harmonized proposal, all cars must hold on a 20 percent grade without using a parking pawl. In lowering the hand control force limit in the NPRM to 320N for purposes of maintaining equivalent stringency to Standard No. 105, the agency thus maintained such equivalency only for vehicles without parking pawls, i.e., generally manual transmission cars, while increasing the stringency for automatic transmission cars. By now proposing a hand control force limit of 400N, the parking brake holding test will be of the same stringency for automatic transmission vehicles, but somewhat less stringent for manual transmission vehicles.

NHTSA tentatively believes that the proposed requirements for manual transmission cars with hand-operated parking brakes meet the need for safety in this area. The agency recognizes that the requirements are somewhat less stringent than those of Standard No. 105, but also believes that the Standard No. 105 level of stringency for these particular requirements is unsupported as resulting in any measurable safety benefits over that of this proposal. The agency requests specific comments on this issue.

In addition to the static parking brake test, the NPRM also included a dynamic parking brake test. Because Standard No. 105 does not include a comparable test, some commenters complained that the NPRM included a more stringent hand control force limit than R.88. The agency notes that the 320N limit was included in the NPRM primarily to maintain the symmetry of specifying the same hand control force limits for both the static and the dynamic tests, as is the case in R.88, and since test data indicate that most current cars easily meet the test. As in the case of the static test, the agency is now proposing a hand control force limit of 400N (90 pounds) instead of 320N (72 pounds). This would make the proposed requirements exactly the same as R.88.

Some commenters requested that the stopping distance of 73 m proposed in the NPRM be deleted because it is not included in R.88. The agency notes that while R.88 specifies a minimum deceleration rate, the measure of performance is still stopping distance. Thus, those commenters are incorrect. With the new system reaction time, the stopping distance proposed in this notice is 74 m.

NHTSA also notes that it is now proposing to place the parking brake test ahead of the fade and recovery test, as in Standard No. 105. This change is being proposed to test the parking brakes in a more normal condition, i.e., without having been subjected to high temperatures. Commenters indicated that with an increased number of burnish stops, it would no longer be necessary to place the parking brake tests at the end of the test sequence.

Equipment Integrity

NHTSA proposed in the NPRM to carry over Standard No. 105's "spike" stop test, to ensure the capability of a vehicle's braking system to withstand sudden, very hard brake applications. Numerous commenters objected to inclusion of this test, arguing that it is unnecessary. The European governments expressed concern that it is an added test and cost, for which no need has been demonstrated.

After reviewing the comments, NHTSA is persuaded that this aspect of performance can be adequately handled under its defect authority. NHTSA is unaware of any accident data which link a single accident to equipment failure related to this aspect of performance. Therefore, the agency is now proposing not to include this test in the harmonized standard.

Final Effectiveness

NHTSA proposed in the NPRM to include a final effectiveness test after the spike stop test. To a large extent, this test was a carryover of Standard No. 105's spike stop check test. Since the spike stop test would be deleted, it is unnecessary to include the check test. In the NPRM, however, NHTSA also cited inclusion of the final effectiveness test as addressing one of the aspects of performance covered by Standard No. 105's full fourth effectiveness test, which the agency did not propose to include in the harmonized standard. In particular, since the fourth effectiveness test is conducted after the fade and recovery test, it ensures adequate braking effectiveness after experiencing high temperatures.

NHTSA now tentatively concludes that this aspect of performance is adequately covered by the hot stop test and recovery stop test. The agency believes that a vehicle will need adequate braking effectiveness in order to meet those tests, which are conducted after the brakes are exposed to high temperatures. Accordingly, the agency is now proposing not to include the final effectiveness test in the harmonized standard.

Equipment Safety and Failure Warning Requirements

As discussed in the NPRM, Standard No. 105 includes a number of equipment and failure warning requirements, most notably for reservoir capacity, failure warning indicators, and fluid reservoir labeling. Europe's braking regulation includes similar, but in some cases, slightly different requirements. While these requirements have been discussed to some extent as part of the ECE harmonization process, they have not yet received the degree of attention that has been given to the road tests. Most of the requirements proposed in the NPRM were essentially the same as those in Standard No. 105.

One of the requirements in this area carried over to the NPRM from Standard No. 105 concerns the brake indicator check function. Brake indicator lamps are currently required to be activated automatically when the vehicle is started, to provide a check of lamp function. In Europe, however, the check function often requires manual action, such as pressing a button or applying the parking brake. The differences between Standard No. 105's requirements and Europe's requirements in this area have contributed to several petitions for inconsequential noncompliance.

In the interest of harmonization, NHTSA is now proposing to permit manual check functions as an alternative to the automatic check function. In order to inform the driver of what type of check function has been provided, the agency is also proposing to require manufacturers to explain the brake indicator check function test procedure in the owner's manual. The agency has tentatively concluded that the need for safety in this area will be met by the combination of these requirements.

Test Conditions

In the NPRM, NHTSA discussed the more significant differences between the test conditions proposed by that notice and those of Standard No. 105. In light of the comments, this notice is proposing a number of test conditions which differ from those of the NPRM. The more significant of these are discussed below.

A. Pretest Instrumentation Checks

NHTSA is now proposing that pretest instrumentation checks, if needed, are to be conducted as part of the burnish procedure, in accordance with specified test conditions. The agency believes that this would reduce test variability by standardizing the test conditions. The new proposal is identical in this regard to the ECE proposal.

B. Burnish

The nature of many brake linings is such that a break-in period is needed for the braking system to achieve its full capability. In the NPRM, NHTSA proposed a maximum of 114 burnish stops, including instrumentation check stops, pre-burnish stops, and first cold effectiveness stops, with the option of conducting fewer burnish stops. This compared to a mandatory 200 burnish stops specified by Standard No. 105, plus three reburnishes of 35 stops each.

While a lower number of burnish stops would reduce the costs of running the test procedure, numerous commenters argued that the 114 stops were inadequate to provide sufficient burnish. The commenters argued that longer burnish was needed both for the braking system and tires. Ford, for example, argued that fully burnished original equipment tires result in seven percent shorter stopping distances.

NHTSA is now proposing to specify 200 burnish stops. This would help to stabilize brake performance and reduce vehicle and test variability. The agency is no longer proposing to permit the option of conducting fewer burnish stops. Specifying a set number of burnish stops rather than having some or all stops optional would ensure repeatability and duplication by all parties conducting tests to the standard, and would result in less variation in braking performance among vehicles. The agency notes that including 200 burnish stops in a harmonized standard would not place a burden on the European governments under their type approval system, since manufacturers could continue to submit vehicles for approval whose brakes have already been burnished.

NHTSA notes that the proposed burnish procedure still differs from that of Standard No. 105, in that a lower initial brake temperature and a lower deceleration rate are specified. The agency believes that the proposed test conditions are more similar to typical driving than those of Standard No. 105, but also recognizes that the stopping distances attained after the less severe burnish will likely be somewhat longer than those attained under Standard No. 105. As discussed above, the on-going test program will help resolve this issue.

C. Number of Runs Per Test Condition

In the NPRM, NHTSA proposed to specify that four stops be made for most test conditions, as compared to six stops under Standard No. 105. The purpose of specifying multiple stops is to enable test drivers to achieve a vehicle's best performance. Prescribed performance must be achieved on at least one stop.

While a lower number of stops would reduce the costs of running the test procedure, numerous commenters argued that this would increase the stringency of the requirements. Therefore, NHTSA is now proposing to specify six stops. This would minimize driver effects and decrease test variability.

Analyses; Costs and Benefits

NHTSA stated in the NPRM that it had analyzed the proposal and determined that it was neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A preliminary regulatory evaluation setting forth the agency's detailed analysis of the economic effects of the proposal was prepared at the time of the NPRM and placed in the docket. The agency has analyzed the alternative test conditions and performance requirements in this notice and determined that the proposal remains neither "major" nor "significant." This rulemaking is based on the preliminary regulatory evaluation and the additional data contained in the SNPRM or, as referenced in the SNPRM, in the docket.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Only relatively simple changes would generally be needed for all passenger cars to meet the proposed standard. These changes would not significantly affect the purchase price of a vehicle. No changes would be needed for many cars. While some reduction in compliance costs would occur, the reduction would not be of a magnitude which would significantly affect the purchase price of a vehicle. For these reasons, neither manufacturers of passenger cars, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the proposed standard. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Information Collection Requirements

The proposed brake fluid reservoir labeling requirements and requirement that manufacturers explain the brake check function test procedure in the owner's manual, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory

Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1493, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.105 would be amended by revising S3 to read as follows:

§ 571.105 Standard No. 105; Hydraulic brake system.

* * * * *

S3. *Application.* This standard applies to multipurpose passenger vehicles, trucks, and buses with hydraulic brake systems, and to passenger cars manufactured before September 1, (the year five years after publication of a final rule in the **Federal Register** would be inserted), with hydraulic brake systems. At the option of the manufacturer, passenger cars manufactured before September 1, (the year five years after publication of a final rule in the **Federal Register** would be inserted), may comply with the requirements of Federal Motor Vehicle Safety Standard No. 135, *Passenger Car Brake Systems,* instead of the requirements of this standard.

* * * * *

3. Section 571.135 would be added to read as follows:

§ 571.135 Standard No. 135; Passenger car brake systems.

S1. *Scope.* This standard specifies requirements for service brake and associated parking brake systems.

S2. *Purpose.* The purpose of this standard is to ensure safe braking performance under normal and emergency driving conditions.

S3. *Application.* This standard applies to passenger cars manufactured on or after September 1 (the year five years after publication of a final rule would be inserted). In addition, passenger cars manufactured before September 1 (the year five years after publication of a final rule would be inserted), may, at the option of the manufacturer, meet the requirements of this standard instead of Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems.*

S4. *Definitions.*

"Antilock brake system" or "ABS" means a portion of a vehicle's service brake system that automatically controls the degree of rotational wheel slip of one or more road wheels of the vehicle during braking.

"Backup system" means a portion of a service brake system, such as a pump, that automatically supplies energy in the event of a primary brake power source failure.

"Brake power assist unit" means a device installed in a hydraulic brake system that reduces the amount of muscular force that a driver must apply to actuate the system, and that, if inoperative, does not prevent the driver from braking the vehicle by a continued application of muscular force on the service brake control.

"Brake power unit" means a device installed in a brake system that provides the energy required to actuate the brakes, either directly or indirectly through an auxiliary device, with driver action consisting only of modulating the energy application level.

"Braking ratio" means the deceleration of the vehicle divided by the gravitational acceleration constant.

"Functional failure" means a failure of a component (either electrical or mechanical in nature) which renders the system inoperative yet the structural integrity of the system is maintained.

"Hydraulic brake system" means a system that uses hydraulic fluid as a medium for transmitting force from a service brake control to the service brake and that may incorporate a brake power assist unit, or a brake power unit.

"Initial brake temperature" or "IBT" means the average temperature of the service brakes on the hottest axle of the vehicle 0.32 km (0.2 miles) before any brake application.

"Lightly loaded vehicle weight" or "LLVW" means unloaded vehicle weight plus 180 kg (396 pounds), including driver and instrumentation.

"Maximum speed" of a vehicle or "Vmax" means the highest speed attainable by accelerating at a maximum rate from a standing start for a distance of 3.2 km (2 miles) on a level surface, with the vehicle at its lightly loaded vehicle weight.

"Pressure component" means a brake system component that contains the brake system fluid and controls or senses the fluid pressure.

"Skid Number" means the frictional resistance of a pavement measured in accordance with American Society for Testing and Materials (ASTM) Method E274–85 at 40 mph, omitting water delivery as specified in paragraphs 4.7 and 8.1 of that method, except for the low coefficient effectiveness test (S7.2) and the wheel lockup sequence test (S7.3) where water is used.

"Snub" means the braking deceleration of a vehicle from a higher reference speed to a lower reference speed that is greater than zero.

"Split service brake system" means a brake system consisting of two or more

subsystems actuated by a single control designed so that a leakage-type failure of a pressure component in a single subsystem (except structural failure of a housing that is common to two or more subsystems) does not impair the operation of any other subsystem.

"Stopping distance" means the distance traveled by a vehicle from the point of application of force to the brake control to the point at which the vehicle reaches a full stop.

"Structural failure" means a failure in which the structural integrity of a component has not been maintained resulting in the failure of one or more brake system components affecting the performance of the main full service brake system and/or other brake related subsystems.

"Variable proportioning brake system" means a system that has a proportioning valve which automatically adjusts the braking force at the axles to compensate for vehicle static axle loading and/or dynamic weight transfer between axles during deceleration.

S5. *Equipment requirements.*

S5.1. *Service brake system.* Each vehicle shall be equipped with a service brake system acting on all wheels. Wear of the service brakes shall be compensated for by means of a system of automatic adjustment.

S5.2. *Parking brake system.* Each vehicle shall be equipped with a parking brake system of a friction type with solely mechanical means to retain engagement.

S5.3. *Controls.* The service brakes shall be activated by means of a foot control. The control of the parking brake shall be independent of the service brake control, and may be either a hand or foot control.

S5.4. *Reservoirs.*

S5.4.1. *Master cylinder reservoirs.* A master cylinder shall have a reservoir compartment for each service brake subsystem serviced by the master cylinder. Loss of fluid from one compartment shall not result in a complete loss of brake fluid from another compartment.

S5.4.2. *Reservoir capacity.* Reservoirs, whether for master cylinders or other type systems, shall have a total minimum capacity equivalent to the fluid displacement resulting when all the wheel cylinders or caliper pistons serviced by the reservoirs move from a new lining, fully retracted position (as adjusted initially to the manufacturer's recommended setting) to a fully worn, fully applied position, as determined in accordance with S7.17(c) of this standard. Reservoirs shall have completely separate compartments for each subsystem except that in reservoir systems utilizing a portion of the reservoir for a common supply to two or more subsystems, individual partial compartments shall each have a minimum volume of fluid equal to at least the volume displaced by the master cylinder piston servicing the subsystem, during a full stroke of the piston. Each brake power unit reservoir servicing only the brake system shall have a minimum capacity equivalent to the fluid displacement required to charge the system piston(s) or accumulator(s) to normal operating pressure plus the displacement resulting when all the wheel cylinders or caliper pistons serviced by the reservoir or accumulator(s) move from a new lining, fully retracted position (as adjusted initially to the manufacturer's recommended setting) to a fully worn, fully applied position.

S5.4.3. *Reservoir labeling.* Each vehicle shall have a brake fluid warning statement that reads as follows, in letters at least 3.2 mm (⅛ inch) high: "WARNING, Clean filler cap before removing. Use only _____ fluid from a sealed container." (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116 e.g., "DOT 3".) The lettering shall be:

(a) Permanently affixed, engraved or embossed;

(b) Located so as to be visible by direct view, either on or within 100 mm (3.94 inches) of the brake fluid reservoir filler plug or cap; and

(c) Of a color that contrasts with its background, if it is not engraved or embossed.

S5.4.4. *Fluid level indication.* Brake fluid reservoirs shall be so constructed that the level of fluid can be checked without need for the reservoir to be opened. This requirement is deemed to have been met if the vehicle is equipped with a transparent brake fluid reservoir and/or a brake fluid level indicator meeting the requirements of S5.5.1(a)(1).

S5.5. *Brake system warning indicator.* Each vehicle shall have one or more visual brake system warning indicators, mounted in front of and in clear view of the driver, which meet the requirements of S5.5.1 through S5.5.5. In addition, a vehicle manufactured without a split service brake system shall be equipped with an audible warning signal that activates under the conditions specified in S5.5.1(a).

S5.5.1. *Activation.* An indicator shall be activated when the ignition (start) switch is in the "on" ("run") position and whenever any of conditions (a), (b) or (c) occur:

(a) A gross loss of fluid or fluid pressure (such as caused by rupture of a brake line but not by a structural failure of a housing that is common to two or more subsystems) as indicated by one of the following conditions (chosen at the option of the manufacturer):

(1) A drop in the level of the brake fluid in any master cylinder reservoir compartment to less than the recommended safe level specified by the manufacturer or to one-fourth of the fluid capacity of that reservoir compartment, whichever is greater.

(2) For vehicles equipped with a split service brake system, a differential pressure of 1.5 MPa (218 psi) between the intact and failed brake subsystems measured at a master cylinder outlet or a slave cylinder outlet.

(3) A drop in the supply pressure in a brake power unit to one-half of the normal system pressure.

(b) Any functional failure in an antilock or variable proportioning brake system.

(c) Application of the parking brake.

S5.5.2. *Function check.*

(a) All indicators shall be activated as a check function by either:

(1) Automatic activation when the ignition (start) switch is turned to the "on" ("run") position when the engine is not running, or when the ignition (start) switch is in a position between "on" ("run") and "start" that is designated by the manufacturer as a check position, or

(2) A single manual action by the driver, such as activating a momentary test button or switch mounted on the instrument panel in front of and in clear view of the driver, or, in the case of an indicator for application of the parking brake, by applying the parking brake when the ignition switch is in the "on" ("run") position.

(b) Check functions meeting the requirements of S5.5.2(a) need not be operational when the transmission shift lever is in a forward or reverse drive position.

(c) The manufacturer shall explain the brake check function test procedure in the owners manual.

S5.5.3. *Duration.* Each indicator activated due to a condition specified in S5.5.1 shall remain activated as long as the condition exists, whenever the ignition (start) switch is in the "on" ("run") position, whether or not the engine is running.

S5.5.4. *Function.* When a visual warning indicator is activated, it may be continuous or flashing, except that the visual warning indicator on a vehicle not equipped with a split service brake system shall be flashing. The audible warning required for a vehicle manufactured without a split service brake system may be continuous or intermittent.

S5.5.5. *Labeling.*

(a) Each visual indicator shall display a word or words, in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (⅛ inch) high and the letters and background shall be of contrasting colors, one of which is red. Words or symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of clarity.

(b) Vehicles manufactured with a split service brake system may use a single common brake warning indicator. If a single common indicator is used, it shall display the word "Brake."

(c) A vehicle manufactured without a split service brake system shall use a separate indicator to indicate the failure condition in S5.5.1(a). This indicator shall display the words "STOP—BRAKE FAILURE" in block capital letters not less than 6.4 mm (¼ inch) in height.

(d) If separate indicators are used for one or more than one of the functions described in S5.5.1(a) to S5.5.1(c), the indicators shall display the following wording:

(1) If a separate indicator is provided for the low brake fluid condition in S5.5.1(a)(1), the words "Brake Fluid" shall be used except for vehicles using hydraulic system mineral oil.

(2) If a separate indicator is provided for the gross loss of pressure condition in S5.5.1(a)(2), the words "Brake Pressure" shall be used.

(3) If a separate indicator is provided for antilock failure as specified in S5.5.1(b), the single word "Antilock" or "Anti-Lock", or "ABS", may be used. The letters and background of a separate indicator for an antilock system shall be of contrasting colors, one of which is yellow.

(4) If a separate indicator is provided for application of the parking brake as specified for S5.5.1(c), the single work "Park" may be used.

(5) If a separate indicator is provided for any other function, the display shall include the word "Brake" and appropriate additional labeling.

S5.6. *Brake system integrity.* Each vehicle shall meet the complete performance requirements of this standard without:

(a) Detachment or fracture of any component of the braking system, such as brake springs and brake shoes or disc pad facings other than minor cracks that do not impair attachment of the friction facings. All mechanical components of the braking system shall be intact and functional. Friction facing tearout (complete detachment of lining) shall not exceed 10 percent of the lining on any single frictional element.

(b) Any visible brake fluid or lubricant on the friction surface of the brake, or leakage at the master cylinder or brake power unit reservoir cover, seal, and filler openings.

S6. *General test conditions.* Each vehicle must meet the performance requirements specified in S7 under the following test conditions and in accordance with the test procedures and test sequence specified. Where a range of conditions is specified, the vehicle must meet the requirements at all points within the range.

S6.1. *Ambient conditions.*

S6.1.1. *Ambient temperature.* The ambient temperature is any temperature between °C (32 °F) and 40°C (104 °F).

S6.1.2. *Wind Speed.* The wind speed is not greater than 5 m/s (11.2 mph).

S6.2. *Road test surface.*

S6.2.1. *Skid number.* The road test surface has a skid number of 81 (dry) except as specified in S7.2 for low coefficient effectiveness and S7.3 for wheel lockup sequence.

S6.2.2. *Gradient.* Except for the parking brake gradient holding test, the test surface has no more than a 1% gradient in the direction of testing and no more than a 2% gradient perpendicular to the direction of testing.

S6.2.3. *Lane width.* Road tests are conducted on a test lane 3.5 m (11.5 ft) wide.

S6.3. *Vehicle conditions.*

S6.3.1. *Vehicle weight.*

S6.3.1.1. For the tests at GVWR, the vehicle is loaded to its GVWR such that the weight on each axle as measured at the tire-ground interface is in proportion to its GAWR, with the fuel tank filled to 100% of capacity. However, if the weight on any axle of a vehicle at LLVH exceeds the axle's proportional share of the GVWR, the load required to reach GVWR is placed so that the weight on that axle remains the same as at LLVW.

S6.3.1.2. For the tests at LLVW, the vehicle is loaded to its LLVW such that the added weight is distributed in the front passenger seat area.

S6.3.2. *Fuel tank loading.* The fuel tank is filled to 100% of capacity at the beginning of testing and may not be less than 75% of capacity during any part of the testing.

S6.3.3. *Lining preparation.* At the beginning of preparation for the road tests, the brakes of the vehicle are in the same condition as when the vehicle was manufactured. No burnishing or other special preparation is allowed, unless all vehicles sold to the public are similarly prepared as a part of the manufacturing process.

S6.3.4. *Adjustments and repairs.* These requirements must be met without replacing any brake system parts or making any adjustments to the brake system except as specified in this standard. Where brake adjustments are specified (S7.1.3), adjust the brakes, including the parking brakes, in accordance with the manufacturer's recommendation. No brake adjustments are allowed during or between subsequent tests in the test sequence.

S6.3.5. *Automatic brake adjusters.* Automatic adjusters are operational throughout the entire test sequence and are adjusted either manually or by other means, as recommended by the manufacturer. The brakes are adjusted in this manner only prior to the beginning of the road test sequence.

S6.3.6. *Antilock brake system (ABS).* If a car is equipped with an ABS, the ABS is fully operational for all tests except the test for failed antilock.

S6.3.7. *Variable proportioning valve.* If a car is equipped with a variable proportioning valve, the proportioning valve is fully operational for all tests except the test for failed variable proportioning valve.

S6.3.8. *Tire inflation pressure.* Tires are inflated to the pressure recommended by the vehicle manufacturer for the GVWR of the vehicle.

S6.3.9. *Engine.* Engine idle speed and ignition timing are set according to the manufacturer's recommendations. If the vehicle is equipped with an adjustable engine speed governor, it is adjusted according to the manufacturer's recommendations.

S6.3.10. *Vehicle openings.* All vehicle openings (doors, windows, hood, trunk, convertible top, cargo doors, etc.) are closed except as required for instrumentation purposes.

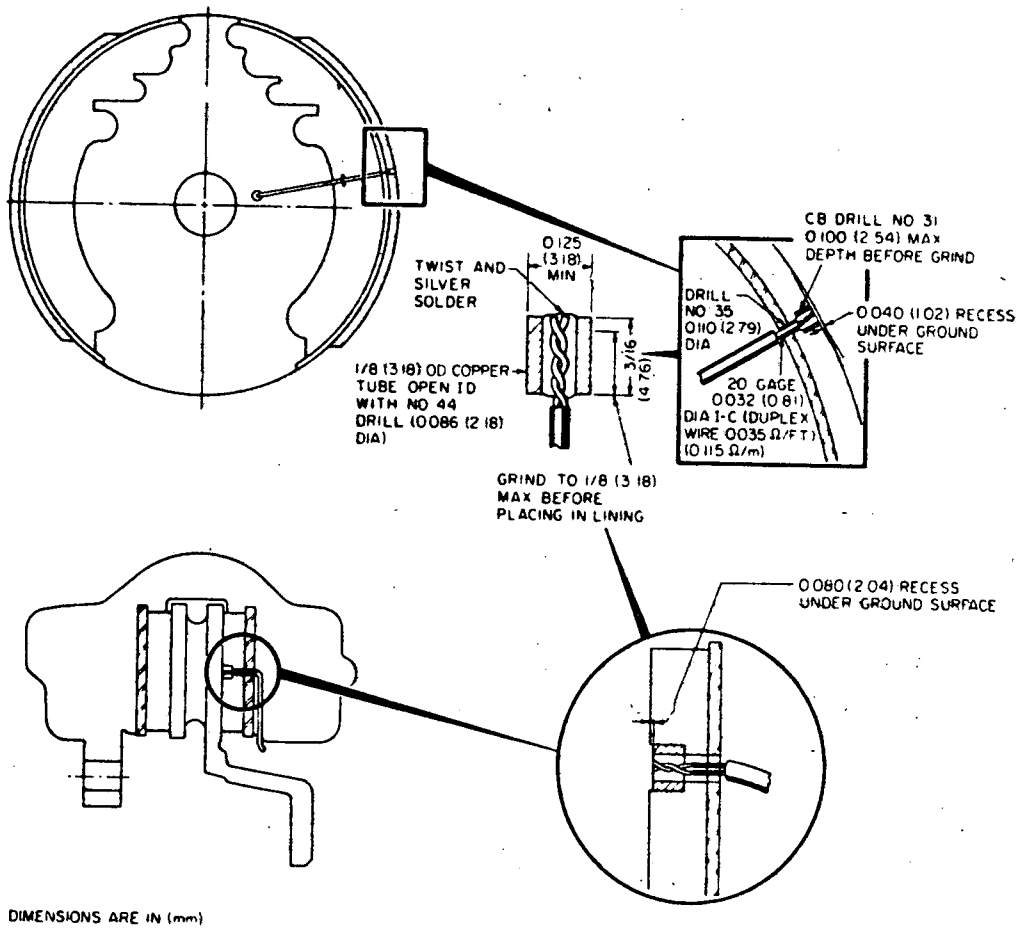
S6.4. *Instrumentation.*

S6.4.1. *Brake temperature measurement.* The brake temperature is measured by plug-type thermocouples installed in the approximate center of the facing length and width of the most heavily loaded shoe or disc pad, one per brake, as shown in Figure 1. A second thermocouple may be installed at the beginning of the test sequence if the lining wear is expected to reach a point causing the first thermocouple to contact the metal rubbing surface of a drum or rotor. For center-grooved shoes or pads, thermocouples are installed within 3 mm (.12 in) to 6 mm (.24 in) of the groove and as close to the center as possible.

BILLING CODE 4910-59-M

Figure 1

Typical Plug-Type Thermocouple Installations



DIMENSIONS ARE IN (mm)

BILLING CODE 4910-59-C

S6.5. *Procedural conditions.*

S6.5.1. *Brake control.* All service brake system performance requirements, including the partial system requirements of S7.6, S7.9 and S7.10, must be met solely by use of the service brake control.

S6.5.2. *Test speeds.* If a vehicle is incapable of attaining the specified normal test speed, it is tested at a speed that is a multiple of 5 km/h (3.1 mph) that is 4 to B km/h (2.5 to 5.0 mph) less than its maximum speed, and its performance must be within a stopping distance given by the formula provided for the specific requirement.

S6.5.3. *Stopping distance.*

S6.5.3.1. The braking performance of a vehicle is determined by measuring the stopping distance from a given initial speed.

S6.5.3.2. Unless otherwise specified, the vehicle is stopped in the shortest distance achievable (best effort) on all stops. Where more than one stop is required for a given set of test conditions, a vehicle is deemed to comply with the corresponding stopping distance requirements if at least one of the stops is made within the prescribed distance.

S6.5.3.3. In the stopping distance formulas given for each applicable test (such as; $S=0.07V+0.0063V^2$), S is the maximum stopping distance in m, and V is the test speed in km/h.

S6.5.4. *Vehicle position and attitude.*

S6.5.4.1. The vehicle is aligned in the center of the lane at the start of each brake application. Steering corrections are permitted during each stop.

S6.5.4.2. Stops are made without any part of the vehicle leaving the lane and without rotation of the vehicle about its vertical axis of more than ±15° from the center line of the test lane at any time during any stop.

S6.5.5. *Transmission selector control.*

S6.5.5.1. For tests in neutral, a stop or snub is made in accordance with the following procedures:

(a) Exceed the test speed by 6 to 12 km/h (3.7 to 7.5 mph);

(b) Close the throttle and coast in gear to approximately 3 km/h (1.9 mph) above the test speed;

(c) Shift to neutral; and

(d) When the test speed is reached, apply the brakes.

S6.5.5.2. For tests in gear, a stop or snub is made in accordance with the following procedures:

(a) With the transmission selector in the control position recommended by the manufacturer for driving on a level surface at the applicable test speed, exceed the test speed by 6 to 12 km/h (3.7 to 7.5 mph);

(b) Close the throttle and coast in gear; and

(c) When the test speed is reached apply the brakes.

(d) To avoid engine stall, a manual transmission may be shifted to neutral (or the clutch disengaged) when the vehicle speed is below 30 km/h (18.6 mph).

S6.5.6. Initial brake temperature (IBT). If the lower limit of the specified IBT for the first stop in a test sequence (other than a parking brake grade holding test) has not been reached, the brakes are heated to the IBT by making one or more brake applications from a speed of 50 km/h (31.1 mph), at a deceleration rate not greater than 3 m/s^2 (9.8 fps^2).

S7. *Road Test, Procedures and Performance Requirements.* Each vehicle shall meet all the applicable requirements of this section, when tested according to the conditions and procedures set forth below and in S6, in the sequence specified in Table 1. Where a range of conditions is specified, the vehicle shall meet the requirements at all points within the range.

TABLE I.—ROAD TEST SEQUENCE

Testing order	Section No.
Vehicle loaded to GVWR:	
1. Burnish	S7.1
2. Low coefficient effectiveness	S7.2
3. Wheel lockup sequence	S7.3
4. Cold effectiveness	S7.4
5. High speed effectiveness	S7.5
6. Stops with engine off	S7.6
Vehicle loaded to LLVW:	
7. Low coefficient effectiveness	S7.2
8. Wheel lockup sequence	S7.3
9. Cold effectiveness	S7.4
10. High speed effectiveness	S7.5
11. Failed antilock	S7.7
12. Failed proportioning valve	S7.8
13. Hydraulic circuit failure	S7.9
Vehicle loaded to GVWR:	
14. Hydraulic circuit failure	S7.9
15. Failed antilock	S7.7
16. Failed proportioning valve	S7.8
17. Power brake unit inoperative	S7 10
18. Parking brake—static	S7.11
19. Parking brake—dynamic	S7.12
20. Heating snubs	S7.13
21. Hot performance	S7.14
22. Brake cooling	S7.15
23. Recovery performance	S7.16
24. Final inspection	S7.17

S7.1. *Burnish.*

S7.1.1. *General information.* Any pretest instrumentation checks are conducted as part of the burnish procedure, including any necessary rechecks after instrumentation repair, replacement or adjustment. Instrumentation check test conditions must be in accordance with the burnish test procedure specified in S7.1.2 and S7.1.3.

S7.1.2. *Vehicle conditions.*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In gear.

S7.1.3. *Test conditions and procedures.*

(a) *IBT:* ≤100°C (212°F).

(b) *Test speed:* 80 km/h (49.7 mph).

(c) *Pedal force:* ≤500 N (112.4 lbs).

(d) *Decel rate:* 3 m/s^2 (9.9 fps^2).

(e) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(f) *Number of runs:* 200 stops.

(g) *Interval between runs:* The interval from the start of one service brake application to the start of the next is either the time necessary to reduce the IBT to 100°C (212°F) or less, or the distance of 2 km (1.24 miles), whichever occurs first.

(h) Accelerate to 80 km/h (49.7 mph) after each stop and maintain that speed until making the next stop.

(i) After burnishing, adjust the brakes as specified in S6.3.4.

S7.2. *Low coefficient effectiveness.*

S7.2.1. *General Information.* This test is for vehicles with or without antilock brake systems. This test and that specified in S7.3 for wheel lockup sequence are meant to be a check of the adhesion utilization characteristics of the vehicle.

S7.2.2. *Vehicle conditions.*

(a) Vehicle load: GVWR and LLVW.

(b) Transmission position: In neutral.

S7.2.3. *Test conditions and procedures.*

(a) *IBT:* >50°C (122°F) ≤100°C (212°F).

(b) *Test speed:* 50 km/h (31.1 mph) for each stop.

(c) *Pedal force:* ≤500 N (112.4 lbs).

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(e) *Number of runs:* 6 stops.

(f) *Test surface:* Skid number 20 (wet).

(g) For each stop, bring the vehicle to test speed and then stop the vehicle in the shortest possible distance under the specified conditions.

S7.2.4. *Performance requirements.* Stopping distance from 50 km/h test speed: ≤40 m (131 ft)

S7.3. *Wheel lockup sequence.*

S7.3.1. *General Information.*

(a) The purpose of this test is to ensure that lockup of both front wheels occurs simultaneously or at a lower deceleration rate than the lockup of both rear wheels when tested on road surfaces with skid numbers of 20 and 50.

(b) A simultaneous lockup of the front and rear wheels refers to the condition when the time interval between the lockup of the last (second) wheel on the rear axle and the last (second) wheel on the front axle is ≤0.1 seconds for vehicle speeds >15 km/h (9.3 mph).

S7.3.2. *Vehicle conditions.*

(a) *Vehicle load:* GVWR and LLVW.

(b) *Transmission position:* In neutral.

S7.3.3. *Test conditions and procedures.*

(a) *IBT:* > 50 °C (122 °F) < 100 °C (212°F).

(b) *Test speed:* 65 km/h (40.4 mph).

(c) *Initial pedal force:* 45 N (10.1 lbs).

(d) *Pedal force:*

(1) Pedal force is applied and controlled by a mechanical brake pedal actuator.

(2) Pedal force must reach its full application level within ½ second and be held within ±4.5 N (1.0 lbs).

(3) Pedal force is increased in predetermined increments until either a simultaneous lockup occurs, or both wheels on one axle and one or no wheels on the second axle lock.

(e) *Wheel lockup:* Only wheel lockups above a vehicle speed of 15 km/h (9.3 mph) are considered.

(f) *Test surface:* This test is conducted first on a surface with a skid number of 20 (wet) and then on a surface with a skid number of 50 (wet).

(g) *Data to be recorded.* The following six channels of analog information must be automatically recorded in phase continuously throughout each test run in such a way that values of the six variables can be cross referenced in real time:

(1) Vehicle speed.

(2) Brake pedal force.

(3) Angular velocity at each wheel.

(h) If a failure occurs, the operating conditions at failure are specified in terms of vehicle speed at rear lockup and the time intervals between wheels which lock.

(i) The test is conducted according to the following steps:

(1) Initial pedal force for the first stop is:

(i) 45N (10 lbs) on the skid number 20 surface.

(ii) 90N (20 lbs) on the skid number 50 surface.

(2) Make one constant pedal force stop from 65 km/h (40.4 mph).

(3) Increase the pedal force by 45N (10 lbs) and repeat step 2.

(4) Repeat steps 2 and 3 as long as the result achieved for each stop is one or no wheels locking on each axle.

(5) As steps 2 and 3 are repeated, if both wheels on the front axle and one or no wheels on the rear axle lock, do not repeat steps 2 and 3 beyond this point (pedal force) of, front axle lockup. Make two more stops at the same pedal force level. At this point the lockup sequence has been determined and the test is complete.

(6) As steps 2 and 3 are repeated, if both wheels on the rear axle and one or no wheels on the front axle lock, make two more stops at the same pedal force level and:

(i) If at least one of these two additional stops yields the same result as the first stop, then the lockup sequence has been determined and the test is complete.

(ii) If the results of both of these additional stops is different from that obtained for the first stop, increase the pedal force by 10N (2.2 lbs) and make three more stops. Continue this process until at least two of the three steps result in one of the following:

(A) Both wheels on the rear axle and one or no wheels on the front axle lock, or

(B) All four wheels lock.

(iii) When either of the conditions described in paragraphs (i)(6)(ii)(A) or (i)(6)(ii)(B) of this section occurs, the lockup sequence has been determined and the test is complete.

(7) As steps 2 and 3 are repeated, if all four wheels lock, reduce the pedal force by 20N (4.5 lbs) and make one stop.

(i) If both wheels on the front axle and one or no wheels on the rear axle lock, or both wheels on the rear axle and one or no wheels on the front axle lock, make two additional stops. If at least one of the two additional stops does not result in the same lockup sequence as the first stop, increase the pedal force by 10N (2.2 lbs) and make three stops. At this point the lockup sequence has been determined and the test is complete.

(ii) If one or no wheels on each axle lock, increase the pedal force level in increments of 10N (2.2 lbs) and make one stop at each new pedal force level until either of the following occurs:

(A) Both wheels on the front axle and one or no wheels on the rear axle lock, or

(B) Both wheels on the rear axle and one or no wheels on the front axle lock.

(iii) When either of the conditions described in paragraph (i)(7)(ii)(A) or (i)(7)(ii)(B) of this section occurs, make two additional stops at that pedal force level. If at least one of the two additional stops results in the same lockup sequence as the first stop at that pedal force level, the lockup sequence has been determined and the test is complete. If at least two of the three stops do not result in the same lockup sequence, successively increase and then decrease (if necessary) the pedal force in 5N (1.1 lbs) increments, from that baseline (pedal force), making three stops for each pedal force level, until two out of three stops result in the same lockup sequence, at which point the test is complete.

S7.3.4. *Performance requirements.*

(a) Both rear wheels shall not reach a locked condition prior to both front wheels being locked, except for simultaneous lockup.

(b) If, when tested to the procedure specified above, the vehicle meets one of the following criteria, then it passes this wheel lockup sequence:

(1) No wheels lock.

(2) Both wheels on the front axle and one or no wheels on the rear axle lock.

(3) Both axles simultaneously lock.

(c) If the vehicle looks all four wheels and fails to meet the criteria for simultaneous lockup or both wheels on the rear axle and one or no wheels on the front axle lock, then it fails the wheel lockup sequence test.

S7.4 *Cold effectiveness.*

S7.4.1. *Vehicle conditions.*

(a) *Vehicle load:* GVWR and LLVW.

(b) *Transmission position:* In neutral.

S7.4.2. *Test conditions and procedures.*

(a) *IBT:* > 50 °C (122 °F) < 100 °C (212 °F).

(b) *Test speed:* 100 km/h (62.1 mph).

(c) *Pedal force:* > 65 N (14.6 lbs) < 500 N (112.4 lbs).

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h ((9.3 mph).

(e) *Number of runs:* 6 stops.

(f) *Test surface:* Skid number 81 (dry).

(g) For each stop, bring the vehicle to test speed and then stop the vehicle in the shortest possible distance under the specified conditions.

S7.4.3 *Performance requirements.*

(a) *Stopping distance for 100 km/h test speed:* < 70 m (230 ft).

(b) *Stopping distance for reduced test speed:* $S < 0.07V + 0.0063V^2$.

S7.5: *High speed effectiveness.*

S7.5.1. *Vehicle conditions*

(a) *Vehicle load:* GVWR and LLVW.

(b) *Transmission position:* In gear.

S7.5.2. *Test conditions and procedures.*

(a) *IBT:* > 50 °C (122 °F) < 100 °C (212 °F).

(b) *Test speed:* 80% of vehicle maximum speed.

(c) *Pedal force:* > 65 N (14.6 lbs) < 500 N (112.4 lbs).

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(e) *Number of runs:* 6 stops.

(f) *Test surface:* Skid number 81 (dry).

S7.5.3. *Performance requirements.* Stopping distance: $S < 0.07V + 0.0070V^2$.

S7.6. *Partial Failure—Stops with Engine Off.*

S7.6.1. *General information.* This test is for vehicles equipped with one or more brake power units or brake power assist units.

S7.6.2. *Vehicle conditions.*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In neutral.

(c) *Vehicle engine:* Off (not running).

S7.6.3. *Test conditions and procedures.*

(a) *IBT:* > 50 °C (122 °F) < 100 °C (212°).

(b) *Test speed:* 100 km/h (62.1 mph).

(c) *Pedal force:* > 65 N (14.6 lbs) < 500 N (112.4 lbs).

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(e) *Number of runs:* 6 stops.

(f) *Test surface:* Skid number 81 (dry).

(g) All system reservoirs (brake power and/or power assist units are fully charged and the vehicle's engine off (not running) at the beginning of each stop.

S7.6.4. *Performance requirements.*

(a) *Stopping distance for 100 km/h test speed:* <70 m (230 ft).

(b) *Stopping distance for reduced test speed:* $S < 0.07V + 0.0063V^2$.

S7.7. *Antilock failure.*

S7.7.1. *Vehicle conditions.*

(a) *Vehicle loading:* LLVW and GVWR.

(b) *Tansmission position:* In neutral.

S7.7.2. *Test conditions and procedures.*

(a) *IBT:* >50° C (122° F) <100° C (212° F).

(b) *Test speed:* 100 km/h (62.1 mph).

(c) *Pedal force:* >65 N (14.6 lbs) <500 N (112.4 lbs).

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(e) *Number of runs:* 6 stops.

(f) *Test surface:* Skid number 81 (dry).

(g) *Functional failure:*

(1) Disconnect the functional power source, or otherwise render the antilock system inoperative.

(2) Determine whether the brake system indicator is activated when any functional failure of the antilock system is created.

(3) Restore the system to normal at the completion of this test.

(h) *Structural failure:* If an antilock system structural failure would result in the same type of structural failure as a hydraulic circuit failure (S7.9), then the test for antilock structural failure is not conducted here. Otherwise, the test for antilock structural failure is conducted.

(i) If more than one antilock brake subsystem is provided, then repeat test for each subsystem.

S7.7.3. *Performance requirements.* For service brakes on a vehicle equipped with one or more antilock systems, in the event of any single failure (functional or structural) in any such system, the system shall continue to operate and shall stop the vehicle as specified in S7.7.3(a) or S7.7.3(b).

(a) Stopping distance for 100 km/h test speed:

(1) <86 m (281 ft) for a functional failure.

(2) <165 m (650 ft) for a structural failure.

(b) Stopping distance for reduced test speed:

(1) $S < 0.07V + 0.0079V^2$ for a functional failure.

(2) $S < 0.70V + 0158V^2$ for a structural failure.

S7.8. *Variable proportioning valve failure.*

S7.8.1. *Vehicle condtions:*

(a) *Vehicle load:* LLVW and GVWR.

(b) *Tansmission position:* In neutral.

S7.8.2. *Test conditions and procedures.*

(a) *IBT:* >50° C (122° F) <100° C (212° F).

(b) *Test speed:* 100 km/h (62.1 mph).

(c) *Pedal force:* >65 N (14.6 lbs) <500 N (112.4 lbs).

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(e) *Number of runs:* 6 stops.

(f) *Test surface:* Skid number 81 (dry).

(g) *Functional failure:*

(1) Disconnnect the functional power source or disconnect the variable proportioning brake system.

(2) Determine whether the brake system indicator is activated when any functional failure of the variable proportioning system is created.

(3) Restore the system to normal at the completion of this test.

(h) *Structural failure:* If a variable proportioning valve system structural failure would result in the same type of structural failure as a hydraulic circuit failure (S7.9), then the test for a variable proportioning valve structure failure is not conducted here. Otherwise, the test for a variable proportioning valve structural failure is conducted.

(i) If more than one variable proportioning brake subsystem is provided, then repeat the test for each subsystem.

S7.8.3. *Performance requirements.* The service brakes on a vehicle equipped with one or more variable proportioning systems, in the event of any single failure (functional or structural) in any such system, shall continue to operate and shall stop the vehicle as specified in S7.8.3.(a) and S7.8.3.(b)

(a) Stopping distance for 100 km/h test speed:

(1) <112 m (367 ft) for a functional failure.

(2) <165 m (540 ft) for a structural failure.

(b) Stopping distance for reduced test speed:

(1) $S < 0.07V + 0.0105V^2$ for a functional failure.

(2) $S < 0.07V + 0.0158V^2$ for a structural failure.

S7.9. *Partial failure—hydraulic circuit failure.*

S7.9.1. *General information:* This test is for vehicles manufactured with and without a split service brake system.

S7.9.2. *Vehicle conditions.*

(a) *Vehicle load:* LLVW and GVWR.

(b) *Transmission position:* In neutral.

S7.9.3. *Test conditions and procedures.*

(a) *IBT:* >50° C (122° F) <100° C (212° F).

(b) *Test speed:* 100 km/h (62.1 mph).

(c) *Pedal force:* >65 N (14.6 lbs) <500 N (112.4 lbs).

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3. mph).

(e) Alter the service brake system to produce any one rupture or leakage type of failure, other than a structual failure of a housing that is common to two or more sybsystems.

(f) Determine the control force, pressure level, or fluid level (as appropriate for the indicator being tested) necessary to activate the brake warning indicator.

(g) *Number of runs:* After the brake warning indicator has been activated, make the following stops depending on the type of brake system:

(1) 4 stops for a split service brake system.

(2) 10 consecutive stops for a non-split service brake system.

(h) Each stop is made by a continuous application of the service brake control.

(i) Restore the service brake system to normal at the completion of this test.

(j) Repeat the entire sequence for each of the other subsystems.

S7.9.4. *Performance requirements.* For vehicles manufactured with a split service brake system, in the event of any rupture or leakage type of failure in a single subsystem, other than a structural failure of a housing that is common to two or more subsystems, and activation of the brake system indicator as specified in S5.5.1., the remaining portions of the service brake system shall continue to operate and shall stop the vehicle as specified in S7.9.4(a) or S7.9.4(b). For vehicles not manufactured with a split service brake system, in the event of any one rupture or leakage type of failure in any component of the service brake system and after activation of the brake system indicator as specified in S5.5.1., the vehicle shall, by operation of the service brake control, stop 10 times consecutively as specified in S7.9.4(a) or S7.9.4.(b):

(a) *Stopping distance from 100 km/h test speed:* ≤165 m (540 ft).

(b) *Stopping distance for reduced test speed:* $S \leq 0.70V + 0.0158V^2$.

S7.10. *Partial failure—Power brake unit or brake power assist unit inoperative (System depleted).*

S7.10.1. *General information.* This test is for vehicles equipped with one or more brake power units or brake power assist units.

S7.10.2. *Vehicle conditions.*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In neutral.

S7.10.3. *Test conditions and procedures.*

(a) *IBT:* ≥50° C (122° F) ≤100° C (212° F).

(b) *Test speed:* ≥100 km/h (62.1 mph).

(c) *Pedal force:* ≥65 N (14.6 lbs) ≤500 N (112.4 lbs).

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(e) *Number of runs:* 6 stops.

(f) Test surface: Skid number 81 (dry).

(g) Disconnect the primary source of power for one brake power assist unit or brake power unit, or one of the brake power unit or brake power assist unit subsystems if two or more subsystems are provided.

(h) If the brake power unit or power assist unit operates in conjunction with a backup system and the backup system is automatically activated in the event of a primary power service failure, the backup system is operative during this test.

(i) Exhaust any residual brake power reserve capability of the disconnected system.

(j) Make each of the 6 stops by a continuous application of the service brake control.

(k) Restore the system to normal at completion of this test.

(1) For vehicles equipped with more than one brake power unit or brake power assist unit, conduct tests for each in turn.

S7.10.4. *Performance requirements.* The service brakes on a vehicle equipped with one or more brake power assist units or brake power units, with one such unit inoperative and depleted of all reserve capability, shall continue to operate and shall stop the vehicle as specified in S7.10.4(a) or S7.10.4(b).

(a) *Stopping distance from 100 km/h test speed:* ≤165 m (540 ft).

(b) *Stopping distance for reduced test speed:* $S \leq 0.07V + 0.0158V^2$.

S7.11. *Parking brake—Static test.*

S7.11.1. *Vehicle conditions.*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In neutral.

(c) *Parking brake burnish:*

(1) For vehicles with parking brake systems not utilizing the service friction elements, the friction elements of such a system are burnished prior to the parking brake test according to the published recommendations furnished to the purchaser by the manufacturer.

(2) If no recommendations are furnished, the vehicle's parking brake system is tested in an unburnished condition.

S7.11.2. *Test conditions and procedures.*

(a) *IBT:* ≤ 100° C (212° F).

(b) *Parking brake control force:* Hand control ≤ 400 N (89.9 lbs); foot control ≤ 500 N (112.4 lbs).

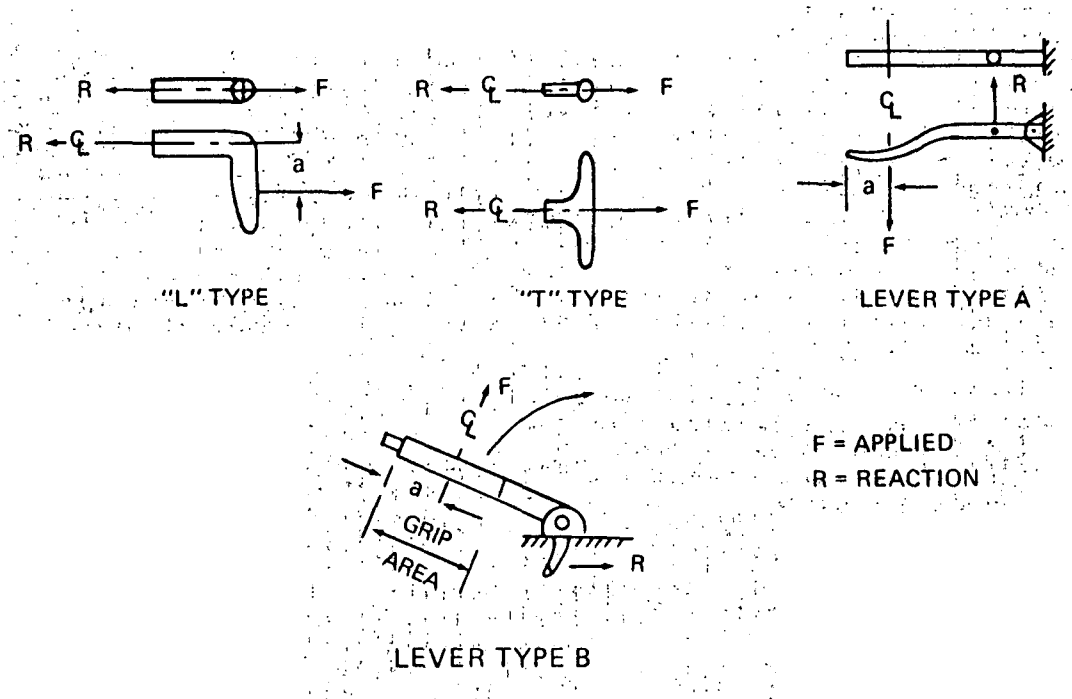
(c) *Hand force measurement locations:* The force required for actuation of a hand-operated brake system is measured at the center of the hand grip area or at a distance of 40 mm (1.57 in) from the end of the actuation lever, as illustrated in Figure 2.

BILLING CODE 4910-59-M

Figure 2

Location for Measuring Brake Application Force

(Hand Brake)



Dimension a = 40mm (1.57 in)

BILLING CODE 4910-59-C

(d) *Parking brake applications:* 1 apply and 2 reapply if necessary.

(e) *Test surface gradient:* 20% grade.

(f) Drive the vehicle onto the grade with the longitudinal axis of the vehicle in the direction of the slope of the grade.

(g) Stop the vehicle and hold it stationary by applying the service brake control and place the transmission in neutral.

(h) With the service brake applied sufficiently to just keep the vehicle from rolling, apply the parking brake as specified in S7.11.2(i) or S7.11.2(j).

(i) The parking brake system is actuated by a single application not exceeding the limits specified in S7.11.2(b).

(j) In the case of a parking brake system that does not allow application of the specified force in a single application, a series of applications may be made to achieve the specified force.

(k) Following the application of the parking brakes, release all force on the service brake control and, if the vehicle remains stationary, start the measurement of time.

(l) If the vehicle does not remain stationary, reapplication of a force to the parking brake control at the level specified in S7.11.2(b) as appropriate for the vehicle being tested (without release of the ratcheting or other holding mechanism of the parking brake) is used up to two times to attain a stationary position.

(m) Verify the operation of the parking brake application indicator.

(n) Following observation of the vehicle in a stationary condition for the specified time in one direction, repeat the same test procedure with the vehicle orientation in the opposition direction on the same grade.

S7.11.3. *Performance requirement.* The parking brake system shall hold the vehicle stationary for 5 minutes in both a forward and reverse direction on the grade.

S7.12. *Parking brake—dynamic test.*

S7.12.1. *Vehicle conditions:*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In neutral.

(c) *Parking brake burnish:* No additional burnishing is allowed beyond that specified in S7.11.1(c).

S7.12.2. *Test conditions and procedures.*

(a) *IBT:* < 100° C (212° F).

(b) *Parking brake control forces:* hand control < 400 N (89.9 lbs); foot control < 500 N (112.4 lbs.)

(c) *Hand force measurement locations:* The force required for actuation of a hand-operated brake system is measured at the center of the hand grip area or at a distance of 40 mm (1.57 in) from the end of the actuation lever, as illustrated in Figure 2.

(d) *Number of runs:* 2 stops.

(e) *Test speed:* 60 km/h (37.3 mph).

(f) *Wheel lockup:* no lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(g) With the vehicle at a test speed of 60 km/h (37.3 mph), apply the parking brake as specified in S7.12.2(h) or S7.12.2(i).

(h) The parking brake system is actuated by a single application not exceeding the limit specified in S7.12.2(b).

(i) In the case of a parking brake system that does not allow application of the specified force in a single application, a series of applications may be made to achieve the specified force.

S7.12.3. *Peformance requirements.* The parking brake system shall stop the vehicle within a distance of 74 m (243 ft) and the final deceleration rate just prior to stopping shall be at least 1.5 m/s^2 (4.92 fps^2).

S7.13. *Heating Snubs.*

S7.13.1. *General information.* The purpose of the snubs is to heat up the brakes in preparation for the hot performance test which follows immediately.

S7.13.2. *Vehicle conditions.*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In gear.

S7.13.3. *Test conditions and procedures.*

(a) *IBT:*

(1) Establish an IBT before the first brake application (snub) of >55°C (131°F) <65°C (149°F).

(2) IBT's before subsequent snubs are those occurring at the distance intervals.

(b) *Number of snubs:* 15.

(c) *Test speeds:* The initial speed for each snub is 120 km/h (74.6 mph) or 80% of Vmax, whichever is slower. Each snub is termianted at one-half the initial speed.

(d) *Decleration rate:*

(1) Maintain a constant deceleration rate of 3.0 m/s^2 (9.8 fps^2).

(2) Attain the specified deceleration within one second and maintain it for the remainder of the snub.

(e) *Pedal force:* <500 N (112.4 lbs).

(f) *Time interval:* Maintain an interval of 40 seconds between the start of brake applications (snubs).

(g) Accelerate as rapidly as possible to the initial test speed immediately after each snub.

(h) Immediately after the 15th snub, accelerate to 100 km/h (62.1 mph) and commence the hot performance test.

S7.14. *Hot performance.*

S7.14.1. *General information.* The hot performance is conducted immediately after completion of the 15th heating snub.

S7.14.2. *Vehicle conditions.*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In neutral.

S7.14.3. *Test conditions and procedures.*

(a) *IBT:* Temperature achieved at completion of heating snubs.

(b) *Test speed:* 100 km/h (62.1 mph).

(c) *Pedal force:* The pedal force is not greater than the average pedal force achieved during the shortest GVWR cold effectiveness stop.

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(e) *Number of runs:* 2 stops.

(f) Immediately after the 15th heating snub, accelerate to 100 km/h (62.1 mph) and commence the 1st stop of the hot performance test.

(g) If the vehicle is incapable of attaining 100 km/h, it is tested at the same speed used for the GVWR cold effectiveness test.

(h) Immediately after completion of the first hot performance stop, accelerate as rapidly as possible to the specified test speed and conduct the second hot performance stop.

(i) Immediately after completion of second hot performance stop, drive 1.5 km (0.98 mi) at 50 km/h (31.1 mph) before the first cooling stop.

S7.14.4. *Performance requirements.*

(a) *Stopping distance from 100 km/h test speed:* <86 m (281 ft) or the shortest stopping distance achieved in the GVWR cold effectiveness test divided by 60%, whichever is shorter.

(b) *Stopping distance for reduced test speed:* $S<0.07V+0.0079V^2$ or the shortest stopping distance achieved in the GVWR cold effectiveness test divided by 60%, whichever is shorter.

S7.15. *Braking Cooling Stops.*

S7.15.1. *General information.* The cooling stops are conducted immediately after completion of the hot performance test.

S7.15.2. *Vehicle conditions.*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In gear.

S7.15.3. *Test conditions and procedures.*

(a) *IBT:* Temperature achieved at completion of hot performance.

(b) *Test speed:* 50 km/h (31.1 mph).

(c) *Pedal force:* <500 N (112.4 lbs).

(d) *Deceleration rate:* Maintain constant deceleration rate of 3.0 m/s^2 (9.8. fps^2).

(e) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 Km/h (9.3 mph).

(f) *Number of runs:* 4 stops.

(g) Immediately after the hot performance stops, drive 1.5 km (0.93 mi) at 50 km/h (31.1 mph) before the first cooling stop.

(h) For the first through the third cooling stops:

(i) After each stop, immediately accelerate at the maximum rate to 50 km/h (31.1 mph).

(2) Maintain that speed until beginning the next stop at a distance of 1.5 km (0.93 mi) form the beginning of the previous stop.

(i) For the fourth cooling stop:

(1) Immediately after the fourth stop, accelerate at the maximum rate to 100 km/h (62.1 mph).

(2) Maintain that speed until beginning the recovery performance stops at a distance of 1.5 km (0.93 mi) after the beginning of the fourth cooling stop.

S7.16. *Recovery performance.*

S7.16.1 *General information.* The recovery performamce test is conducted immediately after completion of the brake cooling stops.

S7.16.2 *Vehicle conditions.*

(a) *Vehicle load:* GVWR only.

(b) *Transmission position:* In neutral.

S7.16.3 *Test conditions and procedures.*

(a) *IBT:* Temperature achieved at completion of cooling stops.

(b) *Test speed:* 100 km/h (62.1 mph).

(c) *Pedal force:* Pedal force is not greater than the average pedal force of the shortest GVWR cold effectiveness.

(d) *Wheel lockup:* No lockup of any wheel allowed at speeds greater than 15 km/h (9.3 mph).

(e) *Number of runs:* 2 stops.

(f) Immediately after the fourth cooling stop, accelerate at the maximum rate to 100 km/h (62.1 mph).

(g) Maintain that speed until beginning the first recovery performance stop at a distance of 1.5 km (0.93 mi) after the beginning of the fourth cooling stop.

(h) If the vehicle is incapable of attaining 100 km/h, it is tested at the same speed used for the GVWR cold effectiveness test.

(i) Immediately after completion of the first recovery performance stop, accelerate as rapidly as possible to the specified test speed and conduct the second recovery performance stop.

S7.16.4 *Performance requirements.*

(a) *Stopping distance from 100 km/h test speed:* < the shortest stopping distance achieved in the GVWR cold effectiveness test divided by 70% and > the shortest stopping distance achieved in the GVWR cold effectiveness test divided by 150%.

(B) *Stopping distance for reduced test speed:* The stopping distance requirements are calculated using the same formulas specified in S7.16.4(a), based on the shortest GVWR cold effectiveness stopping distance resulting from the reduced test specified in S7.16.3(h).

S7.17. *Final inspection.* Inspect:

(a) The service brake system for detachment for fracture of any components, such as brake springs and brake shoes or disc pad facings.

(b) The friction surface of the brake, the master cylinder or brake power unit reservoir cover, and seal and filler openings, for leakage of brake fluid or lubricant.

(c) The master cylinder or brake power unit reservoir for compliance with the volume and labeling requirements of S5.4.2 and S5.4.3. In determining the fully applied worn condition, assume that the lining is worn to: (1) Rivet or bolt heads or riveted or bolted linings or (2) within 0.8mm (1.32 inch) of shoe or pad mounting surface bounded linings or (3) the limit recommended by the manufacturer, whichever is larger relative to the total possible shoe or pad movement. Drums or rotors are assumed to be at nominal design drum diameter or rotor thickness. Linings are assumed adjusted for normal operating clearance in the released position.

(d) The brake system indicators, for compliance with operation in various key positions, lens color, labeling, and location, in accordance with S5.5.

Issued on January 8, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-732 Filed 1-9-87; 10:10 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Crescentia Portoricensis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Crescentia portoricensis* (Higuero de Sierra) to been an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Critical habitat is not proposed. *Crescentia portoricensis* is endemic to evergreen, semievergreen, and deciduous forests on serpentine in the lower Cordillera region of southwestern Puerto Rico. This small tree is threatened by the direct and indirect effects of deforestation, and its extremely low population size. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Crescentia portoricensis*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 16, 1987. Public hearing requests must be received by March 2, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. David Densmore at the Caribbean Field Office address (809/851-7297) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/331-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

Crescentia portoricensis was discovered by N.L. Britton in 1913 along the Maricao River in western Puerto Rico. A small population of the species was later found approximately 10 miles (16 kilometers) to the southeast in the Susua area. Prior to 1979, the species was known from two small populations in Maricao Commonwealth Forest and a third in Susua Commonwealth Forest, each population consisting of about six plants. The two Maricao populations were not found during 1979 searches (Vivaldi and Woodbury 1981), and repeated searches of these sites have failed to locate the plants. However, a population of 23 individuals has recently been discovered in the Maricao area by Commonwealth Forest personnel. Thus, a total of 29 plants are now known from two sites.

Crescentia portoricensis is an evergreen vinelike shrub or small tree reaching 20 feet (6 meters) in height, with a trunk diameter of 3 inches (8 centimeters). The leaves are simple, oblanceolate to narrowly elliptic, shiny dark green and leathery, and usually clustered at the nodes. The yellowish-white flowers are tubular and irregularly bell-shaped, the fruits cylindric, hard, and dry. The species is endemic to the

montane and lower montane mixed evergreen, semievergreen, and deciduous forests of the lower Cordillera of southwest Puerto Rico. Much of this region is underlain by serpentine, which appears as outcrops or serpentinaceous soils, and contributes to its high floristic diversity and endemism. Within the two Commonwealth Forest units where it occurs, *Crescentia portoricensis* is restricted to sites along permanent or intermittent watercourses.

Deforestation has had a significant effect on the native flora of Puerto Rico, particularly at lower elevations. The lands presently within Susua Commonwealth Forest, entirely below 1550 feet (475 meters), were deforested by the beginning of this century. Although the lands at higher elevations (up to 2880 feet or 875 meters) in Maricao Commonwealth Forest have largely escaped such extreme alteration, both Maricao and Susua have continued to be affected indirectly by deforestation of adjacent lands and the increased incidence of erosion, landslides, and flash flooding. Since it occupies stream and valley bottom habitats, *Crescentia portoricensis* has been particularly vulnerable to these latter impacts. It is believed that the two previously known Maricao populations were lost to flooding and the resulting erosion of their habitat.

Crescentia portoricensis was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered for endangered or threatened status by the Fish and Wildlife Service, as identified in the notice published in the December 15, 1980, **Federal Register** (45 FR 82480). The species was placed in category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) and was retained in category 1 in the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the content of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found on October 13, 1983, October 12, 1984, and October 11, 1985, that listing *Crescentia portoricensis* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This proposed rule indicates that the petitioned action is warranted and constitutes the next required finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Crescentia portoricensis* Britton (Higuero de Sierra) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Deforestation and its indirect impacts pose serious threats to this species. Associated erosion or landslides caused by accelerated runoff and flash flooding appear to be the most serious threats to *Crescentia portoricensis*. Although the surviving populations exist within units of the Commonwealth Forest system, the deforestation of surrounding lands continues to affect the species and its habitat. In addition, flood control projects that include large reservoirs in the mountains of the Maricao area have been proposed by the U.S. Army Corps of Engineers. If these are constructed, impoundments could extend into drainages where the species occurs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Species of the genus *Crescentia* (calabash) are widely cultivated throughout the Old and New World tropics. Over-collection could prove a serious problem for this species, since only 29 individuals are known to exist in the wild.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Crescentia portoricensis* is not yet on the Commonwealth list. Federal listing would provide the Act's recovery and protection provisions to this small tree.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The known populations of *Crescentia portoricensis* are confined to geographically small areas and thus are susceptible to a variety of natural disturbances, such as major storms and resulting landslides or flooding. Although the species is probably adapted to survive such events, these natural threats are exacerbated by the manmade conditions outlined in threat factor "A" above. In addition, with fewer than 30 plants known to exist, and no seedlings ever observed, this species is very vulnerable to total extirpation.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Crescentia portoricensis* as endangered. Since there are few individuals remaining and a continuing risk of damage to the plants and/or their habitat exists, endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The distribution of *Crescentia portoricensis* is sufficiently restricted that collecting or vandalism could seriously damage or eliminate the remaining populations of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for the species at this time.

Available Conservation Measures.

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened 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 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Crescentia portoricensis*, as discussed above. Federal involvement is expected only if flood control projects are proposed by the U.S. Army Corps of Engineers.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Although there may be some horticultural interest in *Crescentia portoricensis*, it is anticipated that few trade permits would ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Crescentia portoricensis*;

(2) The location of any additional populations of *Crescentia portoricensis*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Crescentia portoricensis*.

Final promulgation of the regulation on *Crescentia portoricensis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund Inc., Washington, D.C. xv 403 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Crescentia portoricensis* Britton. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 28 pp.

Author

The primary author of this proposed rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Bignoniaceae, 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					
* * *		* * *	*	*		
Bignoniaceae—Bignonia family:						
Crescentia portoricensis	Higuero de Sierra	U.S.A. (PR)	E		NA	NA
* * *		* * *	*	*		

Dated: November 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-783 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Trillium Reliquum (Relict Trillium) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Trillium reliquum* Freeman (relict trillium) as an endangered species under authority of the Endangered Species Act of 1973 (Act), as amended. *Trillium reliquum* is known from only nine locations—Alabama (two sites), Georgia (four sites), and South Carolina (three sites). The species is endangered by timber harvesting, wildfires, and development of its habitat. This proposal, if made final, would implement the Federal protection provided by the Act for *Trillium reliquum*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 16, 1987. Public hearing requests must be received by March 2, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Asheville Endangered Species Field Office, U.S. Fish and Wildlife Service, Room 224, 100 Otis Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (telephone 704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Trillium reliquum, a herbaceous member of the lily family, was recognized as a distinct species by Freeman (1975) after his extensive study of this complex, taxonomically difficult group. During his research, Freeman examined more than 10,000 *Trillium* specimens from over 80 herbaria and extensively collected and observed members of the group in the field. This rare species is distinguished from other sessile-flowered *Trillium* by its decumbent or S-curved stems, distinctively shaped authors, and the color and shape of its leaves. The flowers appear in early spring and are greenish to brownish purple or occasionally pure yellow in color. The fruit is an oval-shaped, berry-like capsule which matures in early summer. *Trillium reliquum* is perennial from a tuberous rhizome, and like other members of the genus, it dies back to this rhizome after the fruit matures (Freeman 1975, Freeman 1985).

Trillium reliquum is found only in moist hardwood forests which have had little or no disturbance in the recent past. The soils on which it grows vary from rocky clays to alluvial sands, but all exhibit a high organic matter content in the upper soil layer. All sites appear to be free from the influence of fire, both in the recent and distant past. Timber harvesting at the known sites has been limited to selective cutting (Freeman 1985).

There are currently nine known populations of *Trillium reliquum*. Alabama has two populations, Georgia has four populations, and South Carolina has three populations. The following discussion of the status of each State's populations is extracted from a status report on the species prepared by Freeman (1985).

Site 1, Henry County, Alabama. This small population (approximately 150 plants, on one-third acre) is on land managed as a recreation area by the U.S. Army Corps of Engineers. Roads constructed in the area, as well as an existing power transmission line, have altered the area and may have destroyed habitat occupied by *Trillium reliquum*. At the present time, illegal trash and refuse dumping and digging for fish bait are potential threats to the species at this location.

Site 2, Lee County, Alabama. This is the second largest known population of the species. Several thousand plants are distributed over a 120-acre area. This site is privately owned and is near an expanding urban population, and the major threat to the site is expansion of an adjacent residential subdivision. The site is currently for sale and could, in the near future, be lost to intensive residential development or conversion to intensive pine monoculture.

Site 3, Clay County, Georgia. This moderate-sized population occurs along a small creek which is a tributary of the Chattahoochee River. The plants occur within a small (3-acre) area bounded by development on three sides and unsuitable habitat on the fourth side. The site is privately owned and is threatened by timber harvesting and/or residential development.

Site 4, Columbia County, Georgia. This moderate-sized population occurs on approximately 15 acres within a privately owned tract in the vicinity of an expanding urban area. Historically, part of this population was destroyed by a quarrying operation. Current threats to the site include residential development and timber harvesting.

Site 5, Columbia County, Georgia. This very small population (less than 50 plants) occurs on unprotected, privately owned land. Recent residential development and timber harvesting have altered many areas adjacent to the site. Potential threats to this population include development, logging, and wildfires.

Site 6, Early County, Georgia. This small population was adversely impacted by a tornado which struck the area in 1983. The only plants observed in 1985 were near the edge of the impacted area. The mature hardwood forest, which formerly occurred at this site, has been completely destroyed and replaced with a thick tangle of broken tree trunks and limbs, intertwined with greenbrier, blackberry, and grape vines.

Site 7, Aiken and Edgefield Counties, South Carolina. This is the largest known population of *Trillium reliquum*. A portion of the site has been purchased as a nature preserve by the South Carolina Department of Marine Resources. An additional small portion of the population is within a highway right-of-way owned by the South Carolina Department of Transportation. The remainder of the area is in private ownership and is threatened by

residential development resulting from the expansion of an adjacent urban area. A portion of the best habitat which occurred at this location was apparently destroyed by activities associated with highway construction. A small portion of the site is currently being adversely impacted by grazing cattle. In the spring of 1986, several hundred plants were cut while in bloom by vandals or uninformed wildflower enthusiasts (Roger Jones, The Nature Conservancy, personal communication, 1986).

Site 8, Aiken County, South Carolina. This small (10-acre) population is in a rick, vegetatively diverse ravine adjacent to the Savannah River. A portion of the site is municipally owned while the remainder is in private ownership. Threats to the site include wildfires, trampling by visitors to the area, timber harvesting, and development.

Site 9, Aiken County, South Carolina. This healthy population occurs along the lower slope of a bluff which parallels the Savannah River. It is the third largest of the known *Trillium reliquum* sites, is privately owned, and currently receives no protection. Threats to this location include wildfires, logging, development, and livestock grazing.

Additional appropriate sites were searched for the presence of *Trillium reliquum* during the 1984 and 1985 field seasons (Freemen 1985). Habitat characteristics such a slope, soils, vegatation, and topography were used to indicate suitable habitat. Including the known sites, Freeman (1985) searched a total of 44 locations for presence and distribution of *Trillium reliquum*. Upon completion of the status survey, the Service provided copies to the appropriate State agencies for review and comment. Rayner (1985) responded that one additional area (the Oconee River drainage) may support the species and suggested that an attempt be made to determine if, in fact, the species occurs in that area. R. Curie and R. Ingram (Currie 1986) searched seven areas in Baldwin County, Georgia, during the spring of 1986. The related species, *Trillium maculatum* and/or *Trillium cuneatum*, were found at most of these sits, but no additional populations of *Trillium reliquum* were found. The areas searched were those which, based upon soils, slope, vegatation, and topography, appeared to be most likely to support *Trillium reliquum*.

Federal government actions on this species began with the November 28, 1983, publication of a supplement to the Notice of Review of Native Plants in the **Federal Register** (48 FR 53640). *Trillium reliquum* was included in this supplement as a category-2 species. Category-2 species are those for which listing as endangered or threatened species may be warranted, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. Subsequent to this notice, the Service funded a status survey of the species. Field work for this survey was conducted during the 1984 and 1985 field seasons and the Service accepted the final report (Freeman 1985) in late September 1985. This status report and other available information indicated that the addition of *Trillium reliquum* to the Federal list of Endangered and Threatened Plants is warranted

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. On October 12, 1984, October 11, 1985, and October 10, 1986, the Service found that listing *Trillium reliquum* may be warranted but was precluded by other higher priority listing actions. Publication of this proposal constitutes the next one-year finding that is required.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Trillium reliquum* Freemen (relict trillium) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

All of the known *Trillium reliquum* populations are currently threatened by one or more human activities (Freeman 1985). The most significant of these threats is the loss or alteration of this trillium's habitat resulting from residential development. Most populations are adjacent to rapidly expanding urban areas, and the direct impacts of construction activities associated with an expanding population are significant. In addition to these direct impacts, activities such as power transmission line constrution, gas pipeline installation, and road construction all may have indirect or direct impacts on this rare species if not planned in a way to protect it. Logging of areas occupied by the species constitutes a significant threat, as does conversion or use of the sites for pine monoculture, pastures, or row crop agriculture. Historically, quarrying of stone has adversely affected one population; and stone, sand, and clay quarrying remains a potential threat to at least portions of the known populations. Fires, whether caused by arson or accident, or for timber management, threaten all populations. All populations have been impacted to some extent by one or more of these activities and all populations, at least in part, remain vulnerable to them (Freemen 1985).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Trillium reliquum is not currently a significant component of the commercial trade in native plants; however, the species has potential for horticultural use, and publicity of the species could generate an increased demand.

C. Disease of Predation

A portion of the *Trillium reliquum* population at Site 7 is currently being adversely impacted by cattle which are being permitted to graze within the wooded areas supporting the species. This activity is a potential threat to most of the known populations. No other threats related to disease or predation are currently known.

D. The Inadequacy of Existing Regulatory Mechanisms

In Alabama, *Trillium reliquum* is informally listed as an endangered species (Freeman *et al.* 1979, Freeman 1979). However, the species has no legal status or protection in that State. *Trillium reliquum* is not included in *Georgia's Protected Plants* (McCollum and Ettman 1977) and therefore does not receive any legal protection in the State. This list has only been revised once since it was originally published, and it is anticipated that relicit trillium will be added to the Georgia list as an endangered plant in a future revision of the Protected Plant List (Chuck Rabolli, Georgia Department of Natural Resources, personal communication, 1986). South Carolina informally lists *Trillium reliquum* as an endangered species (D. Rayner, South Carolina Department of Wildlife and Marine Resources, personal communication, 1986). Although South Carolina does not have an official plant protection

program, the State is pursuing protection of this rare species through its natural areas acquisition program. The only population protected from taking is the one in that portion of Site 7 which has been purchased by South Carolina as a natural area. Plants can only be collected from a State-owned natural area by permit from the appropriate State agency. This prohibition is difficult to effectively enforce and the plants there, as at all of the other known sites, remain vulnerable to taking by hobbyists, collectors, and vandals.

E. Other Natural or Manmade Factors Affecting its Continued Existence.

Trillium reliquum is a species which currently exists in two very small groups of populations—one located along the Georgia-Alabama State line and the other along the Georgia-South Carolina State line. Whether these represent remnant populations of a species which was once much more widely distributed or a species which has always been rare is impossible to determine, based upon the information currently available. In addition to the factors discussed in A–D above, the remaining populations appear to be threatened by an additional human-related factor which appears to be adversely affecting the native flora throughout the Southeast. The woody vine, *Lonicera japonica* (Japanese honeysuckle), is an aggressive, weedy species which was introduced into this country. This species appears, in some areas, to be replacing the native flora. Freeman (1985) notes that this species may represent a serious threat to *Trillium reliquum*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determing to propose this rule. Based on this evaluation, the preferred action is to list *Trillium reliquum* as an endangered species. Endangered status seems appropriate because of the severity of the threats facing the species throughout its range. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Trillium reliquum* at this time. The species has potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on the species. Publication of critical habitat descriptions would make *Trillium reliquum* more vulnerable to taking, since most of the known populations are on privately owned land. Many of the populations consist of only a small number of individuals, and the loss of even a few could jeopardize the species. The landowners involved in managing the habitat of the relict trillium have been informed of the locations of this species and of the importance of protecting it. Protection of this species' habitat will be addressed throughout the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Trillium reliquum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acqusition and cooperation with the States and requires that recovery actions be carried out for listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened 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 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Eight of the nine known populations of *Trillium reliquum* are on privately or State-owned lands. One small population is located on a federally owned recreation area managed by the U.S. Army Corps of Engineers. There are no known current or planned Federal activities which may affect any of these populations.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstancces. It is anticipated that few trade permits would ever be sought or issued since *Trillium reliquum* 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 Federal Wildlife Permit Office, 6th Floor, Broyhill Building, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Trillium reliquum;*

(2) The location of any additional populations of *Trillium reliquum* and the reasons why any habitat should or should not be determined to be critical

habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Trillium reliquum*.

Final promulgation of the regulation on *Trillium reliquum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Endangered Species Field Office (see the "Addresses" section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Currie, R.R. 1986. Memorandum to files reporting results of additional field searches for *Trillium reliquum*. U.S. Fish and Wildlife Service, Asheville Field Office, Asheville, North Carolina.

Freeman, J.D. 1975. Revision of *Trillium* Subgenus *Phyllantherum* (Liliaceae). Brittonia 27:1–62.

Freeman, J.D. 1979. Endangered, threatened, and special concern plants of Alabama. Auburn Univ. Agr. Exp. Sta., Botany and Microbiology Department Ser. #3, 24 pp., illus.

Freeman, J.D. 1985. Status Report on *Trillium reliquum*. Unpublished report to the U.S. Fish and Wildlife Service, Southeast Regional Office, Atlanta, Georgia, 36 pp.

Freeman, J.D., A.S. Causey, J.W. Short, and R.R Haynes. 1979. Endangered, threatened, and special concern plants of Alabama. J. Alabama Acad. Sci. 50:1–26.

McCollum, J.L., and D.R. Ettman. 1977. Georgia's Protected Plants. Georgia Department of Natural Resources and USDA–SCS, Atlanta, Georgia, 64 pp.

Rayner, D.A. 1985. Letter from South Carolina Wildlife and Marine Resoruces Department to Mr. Warren Parker, Field Supervisor, Asheville Endangered Species Field Office, on the status of *Trillium reliquum*.

Author

The primary author of this proposed rule is Mr. Robert R. Currie, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Liliaceae, 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					
Liliaceae—Lily family:						
Trillium reliquum	Relict trillium	U.S.A. (AL, GA, SC)	E		NA	NA

Dated: November 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–782 Filed 1–13–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 9
Wednesday, January 14, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Literacy Corps Guidelines

AGENCY: ACTION.

ACTION: Notice of Guidelines for Development of the VISTA Literacy Corps.

SUMMARY: The Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99–551) established a new literacy component within VISTA. Section 4 of the legislation amends Title I Part A of Pub. L. 93–113 by adding a new section 109A, creating a VISTA Literacy Corps. This notice sets forth the guidelines under which the VISTA Literacy Corps program will be implemented. This directive will supplement the existing VISTA guidelines published in the July 31, 1985 **Federal Register**. Applications for sponsorship of Literacy Corps programs will be reviewed in accordance with these criteria.

DATE: Written comments should be submitted no later than February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Schelly Reid, Special Assistant to the Director of VISTA for Literacy, ACTION, 806 Connecticut Avenue NW., Washington, DC, 202–634–9445.

SUPPLEMENTARY INFORMATION: VISTA is charged with the responsibility of alleviating the problems of poverty by using community, private sector and volunteer resources to achieve this commitment. In keeping with this mission, the VISTA Literacy Corps will encourage partnerships; promote voluntarism; enhance state and local literacy activities; and develop a comprehensive approach for combatting illiteracy. As in the case with other VISTA projects, potential program sponsors should include in their plan provisions for the eventual absorption and assumption of VISTA literacy volunteers' activities upon discontinuation of this Federal suport.

Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guidelines, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30 day comment period except in certain limited circumstances. These Guidelines, although not regulations under this Administrative Procedure Act (5 U.S.C. 551 *et seq.*), may, in whole or in part, be required by our Act to be published in proposed form for comments.

ACTION has determined that Literacy Corps guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' or projects' size and purpose, neither of which will result in the economic impact of a major rule.

Purpose

The purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of public and nonprofit organizations at the local, state, and Federal levels. VISTA Volunteers will play a crucial role in mobilizing financial and volunteer resources in addressing the problem of illiteracy throughout the United States.

Programmatic Goals and Direction

The goals of the Literacy Corps program are:

- To assist in the eradication of illiteracy and to curb the trend toward its intergenerational transfer;
- To bolster ongoing literacy efforts through public and private sector partnerships, interagency agreements and other cooperative arrangements;
- To increase significantly the reliance on private sector resources available to literacy agencies;
- To heighten public awareness on how individuals, organizations, and communities can contribute toward literacy efforts and further generate local support;
- To lower barriers to employment by improving the basic reading skills of those who are unemployed or marginally employed;
- To ensure that volunteers working in the literacy field are provided with appropriate training, adequate supervision, and periodic interim instruction;
- To screen potential tutors and pre-test students to discern more accurately their capabilities as well as their special needs;
- To increase the effectiveness and ensure accountability of literacy programs through the measurement of student performance, attrition and retention data;
- To institute the use of learner advocates or other personal support systems in guiding literacy students through the learning process as they graduate on to the next level of achievement;
- To provide dual remedial instruction of adults with their children.

Criteria and Priority Considerations for the Selection of VISTA Literacy Corps Projects

VISTA Literacy Corps Volunteers will be assigned in a manner consistent with the VISTA equitable distribution requirement. In accordance with section 109(f), all VISTA Volunteers serving in literacy projects as of October 1, 1986, became part of the Literacy Corps.

VISTA Literacy Corps Volunteers will be assigned to programs and projects that specifically meet the requisite anti-poverty criteria under Part A and that provide assistance to illiterate and functionally illiterate individuals who are either unserved or underserved by literacy education programs in their vicinity. The legislation places a "special emphasis on targeting disadvantaged individuals wiht the highest risk of illiteracy" and individuals with the lowest reading abilities and educational level of attainment.

Organizations to which volunteers may be assigned include public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and state education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries; anti-poverty organizations; local, municipal, and State governmental entities; and administrative entitieis designed to administer job training plans under the Job Training Partnership Act.

Priority consideration will be given to the following literacy programs and projects that apply for funding under section 109(c):

(a) Those that assist individuals in greatest need of literacy training who reside in unserved or underserved low-income areas with the highest concentration of illiteracy;

(b) Those that serve individuals reading at the zero to fourth grade levels;

(c) Those that focus on high risk populations, e.g., school dropouts and minority youth;

(d) Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk; and

(e) Statewide programs and projects that support the creation of new literacy efforts, encourage the coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

VISTA Literacy Corps Volunteers and funds may not be used for the cratio of a statewide affiliate of a national organization. This restriction does not preclude the use of VISTA Volunteers for the development and expansion of existing affiliates.

Signed at Washington, DC, this 8th day of January, 1987.

Donna M. Alvarado,

Director.

[FR Doc. 87-771 Filed 1-13-87; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 9, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Extension Service
Wisconsin Forest Products Price Review Survey Forms 2A, 2B, 3A, 4, 5, 6, 7A, 8A, 8C, 9
Quarterly; Semi-annually
State or local governments; Federal agencies or employees; Small businesses or organizations; 900 responses; 150 hours; not applicable under 3504(h)
Theodore A. Peterson, (608) 262-0249

• Forest Service
Comercial Use of "Woodsy Owl" Symbol
Recordkeeping; Quarterly
Businesses or other for-profit; 40 responses; 60 hours; not applicable under 3504(h)
Arthur L. Morrison, (202) 447-5060.

New

• Animal and Plant Health Inspection Service
Volunteer Program
APHIS 360, 361, OF-301
On occasion
Individuals or households; Non-profit institutions; Small businesses or organizations; 170 responses; 38 hours; not applicable under 3504(h)
Yvonne D. Daniel, (301) 436-6466

• Human Nutrition Information Service
Nationwide Food Consumption Survey 1987
Unnumbered questionnairs
One time survey
Individuals or households; 9,600 respnses; 25,000 hours; not applicable under 3504(h)
Robert L. Rizek, (301) 346-8457.

Reinstatement

• Rural Electrification Administration
Report of Progress of Construction and Engineering Services
REA 178
Monthly
Small businesses or organizations; 1,080 responses; 540 hours; not applicable under 3504(h)
Archie W. Cain, (202) 382-1900.

• Soil Conservation Service
Rural Abandoned Mine Program (RAMP)
CPA-11, 11A, 12, 13, 140, 141, 150 Thru 156
Recordkeeping; On occasion
Individuals or households; State or local governments; Farms; 803 responses; 899 hours; not applicable under 3504(h)
Bobby Rakestraw, (202) 382-1866.

Revision

• Economic Research Service
Agricultural Land Values and Markets Survey
Quarterly; Annually
Farms; Businesses or other for-profit; Federal agencies or employers; Non-profit institutions; Small businesses or organizations; 20,000 responses; 4,381 hours; not applicable under 3504(h)
Charles Barnard (202) 786-1430.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 87-836 Filed 1-13-87; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Finding of No Significant Impact: Flat Rock Creek RC&D Measure, Paulding County, OH

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Flat Rock Creek RC&D Measure, Paulding County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment along 300 feet of eroding creek banks of Flat Rock Creek. The erosion is causing severe bank

erosion, loss of trees on and near the streambank, and is affecting several residential properties. Planned works of improvement include the filling of the eroding streambank to a stable slope and protecting the streambank with rock riprap.

The Notice of Finding No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No adminiustration action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Roger A. Hansen,

Deputy State Conservationist.

January 5, 1987.

[FR Doc. 87-735 Filed 1-13-87; 8:45 am]

BILLING CODE 3410-16-M

West Fork Bayou L'Ours Watershed, LA; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the West Fork Bayou L'Ours Watershed, Lafourche Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473-7751.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns watershed protection. The planned works of improvement include the development and implementation of marsh conservation management plans. The cumulative total of work installed via utilization of these plans will include: Twelve acres of critical area plantings; fifty miles of shoreline erosion protection plantings; twenty-eight structures for water control (weirs); nineteen earthen channel dams; and thirty-four miles of low level dikes.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting Horace Austin.

No administrative action of implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: January 5, 1987.

Horace J. Austin,

State Conservationist.

[FR Doc. 87-777 Filed 1-13-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Broadwoven Fabrics (Gray) Average Weight and Width Study
Form Number: Agency—MC-22T; OMB—N/A
Type of Request: New collection
Burden: 310 respondents; 930 reporting hours
Needs and Uses: These data that are collected and published every 5 years as part of the census of manufactures provide 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 yardage output to pounds of fiber consumed
Affected Public: Businesses or other for-profit institutions
Frequency: Every 5 years
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Agency: Bureau of the Census
Title: Survey of Income and Program Participation
Form Number: Agency—SIPP-7200, SIPP-7205L; OMB—0607-0425
Type of Request: Revision of a currently approved collection
Burden: 24,360 respondents; 12,180 reporting hours
Needs and Uses: To provide the executive and legislative branches improved statistics on income distribution and data not previously available on eligibility for and participation in government programs. Changes in status and participation will be measured over time. The data will support policy and program planning
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 7, 1987.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 87-826 Filed 1-13-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-588-087]

Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 1, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters from Japan. The review covers four manufacturers and/or exporters of this merchandise to the United States and generally the period May 1, 1981 through April 30, 1982.

We gave interested parties an opportunity to comment on our preliminary results. Based on the comments received and the correction of clerical errors, we have changed the final results from those presented in our preliminary results of review for two firms.

EFFECTIVE DATE: January 14, 1987.

FOR FURTHER INFORMATION CONTACT: Maureen Rosch or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C 20230; telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 126) the preliminary results of this administrative review of the antidumping duty order on portable electric typewriters from Japan (45 FR 30618, May 9, 1980). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of portable electric typewriters ("PETs") from Japan. Of the 92 pending requests for clarification of the scope of the order listed in the notice of preliminary results of review, 29 models were agreed by both the petitioner and respondents to be either within or outside of the scope of the order. In this notice, the Department is ruling on the general principles of the scope of this order. We will notify individual parties of the application of these principles as they apply to their specific models. The review covers four manufacturers and/or exporters of Japanese portable electric typewriters to the United States and generally the period May 1, 1981 through April 30, 1982.

Analysis of Comments Received

We gave interested parties the opportunity to comment on our preliminary results, as provided by § 353.53a(c) of the Commerce Regulations. At the request of the petitioner, SCM Corporation ("SCM"), we held public hearings on August 25 and August 26, 1986. The petitioner, four Japanese exporters, and one U.S. importer submitted comments.

Comments 1: SCM argues that it is wrong for the Department to fix the antidumping duty order in terms of tariff classifications 676.0510 and 676.0540. It is clear from case law that tariff classification is not dispositive in analyzing scope issues. The Department should renounce tariff classification as a basis for excluding certain PETs from the order and should instead rely upon the four criteria set forth in *Diversified Products Corporation v. United States*, 572 F. Supp., 883, 889 (CIT 1983) ("*Diversified Products*"): (1) The physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser; (3) the distribution, advertising, and marketing channels; (4) the ultimate use of the product. In addition, the Department should consider the cost of any features alleged to distinguish the article from the general class of kind of merchandise covered by the order.

In compliance with § 153.27(a)(2)(ii) of the 1979 Customs Regulations, the petition identified the tariff schedule item under which the petitioner believed all known portable electric typewriters to be classified at the time that the petition was filed in April 1979. The petition, however, defined the class on kind of merchandise as "all portable electric typewriters, whether utilizing typebars or single elements and whether fully electric with powered carriage return or with manual carriage return, and whether with conventional ribbons or with cartridge or cassette ribbons."

Despite advances in technology, manufacturers and consumers still distinguish 'portable' from 'standard' typewriters. The Department should base its scope ruling on that distinction.

Further, the Department should not permit the descriptive use of the tariff schedule nomneclature, which identified the class or kind of merchandise, to create a huge loophole in the coverage of the order as applied to today's products.

Canon Inc. and Canon U.S.A., Inc. ("Canon") argue that SCM is attempting to expand the coverage of the antidumping duty order to include models not in the class or kind of merchandise which is subject to the order. Prior Department rulings excluding models that incorporate a calculating mechanism, a text memory, or a built-in computer interface, that is, excluding automatic PETs and PETs with a calculating mechanism from the scope of the order, are dispositive. SCM's attempt to reopen settled precedents undermines the finality of the Department's administrative decisions and is totally inconsistent with product descriptions utilized in the original investigation, including SCM's own proposed definition. While the Customs regulations required SCM to provide Tariff Schedule of the United States Annotated ("TSUSA") references, they did not limit SCM's choice.

Canon argues that the judicial decisions in *Diversified Products Corp.* v. *United States*, 572 F. Supp. 883, 886–88 (CIT 1983; *Alsthom Atlantique* v. *United States*, 787 F.2d 565, 571 (Fed. Cir. 1986); *Kyowa Gas Chemical Industry Co., Ltd.* v. *United States*, 582 F.54 Supp. 887;. 889 (CIT 1984); and *Royal Business Machines Inc.* v. *United States*, 507 F. Supp. 1007 (CIT 1980), *aff'd*, 669 F.2d 692 (CCPA), uniformly hold that while the Department may "clarify" the scope of an order, it may not modify the reach of the original order. Where a product is specifically included or excluded from the scope of the original investigation, no further inquiry is needed. The fact that market conditions have changed in the intervening years is irrelevant. The Department should not resort to the four additional criteria where the original class or kind definition is dispositive.

Silver Seiko, Ltd. and Silver Reed America, Inc. ("Silver") argue that SCM chose the product investigated and could have broadened the investigation at any time. If the U.S. industry is aggrieved by imports of related products not covered by the order, its remedy is to pursue a separate antidumping proceeding, not to expand the current proceeding to include products that were never included in the fair-value and injury determinations. The U.S. International Trade Commission has never found material injury or threat of material injury to any industry that includes electronic typewriters, printers, or office typewriters.

The Department may not add products in tariff classifications not covered by the original investigation. In *Royal Business Machines*, the Court of International Trade invited the

Department "to clarify and perfect the final order." Adding the TSUSA item number 676.0540 provision, in February 1981, was the Department's only opportunity to redefine the tariff classifications covered by the order. The petition in this investigation described the subject merchandise as "typewriters not incorporating a calculating mechanism: Non-automatic with hand operated keyboard, portable, electric, classified under TSUSA item 676.0510." The Department subsequently amended the order to include some typewriters classifiable under TSUSA item number 676.0540. Both of these tariff classifications cover only non-automatic typewriters.

Brother International Corporation and Brother Industries, Ltd. ("Brother") argue that the language of the order and subsequent scope clarification is clear, precise, and unambiguous with respect to the exclusion of machines with automatic features or a calculating mechanism. When the Department has excluded merchandise in the original antidumping investigation and order, such exclusion is final and not subject to modification.

Tokyo Electric Co., Ltd. and TEC America, Inc. ("TEC") argue that SCM's argument regarding the low cost of adding automatic features is spurious and irrelevant. Only the class or kind of merchandise found to have been sold at less than fair value can be included in the scope of the order.

Makajima All Co., Ltd. argues that the inclusion of either a computer interface feature or a calculating mechanism transforms the machine into something more than a typewriter. A machine with these features is therefore outside the scope of the order.

SCM defined the scope of the investigation. On the basis of fairness and equity, the Department should limit the scope to the class or kind of merchandise in the original fair value and injury determination.

Department's Position: The Department determines that portable electric typewriters (PETs) that are automatic or incorporate a calculating mechanism are not in the class or kind of merchandise under investigation. On matters concerning the scope of a finding or order, our primary basis for determining whether a product is covered is the description of the class or kind of products subject to the original investigation. To determine that class or kind of merchandise, we look to descriptions of the product contained in the petition, and in initial and final determinations of the Commerce Department, Treasury Department, and the International Trade Commission.

When we cannot make a determination concerning the scope of the finding or order based upon the above determinations, we use the four additional criteria that were set forth in *Diversified Products* to make a scope determination. These criteria are: (1) Physical characteristics of the merchandise; (2) the uses for which the merchandise is imported; (3) the expectations of the ultimate purchaser; and, (4) the channels of trade in which the merchandise moves.

In its petition, SCM described the imported merchandise as: "All portable electric typewriters . . . whether fully electric with powered carriage return or with manual carriage return. . . ."

In its petition SCM also identified the tariff classification of the PETs under investigations as TSUSA item 676.0510 which states "Typewriters not incorporating a calculating mechanism: Non-automatic with hand operated keyboard: Portable: Electric."

The **Federal Register** notices for the Treasury Department's initiation of the antidumping proceeding on PETs and for the Commerce Department's Final Less Than Fair Value determination and antidumping order did not describe the PETs subject to investigation. Instead, these notices stated: "For purpose of this notice, portable electric typewriters are provided for in item 676.0510, Tariff Schedules of the United States, Annotated." 44 FR 29191 (May 18, 1979); 45 FR 18416 (March 21, 1980); 45 FR 30618 (May 9, 1980). Thus the Department defined the class or kind of merchandise and the scope of the order by relying on TSUSA item 676.0510.

In its final injury determination, the ITC described the PETs under investigation as: "portable electric typewriters provided for in item 676.05 of the Tariff Schedules of the United States (TSUS) from Japan. . . ." *Portable Electric Typewriters from Japan*, Inv. No. 731-TA-12 (Final), USITC pub. 1062 (May 1980). The Commission report described the PETs under investigation as, "electrically operated portable units (customarily sold at retail with a carrying case) . . ." in which "the typing stroke and the function of certain controls, as well as the forward motion of the carriage return are powered by an electric motor drive." The Commission further stated that "PETs generally contain between 2,200 and 2,500 parts and usually weigh between 18 and 26 pounds each.

PETs are generally not employed in office or business environments where heavy use is required. These units are used primarily where it is desirable to have a unit that can be readily moved from one point to another. The principal users are students and housewives. . . ."

It is apparent from the petition, the Department's and the ITC's past determinations, and the ITC report that automatic typewriters and typewriters with a calculating mechanism were not investigated by either agency.

In response to *Royal Business Machines, Inc.* v. *United States*, 507 F. Supp. 1007 (CIT 1980), *aff'd* 669 F.2d 692 (CCPA), the Department clarified the scope of the investigation on PETs and extended it to cover a certain type of PET, the Royal Administrator, classified under TSUSA 676.0540, 46 FR 14006 (February 26, 1981). In so doing, the Department stated that the Royal Administrator had been specifically investigated by the Department and the ITC during the original investigation.

In contrast, according to the ITC and Department determinations, and the ITC report, neither the ITC nor the Department investigated automatic typewriters and typewriters with a calculating mechanism. In fact, because they specifically relied on the TSUSA item to define the scope of the order, the Department and the ITC defined PETs so as to exclude automatic typewriters and typewriters with a calculating mechanism from the investigation. Because automatic typewriters and typewriters with a calculating device were excluded from the investigation, the domestic industry definition in the Commission's injury investigation was narrowed to include only SCM, and to exclude other typewriter producers, such as IBM. Since automatic typewriters and typewriters with a calculating mechanism were specifically excluded from the investigation, they are not included in the class or kind of merchandise under investigation.

Even if these PETs had not been specifically excluded from the original investigation, under the *Diversified Products* criteria automatic typewriters and typewriters with a calculating mechanism should be excluded. Although automatic PETs and PETs with a calculating mechanism move in the same channels of trade as electro-mechanical PETs, the physical characteristics of the products in question and the products in the class or kind of merchandise investigated are substantially different. The products in question reflect subsequent advances in technology not found in the class or kind of merchandise investigated.

Automatic PETs and PETs with a calculating mechanism have substantially different physical characteristics from the electro-mechanical PETs subject to the original

investigation. Using the PETs in the original investigation, one typed directly to paper. Using the automatic PETs one types on a screen and the page is inserted in memory, which is retained even if the power is turned off, to be printed later.

In its February 1984 letter which excluded certain automatic typewriters, the Office of Compliance described the difference between a non-automatic and an automatic typewriter based on the type of memory: "A non-automatic typewriter has a correcting or current memory which allows the user to make changes or corrections while the machine is turned on. However, when the typewriter is turned off, the memory erases. Automatic typewriters, on the other hand, have a permanent storage memory and produce text without the direct operation of the keyboard. The memory capacity can run from 800 characters to 50,000 characters."

Additionally, the electro-mechanical PETs subject to the original investigation had "powered carriage returns or manual carriage returns." Automatic PETs and PETs with a calculating mechanism do not.

Further, the uses and the expectations of the ultimate purchasers of automatic typewriters and typewriters with a calculating mechanism are different because these typewriters are more sophisticated and can do more than the original electro-mechanical typewriters. They can store text in memory and can calculate. One no longer needs an adding machine and a typewriter; they can be combined in one unit. Since the characteristics and uses of automatic PETs and PETs with a calculating mechanism are different than the electro-mechanical PETs originally subject to the investigation, and the expectations of the ultimate purchaser are different, automatic typewriters and typewriters with a calculating mechanism are not in the same class or kind of merchandise and are excluded from the investigation.

Comment 2: SCM argues that features and use do not distinguish PETS from office typewriters for purposes of the scope of the antidumping duty order. While the durability of a machine is one factor that may be considered, durability in and of itself does not provide a meaningful guideline for distinguishing PETs from office machines. Other features alleged to distinguish an office machine from a PET may be incorporated into any electronic machine with some memory. Therefore, features provide no meaningful guidance for determining which machines are covered by the scope of the order. The Department should consider channels of distribution, advertising, marketing, and price points as the distinguishing criteria between PETs and office typewriters.

The criteria which currently distinguish a PET from a word processor are a full- or half-page video screen which permits the user to see the text as it will be printed on paper, block move and other complex text editing capabilities, external permanent rext storage, and a print speed faster than 50 characters per second ("cps").

Fujitsu Limited and Fujitsu America, Inc. ("Fujitsu") argue that the demarcation between PETS and other keyboard devices such as word processors is clear. A typewriter is a machine in which characters similar to those produced by printer's type are produced by means of keyboard-operated types. A word processor is a keyboard-operated terminal usually with a video display and a magnetic storage device used in the production of typewritten documents by automated and usually computerized typing and text-editing equipment. A machine which is primarily alphabetic without significant non-typing characteristics and features is a typewriter.

Nakajima argues that since the U.S. typewriter industry looks to reports by Buyers Laboratory, Inc. ("BLI") for classification of typewriters, the Department should accept BLI's standards for portable, compact, and office machines.

Since BLI does not test PETs, Nakajima recommends that if BLI does not test a typewriter which weighs less than 26 pounds and is sold with a carrying case or handle, the Department should consider that model within the scope of the order.

Conversely, if BLI certifies that a machine is designed for the small professional office, the Department should consider that model outside the scope of the order.

Furthermore, any machine that either meets GSA test standards for an office typewriter, or is accepted under a State's procurement contract as an office typewriter, should be deemed to be outside the scope of the order.

Nakajima further argues that the following specifications listed in *The Authorized OA Dealer Report* should be adopted as the criteria for PETs: Paper capacity of 12–13 inches, writing line of 10–11 inches, print speed of 10–13 cps, width of 15–17 inches, weight of 13–15 pounds, "C/D" grade keyboard, and a price range of $300 to $400. Furthermore, according to BLI, a life expectancy design goal for PETs should be under 15 million keystrokes and a ribbon capacity of 60,000 characters of less.

Silver argues that a word processor allows revisions to be made before printing. Thus, there is a separation of the composing and printing functions which requires a cathode-ray or LCD display which permits the typist to edit, rearrange, and compose before printing the material. Further, there is a magnetic, stored memory which permits changes to be made after printing without retyping the entire document.

Brother argues that a word processor is a data processing machine with a display unit, keyboard, disk drive, and other storage or printing units. A word processor is an automatic (memory) machine capable of editing and storing text.

Brother further argues that the Department must exclude any and all merchandise which is used in an office environment, marketed through office equipment dealers, or which provides the purchaser with useful office environment capabilities.

Department's Position: The original petition was brought only on portable electric typewriters from Japan and it specifically excluded office typewriters. Therefore, office typewriters are excluded from the class or kind of merchandise and from the scope of the order. Because of the number of factors to be considered, however, there is no clear delineation between PETs and office machines. We will take the various model specifications into consideration for scope inclusion and at a later date will make a determination on a model-by-model basis. The primary criteria will be whether or not the typewriter is generally used in the office or business environment where heavy use is required. In determining whether the typewriters are generally used in the office, we will consider a number of specifications such as weight, dimensions, presence of a carrying case or handle, type of market, method of distribution, and whether any independent entity, such as GSA or state governments, have classified the particular typewriters as office typewriters.

Comment 3: Silver argues that the Department erred in calculating foreign market value ("FMV") for comparison to sales by Silver Reed America ("SRA") based on home market sales to "other" retailers. Section 353.14(b) of the Commerce Regulations provides that when an exporter grants quantity discounts of at least the same magnitude upon 20 percent or more of its sales of such or similar merchandise in the home market during the period, the Department *must* use only the

discounted price to establish foreign market value.

Silver argues that the Department should therefore have used the sales price to one particular large-scale retail merchandiser to establish FMV, both for Exporter's Sales Price ("ESP") sales through SRA and for purchase price ("PP") sales. This merchandiser is the only buyer which purchased quantities approaching the quantities purchased by SRA's retail customers. These sales are thus closest to being at the same "level of trade."

Furthermore, using prices to this one merchandiser for FMV would greatly simplify the Department's administrative task.

Should the Department refuse to use this customer's sales as the sole basis, it must, at a minimum, include sales to this customer and the other large retail purchases within the average prices used to calculate FMV.

SCM argues that the Department's comparison of home market sales to U.S. sales at two distinct levels of trade is supported and required by the regulations.

Department's Position: Section 353.14(b) of the Commerce Regulations deals with the granting of quantity discounts and does not apply here, where different categories of customers purchase different quantities but where there is no established policy for granting quantity discounts across the board. Section 353.19 of the Commerce Regulations requires that we choose a price "generally . . . at the same commercial level of trade." Since there are two commercial levels of trade in the home market, we used the first—sales to Silver's large-scale retail merchandisers—for comparison to Silver's United States purchase price customers who are similarily large-scale retail merchandisers, and the second—all other sales—for comparison to SRA's ESP sales in the United States which are made in smaller quantities to other customers.

Comments 4: Silver argues that the Department erroneously deducted a flat percentage co-op advertising cost from all of SRA's United States sales. Only a few of SRA's customers received co-op advertising payments and many did not receive the full percentage payment. The Department justified its use of a flat percentage deduction on the grounds that SRA's submitted information on co-op advertising was "inadequate." Since Silver was never informed of any inadequacy, the Department is bound to use either Silver's information or to request additional information.

SCM argues that any co-op advertising expense data submitted after verification are not acceptable since the figures cannot be substantiated. Therefore, the Department should reject SRA's co-op advertising claim and deduct a flat percentage from all United States sales by SRA.

Department's Position: We agree with Silver. We requested and received co-op advertising expense figures related to the sales under review on a customer-by-customer, model-by-model, and sale-by-sal basis. We have used this information to calculate the co-op advertising adjustment for the final results.

Comment 5: Silver argues that the Department should not impute an interest cost for the time between shipment from Japan and shipment by SRA. The Department has a consistent and long-standing policy of basing its calculations on actual company records as long as they are prepared in accordance with generally accepted accounting principles and do not distort actual costs. The opportunity cost of holding inventory is not reported, is not required by United States or Japanese accounting principles, and does not constitute an "actual cost." Furthermore, since the sale between Silver Tokyo and SRA (related parties) is disregarded, the imputed interest cost is in no way a selling expense and cannot figure into United States price calculation.

If the Department insists on imputing an interest cost, it should at least offset that cost by SRA's actual financing costs. The Department, by deducting both SRA's actual financial costs and imputed interest costs, double-counted SRA's financial cost of holding inventory.

SCM argues that Silver Seiko bears a cost similar to the cost of holding inventory during the time between date of shipment from Japan and date of receipt in the United States. This cost is directly related to each shipment, is "actual," and can be readily calculated. If SRA borrowed funds to finance shipments, finance expenses would show up on SRA's books and be deducted. If SRA moves the expense to its parent's books, the expense still exists.

Silver argues that it calculated its indirect credit expense in the home market exactly as it calculated SRA's indirect credit expense on U.S. sales. Silver believes that since these costs are wholly imputed and hence not "actual costs" shown on the company's books, they should not be deducted from either side. If the Department must deduct them, however, it must deduct them from both sides.

SCM further argues that deducting an "imputed" credit cost on the home market side double counts Silver's indirect selling expenses because these expenses are captured on Silver's books and are already included in General and Administrative Expenses ("G&A".) Because a "pool" of Silver's G&A is deducted in full in the offset, and none of this "pool" is deducted from ESP, it is proper for the Department to impute some of that expense to SRA.

Department's Position: We agree with SCM that we should impute an interest expense for the period between the date of shipment from Japan and the date of receipt in the United States; the opportunity cost of holding inventory is a real expense which Silver cannot isolate from its pool of interest expenses. We agree with Silver, however, that we should impute and adjust for the expense in both the U.S. market and the Japanese home market. We have recalculated inventory turnover and associated interest expenses for the home market on a model-by-model basis, and have adjusted the FMV accordingly.

Comment 6: SCM argues that the Department must deny Silver a level of trade adjustment since none of the expenses themselves are directly related to the sales under consideration. Furthermore, given that the Department compared home market and U.S. sales at the same level of trade, there is no basis for any adjustment.

Silver argues that the Department should grant Silver a level of trade adjustment since all of its home market sales are to retailers and all of its U.S. sales are to wholesalers or distributors. By denying this adjustment the Department is saying, in effect, that Silver's higher costs of selling in the home market have no effect on price, an approach totally inconsistent with the Department's approach on other adjustments.

Furthermore, there is no requirement of a direct relationship between an expense and sale in the regulation relating to level of trade adjustments. The only requirement is that the difference have some effect on price comparability.

Department's Position: Since we are already distinguishing between the two commercial levels of trade my making our home market and United States sales comparisons at the same level of trade, an additional adjustment for differences in level of trade is not warranted. Further, Silver has not demonstrated that there are quantifiable differences in levels of trade between

the two markets which would have any effect on price.

Comment 7: SCM argues that since the Department did not adequately verify SRA's response, the final determination should be based on the best information otherwise available. The Department did not verify the completeness of SRA's United States sales listing, whether SRA's records permitted inventory turnover to be restated on a model-by-model basis, or the turnover period. The Department did not verify that ocean freight, insurance, brokerage, and inland freight expense totals included all imports during the period. The Department did not require SRA to calculate age of receivables on a transaction-by-transaction basis. The Department did not verify the tabulation of advertising expenses. The Department did not verify the exclusion of training expenses from selling, general and adminstrative expenses ("SG&A"), or inquire whether Silver extended payment terms and reduced prices on non-PET products sold to SRA.

Since SRA has been on notice since 1983 that the Department requires information on a sale-by-sale or customer-by-customer basis whenever averaged data creates a distortion in United States price, the Department should base its final determination on the best information otherwise available.

Silver argues that the Department did an extremely thorough job of verifying both Silver and SRA's responses. Where the Department is satisfied that allocation methodologies reasonably apportion selling expenses and costs, United States antidumping law does not require that deductions be stated on a model-by-model or customer-by-customer basis. The Department may rely on best information otherwise available only when it is not satisfied that respondents are providing satisfactory information. Since the Department agrees that Silver has provided all requested information, there is no basis for using the best information otherwise available.

Department's Position: We verified that the sales listing to the United States was complete; that ocean freight, insurance, brokerage, and inland freight expenses were reported for all imports during the period of review; that reported training expenses were not related to PETs; that SRA's average credit costs were reasonable; and that SRA's advertising and promotional expense were correctly reported. The Department is satisfied with the accuracy of submitted data and sees no reason to resort to the best information otherwise available.

Comment 8: SCM argues that the depreciation expense attributable to the neon sign above SRA's office door should be apportioned to PET sales and deducted from ESP since it is an expense incurred in selling the merchandise in the United States.

Department's Position: The Department agrees that the neon sign depreciation expense is related to operations and is thus allocable to PET sales as part of G&A expense. We have included this expense in calculating ESP for the final determination.

Comment 9: SCM argues that the Department should deduct the share of Silver's overseas department expenses that relate to export sales from ESP.

Silver argues that it reported Headquarters G&A expenses related to United States exports in its revised response. These expenses were verified by the Department in 1985.

Department's Position: Due to a programming error, we neglected to deduct export-related overseas department expenses from ESP. We have corrected this error for our final calculation.

Comment 10: SCM argues that since Silver's claimed difference in merchandise adjustment is based on production run set-up time, it is in no way related to any physical difference in the products produced. Therefore, the Department cannot allow this adjustment.

Silver argues that its claim for an adjustment to account for differences in the length of production runs is both a difference in merchandise and a difference in quantities. Although the merchandise produced may be physically the same, the cost of producing it for the U.S. market is lower because the cost of preparing the assembly line is spread over more units. If it is clearer, Silver will recharacterize its claim as a claim for differences in quantity under § 353.14(b)(2) of the Department's regulations. The cost savings on U.S. sales were verified by the Department.

Department's Position: We deny this claim for differences in quantity because there is no tie between the Longer production runs and any price discount as required by § 353.14(b) of the Commerce Regulations. Furthermore, we agree with SCM that the claimed difference in merchandise adjustment cannot be allowed since it is not based on any quantifiable physical differences in the products produced for the two comparison markets.

Comment 11: SCM argues that the Department cannot accept Brother's questionnaire response because it is incomplete. The Department must, therefore, rely upon the best information otherwise available. Brother reported only sales to wholesalers, and sales in "usual" wholesale quantities, but did not report sales of discontinued models.

Brother argues that only the "usual" wholesale sales were subject to the investigation. Discontinued models constituted a very small quantity of comparable home market merchandise and were reported to and verified by the Department.

Department's Position: We agree with Brother. We reviewed all home market sales and verified that Brother's reported home market sales listing is complete for this administrative review.

Comment 12: SMC argues that in the absence of more complete data, the Department should attribute 90-day terms and 5% promotional allowances to all of Brother's sales in the United States from August through Christmas, 1981. The Department should deduct advertising and promotional expenses on a sale-by-sale or at least a customer-by-customer basis. In the absence of adequate data to permit such a deduction, the Department should allocate all advertising and promotional expenses to PET sales only.

The Department should include in "direct" advertising and promotional expenses "discounts and sales allowances," "accrual advertising," and "corporate advertising."

Brother argues Brother International Corporation ("BIC"), its United States subsidiary, reported co-op and accrual advertising information by customer account and, where possible, by model. This information was verified by the Department. The Department properly characterized BIC's accrual advertising as an "indirect" selling expense because this advertising represents a general benefit to all of Brother's merchandise. This expense was deducted on a customer-by-customer basis. No mischaracterizations of advertising expenses were noted at verification.

Department's Position: We agree with SCM that discounts and sales allowances, accrual advertising, and corporate advertising related to the sales under consideration are direct advertising expenses. Although BIC's customers do not necessarily use these allowances for PET promotion, they received these benefits as a direct result of purchases of PETs. Therefore, we have recalculated Brother's direct expenses for the final determination.

Co-op and accrual advertising were adjusted for on a customer-by-customer basis in keeping with the available records. Other advertising and promotional expenses were allocated to

all units sold. The Department verified BIC's allocation method and has determined that it is reasonable.

Comment 13: SCM argues that, given that Brother's Olympic advertising campaign was image-building for its entire typewriter line, the Department should have investigated whether Brother's home market indirect selling expenses were inflated to the extent of Olympic advertisements. The Department should determine the amounts of Olympic advertising expense incurred by Brother in Japan and the United States and then allocate these expenses to all typewriter sales worldwide by geographical area.

Brother argues that, at verification, it established that all Olympic advertisements were limited exclusively to Brother EM-series office machines. The objective in obtaining the license to use the Olympic logo was to advertise Brother's entry into the office typewriter market. Furthermore, the Department meticulously verified the accuracy of all indirect selling expense claims in the home market.

Department's Position: Brother has established and we have verified that the Olympic advertising campaign was devoted exclusively to Brother's EM-series office machines. Brother's advertisements refer specifically and exclusively to office machines, not to PETs. These advertising expenses are not related to PET sales. Therefore, we did not adjust for Olympic advertising expenses.

Comment 14: SCM argues that the Department should require Brother to identify sales promotion expenses in the home market by model, or disallow the claimed adjustment as not directly related to the sales under consideration.

Brother argues that the Department thoroughly verified Brother's home market promotional allowances. Even if some Japanese-language PETs were included, Brother divided the verified allocable figures by the number of wholesale units sold during the period, so no likelihood exists of any material overstatement of such expense allocable to portable home market models.

Department's Position: We verified home market promotional expenses. The Department is satisfied that the claimed adjustment is reasonable. It is not necessary for Brother to report its promotional expenses by model for this period of review.

Comment 15: SCM argues that to prevent abuse of the offset allowance, the Department should presume that all selling expenses incurred in the United States are direct unless established otherwise by competent, verified evidence.

Brother argues that the Department, in its final notice of the last administrative review, verified that BIC's claimed indirect selling expenses are not tied to individual sales but rather are general expenses. Therefore, they cannot be characterized as direct selling expenses.

Furthermore, there is no warrant anywhere in the statute, the regulations, or legislative history that all expenses incurred in ESP sales should be deemed to be direct expenses unless shown otherwise.

Department's Position: We agree with Brother. The Department has verified that Brother's characterization of its selling expenses as direct or indirect is appropriate.

Comment 16: SCM argues that given the lack of evidence on which to compute credit costs incurred by Brother on behalf of BIC, the Department should assume a 70-day payment cycle between the two companies as the best information otherwise available.

Brother argues that the Department's use of averaged collection periods does not distort United States price.

Department's Position: We agree with Brother. Credit periods and costs were verified by the Department in Japan and in the United States. We are satisfied that the reported credit costs are reasonable.

Comment 17: SCM argues that in computing the amount of expenses eligible for inclusion in the ESP offset, the Department must deduct the U.S.-related finance expenses from Brother's indirect selling expenses and allocate the remainder over third country as well as home market sales to reflect the interest costs involved in Brother's worldwide export sales. Failure to do so double-counts those costs and inflates the ESP offset.

Brother argues that because home market selling expenses are entirely those of Brother Sewing Machine Sales Corporation ("BSMSC"), which does not sell for export, BSMSC cannot include financing or selling costs for export sales as part of its indirect selling expenses.

Department's Position: We verified and are satisfied that the selling expenses shown on BSMSC's books are related to home market sales.

Comment 18: SCM argues that shipment expenses from Brother's plant to an advance warehouse, branch office, or other shipping point is not permissible as a deduction from foreign market value for inland freight because these shipments are not directly related to particular sales nor are they a sales obligation undertaken by Brother.

Brother argues that transportation costs incurred between the plant and the local warehouse of BSMSC are direct selling expenses because, unless the merchandise is readily available at local warehouses, very few sales are likely to be generated for home comsumption.

Department's Position: We agree with SCM and have disallowed the deduction for shipment expenses between the plant and local warehouse as a direct expense for the final results.

Comment 19: SCM argues that, at verification, the Department did not investigate any of the issues raised by SCM. The Department failed to investigate the accuracy of claimed advertising, credit, and promotional expenses, but rather simply "verified" BIC's submitted figures. The Department should, therefore, reject BIC's data entirely and rely on the best information otherwise available. At a minimum, the Department should assume that all sales during promotional periods were made at extended terms and that all United States selling expenses were direct.

Brother argues that the Department examined issues of "Key City" funds, SG&A, overhead and financial expenses of BIC at verification and found no inaccuracies.

Department's Position: We verified all of the adjustments outlined by SCM. We have no cause to resort to information other than that submitted by Brother and verified by the Department.

Comment 20: SCM argues that, in the cost of production ("COP") calculation, Tokyo Juki's ("Juki's") allocation of SC&A on the basis of "the numbers of workers involved in the production process" is distorting. The Department should use a cost-based allocation which excludes units in inventory from the denominator.

Juki argues that its method of allocation of SG&A is reasonable, non-distortive, in accordance with generally accepted accounting principles ("GAAP"), and was accepted by the Department in the first annual review. By long-standing administrative practice, the Department accepts allocation methods reflected in the company's books as long as the books are kept in accordance with GAAP and do not distort actual costs. Since Juki manufactured PETs pursuant to long term contract, there were virtually no selling expenses associated with their sale. SCM's proposed allocation method would greatly distort the actual costs. Since the export PET models were produced only in response to orders, there was little or no inventory. Jiki's allocation of expenses based on the number of units produced is, therefore, not distorting.

Department's Position: We agree with Juki that its allocation methodology is non-distorting. Since all sales were made to order under long-term contract, the number of units produced is much the same as the number of units sold. Therefore, an allocation methodology based on production is reasonable.

Comment 21: SCM argues that the Department should not include Juki's below cost sales in its average FMV because start-up costs were not recovered over the period from January 4, 1980 through April 30, 1982. In the evoluntionary market for PETs, with its rapid product development, start-up costs cannot be expected to be recovered over the long term.

Junki argues that the Department did not use below-cost sales for comparison purposes since these sales were not contemporaneous with the United States sales under consideration. SCM's argument that the Department should combine the consecutive review periods from January 1980 through April 1982 to analyze whether start-up costs were recovered is without merit. The Department has already determined that Juki's sales during the first review period were not at less than fair value. The issue now is whether Juki's prices during the second review period are at less than fair value.

Department's Position: We did not disregard these sales because Juki did not sell substantial quantities over an extended period of time at prices that would not permit recovery of all costs in a reasonable period of time. We are satisified that Juki's start-up costs will be recovered within a reasonable period.

Comment 22: SCM argues that the Department should reallocate factory overhead financing expenses to U.S. and home market models on the basis of production cost to reflect relative working capital needs of different product lines, instead of on the basis of capital investment.

Juki argues that its method of allocation is its usual method of allocating such expenses for its own purposes and that its records are kept in accordance with GAAP. SCM has not provided the Department with any plausible theory that this allocation distorts cost.

Department's Position: We accept Juki's method of allocation as reasonable since it conforms to GAAP, the company's usual record-keeping, and our allocation of other factory expenses.

Comment 23: SCM argues that the deduction for brokerage charges incurred on imported parts used only in home market typewriter production should be denied. The allocation is unreasonable and unverified.

Juki argues that the brokerage charges incurred on imported parts withdrawn from bonded warehouse were verified by the Department for the period under review. These charges were incurred on the date of delivery of the parts, not on the date of sale of the typewriters.

Department's Position: We are satisfied that Juki has correctly reported and adjusted for brokerage charges incurred on imported parts used for home market production. The adjustment is reasonable because these expenses are incurred only for production of home market merchandise.

Comment 24: SCM agrees with the Department's use of best information available for Nakajima. If the Department conducts any further investigation, however, it should investigate Nakajima's U.S. selling practices and advertising and promotional expenses.

Nakajima argues that the Department examiners were unable to verify Nakajima's COP because they did not examine and evaluate the prepared verification data. The Department had a preconceived notion of cost accounting that was foreign to Nakajima and, consequently, the Department posed inappropriate, technical questions. Nakajima's inability to answer is wrongfully characterized as a failure to prove the submitted costs.

SCM further argues that the January 9, 1986 verification report outlines in detail the many areas in which Nakajima failed to substantiate the figures reported in its questionnaire response. Information of record remains contradictory or unsupported with respect to all aspects of the production cost data.

In the event that a respondent is unwilling or unable to provide sufficient data during verification to establish its claims, the statute requires resort to the best information otherwise available. The Department cannot rely on partially "verified" cost data for the 1980–81 or 1982–83 periods in lieu of Nakajima's actual 1981–82 data. Consistent with agency practice, the best information otherwise available should be derived so as to encourage future compliance and cooperation by the respondent.

Nakajima cannot, under guise of compliance with the verification outline, seize control of the proceeding and choose which cost figures to demonstrate, which invoices or documents to submit, or which conflicting figures to ignore.

Department's Position: We attempted to verify Nakajima's submitted cost data using several different approaches. Nakajima was unable to provide a complete organizational chart, a listing of cost centers, a standard cost book for Japanese models, an explanation of time and motion study discrepancies, an estimate of the time necessary to produce a typewriter, any documentation on direct labor costs, or monthly factory cost reports. Nakajima was unable to trace subcontracting costs to the financial statements and did not provide the detailed information requested. Nakajima's factory overhead monthly detail figures did not generally trace to the summary provided on the audited financial statements.

Finally, Nakajima could not support its claims for raw materials costs, SG&A, credit expenses on sales identified in the verification outline, or warranty claims. Since Nakajima was unable to provide any documentation in support of its submission as required by our regulations, the Department resorted to the best information otherwise available except for model 8800c, for which cost of production had previously been verified.

Comment 25: Nakajima argues that the Department must refuse to use the petitioner-submitted best information available because it knows that this information is incorrect.

SCM argues that the accuracy of the market research report is irrelevant. The issue is Nakajima's inability to support its reported data at verification.

Department's Position: Due to Nakajima's failure to support its reported data at verification, the Department resorted to other information on the record as the best information otherwise available. SCM's submitted market research report was the only information available on the record which we could use to calculate Nakajima's COP.

Comment 26: Nakajima argues that the Department has already verified its COP information submitted for the current review during the course of verifications conducted for other periods of review.

Department's Position: Because of the failure of Nakajima, at the most recent verification, to adequately support its reported costs, we have confined our use of Nakajima's data to that which was specifically verified. Thus, we have accepted only Nakajima's costs on one model, 8800c. The costs for this model were verified in a report from our Tokyo office dated May 18, 1984. For all other models produced we have used the best information available.

Comment 27: An importer, Olivetti Corporation ("Olivetti"), argues that the

Department should not impose antidumping duties on an importer when it calculates margins that are *de minimis*. The Department recognizes that the law does not concern itself with trifling matters for cash deposit purposes: it should recognize the same principle for duty assessment purposes.

Juki's *de minimis* margins are the result of insignificant differences in the merchandise and exchange rate fluctuations. It is inequitable for the Department to instruct Customs to assess *de minimis* duties, since, by the Department's own determination, it has no effect on commerce, yet serves only to tax the importer and burden Customs.

SCM argues that the Department must apply the *de minimis* doctrine on a case by case basis. Given that the ordinary duty rate on PETs covered by this review is zero, the Department should presume that any margin in excess of 0.3%, the level set by Treasury Department practice, is competitively significant.

Department Position: While the overall margins for a manufacturer may be *de minimis*, the dumping margin for individual sales may be commercially significant. The Department's practice is to instruct Customs to assess all actual antidumping duties on an entry-by-entry basis, regardless of the amount.

Comment 28: SCM argues that the Department should deduct profits from ESP in conformance with the international code and the principle of reciprocity in international unfair trade laws.

Department's Position: It is not our policy or practice to make a deduction from ESP for profit. A deduction from United States price for profit is neither required by statute nor the Commerce Regulations. Because we are comparing the returns the seller earns in the home market and U.S. market, we do not deduct profit from either foreign market value or United States price. If profit was stripped out of either, it would distort our comparison of those returns.

Comment 29: SCM argues that the Department should reverse its past practice and assume that differences in circumstances of sale do not lead to a difference in price unless respondents establish a causal link.

Department's Position: Our regulations state that primary consideration should be given to the cost to the seller for differences in circumstances of sale. The Court has held that the Department can rely on differences in cost to make adjustments for differences in circumstances of sale.

Comment 30: SCM argues that the Department should eliminate the ESP offset provision.

Department's Position: It is our long standing practice to permit the ESP offset as an equitable adjustment to FMV. This practice, upheld by the courts, is in accordance with section 772(e)(2) of the Tariff Act. Elimination of the ESP offset provision would result in grossly unfair treatment of foreign sellers. It would require a deduction from exporters' sales prices for indirect selling expenses incurred by their related importers but would not take account of similar expenses incurred on home market sales.

Final Results of the Review

Based on our analysis of the comments received and the correction of certain clerical errors, we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Brother Industries, Ltd.	5/21/81 to 5/20/82	2.24
Nakajima All	5/01/81 to 4/30/82	16.40
Silver Seiko, Ltd	4/01/81 to 3/31/82	4.92
Tokyo Juki	5/01/81 to 4/30/82	0.33

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based upon the most recent of the above margins shall be required for these firms. Because the weighted-average for Tokyo Juki is less than 0.5 percent, and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for that firm. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1982 and who is unrelated to any reviewed firm or any previously reviewed firms, a cash deposit of 4.92 percent shall be required. These deposit requirements are effective for all shipments of Japanese portable electric typewriters entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: January 8, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-828 Filed 1-13-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administation

[A-508-602]

Final Determination of Sale at Less Than Fair Value Oil Country Tubular Goods From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that oil country tubular goods (OCTG) from Israel are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend liquidation of all entries of OCTG from Israel that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: January 14, 1987.

FOR FURTHER INFORMATION CONTACT: James Riggs or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4929 or 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that OCTG from Israel is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). We made fair value comparisons on sales of the class or kind of merchandise to the United States by Middle East Tube Company Ltd. (METCO) during the period of investigation, April 1, 1985 through March 31, 1986. Comparisons were based on United States price and foreign market value, based on a constructed value. The weighted-average margin for METCO is listed in the "Continuation of

Suspension of Liquidation" section of this notice.

Case History

On March 12, 1986, we received a petition in proper form filed by Lone Star Steel Company and C.F. & I. Steel Corp., domestic manufacturers of OCTG, on behalf of the U.S. industry that produces OCTG.

In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. The petition also alleged that critical circumstances exist. We initiated such an investigation on April 1, 1986 (51 FR 11963, April 8, 1986), and notified the ITC of our action.

On April 17, 1986, we presented an antidumping duty questionnaire to counsel for METCO, which accounts for all exports of the subject merchandise to the United States. We requested a response in 30 days.

On April 28, 1986, the ITC determined that there is a reasonable indication that imports of OCTG from Israel materially injure a U.S. industry (USITC Pub. No. 1840, April 1986).

On May 9, 1986, respondent requested and was granted an extension of the due date for the questionnaire response to June 9, 1986. On May 29, respondent requested an additional extension, until June 13, 1986, to respond to the Commerce Department's antidumping duty questionnaire. We declined this request. We received a response from METCO on June 9, 1986, with supplemental responses on June 12, June 26, June 27, June 30, July 2, August 4, and August 8, 1986.

On August 19, 1986, we made an affirmative preliminary determination (51 FR 30259, August 25, 1986).

We verified METCO's response from September 1 to September 4, 1986.

On September 11, 1986 the respondent requested a postponement of the final determination. We granted this request and postponed the due date for the final determination until no later than January 7, 1986.

As required by section 774 of the Act and § 353.44(e) of the Commerce regulations, we afforded interested parties an opportunity to submit oral and written comments, and on November 7, 1986, a hearing was held to allow parties to address the issues arising in this investigation.

Scope of Investigation

The products under investigation are "oil country tubular goods," which are hollow steel products of circular cross section intended for use in the drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either America Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States Annotated* items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3953, 610.4025, 610.4035, 610.4210, 610.4220, 610.4230, 610.4240, 610.4310, 610.4320, 610.4335, 610.4942, 610.4944, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244. This investigation includes OCTG in both finished and unfinished condition.

For purposes of its preliminary determination, the ITC ruled that drill pipe is a separate "like product" from other types of OCTG. Since the petitioners do not manufacture, produce, or wholesale drill pipe, they are not "interested parties" with respect to drill pipe, within the meaning of section 771(9)(C) of the Act. Therefore, we did not investigate sales of drill pipe in this investigation.

Fair Value Comparison

In order to determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value, based on a constructed value, as respondent did not have sales of subject merchandise to the home market or to third countries. The period of investigation covers the year prior to initiation in order to capture a sufficient number of sales to make a fair value comparison.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States as all sales by METCO were made to unrelated purchasers prior to importation into the United States.

We calculated the purchase price based on the C.&F., or C.I.F., packed price. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, and loading charges. We increased METCO's purchase price by the amount of a duty drawback received for export sales of OCTG.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on constructed value since there were no sales of OCTG either in the home market or to third countries.

We used the constructed value data submitted by METCO, and made the following adjustments to reflect more appropriately METCO's cost of production for OCTG: (1) Depreciation expense was adjusted to reflect the effects of inflation; (2) a management fee paid by METCO to its parent company was not included. Instead, an amount reflecting the actual cost to the parent of providing management services to METCO was used; (3) financial expenses of METCO were not used. We instead included a proportional amount of the parent's financial expenses offset by financial income related to the general operations of the parent and the cost of financing accounts receivable; (4) since there were no third country or home market sales, U.S. selling and credit expenses were included. The circumstance of sale adjustment was, therefore, not made to the constructed value.

The constructed value included the material and fabrication expenses incurred to produce the product sold in the U.S. market. Since the general expenses were greater than the statutory minimum of 10 percent, we used actual general expenses of the company. Because actual profit was less than eight percent, the statutory minimum profit of eight percent was added.

Negative Determination of Critical Circumstances

Petitioners have alleged that critical circumstances exist with respect to imports of OCTG from Israel. For purposes of section 735(a)(3) of the Act, critical circumstances exist if we find that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the merchandise which is the subject

of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that there is no reasonable basis to believe that imports of the subject merchandise from Israel have been massive over a realatively short period. We examined all available Census data for the first ten months of 1986 and found no surge in imports of OCTG from Israel over a relatively short period. Accordingly, we do not have to consider whether section 735(a)(3)(A) of the Act applies in this case. Therefore, we determine that critical circumstances do not exist with respect to imports of OCTG from Israel.

Currency Conversion

We made currency conversions from new Israeli shekels to U.S. dollars in accordance with § 353.56(a) of our regulations, using the end of quarter exchange ratio from the International Monetary Fund's Statistical Yearbook, as certified rates from the Federal Reserve Bank of New York were not available.

Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondent, using standard verification procedures, including examination of accounting records and original source documents containing relevant information on selected sales.

Petitioners' Comments

Comment 1: Petitioners argue that payments received by METCO under the Israeli Exchange Insurance Scheme (EIS) must not be used to increase METCO's purchase price on sales to the United States.

DOC Position: We agree. Section 772(d) of the Act permits the Department to increase U.S. price for purposes of fair value comparisons only under four specific circumstances: By the amount of packing, if not included in the U.S. price; by the amount of import duties imposed and rebated upon export; by the amount of any taxes imposed on the merchandise that are rebated upon export; and by the amount of countervailing duties levied to offset an export subsidy. Because payments of this type are not enumerated within section 772(d), the EIS payments received by METCO have not been added to U.S. price in our calculatons. See our position on Petitioners' Comment 5.

Comment 2: Petitioners argue that credit calculations must be based on actual credit terms, not the nominal terms reported by METCO.

DOC Position: We agree. We calculated credit charges based on the actual shipping dates and dates of receipt of payment.

Comment 3: Petitioners argue that all shekel denominated expenses must be converted to U.S. dollars as of the date of sale, not as of the date they were incurred, before being deducted from gross U.S. price to arrive at a net U.S. price.

DOC Position: It is the Department's policy to convert currencies for charges on the date they are icurred, not on the date of sale.

Comment 4: Petitioners argue that the Department should use verified information for insurance charges related to METCO's U.S. Sales instead of the amounts initially submitted by METCO.

DOC Position: It is the Department's policy to use only verified information for its final determinations. METCO's insurance charges are adjusted upward to reflect the verified amounts.

Comment 5: Petitioners argue that payments made to METCO under the Israeli Exchange Insurance Scheme may be added to U.S. price only if they are countervailed as an export subsidy.

DOC Position: In the Department's instructions to the U.S. Customs Service after a final affirmative determination, we provide dumping margins reduced by any countervailing duties levied on export subsidies pursuant to section 772(d)(1)(D) of the Act. As EIS payments have been found to be an export subsidy in the final determination in the countervailing duty investigation of OCTG from Israel, the amount of a cash deposit or bond required by U.S. Customs will be net of countervailing duties attributed to these EIS payments and any other export subsidies received by METCO on its sales of OCTG to the United States. See also the section of this notice entitled "Continuation of Suspension of Liquidation."

Comment 6: Petitioners contend that the Department's calculation of constructed value should be based on the weighted-average costs for all METCO's facilities, including the facilities of its subsidiaries capable of producing OCTG.

DOC Position: We agree. The constructed value used by the Department is based on fully absorbed weighted-average costs for all facilities capable of producing OCTG.

Comment 7: Petitioners argue that, in calculating constructed value in a hyperinflationary economy such as Israel's the Department should use the material costs prevailing in the months in which OCTG sales were made.

DOC Position: In this case there was no need to match these costs to the dates of sale. When purchasing coil, the raw material, METCO pays in dollars, which are not subject to the effects of hyperinflation. The Department thus used dollar values for the material cost of coil in its computation of the cost of production.

Comment 8: Petitioners argue that the Department should not reduce METCO's material costs to reflect the extended credit terms received by METCO on coil purchases. Any reductions in METCO's costs resulting from extended credit terms are properly accounted for in the Department's calculation of METCO's finance charges.

DOC Position: We agree. The Department used the actual costs for METCO's material purchases. We did not reduce coil costs to adjust for extended credit terms granted by METCO's suppliers because credit terms are an element of financing, not raw material costs. We have taken the effects of credit terms into account in calculating the net financing expenses.

Comment 9: Petitioners state that the Department should ensure that general and administrative expenses are fully absorbed by direct cost centers, either directly or by transfer through indirect cost centers.

DOC Position: METCO does not allocate its general and administrative costs to direct or indirect cost centers. We have allocated general expenses as described in DOC Position on Petitioners' Comment 12.

Comment 10: Petitioners state that METCO's direct labor and overhead costs should incude the costs for overtime shifts and idle shifts.

DOC Position: The direct labor and overhead costs used in the final determination are based on total costs, including costs for overtime and idle shifts.

Comment 11: Petitioners argue that any credit for sales of scrap must reflect actual revenue received, rather than imputed or potential revenue. The scrap sales revenue must also be net of any costs incurred by METCO related to recovering, cleaning, conditioning and selling the scrap.

DOC Position: Revenue from OCTG scrap sales is not recorded separately, but is included in scrap sales from all pipe products. To determine scrap credit attributable to OCTG, we multiplied the

average sales value of pipe scrap by the actual yield loss from the manufacturing of OCTG. METCO performs no cleaning or conditioning of scrap, and costs related to recovery and sale of scrap are contained in fabrication costs.

Comment 12: Petitioners contend that, in a hyperinflationary economy such as Israel's, aggregate nominal general expenses are meaningless. The Department must adjust all monthly general expense totals for inflation to arrive at total month-of-sale costs.

DOC Position: The methodology suggested by petitioners would require the Department to adjust general expenses and all other costs for inflation as of the time of sale, to allow the allocation of general expenses over cost of goods sold. The Israeli accounting system is structured to account for inflation by other means.

The Department calculated general expenses in each month by multiplying the cost of goods sold in that month by the ratio of general expenses to cost of goods sold on an annual basis. To the extent that both general expenses and cost of goods sold do not fluctuate relative to each other from month to month, the resulting ratio provides an accurate measurement of the relationship between the two types of costs.

Comment 13: Petitioners contend that METCO's cost of production questionnaire response incorrectly reported transactions with related parties as they appeared in METCO's books. Transactions between METCO and related parties must be recorded at prices which represent the fully absorbed costs of the related parties. Specifically, petitioners contend that a management fee paid by METCO to its parent company does not accurately reflect actual costs incurred.

DOC Position: The Department used actual costs to the parent company incurred in providing the management services to METCO.

Comment 14: Petitioners argue that depreciation expenses must be based on asset values adjusted for inflation, rather than on the nominal values reported by METCO.

DOC Position: We agree. The cost of manufacturing was adjusted to include the increased depreciation expense. The depreciation expense was adjusted from information in METCO's financial statements which presented the effects of inflation on depreciation.

Responsdent's Comments

Comment 1: Respondent argues that payments made to METCO under the Export Insurance Scheme should be added to U.S. purchase price in fair value comparisons. These payments are received as a result of sales of OCTG in the United States and increase METCO's revenues on such sales.

DOC Position: We disagree. See DOC Position on Petitioners' Comments 1 and 5.

Comment 2: Respondent contends that, in its calculation of U.S. price, the Department must make an addition for duties on imported materials which are rebated upon the export of OCTG.

DOC Position: We agree. The Department has taken these duties into account in accordance with section 772(d) of the Act.

Comment 3: Respondent argues that linkage expenses, that part of the interest expense attributed to inflation, should not be included in the computation of constructed value. In *Oil Country Tubular Goods from Argentina: Final Determination of Sales at Less Than Fair Value,* 50 FR 12595 (1985), the Department recognized that linkage entries of this type are merely accounting devices used in hyperinflationary economies and should not be taken into account in determining production costs.

DOC Position: In our calculation of METCO's financial expenses, we used a portion of the financial expenses of the parent company, offset by financial revenues related to operations. Since linkage could not be identified with interest revenues or with some interest expenses, and since the total interest revenues did not differ materially from total interest expenses, the Department concluded that the residual effects of linkage would be insignificant. Consequently, we did not allow for linkage in calculating constructed value.

Comment 4: Respondent contends that the Department correctly used dollar values in its computation of METCO's cost of purchased raw materials. This methodology is designed to take account of the effects of inflation and depreciation on the value of purchases made in shekels. The Department should not convert these figures into shekels and then reconvert them into dollars, as petitioners request, because such recalculations could create distortions in these values.

DOC Position: We agree. The Department's calculation of constructed value included raw material costs as incurred in dollars.

Comment 5: Respondent argues that, in the computation of METCO's selling, general and administrative expenses, the Department should not include transfers of funds from METCO to Koor, the parent company, in excess of a reasonably allocated portion of Koor's general expenses. Where Koor performed managerial services for METCO, the value of those services would properly be included in a calculation of METCO's general costs. The excess of this management fee was simply a transfer of funds between subsidiary and parent, and it should not be included in the calculation of METCO's managerial costs. In effect, the fee represents a transfer of profit from subsidiary to parent, and clearly does not belong in SG&A.

DOC Position: We agree. In our calculation of SG&A expenses, the Department did not use the management fee paid by METCO to its parent because intracompany transactions cannot be assumed to be at "arm's length." Instead, we used a portion of the general expenses that had been allocated to METCO's line of business on Koor's financial statements.

Comment 6: Respondent argues that Solcoor's selling, general, and administrative expenses should not be included in METCO's SG&A expenses because Solcoor was not a party to any of METCO's sales transactions.

DOC Position: We agree. Solcoor's expenses were not considered in the calculation of METCO's SG&A expenses.

Comment 7: Respondent contends that, in its calculation of raw material costs, the Department should consider the favorable credit terms obtained by METCO. In effect, extended credit terms reduce the cost of raw material to METCO.

DOC Position: We disagree. See DOC Position on Petitioners' Comment 8.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of OCTG from Israel that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond on all such entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States

price. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/seller/exporter	Weighted-average margin (percentage)
METCO	11.96
All others	11.96

Article VI./5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for the amount. Accordingly, the level of export subsidies (as determined in the final affirmative countervailing duty determination on OCTG from Israel) will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on OCTG from Israel entered, or withdrawn from warehouse, for consumption, on or after the suspension of liquidation equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

January 7, 1987.

[FR Doc. 87-827 Filed 1-13-87; 8:45 am]

BILLING CODE 3510-DS-M

Postponement of Final Countervailing and Antidumping Duty Determinations; Standard Carnations From Chile (C-337-601) and (A-337-602), and Certain Fresh Cut Flowers From Israel (C-508-603) and the Netherlands (C-421-601)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determination involving standard carnations from Chile is being postponed until not later than January 26, 1987, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended.

Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), the deadline for the final countervailing duty determinations on standard carnations from Chile and on certain fresh cut flowers from Israel and the Netherlands are also postponed until not later than January 26, 1987, to coincide with the revised date of the final antidumping duty determination.

EFFECTIVE DATE: January 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins (Antidumping Duty) or Barbara Tillman Countervailing Duty), Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769 (Jenkins), or 377-2438 (Tillman).

Case History

On May 21, 1986, we received an antidumping duty petition filed by the Floral Trade Council of Davis, California, on standard carnations from Chile and countervailing duty petitions on standard carnations from Chile and on certain fresh cut flowers (cut flowers) from Israel and the Netherlands. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping duty petition alleged that imports of standard carnations from Chile are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation, and on June 10, 1986, we initiated such an investigation (51 FR 21947, June 17, 1986). On July 7, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of standard carnations cause material injury to a U.S. industry (USITC Pub. No. 1887). The preliminary affirmative determination in this antidumping duty investigation was made on October 28, 1986 (51 FR 39885, November 3, 1986).

In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that producers or exporters in Chile of standard carnations, and in Israel and the Netherlands of cut flowers, directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds upon which to initiate countervailing duty investigations, and on June 10, 1986, we initiated such investigations (51 FR 21953, June 17, 1986). On July 7, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of standard carnations and cut flowers cause material injury to a U.S. industry (USITC Pub. No. 1887). No October 20, 1986, we issued a preliminary negative determination in the countervailing duty investigation of standard carnations from Chile (51 FR 37951, October 27, 1986) and preliminary affirmative determinations in the countervailing duty investigations of cut flowers from Israel (51 FR 37938, October 27, 1986) and from the Netherlands (51 FR 37944, October 27, 1986).

On November 4, 1986, petitioner filed a request for an extension of the deadline date for the final determinations in the countervailing duty investigations to correspond with the date of the final determinations in the antidumping duty investigations.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the

administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation], . . . to the date of the final determination" in the antidumping duty investigation [19 U.S.C. 1671d(a)(1)(1)]. Pursuant to this provision, we granted an extension of the deadline date for the final determinations in the countervailing duty investigations of standard carnations from Chile and of cut flowers from Israel and the Netherlands to January 12, 1987, the deadline for the final determinations in the corresponding antidumping duty investigations (51 FR 43649, December 3, 1986).

On December 22, 1986, Chilean respondents requested that the Department extend the period for the final determination in the antidumping duty investigation to 84 days from publication of our preliminary affirmative antidumping duty determination, in accordance with section 735(a)(2)(A) of the Act.

Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of an affirmative preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement.

The Chilean respondents are qualified to make such a request since they account for a significant portion of the exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the date of the final antidumping duty determination is hereby extended. We intend to issue the final determination in the antidumping duty investigation of standard carnations from Chile not later than January 26, 1987.

Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), at petitioner's request, the Department postponed the deadline for the final countervailing duty determinations in the investigations of standard carnations from Chile and of certain fresh cut flowers from Israel and the Netherlands to coincide with the final determinations in the antidumping duty investigations. Therefore, in accordance with 19 U.S.C. 1671(a)(1), the final countervailing duty determinations on standard carnations from Chile and on certain fresh cut flowers from Israel and the Netherlands are also extended until not later than January 26, 1987.

The U.S. International Trade Commission is being advised of these postponements in accordance with section 735(d)and 705(d) of the Act.

This notice is published pursuant to section 735(d) and 705(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 9, 1987.

[FR Doc. 87-829 Filed 1-13-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Publication of annual list of foreign Government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1201 note).

Dated: January 7, 1987.

Gilbert B. Kaplan

Deputy Assistant Secretary, Import Administration.

Appendix

QUOTA CHEESE SUBSIDY PROGRAMS

[Amounts in cents per pounds]

Country and program(s)	Gross subsidy [1]	Net subsidy [2]
Belgium: European Community (EC) restitution payments	8.9	8.9
Canada: Export assistance on certain types of cheese	25.2	25.2
Denmark: EC restitution payments	9.8	9.8
Finland:		
Export subsidy	75.4	75.4
Indirect subsidies	17.1	17.1
Total	92.5	92.5
France: EC restitution payments	9.3	9.3
Greece: EC restitution payments	6.5	6.5
Ireland: EC restitution payments	9.2	9.2
Italy: EC restitution payments	37.1	37.1
Luxembourg: EC restitution payments	8.9	8.9
Netherlands: EC restitution payments	6.4	6.4
Norway:		
Indirect (milk) subsidy	16.5	16.5
Consumer subsidy	36.6	36.6
Total	53.1	53.1
Switzerland: Deficiency payments	89.0	89.0
U.K.: EC restitution payments	7.5	7.5
W. Germany: EC restitution payments	12.1	12.1

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 87-830 Filed 1-13-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Korea Drilling Company Ltd. From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On December 15, 1986, Korea Drilling Company Ltd. filed an appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A). The appeal is taken from an objection by the California Coastal Commission to the activities described in appellant's application for a permit under section 402 of the Clean Water Act for the discharge of drilling muds and cuttings from its Outer Continental Shelf oil and gas drilling vessel, DOO SUNG. The Commission objected to the EPA permit because of issues relating to foreign competition and drilling vessel safety.

The appellant requested a 60-day extension to file supporting information, which was granted. After this information is submitted for the record, public comments will be solicited on the issues raised by the appeal.

FOR ADDITIONAL INFORMATION CONTACT: L. Pittman, Office of General Counsel, National Oceanic and Atmospheric Administration, (202) 673-5200.

(Domestic Assistance Catalog No. 11.419 Coastal Zone Management Administration)

Dated: January 9, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87-802 Filed 1-13-87; 8:45 am]

BILLING CODE 3510-08-M

[Docket No. 31214-233]

Inspection and Certification; Fees and Charges

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 1987 inspection fees.

SUMMARY: NOAA announces a change in the established rates for voluntary Department of Commerce fishery product grading and certification services consistent with its intent to provide inspection services at the lowest appropriate cost. The change results from a pay raise of 3 percent for Federal employees effective January 1, 1987, and increases in other operating costs such as rent, communications, and utilities that were previously covered by the agency. The change represents an increase of 11.5 percent in the basic hourly rates.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard V. Cano, Program Manager, National Seafood Inspection Program, National Marine Fisheries Service, Washington, DC 20235, Phone 202-673-5374.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR 260.70 authorize the Secretary of Commerce to review and revise annually the rates for voluntary fishery produce inspection, grading, and certification services by publishing a notice of fee changes in the **Federal Register**. The revised hourly rates relect a 3.0 percent salary raise for federal employees, increases in other operating costs such as rent, communications, and utilities previously covered by the agency, the necessity of providing reserve capital (about 1.5 percent of estimated revenue) to absorb periodic imbalances in cost versus revenue due to the seasonal nature of the industry and the need to maintain adequate, trained inspectional staff to address the fluctuating industry needs. The bassic hourly rates are increased by 11.5 percent. Below is the schedule of fees effective Janaury 1, 1987. The fees outlined for the State of Alaska are for services provided by cross-licensed State of Alaska inspectors. Charges for services provided in Alaska by NMFS inspectors will be at the rates as specified, plus cost of living allowances.

(a) Type I—Official establishment and product inspection—contract basis:

	Per hour
Regular (except Alaska)	$26.95
Overtime (except Alaska)	40.45
Sunday and legal holidays (2 hrs. minimum (except Alaska))	53.90

(1) The contracting party will be charged at an hourly rate of $26.95 per hour for regular time; (2) $40.45 per hour for overtime in excess of 8 hours per shift per day; and (3) $53.90 per hour for Sunday and national legal holidays for services performed by inspectors at official establishment(s) operating under Federal inspection. In addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6:00 p.m. and before 6:00 a.m. The contracting party will be billed monthly for services rendered in accordance with contractual provisions at the rates prescribed in this section. Products designated in a contract will be inspected during processing at the hourly rate for regular time, plus overtime, when appropriate. (b) Type II—Lot inspection—Official and unofficially drawn samples:

	Per hour
Regular (except Alaska)	$37.75
Overtime (except Alaska)	56.65
Sunday and legal holidays (2 hrs. minimum) (except Alaska)	75.50
Minimum fee (except Alaska)	28.35

(1) For lot inspection services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday—$37.75 per hour. (2) For lot inspection services performed at times Monday through Friday other than 7:00 a.m. to 5:00 p.m., and on Saturdays (2 hrs. minimum)—$56.65 per hour. (3) Sunday and national legal holidays (2 hrs. minimum)—$75.50 per hour. (4) The minimum service fee to be charged and collected for inspection of any lot or lots of products requiring less than 1 hour will be $28.35.

(c) Type III—Miscellaneous inspection and consultative service.

When any inspection or related service such as, but not limited to, initial and final establishment surveys, appeal inspections, sanitation evaluation, Sanitatary Inspected Fish Establishment (SIFE) inspections, sampling product evaluation, and label and product specification review, requires charges to which the foregoing sections are clearly inapplicable, charges will be based on the rates set forth below:

	Per hour
Regular (except Alaska)	$33.70
Overtime (except Alaska)	50.55
Sunday and legal holidays (2 hrs. minimum) (except Alaska)	67.40
Minimum fee (except Alaska)	25.30

(1) For miscellaneous inspection and consultative services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday—$33.70 per hour. (2) For miscellaneous inspection and consultative services performed Monday through Friday other than 7:00 a.m. to 5:00 p.m., and on Saturdays (2 hrs. minimum)—$50.55 per

hour. (3) For miscellaneous inspection and consultative services performed on Sunday and national legal holidays (2 hrs. minimum)—$67.40 per hour. (4) The minimum service fee to be charged and collected for miscellaneous inspection and consultative services requiring less than 1 hour will be $25.30.

(d) The hourly rates for the State of Alaska as performed by cross-licensed State of Alaska inspectors are as follows. Charges for services provided in Alaska by NMFS inspectors will be at the rates stated previously, plus cost of living allowances. For Type I inspection, in addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6:00 p.m. and before 6:00 a.m.

STATE OF ALASKA

	Area		
	Aleutian chain (per hour)	South East and South Central Anchorage, Kenai, Juneau, Ketchikan (per hour)	Remainder of Alaska Kodiak, Bristol Bay Dillingham (per hour)
Type I:			
Regular time	$36.00	$29.60	$31.75
Overtime	49.70	40.95	43.90
Sunday and legal holidays	61.80	51.00	54.65
Type II:			
Regular time	45.70	38.10	40.25
Overtime	63.25	53.95	57.25
Sunday and legal holidays	82.55	69.60	74.05
Minimum	37.60	31.35	33.10
Type III:			
Regular time	40.10	33.10	35.30
Overtime	53.30	44.25	47.70
Sunday and legal holidays	68.65	57.00	61.65
Minimum Fee	35.80	29.40	31.60

(e) *Analytical services:* Applicants requesting specific analyses to be performed in a National Marine Fisheries Service laboratory will be charged at the prevailing rate. Analyses performed in a private laboratory will be charged at the current rate of that laboratory. Charges based on these fees will be in addition to any hourly rates charged for lot, miscellaneous, and consultative inspection service as well as to any hourly rates charged for inspection services provided under a contract at official establishments. A surcharge of 20 percent of the total charges for analytical services will be charged for administrative purposes.

Classification

This action is taken under the authority of 50 CFR 260.70 and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any information request as defined in the Paperwork Reduction Act.

(16 U.S.C. 742e and 7 U.S.C. 1622, 1624)

Dated: January 9, 1987.

Joseph W. Angelovic,

Deputy, Assistant Administrator for Science and Technology.

[FR Doc. 87-817 Filed 1-9-87; 4:27 pm]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

Atlantic Striped Bass Conservation Act Implementation

AGENCIES: National Marine Fisheries Service (NMFS), NOAA Commerce and U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of receipt of notification from the Atlantic States Marine Fisheries Commission, pursuant to the Atlantic Striped Bass Conservation Act, that two coastal States have not adopted and/or are not enforcing all regulatory measures necessary to fully implement the Interstate Fisheries Management Plan for the Striped Bass.

SUMMARY: The Departments of Commerce and the Interior jointly announce, through their respective agencies, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, that they have been notified in writing by the Atlantic States Marine Fisheries Commission of its determination that the State of New Jersey and the District of Columbia have not adopted and/or are not forcing all regulatory measures necessary to fully implement the Commission's Interstate Fisheries Management Plan for the Striped Bass.

FOR FURTHER INFORMATION CONTACT: Richard Roe, (202) 673-5263 or Gary Edwards, (202) 343-6394.

ADDRESS: Richard B. Roe, NOAA/NMFS, 1825 Connecticut Avenue, NW., Washington, DC 20235 or Gary Edwards, FWS, 18th and E. Streets, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Atlantic Striped Bass Conservation Act (the Act) (16 U.S.C. 1851 Note, as amended by P.L. 99-432) is intended to support and encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of Atlantic striped bass. Section 4(a)(1) of the Act requires the Atlantic States Marine Fisheries Commission (the Commission) to determine during December of fiscal year 1987 (December 1986) and of each year thereafter.

(A) Whether each coastal State has adopted all regulatory measures necessary to implement fully the Interstate Fisheries Management Plan for the Striped Bass (Plan), as amended, in its coastal waters; and

(B) Whether the enforcement of the Plan by each coastal State is satisfactory. Enforcement of the Plan by a coastal State shall not be considered satisfactory by the Commission if, in its view, the implementation of the Plan within its coastal waters is being, or will likely be, substantially and adversely affected.

Further, section 4(a)(2) requires the Commission to notify the Secretaries of the Departments of Commerce and the Interior immediately of each negative determination made under section 4(a)(1).

Section 4(b) of the Act specifies that after notification by the Commission that a coastal State has not taken the actions described in section 4(a)(1), the Secretaries shall determine jointly, within thirty days, whether that coastal State is in compliance. If the State is found not to be in compliance, the Secretaries shall declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and the coastal State in question.

On January 7, 1987, the Secretaries received a letter from the Executive Director, on behalf of the Commission, prepared pursuant to section 4(a)(2) of the Act. The letter reported that two States, New Jersey and the District of Columbia (the latter defined as a coastal State under section 3(3)(b) of the Act), do not currently have fishery regulations for striped bass that are in compliance with Objective 1 of Amendment 3 to the Plan. Objective 1 of Amendment 3 provides:

> That the states prevent directed fishing mortality on at least 95% of the 1982 year class of females, and females of all subsequent year classes of Chesapeake Bay stocks until 95% of the females of these year classes have an opportunity to reproduce at least once.

The Commission determined that the State of New Jersey is not in compliance

with the provisions of the Plan based on inadequate regulatory measures in place as of December 31, 1986. Also, the Commission determined that the District of Columbia is not in compliance with the provisions of the Plan based on the lack of adequate regulatory measures and the lack of satisfactory enforcement in place as of December 31, 1986.

Representatives of the Secretaries will review all available information and meet with representatives of the State of New Jersey, the District of Columbia, and the Commission to consider and review their comments. Results of the determination of compliance by the Secretaries will be published in the **Federal Register**. Should it be determined that one or both of these jurisdictions are not in compliance with the Plan, the **Federal Register** notice will also announce that a fishing moratorium will be declared thirty days from the date of the determination. A third **Federal Register** notice at the end of the thirty-day period would be issued to declare any moratorium. Any moratorium so declared would be terminated upon receipt by the Secretaries of Commerce and the Interior of notification from the Commission that the State(s) involved has taken appropriate remedial action.

Dated: January 9, 1987

William E. Evans,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service

[FR Doc. 87-819 Filed 1-13-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Silk Blends and Other Vegetable Fiber Textiles and Textile Products From the Republic of Korea

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 9, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4121. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On December 18, 1985, January 22, 1986, February 25, 1986 and April 24, 1986, notices were published in the **Federal Register** (50 FR 52356, 51 FR 3393, 51 FR 7102 and 51 FR 16092) which establishes import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

During recent negotiations on the Governments of the United States and the Republic of Korea established a new bilateral agreement for 1986 to include, among other things, silk blends and other vegetable fiber textile products. The new agreement establishes limits for Categories 300-320, 360-363, 369-O, 400-429, 464-469, 600-627, 665-669, and 670-O (Group I); 330-354, 359, 431-448, 459 and 630-654, 659 (Group II); 831-844 and 847-859 (Group III); 369-L, 670-L/870 (Group VI) and within the groups, individual limits for certain cotton, wool, man-made fiber, silk blends and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1986 and extends through December 31, 1986. The agreement also establishes individual restraint limits for Categories 845 and 846. The specific limits for Group III, Group VI and Categories 835, 836, 840; Categories 369-L, 670-L/870, 845 and 846 are prorated for the period which began on September 1, 1986 and extends through December 31, 1986.

In the letter below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption of cotton, wool, man-made fiber, silk blends and other vegetable fiber textiles and textile products in the foregoing categories of the designated limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers were published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754, November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 4 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington DC 20229.
January 8, 1987.

Dear Mr. Commissioner: This directive cancels and supersedes the directives of December 18, 1985, January 22, 1986, February 25, 1986 and April 24, 1986 and September 17, 1986, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1986 and extends through December 31, 1986.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Textile Agreement of November 21 and December 4, 1986 between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 or March 3, 1972, as amended, you are directed to prohibit, effective on January 9, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blends and vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the designated periods, in excess of the following restraint limits [1]:

Category	12-mo. restraint limit, Jan. 1-Dec. 31, 1986
Group I	
300-320, 360-363.	417,624,985 square yards equivalent.
369-0 [2], 400-429, 464-469, 600-627, 665-669 and 670-0 [3], as a group 300/301.	5,145,354 pounds.
310/318	3,818,125 square yards.
313	50,383,665 square yards.
314	2,692,226 square yards.
315	23,001,542 square yards.

[1] These limits have not been adjusted to account for any imports exported after December 31, 1985.

Category	12-mo. restraint limit, Jan. 1–Dec. 31, 1986
317	16,580,640 square yards.
319	8,070,440 square yards.
320	24,591,453 square yards.
410	4,567,529 square yards.
604	585,127 pounds.
605–C [4]	2,524,954 pounds.
605–0 [5]	717,500 pounds.
611	2,306,250 square yards.
612	94,860,871 square yards.
613	22,902,386 square yards.
614–0 [6]	12,082,188 square yards.
614–W [7]	8,990,165 square yards.
669–C [8]	1,893,715 pounds.
669–F [9]	680,590 pounds.
669–P [10]	3,769,118 pounds.
669–T [11]	5,194,747 pounds.
Group II	
330–354, 359, 431–448, 459, 630–654, 659 as a group.	676,073,808 square yards equivalent.
331	483,870 dozen pairs.
33/334	66,826 dozen.
335	68,237 dozen.
336	43,076 dozen.
337/637	65,000 dozen of which not more than 42,250 dozen shall be in Category 337 and not more than 42,250 dozen shall be in Category 637.
338/339	704,245 dozen.
340	207,303 dozen.
341	129,149 dozen.
342	72,775 dozen.
345	65,726 dozen.
347/348	309,035 dozen.
350	12,527 dozen.
351	110,143 dozen.
352	133,935 dozen.
353/354/653/654.	222,899 dozen.
359–H [12]	4,253,750 pounds.
433/434	17,112 dozen of which not more than 13,065 dozen shall be in Category 433 and not more than 6,700 dozen shall be in Category 434.
435	30,977 dozen.
436	13,113 dozen.
438	62,186 dozen.
440	211,262 dozen.
442	46,527 dozen.
443	26,838 dozen.
444	4,024 dozen.
445/446	51,686 dozen.
447	82,623 dozen.
448	31,176 dozen.
459–W [13]	195,228 pounds.
631	226,147 dozen pairs.
632	1,716,875 dozen pairs.
633/634/635	1,416,411 dozen of which not more than 178,914 dozen shall be in Category 633; not more than 824,191 dozen shall be in Category 634 and not more than 625,766 dozen shall be in Category 635.
636	230,454 dozen.
638/639	5,545,173 dozen.
640–D [14]	3,804,434 dozen.
640–0 [15]	2,536,289 dozen.
641	1,076,227 dozen.
642	83,765 dozen.
643	60,691 dozen.
644	86,151 dozen.
645/646	3,348,885 dozen.
647/648	1,164,777 dozen.
649	500,752 dozen.
659–C [16]	596,654 pounds.
659–H [17]	2,437,961 pounds.
659–S [18]	297,250 pounds.

[2] In Category 369, all TSUSA numbers except those listed in footnote 19.

[3] In Category 670, all TSUSA numbers except those listed in footnote 20.

[4] In Category 605, all TSUSA numbers 316.5500 and 316.5800.

[5] In Category 605, all other TSUSA numbers except 316.5500 and 316.5800.

[6] In Category 614, only TSUSA numbers except those in footnote 7.

[7] In Category 614, only TSUSA numbers 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338,1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568, and 338.1572.

[8] In Category 669, only TSUSA numbers 348.0065, 348.0075, 348.0565, and 348.0575.

[9] In Category 669, only TSUSA numbers 355.4520 and 355.4530.

[10] In Category 669, only TSUSA number 385.5300.

[11] In Category 669, only TSUSA numbers 386.1105 and 389.6210.

[12] In Category 359, only TSUSA numbers 702.0600 and 702.1200.

[13] In Category 459, only TSUSA numbers 702.7500 and 702.8000.

[14] In Category 640, only TSUSA numbers 381.3132, 381.3134, 381.9535, 381.9540, 381.9968, 381.8666, 381.3558, and 381.6972.

[15] In Category 640, all TSUSA numbers except those in footnote 14.

[16] In Category 659, only TSUSA numbers except those 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[17] In Category 659, only TSUSA numbers 703,0510, 703,0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703,1640 and 703.1650.

[18] In Category 659, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353,

Category	4-month restraint limit (Sept. 1–Dec. 31, 1986)
Group III	
831–844 and 847–859, as group.	7,173,833 square yards equivalent.
835	9,000 dozen.
836	24,667 doxen.
840	38,333 dozen.
Group VI	
369–L [19] 670–L/870[20], as a group.	19,433,333 square yard equivalent.
369–L	166,667 pounds.
670–L/870	10,666,666 pounds of which not more than 8,666,667 pounds shall be in TSUSA numbers 706.3415, 706.4130, and 706.4135.
845	769,375 dozen.
846	284,047 dozen.

[19] In Category 369, only TSUSA numbers 706.3210, and 706.3650 and 706.4111.

[20] In Category 670, only TSUSA numbers 706.3415, 706.4130, 706.4135.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–825 Filed 1–13–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:00 am to 5:00 pm on 20 February 1987 and from 8:00 am to 5:00 pm on 21 February 1987. The meeting will be held at the Monterey Sheraton, 350 Calle Principal, Monterey, California 93940. The purpose of the meeting is to

reveiw the Department of Defense's computer adaptive testing efforts, and plans for development of new forms of the Armed Services Vocational Aptitude Battery (Forms 18 and 19). Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A.R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than 31 January 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

January 8, 1987.

[FR Doc. 87-760 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 3, 1987; Tuesday, February 10, 1987; Tuesday, February 17, 1987; and Tuesday February 24, 1987; at 10:00 a.m. in Room 1E801, the Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-761 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee; Changes in Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 138. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 138 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 January 1987.

FOR FURTHER INFORMATION CONTACT: Per Diem, Travel and Transportation Allowance Committee, telephone (202) 325-9330, or autovon 221-9330.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 138 to the Heads of the Executive Departments and Establishments

Subject: Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 137 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$89
Anaktuvuk Pass	140
Anchorage	122
Atqasuk	215
Barrow	144
Bethel	124
Cold Bay	120
Coldfoot	122
College	105
Cordova	113
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	105
Elmendorf	122
Fairbanks	105
Ft. Richardson	122
Ft. Wainwright	105
Juneau	109

Locality	Maximum rate
Katmai National Park	148
Kenai	119
Ketchikan	113
King Salmon [3]	134
Kodiak	110
Kotzebue [3]	126
Murphy Dome [3]	105
Noatak	126
Nome	136
Noorvik	126
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	113
St. Paul Island [4]	115
Sand Point	103
Shemya AFB [3]	30
Shungank	126
Sitka-Mt. Edgecombe	113
Skagway	113
Spruce Cape	110
St. Mary's	100
Tanana	136
Valdez	136
Wainwright	165
Wrangell	113
Yakutat	110
All Other Localities [3]	91
American Samoa	81
Guam M.I.	93
Hawaii:	
Hawaii, Island of:	
Hilo	59
Other	84
Oahu	98
All Other Islands	84
Johnston Atoll [2]	23
Midway Islands [1]	13
Northern Mariana Islands: [4]	
Rota	76
Saipan	92
Tinian	68
All Other Islands	20
Puerto Rico:	
Bayamon:	
12-16—5-15	134
5-16—12-15	107
Carolina:	
12-16—5-15	134
5-16—12-15	107
Fajardo (Including Luquillo):	
12-16—5-15	134
5-16—12-15	107
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16—5-15	134
5-16—12-15	107
Roosevelt Roads:	
12-16—5-15	134
5-16—12-15	107
Sabana Seca:	
12-16—5-15	134
5-16—12-15	107
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	134
5-16—12-15	107
All Other Localities	107
Virgin Islands of U.S.:	
12-1—4-30	156
5-1—11-30	126
Wake Island [2]	20
All Other Localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, means and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, means and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] Effective 1 January 1987, per diem rates for the Commonwealth of the Northern Mariana Islands will be administered by the per diem, Travel and Transportation Allowances Committee and will appear in this Bulletin. For per diem rates prescribed for the Northern Mariana Islands prior to January 1987, see rates prescribed for the Trust Territory of the Pacific Islands in the U.S. Department of State Maximum Travel Per Diem Allowances for Foreign Areas, Per Diem Supplement, Section 925 of the Standardized Regulations (Government Civilians, Foreign Areas).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-762 Filed 1-13-87; 8:45 am]

BILLING CODE 3801-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number, if applicable; (3) abstract statement of need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Reinstatement of a Previously Approved Collection

United States Air Force AvFuels Invoice, AF Form 315.

Any individual, firm, domestic or foreign government function, or any other agency that makes into-plane fuel sales to USAF aircraft must use this form for accounts payable purposes.

State or local governments, businesses:

Responses	46,000
Burden Hours	57,500

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. John F. Lavin, HQ USAF/LEYSF, Washington, DC 20330, telephone number (202) 695-9798.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-763 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number, if applicable; (3) abstract statement of need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of

the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Reinstatement of a Previously Approved Collection

United States Air Force Invoice, AF Form 15.

Any individual, firm, domestic or foreign government function, or any other agency that sells aircraft components, supplies or services to an authorized Air Force representative, on an emergency basis, is required to provide billing and payment information on this form.

State or local governments, businesses:

Responses ..... 20,000.
Burden Hours ..... 25,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suit 1204, Arlington, VA 22202-4302, telephone number (202) 746/0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. John F. Lavin, HQ USAF/LEYSF, Washington, DC, 20330, telephone number (202) 695-9798.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-764 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Air Force Activities for Conversion to Contract

The Air Force recently determined that E-3 Mission Crew Simulator support and training development, Tinker AFB, OK, will be examined for conversion to contract.

For further information contact Mr. Ross Clark, HQ TAC/XPMP, Langley AFB, VA, telephone (804) 764-5174.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-780 Filed 1-13-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

United States Naval Academy

Candidate's Academic Interest and Current Studies Form and Personal Statement, NDW-USNA-GRB-1110/18

Information is used to predict a candidate's likelihood of a voluntary selection of majors. The form also provides updated self-reported information on courses in progress, writing ability, and indicates candidate's aptitude/motivation to pursue a naval career.

Individuals or households
Responses 10,000
Burden hours 10,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Nick S. Pantelides, Admissions Director, Department of the Navy, United States Naval Academy, Annapolis, Maryland 21402, telephone (301) 267-4336.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-765 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

United States Naval Academy

Candidate Personal Data Record, NDW-USNA-GRB-1110/12

Information is used to implement the provisions of Title 10 U.S.C. Changes 503 and 603. Information collected is necessary to evaluate each candidate's personal background in the admissions process.

Individuals or households
Responses 10,000
Burden hours 5,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3225, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Nick S. Pantelides, Admissions Director, Department of the Navy, United States Naval Academy, Annapolis, Maryland 21402, telephone (301) 267-4336.

January 8, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 87-766 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Request for Secondary School Transcript; NDW-USNA-GRB-1110/15

Information is used to evaluate a candidate's high school academic performance in the admissions process and also provides a profile of the school.

Individuals or households
Responses 10,000
Burden hours 3,333.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Nick S. Pantelides, Admissions Director, Department of the Navy, United States Naval Academy, Annapolis, Maryland 21402, telephone (301) 267-4336.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-767 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Strong-Campbell Interest Inventory, Form T325.

Information is used to predict the voluntary selection of majors and retention and to also predict a candidate's career motivation/retention.

Individuals or households
Responses 10,000
Burden hours 3,333.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Nick S. Pantelides, Admissions Director, Department of the Navy, United States Naval Academy, Annapolis, Maryland 21402, telephone (301) 267-4336.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-768 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

School Official's Evaluation of Candidate; NDW/USNA-GRB-1110/14.

Information is used to further evaluate a candidate's predicted academic-military performance.

Individuals or households
Responses 20,000
Burden hours 6,666.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Nick S. Pantelides, Admissions Director, Department of the Navy, United States Naval Academy, Annapolis, Maryland 21402, telephone (301) 267-4336.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-769 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to

provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Measuring and Scoring Physical Aptitude for the United States Naval Academy, NDW-USNA-GRB-11110/17.

Information is used to predict candidate's aptitude for the physical education program at the Academy (requirements are one less than plebe year minimums) and also to test coordination, physical strength, speed, agility and endurance.

Individuals or households
Responses 10,000
Burden hours 5,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Officer of Management and Budget, Desk Oficer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the informaton collection proposal may be obtained from Mr. Nick S. Pantelides, Admissions Director, Department of the Navy, United States Naval Academy, Annapolis, Maryland 21402, telephone (310) 267-4336.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 8, 1987.

[FR Doc. 87-770 Filed 1-13-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before February 13, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Mangement and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202)426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatment; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 9, 1987.

Carlos U. Rice,

Acting Director, Information Technolgoy Services.

Office of Postsecondary Education

Type of Review: Revision
Title: Guarantee Agency Request for Reimbursement for Claims Paid, Guarantee Agency Request for Reimbursement Under Agreement for Federal Reinsurance Guarantee Agency Report of Recoveries on Claims Paid Under Federal Reinsurance, Guarantee Agency Request for Reimbursement on Death and Disability
Agency Form Number: Ed 1189; 1189-1; 1189-2; and 1189-3
Frequency: Monthly
Affected Public: State or local governments; non-profit institutions
Reporting Burden: Responses: 2784; *Burden Hours:* 10,440
Recordkeeping Burden: Recordkeepers: 58; *Burden Hours:* 4.64

Abstract: The Guarantee Agency Request for Reimbursement for Claims Paid is a summary of claim payments made to lenders that the Guarantee Agency submits to the Department of Education (ED) for reimbursement on claims. The Guarantee Agency Request for Reimbursement Under Agreement for Federal Reinsurance is used by the Guarantee Agency to request reimbursement on default claims, death and disability claims made prior to December 15, 1968 and for all bankruptcy claims. The Guarantee Agency Report of Recoveries on Claims Paid Under Federal Reinsurance is used by the Guarantee Agency to report recoveries owed to the Department of Education. The Guarantee Agency Request for Reimbursement on Death and Disability provides a tool whereby the Guarantee Agency can request reimbursement on death and Disability claims made on or after December 15, 1968.

Office of Educational Research and Improvement

Type of Review: New
Title: National Assessment of Educational Progress (NAEP): Field Tests for 1988
Agency Form Number: Ed 2371-19FT and 2371-19
Frequency: Non-recurring
Affected Public: Individuals or households; state or local governments
Reporting Burden: Responses: 11,844; *Burden Hours:* 6,633
Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:*

Abstract: Congress mandated the collection of National Assessment survey data. Development of objectives, background questions, exercises and field-testing of items for the 1987-88 assessments in writing, reading, citizenship, and U.S. history, will occur during the 1987 school year. The results from this field test will be used to select exercises for the 1987-88 National Assessment of Educational Progress survey.

[FR Doc. 87-823 Filed 1-13-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87-208-000 et al.]

Arkansas Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

January 8, 1987.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Co.

[Docket No. ER87-208-000]

Take notice that on December 31, 1986, Arkansas Power & Light Company (AP&L) tendered for filing a Letter Agreement dated December 23, 1986, between AP&L and the Cajun Electric Power Cooperative, Inc. (CAJUN) for transmission service through the system of AP&L to the system of Louisiana Power & Light Company to permit a sale by the Southwestern Power Administration to CAJUN of 25 MW of capacity and associated energy. AP&L requests an effective date of January 1, 1987 for the Agreement.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Co.

[Docket No. ER87-202-000]

Take notice that Arkansas Power & Light Company (AP&L) filed on December 31, 1986 a proposed First Amendment to Peaking Power Agreement amending the Peaking Power Agreement dated September 10, 1985 which is a supplement to the Power Coordination, Interchange & Transmission Agreement between City of West Memphis, Arkansas and Arkansas Power & Light Company, dated June 25, 1982. The Amendment extends the term of the Peaking Power Agreement and allows the amount of Peaking Capacity and associated energy to vary for each annual period beginning October 1, 1991 and each year thereafter dependent on the City's peak demand in the previous peak period May through September.

The proposed Amended Agreement will effect a savings of approximately $3.2 million in the projected twelve month period ending September 30, 1992.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Green Mountain Power Corp.

[Docket No. ER87-207-000]

Take notice that Green Mountain Power Corporation ("GMP") on December 31, 1986, tendered for filing as a rate schedule to be effective January 1, 1987, an executed agreement dated as of January 1, 1987, between GMP and Bozrah Light and Power Company ("Bozrah"). The proposed rate schedule provides for the sale to Bozrah of all of its electicity requirements by GMP through at least October 31, 1996.

Copies of the filing were served on Bozrah, the Vermont Public Service Board and the Vermont Department of Public Service. GMP has requested waiver of the normal notice requirements.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Co.

[Docket No. ER87-210-000]

Take notice that on January 2, 1987, the Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated December 22, 1986, with the City of Larned, Kansas for wholesale service to that community. KPL states that this contract permits the City of Larned to receive service under rate schedule WTU-12/83 designated Supplement No. 8 to R.S. FERC No. 191. The proposed effective date is January 1, 1987. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Larned and the State Corporation Commission.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this document.

5. New England Power Co.

[Docket No. ER86-711-000]

Take notice that on December 30, 1986, New England Power Company (NEP) tendered for filing an amendment to its initial filing in the above docket, in order to amplify contractural meanings and intent.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER87-206-000]

Take notice that on December 31, 1986, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing revised Exhibits VIII and IX to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy Among Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) and Lake Superior District Power Company.

Exhibit VIII sets forth the specifications of average monthly coincident peak demands for calendar year 1987 for each of the Companies. A statement of the impacts of these coincident peak demands on each Company have been filed.

These coincident peak demands are determined in substantially the same fashion as the coincident peak demands for calendar year 1985 which were determined in FERC Docket ER84-690-000.

Exhibit IX sets forth a specification of depreciation rates certified by the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission for NSP (Minnesota) and NSP (Wisconsin).

The Companies request an effective date of January 1, 1987, for the exhibits. Copies of the filing letter and revised Exhibits VIII and IX have been served upon the wholesale customers of the three affiliates. Copies of the filing have been mailed to the state commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Oklahoma Gas and Electric Co.

[Docket No. ER87-158-000]

Take notice that on December 12, 1986, Oklahoma Gas and Electric Company (OG&E) tendered for filing a new Rate Schedule, Trade Electricity for Gas Rider (TEGR), applicable to certain points of delivery for rural electric cooperatives and municipalities to whom the Company supplies electric services under the WC-1 or WM-1 Rate Schedule that is a part of the Oklahoma Gas and Electric Company FERC Electric Tariff, 1st Revised volume No. 1.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Power & Light Co.

[Docket No. EL87-8-000]

Take notice that on December 24, 1986, Pacific Power & Light Company (PP&L) filed a request for a declaratory order finding that PP&L may require Idaho Power Company to deliver power of PP&L to Sierra Pacific Power Company at the Midpoint substation of Idaho Power Company under a Transmission Services Agreement between PP&L and Idaho Power Company. PP&L originally made its request in a motion to intervene in

Docket No. ER87-107-000. This docket number has been assigned to the filing by Idaho Power Company of the Transmission Services Agreement. Because the Commission ordinarily treats requests for declaratory orders as separate dockets, PP&L's request has been redesignated as Docket No. EL87-8-000 and this separate notice of the filing is being issued.

PP&L states that is has served copies of the motion in which it makes its request for a declaratory order upon each person designated on the service list in Docket No. ER87-107-000.

Comment date: January 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Co.

[Docket No. ER87-200-000]

Take notice that Portland General Electric Company (PGE) on December 30, 1986 tendered for filing a Sales Agreement with the City of Santa Clara for the sale during a fourteen-month period beginning on August 1, 1986, of up to 408,960 MWh of firm energy surplus deliverable at rates not in excess of 40 MW per hour.

The contracts rates for energy to be sold are based upon PGE's incremental cost production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of August 1, 1986 and therefore requests a waiver of the Commission's notice requirements.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Co.

[Docket No. ER87-201-000]

Take notice that Portland General Electric Company (PGE) on December 30, 1986 tendered for filing a Sales Agreement with the State of California Department of Water Resources for the sale during a 12-month period beginning on March 1, 1986 of up to 188,800 MWh of firm energy surplus deliverable at rates not in excess of 50 MW per hour.

The contract rate, 21.5 mills per kWh, for energy to be sold is based upon PGE's incremental cost production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the propsed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of March 1, 1986 and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon the State of California Department of Water Resources and the Oregon Public Utility Commissioner.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Refuse Energy Systems Co.

[Docket No. ER87-203-000]

Take notice that on December 31, 1986, Refuse Energy Systems Company ("Saugus Resco") tendered for filing (1) a proposed rate schedule change (designated Saugus Resco Rate Schedule FERC No. 2) consisting of an Amended and Restated Agreement (the "Amended Agreement"), dated as of January 1, 1986, to govern sales of electric power by Saugus Resco to New England Power Company ("NEP") from a biomass fueled small power production facility located in Saugus, Massachusetts (the "Facility") and (2) a petition for waiver of the "Commission's regulations regarding the submission of cost-of-service data and the submission of rate change schedules not less than 60 days prior to the date on which the proposed change is to become effective. The proposed changes would increase revenues from jurisdictional sales by $9,452,046 based on the 12 month period ending December 31, 1986. The rate schedule change provides for a levelized rate, a portion of which escalates with changes in the Consumer Price Index, that is projected to yield a rate over the term of the Amended agreement that will not be in excess of NEP's avoided cost.

The principal reason for the proposed change is that Saugus Resco has agreed to provide NEP with a firmer commitment of capacity from the Facility and to permit the Facility to be dispatched (with certain limitations) by the New England Power Pool, and NEP has agreed to compensate Saugus Resco for such agreement by the payment of a levelized rate.

Copies of the rate change filing have been served upon NEP.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. Union Electric Co.

[Docket No. ER87-204-000]

Take notice that on December 31, 1986, Union Electric Company (UE) tendered for filing an Interchange Agreement dated November 14, 1986, between UE and Iowa Power & Light Company.

The Interchange Agreement supersedes in its entirety an existing agreement and among other things, establishes the rights and obligations of the parties, the points of interconnections, the types of power and energy to be exchanged and the rates therefor.

UE requests that the filing be permitted to become effective December 1, 1986.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this document.

13. UNITIL Power Corp.

[Docket No. ER87-209-000]

Take notice that on December 31, 1986, UNITIL Power Corp. ("UNITIL Power") tendered for filing an initial rate schedule for transmission service for Public Service Company of New Hampshire ("PSNH"). Service under an interim agreement began October 1, 1986, and the parties have agreed that the rates finally determined to be just and reasonable in this docket shall be made retroactive to that date.

UNITIL Power requests that the Commission waive its standard notice period and allow the Rate Schedule to become effective on December 31, 1986.

UNITIL Power states that a copy of this rate schedule has been mailed to PSNH at Concord, New Hampshire, and is being filed with the New Hampshire Public Utilities Commission.

UNITIL Power further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Co.

[Docket No. ER87-205-000]

Take notice that Wisconsin Electric Power Company on December 31, 1987, tendered for filing an executed Supplement No. 11 to the Service Agreement for Transmission Service between the Company and Wisconsin Public Power Inc. System (WPPI). The Supplement limits the provision of firm transmission service currently offered under Supplement No. 9 to weekdays only, excluding six national holidays. Because of this change, billings for transmission service will decrease by

approximately $19,700, according to the Company. Supplement No. 11 will supersede Supplement No. 9.

The Company also requests cancellation of Supplement No. 10. According to the Company, the specification of contract demand is now inapplicable since the Commission approved a Partial Settlement Agreement in Docket Nos. ER85-785-009 *et al.*

Wisconsin Electric requests waiver of the Commission's sixty-day notice requirement in order to allow an effective date of January 1, 1987.

Copies of the filing have been served on WPPI, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

15. Oklahoma Gas and Electric Co.

[Docket No. ER87-158-000]

Take notice that on December 31, 1986, Oklahoma Gas and Electric Company supplemented its filing made herein on December 12, 1986 by requesting a waiver of a portion of § 35.14 of the Commission's regulations so as to permit implementation of the Company's Trade Electricity for Gas Rider (TEGR). Under TEGR, a qualifying customer delivers its own natural gas to ENOGEX Inc.'s pipeline system in exchange for kilowatt-hours that will be generated by the Company. The waiver would permit the Company to exclude from the Fuel Cost Adjustment provision both the gas purchased by the customer and the related kilowatt-hours.

Copies of this filing have been served on Arkansas Valley Electric Cooperative, KAMO Electric Cooperative, each wholesale municipality to whom the Company supplies electric service, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: January 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-756 Filed 1-13-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3142-2]

National Drinking Water Advisory Council; Request for Nomination of Members

The Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide advice, consultation and recommendations to the Agency on the activities, functions and policies relating to the implementation of the Safe Drinking Water Act as amended, which became effective December 16, 1974. The Charter for this Advisory Committee is reproduced below.

Any interested person or organization may nominate qualified persons for membership. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should include a resume of the nominee's background, experience and qualifications.

This request for nominations does not imply any commitment by the Agency as to the procedure to be followed in making selections.

Persons selected for membership will receive per diem compensation for travel and nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Executive Secretary, (202) 382-5533, National Drinking Water Advisory Council, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, no later than January 30, 1987. The Agency will not formally acknowledge or respond to nominations.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

Dated: December 24, 1986.

National Drinking Water Advisory Council

1. Purpose

This Charter is reissued for the National Drinking Water Advisory Council in accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. (App. I) 9(c).

2. Authority

The Council was created on December 16, 1974, under the Safe Drinking Water Act of 1974, Pub. L. 93-523, 42 U.S.C. 300j-5 and the charter was renewed on December 23, 1976; December 1, 1978; November 7, 1980; November 29, 1982; and December 7, 1984.

3. Objective and Scope of Activity

The Council advises, consults with, and makes recommendations on a continuing basis to the Administrator, through the Assistant Administrator for Water, on matters relating to activities, functions, and policies of the Agency under the Safe Drinking Water Act.

4. Functions

The Council provides practical and independent advice to the Agency on matters and policies relating to drinking water quality and hygiene, and maintains an awareness of developing issues and problems in the drinking water area. It reviews and advises the Administrator on regulations and guidelines that are required by the Safe Drinking Water Act; makes recommendations concerning necessary special studies and research; recommends policies with respect to the promulgation of drinking water standards; assists in identifying emerging environmental or health problems related to potentially hazardous constituents in drinking water; and proposes actions to encourage cooperation and communication between the Agency and other governmental agencies, interested groups, the general public, and technical associations and organizations on drinking water quality.

5. Composition and Meetings

The Council consists of fifteen members including a Chairperson, appointed by the Deputy Administrator after consultation with the Secretary, Department of Health and Human Services. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water representatives of private organizations or groups

demonstrating an active interest in the field of water hygiene and public water supply. Except as provided in section 1446 of the Safe Drinking Water Act, each member of the Council will hold office for a term of three years and will be eligible for reappointment. The Council is authorized to form Subcommittees to consider specific matters and report back to the full Council. Meetings will be held as necessary and convened by the Assistant Administrator for Water. A fill-time salaried officer or employee of EPA will be designated as the Executive Secretary. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the designated Agency official. The Designated Federal Official will be present at all meetings and is authorized to adjourn any meeting whenever it is determined to be in the public interest. The estimated annual operating cost of the Council is approximately $60,000, which includes .75 work-year of staff support. The Office of Water will provide the necessary staff and support of the Council.

6. Duration

As provided in the Safe Drinking Water Act, "section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council." However, the Charter is subject to the renewal process upon the expiration of each successive two-year period following the date of enactment of the Act establishing this Council.

7. Supersession

The former National Drinking Water Advisory Council charter signed on December 7, 1984, is hereby superseded.

Approval Date: December 4, 1986.

A. James Barnes,

Deputy Administrator.

[FR Doc. 87-790 Filed 1-13-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; Bostrum-Warren, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2647
Name: Bostrum-Warren, Inc.
Address: 11,222 LaCienega Blvd., Inglewood, CA 90304
Date Revoked: November 26, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2444
Name: All-Freight Packers, Inc. dba All-Freight Packers & Forwarders
Address: 1441 N. Red Gum St., Anaheim, CA 92806
Date Revoked: December 6, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2587
Name: M.I.T. Shipping Incorporated
Address: 22706 Aspan St., #307, Lake Forest, CA 92630
Date Revoked: December 17, 1986
Reason: Failed to maintain a valid surety bond

License Number: 1494
Name: Jetero International Services, Inc.
Address: P.O. Box 60612 AMF, Houston, TX 77205
Date Revoked: December 18, 1986
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 87-818 Field 1-13-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Huntington Bancshares, Inc., et al.; Applications To Engage de Novo In Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanie by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless othewise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1987.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares, Incorporated,* Columbus, Ohio; to engage *de novo* through its subsidiary, The Huntington Company, Columbus, Ohio, in providing investment or financial advice pursuant to § 225.25(b)(4); and underwriting and dealing in government obligations or money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cole-Taylor Financial Group, Inc.,* Northbrook, Illinois; to engage *de novo* through its subsidiary, Cole-Taylor Trust Company, Northbrook, Illinois, in trust company functions pursuant to § 225.25(b)(3); real estate appraising §225.25(b)(13); and tax planning and preparation pursuant to § 225.25(b)(21) of the Board's Regulation Y. Comments on this application must be received by January 30, 1987.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 40 South Akard Street, Dallas, Texas, 75222:

1. *Texas Capital Bancshares, Inc.:* Houston, Texas to engage *de novo* through its subsidiary, Texas Capital Services, Inc., Houston, Texas, in the leasing of personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-736 Filed 1-13-87; 8:45 am]

BILLING CODE 6210-01-M

Pacific Bancshares N.V., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection a the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Pacific Bancshares N.V.*, Curacao, Netherland Antilles; to become a bank holding company by acquiring 49.8 percent of the voting shares of Pacific National Bank, Miami, Florida.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to acquire 90.5 percent of the voting shares of Bank of Polver, Polver, Wisconsin. Comments on this application must be received by January 27, 1987.

Board of Governors of the Federal Reserve System, January 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-737 Filed 1-13-87; 8:45 am]

BILLING CODE 6210-01-M

William H. Triplett, Jr.; Acquisition of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 29, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *William H. Triplett, Jr.*, Lewisville, Arkansas; to acquire 42.75 percent of the voting shares of Peoples Bank and Loan Company, Lewisville, Arkansas.

Board of Governors of the Federal Reserve System, January 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-738 Filed 1-13-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), 48 FR 46434, 46437–46438, 46441 of 12 October 1983, is amended to reflect a reorganization within the Office of the Associate Administrator for Operations (AAO). The reorganization consolidates HCFA's Medicare contractor evaluation responsibilities and the related data reporting process in the Bureau of Program Operations (BPO) in AAO. In addition, the Medicaid financial management and systems functions are being consolidated in the Bureau of Quality Control (BQC), also in AAO. These changes are being made to improve HCFA's management and communication capabilities, to increase HCFA's ability to achieve improvements in the Medicaid financial oversight areas, and to place more direct focus on the Medicare and Medicaid programs within AAO.

The specific amendments to Part F are as follows:

- Section FP. 20. A, Bureau of Program Operations (FPA), is deleted in its entirety and replaced by an updated functional statement to read as follows:

A. Bureau of Program Operations (FPA)

Provides direction and technical guidance for the nationwide administration of HCFA's health care financing programs. Develops negotiates, executes, and manages contracts with Medicare contractors. Manages the Medicare financial management system and national budgets for Medicare contractors. Establishes national policies and procedures for the procurement of claims processing and related services from the private sector. Defines the relative responsibilities of all parties in health care financing operations and designs the operational systems which link these parties. Directs the establishment of standards of performance from contractors. Compiles operational and performance data for recurring and special reports to reflect status and trends in program operations effectiveness. Prepares recommendations regarding terminations, awards, penalties, non-renewals, or other appropriate contract actions. Establishes national policy and procedures for the recovery of overpayments. Directs the processing of Part A beneficiary appeals and beneficiary overpayments.

- Section FP. 20. B, Bureau of Quality Control (FPC), is deleted in its entirety and replaced by an updated functional statement to read as follows:

B. Bureau of Quality Control (FPC)

Operates statistically based quality control programs and conducts problem-focused assessments in the areas of claims payment, institutional reimbursement, eligibility, third-party liability, and utilization control, and develops similar additional quality control programs which measure the financial integrity of Medicare and Medicaid. Following coordination with pertinent HCFA components, notifies carriers, fiscal intermediaries, and State agencies of findings resulting from quality control programs. Makes recommendations to the Associate Administrator for Operations regarding financial penalties authorized and determined appropriate under regulations. Assists State Medicaid fiscal agents and Medicare contractors in improving the management of Federally required quality control programs. Plans and oversees Medicaid

financial management systems and national budgets for States. Develops requirements, standards, procedures, guidelines, and methodologies pertaining to the review and evaluation of State agencies' automated systems. Develops, operates, and manages a program for the performance evaluation of Medicaid State agencies and fiscal agents. Identifies significant trends and priority problems through comprehensive analyses of program operations and performance and evaluates findings surfaced through various assessment programs. Develops and conducts comprehensive analyses and studies of selected areas of policy and operations to evaluate the appropriateness, cost effectiveness, or other impact resulting from the implementation of law, regulations, policies, or operational procedures and systems. Develops recommendations for specific policy or operational improvements based on assessment findings. Coordinates, monitors, and evaluates all corrective action initiatives resulting from program assessment findings. Develops program-wide policies, regulations, procedures, guidelines, and studies dealing with program effectiveness, oversight, and improvement.

Dated: January 7, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-843 Filed 1-13-87; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-07-4322-02]

Arizona; Safford District Advisory Council and Grazing Advisory Board; Joint Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that meetings of the Safford District Advisory Council and Safford District Grazing Advisory Board, (originally scheduled for December 15, 1986, but cancelled due to inclement weather), have been rescheduled for February 13, 1987. As per the previous notice, a field tour of the Lazy B Ranch to observe various grazing management systems will depart from the Safford District Office, 425 E. 4th Street, Safford, AZ at 10:00 a.m.

SUPPLEMENTARY INFORMATION: The information in the original notice, published in the **Federal Register**, Vol. 51, No. 215, November 6, 1986, remains the same.

Dated: January 6, 1987.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 87-741 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-32-M

[NM-040-07-4212-11; NM 63440-OK]

Recreation and Public Purposes Classification Haskell County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP classification.

SUMMARY: The following described lands have been examined and are hereby classified as suitable for sale under the Recreation and Public Purposes (R&PP) Act of June 14, 1926, (44 Stat. 741; 43 U.S.C. 869), as amended, and the regulations thereunder Title 43 Code of Federal Regulations (CFR) Parts 2740 and 2912:

Haskell County, (HS)

Parcels	Legal description	Acres
	T.8 N., R. 22 E., I.M.	
8	Sec. 23: Townsite Addition No. 3, Lots 1 and 2.	79.55
9	Sec. 24: W½SW¼	80.00
10	Sec. 24: E½SW¼	80.00
11	Sec. 24: W½SE¼ and SE¼SE¼	120.00

Containing 359.55 acres

The Haskell County Industrial Authority (HCIA) propose to use the identified lands for environmental education, agricultural training, and recreation. The proposed use of the lands are in the public interest and are consistent with the Bureau's planning for the lands involved in this action.

Comments: For a period of 45 days after the date of publication of this Notice in the **Federal Register**, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, 9522-H East 47th Place, Tulsa, Oklahoma, 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, telephone (405) 231-5491.

Dated: January 2, 1987.

Jim Sims,

District Manager.

[FR Doc. 87-740 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-FB-M

[WY-930-07-4220-11; W-059320, W-068665, W-094183, W-0150196, W-0321051, W-28577, W-34584]

Correction of Proposed Continuation of Forest Service Withdrawals, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will correct the proposed continuation of Forest Service withdrawals published in Vol. 50 FR, No. 138, Page 29278, July 18, 1985. This modification will correct the notice to indicate that 97.91 acres of land identified in the legal description have been closed to surface entry as well as to mining location. The lands will continue to be closed to mining location, however, a change in the segregative effect of the withdrawals is proposed to allow the lands to be opened to such forms of surface entry as are appropriate to national forest lands.

DATE: Comments should be received by April 14, 1987.

ADDRESS: Comments should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, 307-772-2072.

The above referenced notice is corrected to show that the following lands have been closed to surface entry as well as to the operation of the mining laws. The segregative effects of the withdrawals are proposed to be modified to allow the opening of 97.91 acres to such forms of surface entry as are appropriate to national forest lands.

Sixth Principal Meridian

T. 28 N., R. 73 W.,
Sec. 8, S½SW¼SE¼.
T. 13 N., R. 80 W.,
Sec. 6, E½ of lot 5, W½SE¼NW¼.
T. 14 N., R. 80 W.,
Sec. 31, SE¼SE¼SW¼, NE¼SW¼SE¼, W½SE¼SW¼SE¼, W½NE¼SE¼SE¼, NW¼SE¼SE¼.

The areas described aggregate 97.91 acres in Albany, Carbon and Converse Counties.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed continuation of the withdrawals, may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the exising and potential

demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

F. William Eikenberry,

Associate State Director.

[FR Doc. 87-743 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-22-M

[OK NM 19955]

Proposed Classification for State Indemnity Selections; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed land classification.

SUMMARY: The Commissioners of the Land Office of the State of Oklahoma have filed a petition for classification and application to acquire public lands, under the provisions of the Act of June 16, 1906 [34 Stat. 267]. The lands included in the proposed classification decision are located in Texas and Oklahoma Counties, Oklahoma, and are described as follows:

Texas County, (TX)

Tract	Legal description	Acres
TX-1	T 3 N., R. 16 E., CM.	40.00
	Sec. 24, SW¼NFW¼.	
TX-2	T 6 N., R. 16 E., CM.	30.35
	Sec. 10, Lot 2	

Oklahoma County, (OK)

Tract	Legal description	Acres
OK-7	T 13 N., R. 2 W., IM.	1.20
	Sec. 35, Lot 1	

The tracts described contain 71.55 acres.

The Bureau of Land Management will examine these lands for evidence of prior valid rights or other statutory constraints that would bar transfer. This proposed classification is pursuant to Title 43 Code of Federal Regulations (CFR) Subpart 2400.

Information concerning these lands and the proposed transfer to the State of Oklahoma may be obtained from District Manager, Bureau of Land Management, Tulsa District Office, 9522-H East 47th Place, Tulsa, OK 74145.

The transfer of the lands to the State would be subject to all valid existing rights, and all minerals would be retained by the United States.

For a period of 60 days from the date of publication of this Notice in the **Federal Register,** all persons who wish to submit comments suggestions, or objections in connection with the proposed classification, may present their views in writing to the State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504-1449.

Any adverse comments will be evaluated by the State Director who will issue a notice of determination to proceed with, modify, or cancel the action. In the absence of any action by the State Director, this classification action will become the final determination of the Department of the Interior.

As provided by Title 43 Code of Federal Regulations (CFR) Subpart 2450, § 2450.4(c), pubic hearing may be scheduled by the State Director if he determines that sufficient public interest exists to warrant the time and expense of a hearing.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, telephone (405) 231-5491.

Jim Sim,

District Manager.

[FR Doc. 87-742 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-FB-M

[UT-050-07-4322-14]

Grazing Advisory Board Meeting and Tour; Richfield District, Utah

AGENCY: Bureau of Land Management, Richfield, Utah.

ACTION: Grazing Advisory Board Meeting.

SUMMARY: The Richfield District Grazing Advisory Board will hold a meeting on February 26, 1987. A field tour is tentatively set for 8:00 a.m., February 27, 1987. The meeting will start at 9:00 a.m. in the BLM District Office, 150 East 900 North, Richfield, Utah.

The agenda for the meeting will include:

1. The locoweed research program funding proposal.
2. Review of FY 87 weed program.
3. Review of accomplishments of FY 86 fire rehabilitation program and plans for FY 87.
4. Status of statewide board meeting.
5. FY 87 Range Management Budget.
6. Update on the Henry Mountain CRMP.
7. Proposed change in livestock class for the Burr Point and Hanksville allotments.
8. Grazing decisions for Cave Flat and South Caineville Mesa.
9. Sevier River's project maintenance agreement.

The field tour will be held to review with range rehabilitaton work done in the San Ledge area. The tour will depend upon the weather.

The meeting and tour are open to the public. Interested persons may make oral statements to the Board between 1:00 p.m. and 2:00 p.m. on February 26, 1987, or file written comments for the Board's consideration. Records of the meeting will be available in the Richfield District Office for public inspection or copying within 30 days after the meeting.

For further information, contact: Bert Hart, Public Affairs Specialists, at the above address or call (801) 896-8221.

Donald L. Pendleton,

District Manager.

January 6, 1987.

[FR Doc. 87-775 filed 1-13-87; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-040-07-4111-09]

Bridger-Teton National Forest, Wyoming

AGENCY: Bureau of Land Management (BLM) and the Forest Service (FS), U.S. Department of Agriculture.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: An EIS on the construction, drilling, operation, and maintenance of an 11,050-foot exploratory oil well proposed by Amoco Production Company on the Jackson Ranger District, Bridger-Teton National Forest, will be jointly prepared. The drilling proposal, known as the Sohare Creek Unit Exploratory Oil Well, is located in the headwaters of a fork of Sohare Creek; a tributary of the Gros Ventre River, Teton County, Wyoming. BLM will be the lead agency in the joint effort to prepare the EIS. This notice describes the prior environmental review that has occurred; the geographic area affected; the proposed action and alternatives to be analyzed; the list of issues and concerns; the scoping process; and the location of offices that have information for public review, both during and at the completion of the process.

ADDRESSES: To obtain additional information, raise other issues, or submit written comments, write or visit either of the following BLM or FS Offices:

BLM, Rock Springs District Office, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869

FS, Forest Supervisor Office, 340 North Cache, P.O. Box 1888, Jackson, Wyoming 83001.

FOR FURTHER INFORMATION CONTACT: Bill McMahan, Project Leader, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350. Al Reuter, Project Leader, Forest Service, Bridger-Teton National Forest, P.O. Box 1888, Jackson, Wyoming 83001, (307) 733-4755.

SUPPLEMENTARY INFORMATION: Prior environmental review: Amoco Production Company submitted an application for permit to drill (APD) on November 12, 1985, to the Bureau of Land Management for the Sohare Creek Unit Exploratory Well. The purpose of the proposed action is to drill an exploratory oil well on lands within the Sohare Creek Unit. The need for this action is to allow Amoco to determine if hydrocarbons are present within the Amoco-Sohare Unit. If hydrocarbons are encountered, production potential would be evaluated. The Sohare Creek Unit is located approximately 45 miles northeast of Jackson, Wyoming.

An environmental assessment (EA) documenting the analysis and evaluation of the Amoco proposal was completed in November 1986. Copies are available for public review at the Forest Supervisor's Office and Jackson Ranger District Office in Jackson, Wyoming; the Buffalo Ranger District Office, Moran, Wyoming; and the Bureau of Land Management District Office, Rock Springs, Wyoming.

Based upon the evaluation of the potential adverse environmental effects and proposed mitigation measures documented in the Sohare EA, the FS and BLM concluded that this proposal may significantly affect the human environment. Therefore, an EIS is required to ensure that all relevant factors are available for consideration in making the final decision on either moving forward with the proposal, requiring mitigation, or deny the action at this time.

Proposed Action and Alternative

Alternative A—Kettle Creek (Proposed Action)

The drill site is located at the headwaters of a fork of Sohare Creek in the SW½SW¼ of SEction 35, T. 43 N., R. 112 W. Access to Alternative A would be the existing Flagstaff and Leidy Creek Roads from U.S. Highway 287. New construction would begin where the existing road on the South Fork of Spread Creek intersects the reclaimed roadway in Kettle Creek. The new road proposal would follow the alignment previously used to access the abandoned Exxon drill site, to a point on a south drainage of Kettle Creek. From there, the proposed access would proceed south over the hydrographic divide between Kettle Creek and Sohare Creek to the proposed drill site. Total length of new road construction would be about 3.4 miles with approximately 30 acres of disturbance. A resident campsite to house drilling-related personnel on location would be designed to hold a maximum of 30 people and would be located adjacent to the drill site. Total disturbed area, including the drill site and campsite, is estimated at 6 acres.

Alternative B—Sohare Creek

Alternative B would utilize the drill site and campsite described under Alternative A. Access to the Alternative B drill site and campsite would be provided by the existing U.S. Highway 89-191 north from Jackson, then east on the Gros Ventre Road to the Gros Ventre Junction with Cottonwood Creek Road, and north on Cottonwood Creek. New road construction would begin at the end of the Cottonwood Creek Road near the junction of Sohare Creek and Cottonwood Creek and would proceed northwest into the Sohare Creek drainage. Total length of new access road construction is about 5 miles with approximately 48 acres of disturbance. Heavy reconstruction of 7.2 miles of the Cottonwood Creek Road would be required from near the Goose Wing Ranch to the road end. About 15 miles of light-to-heavy maintenance of the graveled segment of the Gros Ventre Road would also be required. A bridge over the Gros Ventre River would require rework to support heavy drilling traffic.

Alternative C—Sohare Creek Modified

Alternative C would utilize the drill site and campsite described under Alternative A. Access to Alternative C would be as described under Alternative B, but modified. New construction would begin at the end of the Cottonwood Creek Road. The route would parallel Sohare Creek to the drill site rather than routing the road out of the drainage, up a series of switchbacks, and along steep, timbered slopes. The total length of new construction would be reduced by approximately 2 miles or 19 acres as compared to Alternative B.

Alternative D—Helicopter Mobilization and Support

Alternative D would utilize the drill site and campsite described under Alternative A. Access would be restricted to a helicopter staging area located either on a flat bench north of Kettle Creek or on a large bench in the Dry Cottonwood drainage. All construction and drilling-related equipment and support materials would be transported via helicopter from the staging area to the drill site. Access to the selected staging areas would involve reconstruction or improvement of existing roads. The staging area would require about 4 acres to accommodate the mobilization and support activities.

Alternative E—No Action

The "No Action Alternative" would preclude oil and gas drilling as currently proposed by Amoco.

Issues and Concerns

Public issues and concerns were solicited for analysis through a scoping statement. The scoping statement, prepared and submitted to the public on October 30, 1985, described the action to be analyzed in an EA. It included preliminary issues and concerns, and timing needs or requirements for public involvement. The EA was completed in November 1986. Public and agency scoping, and the findings of the EA have identified the following issues and concerns:

—Elk calving and critical big game winter range.
—Cumulative effects of an access road crossing grizzly bear management situation 1 and 2 habitat.
—Potential disruption of historic elk migration.
—Commercial outfitter guide operations.
—Big game hunting.
—Established recreation snowmobiling activities.
—A new road into an area currently without roads.
—Effects on the tourist based economy of Jackson Hole caused by a disruption of scenic and wildlife resources.
—Cumulative effects of proposal and other land and resource use activities in the area.
—Increased erosion and stream sedimentation with construction on unstable soils and steep slopes.
—Zone 3 seismic risk area.
—High-level year-long recreation traffic.
—Proposal may be inconsistent with the proposed Bridger-Teton National Forest Land and Resource Management Plan (Draft issued for public review October 1986).
—Successful reclamation may be difficult to achieve.
—Slopes over 40 percent would be involved.
—Potential adverse effects of noise with use of helicopter.

Scoping

A scoping statement will be mailed to determine additional significant issues. Also, the prior environmental review

comments received from the public in response to the November 1985 scoping statement and the findings of the EA completed in November 1986, will be used to identify the issues to be addressed in the EIS. The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in preparing the EIS.

F. William Eikenberry,

Associate State Director.

[FR Doc. 87-739 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-22-M

[ID-030-07-4212-14]

Realty Action; Idaho Falls District; Bonneville County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public land in Bonneville County.

DATE AND ADDRESS: The sale offering will be held on Tuesday, March 24, 1987, at 1:00 p.m. at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401. Unsold parcels where no bids are received will be offered every Tuesday through April 21, 1987, on which date this sale offering will be suspended.

SUMMARY: The following described lands have been examined and through the public-supported land use planning process have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than the fair market value as determined by an appraisal.

Parcel	Legal description	County	Market value	Sale type
I-19736..	T.1N.,R.44E.,B.M. Sec. 17: S½NW¼SE¼SE¼ (5 acres)	Bonneville	$6,100	Competitive.
I-20368..	T.1N.,R.44E.,B.M. Sec. 17. E½W½SW¼SE¼SE¼E½SW¼SE¼SE¼ (7.5 acres)	Bonneville	9,900	Do.
I-22291...	T.1N.,R.44E.,B.M. Sec. 17: W½NW¼SW¼SE¼,SW¼SW¼SE¼ (15 acres)	Bonneville	22,500	Do.
I-22434...	T.1N.,R.44E.,B.M. Sec. 1: Lots 63, 64, 65, 74, 75, 76, 94 and 95	Bonneville	5,000	Do.

When patented, the lands will be subject to the following reservations:

All parcels

1. Right-of-Way reservation to the United States for ditches and canals.
2. All minerals reserved to the United States.
3. All valid existing rights and reservations of record.

Specific reservations

Parcel	Reservation
I-191736....	Road Right-of-Way I-21969 held by H.V. Davidge Access Right-of-Way I-23546 held by Bureau of Land Management.
I-20368.....	Access Right-of-Way I-23547 held by Bureau of Land Management.
I-22291.....	Highway Right-of-Way BL-053505 held by Idaho Department of Transportation.
I-22434.....	Development of this parcel must be to the requirements of the Idaho State Department of Health, Bonneville County, and City of Swan Valley. In addition, building foundations must be built above the base level of the floodplain (State Highway 26). All structures shall be elevated using open walks/works, e.g., columns, walls, piles, pires, etc. rather than fill. The United States will assume no liability for construction on this parcel.

The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

Sale Procedure

All parcels will be sold by competitive bidding procedures as follows. A sealed bid must be submitted in person or by mail prior to the date and time of the sale to the Idaho Falls District, 940 Lincoln Road, Idaho Falls, Idaho 83401. The bid must be sealed in an envelop specifying the serial number and the sale date in the lower left hand corner (i.e., "Sealed bid-public land sale I-19736-March 24, 1987"). If two or more vaild sealed bids are received for the same amount and are the high bid, a supplemental bidding of the high bidders will be held.

Bids must be submitted for no less than fair market value. A thirty percent (30%) deposit must accompany each bid. The deposit must be paid by certified check, money order, bank draft, or cashier's check. Bids will be rejected if accompanied by a personal check. The successful bidder will have 180 days from the date of sale to pay the balance of the purchase price.

SUPPLEMENTARY INFORMATION: Detailed information concerning conditions of the sale can be obtained by contacting Scott Powers or Bruce Bash, Realty Specialists at (208) 529-1020.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, ID 83401. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, the realty action will become the final determination of the Department of the Interior.

Dated: January 5, 1987.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 87-778 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-GG-M

New Mexico; Filing of Plat of Survey

December 29, 1986.

The Plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on December 24, 1986.

A survey representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of a portion of section 25, and the survey of the new meanders of a portion of the present right bank of the Washita River in section 25, Township 7 North, Range 11 West, Indian Meridian, Oklahoma, under Group 40 OK.

The survey was requested by the Area Director, Bureau of Indian Affairs, Anadarko, Oklahoma.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Kelley R. Williamson, Jr.,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87-779 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management

and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313, with copies to Norman J. Hess, Acting Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Alaska Outer Continental Shelf (OCS) Social Indicators Survey

Abstract: Respondents supply information and data to establish measures of well being of rural population potentially affected by OCS activity. This information will allow the Agency to establish a basis to describe, project, and monitor the effects of major Federal action on the Alaskan OCS

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Residents in rural Alaska potentially affected by OCS leasing

Annual Responses: 300

Annual Burden Hours: 150

Bureau clearance officer: Dorothy Christopher, 703-435-6213.

Dated: December 22, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-776 Filed 1-13-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-274 (Final)]

Softwood Lumber From Canada

AGENCY: United States International Trade Commission

ACTION: Termination of investigation.

SUMMARY: On January 5, 1987, the Department of Commerce published a notice in the **Federal Register** (52 FR 315) stating that, having received a letter from petitioner in the subject investigation (The Coalition for Fair Lumber Imports) withdrawing its petition, it was terminating its countervailing duty investigation on softwood lumber from Canada. Accordingly, pursuant to § 207.40(a) of the Commisison's Rules of Practice and Procedure (19 CFR 207.40(a)), the subject investigation is terminated.

EFFECTIVE DATE: January 7, 1987.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-523-1793), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: January 9, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-812 Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-241]

Certain Prefabricated Bow Forms; Decision To Extend Deadline for Determining Whether To Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Extension of deadline for determining whether to review an initial determination.

SUMMARY: The Commission has extended from January 7, 1987, to January 21, 1987, the administrative deadline for determining whether to review the initial determination (ID) on violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., or P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0311 or 202-523-0350, respectively.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337-TA-241 is being conducted to determine whether there is a violation of section 337 in the importation or sale of certain prefabricated bow forms from the Philippines, Italy, Hong Kong, and Taiwan. The accused imported bow forms are alleged to infringe claims 1 and 2 of U.S. Letters Patent 3,637,455 (the '455 patent). The complainant is the patent owner, Minnesota Mining and Manufacturing Co. (3M) of St. Paul, MN. Ten domestic and foreign companies were named as respondents. *See* 51 FR 6183 February 20, 1986) and 51 FR 24949 (July 9, 1986).

On November 20, 1986, the ALJ issued an ID holding that there is no violation of section 337 in the importation or sale of the accused imported bow forms. Complainant 3M and domestic respondents Berwick Industries and Harvard FAir Corp. each petitioned for review of the ID. Each petition was opposed by the Commission investigative attorney or another party.

The previous deadline for the Commission to determine whether to review the ID ws January 7, 1987. (*See* 19 CFR. 210.54(b)(1).) the Commission has determined to extend this deadline to January 21, 1987.

Public inspection. Copies of the ID, the petitions for review, the responses thereto, and all other nonconfidential documents on the record of the 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, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on, 202-724-0002.

Issued: January 5, 1987.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-811 Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-256]

Certain Cryogenic Ultramicrotome Apparatus and Components Thereof; Determination Not To Review Initial Determination Joining Respondent and Terminating Investigation as to Another Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination (ID) joining a respondent in the above-captioned investigation and terminating the investigation as to another respondent.

SUMMARY: The Commission has determined not to review the ID of the presiding administrative law judge (ALJ) to join Cambridge Instruments, Inc., as a respondent in the investigation and to terminate the investigation as to Cambridge Instruments, Ltd.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION: On November 7, 1986, complainant, all respondents, and the Commission investigative attorney filed a joint motion (Motion No. 256-6) to amend the complaint and notice of investigation to add Cambridge Instruments, Inc., of Buffalo, New York, as a respondent in the investigation and to terminate the investigation as to Cambridge Instrument, Ltd., of Clifton, England. On December 10, 1986, the ALJ issued an ID (Order No. 7) granting the motion.

The motion is based on the stipulation that, although both the aforementioned respondents and the other respondents in the investigation are subsidiaries or otherwise affiliated with the Cambridge Group of Companies (Cambridge Group), Cambridge Instruments, Inc., and not Cambridge Instruments, Ltd., is responsible for sales, service, and assets for the Cambridge Group in the United States. Complainant Research and Manufacturing Co., Inc., was not aware of this at the time the complaint was filed and moved to amend its complaint to reflect its new understanding of the Cambridge Group's corporate structure.

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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on, 202-724-0002.

Issued: January 5, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-806 Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Fujitsu Limited and Fujitsu Microelectronics, Inc. (collectively "Fujitsu").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 9, 1987.

Copies of the initial determination, the settlement agreement, 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary of the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: January 9, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-807-Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Sharp Corporation and Sharp Electronics Corporation (collectively "Sharp").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders reveiw of the initial determination. The initial determination in this matter was served upon the parties on December 29, 1986.

Copies of the initial determination, the settlement agreement, 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, 701 E Street NW., Washington, DC, 20436,

telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: January 9, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-808 Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-244]

Certain Insulated Security Chests; Decision To Review and Remand Portions of an Initial Determination Terminating Respondents; Nonreview of Remainder of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Review of the portions of an initial determination (ID) terminating EP Industrial Co., Ltd. (EP), Fedco, Inc. (Fedco), Builder's Emporium, Inc. (Builder's Emporium), and Handyman; nonreview of the remainder of the ID.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand those portions of an ID (Order No. 11) granting motions to terminate EP, Fedco, Builder's Emporium, and Handyman as respondents in the above-captioned investigation. The Commission has also determined not to review that portion of the ID terminating Saga International, Inc. (Saga) and Saga Pacific Trading Co., Ltd. (Saga P) as respondents in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

SUPPLEMENTARY INFORMATION: On December 1, 1986, the presiding administrative law judge (ALJ) issued an ID (Order No. 11) granting two motions to terminate respondents in this investigation. The first motion (No. 244-12), a joint motion filed September 12, 1986 by complainant John D. Brush & Co., Inc. (Brush) and respondents Saga, Saga P, and EP, sought to terminate the investigation as to those three respondents on the basis of a settlement agreement among Brush, Saga, Saga P, and EP, and a consent order agreement between Brush and EP. The Commission investigative attorney (IA) supported the motion. The second motion (No. 244-14), filed by Brush on October 21, 1986, sought to terminate the remaining respondents, Fedco, Builder's Emporium, and Handyman. The IA and all respondents supported this motion. No petitions for review of the ID nor Government agency or public comments regarding the ID have been received.

The Commission has determined not to review that portion of the ID that terminates respondents Saga and Saga P on the basis of a settlement agreement. The Commission has determined to review and remand to the ALJ for further proceedings consistent with the Commission's Action and Order those portions of the ID that (1) terminate respondent EP on the basis of a settlement agreement, consent order agreement, and proposed consent order, and (2) terminate remaining respondents Fedco, Builder's Emporium, and Handyman.

The basis for the Commission's review and remand of portions of the ID is that the consent order agreement between Brush and EP does not comply with the Commission's rules, the consent order directed to EP is extraterritorial in scope and thus exceeds the Commission's jurisdiction, and the termination of the respondents Fedco, Builder's Emporium, and Handyman was contingent in part on the termination of EP, which the Commission is remanding to the ALJ.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53-210.55 (19 CFR 210.53-210.55).

Copies of the ID, the Commission's Action and Order, 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-1626.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: January 6, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-809 Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-267 and 268 (Final) and 731-TA-304 and 305 (Final)]

Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C., 1671d(b)), that an industry in the United States is materially injured [2] by reason of imports from Korea and Taiwan of stainless steel cooking ware, not including teakettles, ovenware, and kitchenware, for cooking on stove-top burners, provided for in item 653.94 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Governments of Korea and Taiwan.

The Commission also determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured [2] by reason of imports of such cooking ware of stainless steel from Korea and Taiwan which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). Because Commerce made an affirmative final critical circumstances determination with respect to imports from Taiwan by Lyi Mean and Song Far, the Commission is required to make an additional finding. Pursuant to section 735(b)(4)(a), the Commission determines that the material injury is not by reason of massive imports of the LTFV

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR (207.2(i)).

[2] Chairman Liebeler, Vice Chairman Brunsdale, and Commissioner Stern dissenting.

merchandise over a short period of time to the extent it is necessary to impose the duty retroactively to prevent such injury from recurring.

Background

The Commission instituted the antidumping investigations effective July 29, 1986, following a preliminary determination by the Department of Commerce that imports of certain stainless steel cooking ware from Korea and Taiwan were being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 7, 1986 (51 FR 28450).

On November 26, 1986, Commerce published its affirmative final determinations in the **Federal Register** (51 FR 42873) that imports of certain stainless steel cooking are being subsidized by the Governments of Korea and Taiwan. Notice of the Commission's final countervailing duty investigations and a public hearing to be held in connection with those investigations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 26, 1986 (51 FR 42947).

A public hearing was held in Washington, DC, on November 24, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 9, 1987. The views of the Commission are contained in USITC Publication 1936 (January 1987), entitled "Top-of-the-stove stainless steel cooking were from Korea and Taiwan: Determinations of the Commission in Investigations Nos. 701-TA-267 and 268 and 731-TA-304 and 305 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations.

Issued: January 9, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-813 Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-272 and 731-TA-319 (Final)]

Operators for Jalousie and Awning Windows From El Salvador

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from El Salvador of operators for jalousie and awning windows, provided for in item 647.03 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of El Salvador. The Commission also determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from El Salvador of operators for jalousie and awning windows which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted investigation No. 701-TA-272 (Final) effective June 18, 1986, following a preliminary determination by the Department of Commerce that imports of operators for jalousie and awning windows from El Salvador were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). The Commission instituted investigation No. 731-TA-319 (Final) effective September 3, 1986, following a preliminary determination by the Department of Commerce that imports of operators for jalousie and awning windows from El Salvador were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection with both investigation No. 731-TA-319 (Final) and investigation No. 701-TA-272 (Final) was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 17, 1986 (51 FR 32974). The hearing was held in Washington, DC, on November 20, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 2, 1987. The views of the Commission are contained in USITC Publication 1934 (January 1987), entitled "Operators for Jalousie and Awning Windows from El Salvador."

Issued: January 5, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-810 Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes and Lodwick dissenting with respect to jalousie window operators.

[Investigation No. 337-TA-110]

Certain Methods for Extruding Plastic Tubing, Issuance of Order To Show Cause Why Advisory Opinion Proceeding Should Not be Terminated

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of an order to show cause why the advisory opinion proceeding in the above-captioned investigation should not be terminated.

SUMMARY: The Commission has determined to issue an order to show cause why the advisory opinion proceeding should not be terminated on the ground that Meditech International Co. (Meditech), the requester of the advisory opinion, has not established that it or its foreign suppliers practice a process for manufacturing plastic tubing for making reclosable plastic bags that is not covered by the exclusion order issued in the investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION: On September 2, 1982, the Commission issued a general exclusion order in the investigation, covering reclosable plastic bags manufactured according to a process which, if practiced in the United States, would infringe the claims of one or more of three U.S. process patents. Two of the patents have since expired, leaving as the basis for the Commission's exclusion order only U.S.

Letters Patent Re. 28,959 (the '959 patent).

On April 4, 1986, the Commission instituted an advisory opinion proceeding at the request of Meditech. Meditech requested that the Commission issue an advisory opinion stating that certain reclosable plastic bags that Meditech seeks to import into the United States are not covered by the Commission's exclusion order. In its notice of institution of the advisory opinion proceeding, the Commission instructed its Office of Unfair Import Investigations (OUII) to prepare a report for the Commission on the question of whether Meditech's plastic bags are covered by the Commission's exclusion order. A report was submitted to the Commission by OUII on July 8, 1986. On September 24, 1986, OUII issued a revised report recommending the issuance of an order directing Meditech to show cause why the advisory opinion proceeding should not be terminated for Meditch's failure to identify the process it is using to produce plastic bags and to provide means to verify that process.

Copies of the Commission's order to show cause 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: January 9, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-842 Filed 1-13-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-26 (Sub-36X)]

Southern Railway Co.; Abandonment Exemption; in Jefferson County, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Southern Railway Company of 5.6 miles of track in Jefferson County, AL, subject to standard labor protection.

DATES: This exemption is effective February 13, 1987. Petitions to stay must be filed by January 26, 1987, and petitions for reconsideration must be filed by February 3, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-26 (Sub-No. 36X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Nancy S. Fleischman, Esq., Norfolk Southern Corporation, One Commercial Plaza, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystem, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free, (800) 424-5403.

Decided: January 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 87-800 Filed 1-13-87; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL CAPITAL PLANNING COMMISSION

Intent To Prepare an Environmental Assessment and To Conduct a Scoping Meeting on Proposed PortAmerica Project, Prince George's County, MD

AGENCY: National Capital Planning Commission (NCPC).

ACTION: Notice of intent to prepare an environmental assessment and to hold a scoping meeting.

SUMMARY: The National Capital Planning Commission, in cooperation with the Federal Highway Administration, the Federal Aviation Administration, the U.S. Army Corps of Engineers, the Environmental Protection Agency, the National Park Service, and the Commission of Fine Arts, will be preparing an environmental assessment on the proposed PortAmerica project located in Prince George's County, Maryland. The PortAmerica project, located south of the Capital Beltway between the Potomac River and Indian Head Highway (Maryland Route 210), is a major mixed-use private development planned to include office, commercial/retail, residential, hotel, recreational, and marina uses. The NCPC and these cooperating agencies will hold a public scoping meeting on the proposed PortAmerica environmental assessment at the time and place noted below. The purpose of the meeting is to give interested persons an opportunity to provide written and/or oral comments on the issues, impacts, and alternatives to be considered in the assessment. It is not to debate the relative merits of the proposed project or any of the alternatives.

DATE: January 29, 1987.

TIME: 9:00 a.m. to 12 Noon; and 1:30 p.m. to 5:00 p.m., if necessary.

PLACE: 10th Floor Conference Room, NCPC, 1325 G Street, NW., Washington, DC 20576.

FOR FURTHER INFORMATION CONTACT: Donald Bozarth, National Capital Planning Commission, 1325 G Street, NW., Washington DC 20576, telephone: (202) 724-0168. For registration information only, call 724-0174 between 8:00 a.m. and 5:30 p.m.

SUPPLEMENTARY INFORMATION:

Agenda

The agenda is as follows:

I. Opening Remarks
II. Introduction of Participants
III. Description of Project
IV. Initial List of Issues, Impacts and Alternatives
V. Public Comments

Description of the Project

The PortAmerica project consists of two distinct parcels. These parcels contain approximately 442 acres of land and water area. As proposed, the development would include roughly 1,700,000 square feet of office space, 410,000 square feet of commercial retail including restaurant space, 300,000 plus square feet of indeterminate use, 1200 dwelling units, 1025 hotel rooms, and a marina developmeht of 250-500 slips. A total gross floor area of approximately 7.3 million square feet is proposed.

The north or "Beltway Parcel" of 82 acres is proposed to contain the 40-42 story "World Trade Center Washington, DC." This parcel would also contain a proposed 600-room, 12-story hotel, approximately 600,000 square feet of office space in three 15-story structures and 200,000 square feet of commercial/retail space to be distributed among the office building and the hotel. Most of the parking would be in several parking structures, two of which flank the 40-42 story office building.

The south or "Waterfront Parcel" of 361 acres (including 240 acres of submerged land) would contain 176,000 square feet of retail space, a 250-500

boat slip marina(s), a 350-room hotel, a jitney/ferry terminal, a 20,000 square foot community center with accompanying 24,000 square feet of neighborhood commercial use, and a 75-room inn with a nearby restaurant and lighthouse at Rosier Point, the southernmost portion of the site. This parcel would also contain 1200 dwelling units, including single-family townhouses and condominum/apartment style multi-family units. A major split-level walkway system serving as the spine of the community would be located along the waterfront.

Submittal of Comments

Those persons interested in providing oral comments at the scoping meeting are encouraged to contact NCPC by January 22, 1987 to register to speak. However, any person wishing to provide written or oral comments at the meeting will be permitted to do so. In order that all comments may be considered in a timely fashion, written comments should be received not later than 10 days after the scoping meeting.

Reginald W. Griffith,

Executive Director.

[FR Doc. 87-846 Filed 1-13-87; 8:45 am]

BILLING CODE 7520-01-M

NATIONAL SCIENCE FOUNDATION

Statement of Organization

I. Creation and Authority

The National Science Foundation (NSF) is an independent agency of the U.S. Government, established by the National Science Foundation Act of 1950, as amended, and related legislation, 42 U.S.C. 1861 *et seq.*, and was given additional authority by Title IX of the National Defense Education Act of 1958 (72 Stat. 1601; 42 U.S.C. 1876–1879), the Science and Technology Equal Opportunities Act (42 U.S.C. 1985), and Titles I and III of the Education for Economic Security Act (98 Stat. 1267, 20 U.S.C. 3911 to 3954 and 3981 to 3988). The Foundation consists of the National Science Board of 24 part-time members and a Director (who also serves as *ex officio* National Science Board member), each appointed by the President with the advice and consent of the U.S. Senate. Other senior officials include a Deputy Director who is appointed by the President with the advice and consent of the U.S. Senate, and eight Assistant Directors.

The Foundation's organic legislation authorizes it to engage in the following activities:

A. Initiate and support, through grants and contracts, scientific and engineering research and programs to strengthen scientific and engineering research potential, and education programs at all levels, and appraise the impact of research upon industrial development and the general welfare.

B. Award graduate fellowships in the sciences and in engineering.

C. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

D. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

E. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating its research and educational programs with other Federal and non-Federal programs.

F. Maintain a current register of scientific and technical personnel, and in other ways provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the United States, and provide a source of information for policy formulation by other Federal agencies.

G. Determine the total amount of Federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

H. Initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

I. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

J. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and engineering. Strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States.

K. Support activities designed to increase the participation of women and minorities and others underrepresented in science and technology.

II. Organization

The Foundation is organized along functional and disciplinary lines corresponding to program support of science, engineering, and science and engineering education.

A. National Science Board

The National Science Board is composed of 25 members, in cluding the Director of the Foundation *ex officio*. Members serve for 6-year terms and are selected because of their distinguished service in the fields of the basic, medical, or social sciences, engineering, agriculture, education, public affairs, or research management. They are chosen in such a way as to be representative of scientific and engineering leadership in all areas of the Nation. The officers of the Board, the Chairman and Vice Chairman, are elected by the Board from among its members of 2-year terms. The Board exercises authority granted it by the NSF Act, including establishing policies for carrying out the purposes of the Act. Meetings of the Board are governed by the Government in the Sunshine Act (Pub. L. 94–409) and the Board's Sunshine regulations (45 CFR Part 614). The policies of the Board on the support of science and engineering and development of human resources are generally implemented through the various programs of the Foundation. The National Science Board is required by statute to render a biennial report on indicators of the state of science and engineering to the President for submission to the Congress.

B. Director

The Director of the National Science Foundation is Chief Executive Officer of the Foundation and serves *ex officio* as a member of the National Science Board and as Chairman of its Executive Committee. The director is responsible for the execution of the Foundation's programs in accordance with the NSF Act and other provisions of law. The Director is also responsible for duties delegated to him by the Board and for recommending policies to the Board. The Director is assisted by a Deputy Director who is appointed by the President, with the advice and consent of the Senate. The Senior Science Advisor serves as science advisor to the Director providing broad policy-level advice, assistance and support on a wide range of scientific and policy matters relevant to the mission of the Foundation.

III. Activities of the Foundation.

The activities of the Foundation are carried out by a number of Foundation

components reporting to the Director through their respective senior officers.

A. Staff Officers

1. National Science Board Office

NSBO is responsible for operating and representing the National Science Board, identifying policy issues for consideration by the Board, developing congressional testimony for Board members, and providing liaison between the Board and the Director and his staff.

2. Office of Budget, Audit and Control

OBAC is responsible for the development, analysis, and execution of the Foundation's budget to the Office of Management and Budget and the Congress; for evaluation of NSF programs and related activities; and for carrying out audit and oversight of the financial, administrative, and programmatic aspects of NSF activities. This responsibility encompasses budget formulation and development in cooperation with the Director, the National Science Board, Assistant Directors, and other staff, working with staff and officials of the Office of Management and Budget and the Office of Science and Technology Policy, appropriate budget execution and control through operating plans and special analyses, assisting in the development of long-range plans for the Foundation, and assisting the Director in the general management of the Foundation. Audit functions are coordinated with other Federal organizations, including the General Accounting Office.

(a) *Division of Audit and Oversight.* DAO is responsible for audit and oversight of financial, administrative, and programmatic aspects of NSF's activities. The Division is the focal point of contacts with other Federal audit organizations in the Executive Branch and with the General Accounting Office.

(b) *Budget Division.* The Budget Division is responsible for supporting the Foundation's planning activities and for the translation of plans into resource requests. The staff prepares and defends the Agency's budget request to the Office of Management and Budget and to the Congress. They are responsible for developing and maintaining budget/management procedures, data bases, and monitoring systems for providing budget control on behalf of the Director. They also prepare, manage, and monitor the Foundation's Program Development and Management budget and prepare and manage the Foundation's annual current and operating plans.

(c) *Program Evaluation Staff.* The Program Evaluation Staff is responsible for providing studies to the Director to assess whether the award decision and the results of NSF funding are in conformance with NSF policy and Congressional intent. This is done by conducting post-performance evaluations of research program, studies which use reviewer ratings to assess the integrity of the award decision process, and studies to assess the contribution the Foundation's programs make to scientific and technological advancements.

3. Office of Information Systems

OIS is responsible for development, operation, maintenance, and oversight of automated systems that provide management information and support program and administrative staff activities throughout the Foundation's business cycle. Included are policy development, technical assistance, systems analysis, computer programming, operation of the central computer facility, and implementation/coordination of distributed processing systems and external computing services.

4. Office of Legislative and Public Affairs

OLPA is responsible for representing the Foundation, the Director, and key associates in relationships with the Congress, the communications media and the public, various academic groups and professional societies, institutions, and other NSF clientele. Legislative responsibilities include providing the coordination, analysis, liaison, and other assistance necessary for the annual congressional consideration of the NSF budget as well as all science and technology related legislative issues and providing information and advice to the Director and key NSF staff on interactions with the Congress. Public affairs and communications responsibilities include informing and educating the general and specialized publics about NSF programs, activities, and services; maintaining relations with the public and news media (both print and electronic media); preparing and issuing reports, audio-visual materials, and publications (including MOSAIC, NSF's magazine) that serve the general and specialized publics; and responding to both Freedom of Information Act requests and general inquiries from the public. The Office is also responsible for coordinating special projects and activities such as National Science and Technology Week; overseeing the work of the NSF Historian; and approving and coordinating publications created by other NSF offices, in accordance with OMB requirements.

5. Office of the General Counsel

OGC provides legal advice to the Director, the National Science Board, and NSF staff and represents them in legal matters, including the development of laws and regulations likely to affect the NSF, science, or the use of science. They prepare and coordinate NSF comments on proposed legislation.

B. Directorates

1. Assistant Director for Administrative

The Assistant Director serves as the principal advisor to the Director on all administrative and general management activities of the National Science Foundation. This responsibility encompasses: grants and contracts administration, personnel management and employee-oriented programs, health services, financial management, management analysis, and general administrative and logistic support functions.

(a) *Office of Equal Opportunity.* OEO is responsible for assisting management in developing, maintaining, and carrying out a continuing Agency-wide affirmative action program and for developing all other aspects of the Agency's equal opportunity program.

(b) *Division of Administrative Services.* DAS is responsible for the management and direction of official travel services and conference arrangements; procurement, issuance and maintenance of supplies, materials, and equipment; space management; telecommunications and building maintenance; records disposition; mail and messenger services; property accountability; warehouse management; document and building security; printing, typesetting, graphics, reproduction and binding services; publications distribution and storage; and the NSF Library.

(c) *Division of Financial Management.* DFM is responsible for the development, coordination, and direction of financial management policies, programs, and operations, and for the design of modern automated business management systems. This Division provides funds control, payroll and disbursing services, and maintains accounting systems to manage the financial aspects of Foundation operations and to produce timely and accurate data for financial management and budgetary purposes.

(d) *Division of Grants and Contracts.* DGC is responsible for the award process including negotiation and administration of grants and contracts or other arrangements in accordance with existing laws, regulations, and Foundation policy and procedures.

Negotiation include those activities necessary to obtain agreement on the arrangements between the grantee or contractor and the Foundation prior to the making of an award. Administration includes those activities necessary to execute the award, monitor performance, and close out the grant or contract, as well as audit resolution, procurement reporting, intergovernmental reviews, FOIA and proposal release, Small and Disadvantaged Business programs, contracting out, and other special activities. The Division also develops and coordinates the implementation of Foundation grant, contract and cooperative agreement administration policies and procedures with staff, external organizations and other Federal agencies.

(e) *Division of Personnel and Management.* DPM is responsible for planning, developing, and implementing the personnel management program of the Foundation to provide for the effective acquisition, retention, motivation, development, and use of NSF personnel. The Division is also responsible for improvement of Foundation management systems and procedures, management of the NSF Internal Issuance System, and the Committee Management Program.

2. Assistant Director for Biological, Behavioral, and Social Sciences.

The Assistant Director serves as principal advisor to the Director in the development of long-range plans, annual programs, and research policy in the biological, behavorial, and social sciences as established by statute and the National Science Board authority. The Assistant Director is also responsible for developing and implementing programs to strengthen scientific research potential in these sciences. The Directorate, composed of five divisions and one office reporting to the Assistant Director, is structured primarily on a disciplinary basis. Each division, headed by a Division Director, is subdivided into programs. In addition to supporting research projects, divisions may support dissertations, research conferences and workshops, meetings, and the organization or development of specialized research facilities and equipment.

(a) *Office of Interdirectorate Research Coordination.* OIRC is responsible for maintaining an Agency-wide biotechnology information and accounting system for all grant and contract activities; receives proposals, coordinates reviews and decisions, and administers any subsequent awards for the Agency-wide Ethics and Values Studies activity; and coordinates basic date capture for all proposals received in the Biological, Behavorial and Social Sciences directorate.

(b) *Division of Behavioral and Neural Sciences.* BNS is responsible for basic and applied research in anthropology, linguistics, memory and cognitive processes, social and developmental psychology, developmental neuroscience, intergrative neural systems, molecular and cellular neurobiology, psychobiology, and sensory physiology and perception. The Division also provides support for systematic anthropological collections. The major goals of the Division are to advance understanding of the structure and function of nervous systems and to comprehend better the biological, psychological, and cultural mechanisms underlying behavior.

(c) *Division of Biotic Systems and Resources.* BSR is responsible for research in ecology, ecosystem studies, population biology and physiological ecology, and systematic biology. The Division provides support for biological research resources such as systematic collections, controlled environmental facilities, field research facilities, and culture collections. The research supported by this Division is to advance knowledge of the attributes and interrelations of organisms, populations, and communities as they exist in their natural environment.

(d) *Division of Molecular Biosciences.* DMB is responsible for supporting research in the fields of biochemistry, biophysics, metabolic biology, prokaryotic aspects of genetic biology, and biological instrumentation. Research in plant biology is emphasized in all programs, and the Division supports a limited number of postdoctoral research fellowships in molecular plant biology.

(e) *Division of Cellular Biosciences.* DCB is responsible for supporting research in the fields of cell biology, cellular physiology, developmental biology, eukaryotic aspects of genetic biology, and regulatory biology. Although major emphasis is on research on cellular mechanisms, the scope of the research includes the study of life processes at the subcellular, cellular, and organismal levels. General topics supported include how plants, animals, and microorganisms develop, grow, reproduce, and regulate their physiological activity. Research in plant biology is emphasized in all programs. Together with the Division of Molecular Biosciences, 20 postdoctoral fellowships in plant biology are awarded each year.

(f) *Division of Social and Economic Science.* SES is responsible for basic and applied disciplinary and multidisciplinary research in economics, geography and regional science, history and philosophy of science, law and social sciences, political science, sociology, measurements methods and data improvement, and decision, risk, and management science. The Division supports research on social and economic systems, organizations and institutions, and individual social behavior. Support is also provided for data collection and improvement and for methodological and measurement research.

3. Assistant Director for Computer and Information Science and Engineering

The Assistant Director serves as the principal advisor to the Director, within the framework of statutory and NSB authority, in computer and information sciences and engineering. Development and implementation of research and facilities support policies, annual programs and budgets, long-range plans and the establishment of research priorities to further national goals and strengthen the scientific research potential are responsibilities of the Assistant Director. Four divisions, each dealing with a substantive area, report to the Assistant Director. In addition to the specific areas, support is provided for advanced scientific computing facilities, networking, microelectronic prototyping, appropriate conferences, symposia, and research workshops in the areas for which it has responsibility.

(a) *Division of Computer and Computation Research.* CCR is responsible for research in several broad areas including theories of computation, numerical, symbolic and algebraic computation, computer and software systems architectures, graphics, operating systems, programming languages, program semantics, theorem proving and other aspects of software systems science and software engineering. It also provides experimental facilities for research in computer and information science and engineering, and special-purpose equipment for research.

(b) *Division of Information, Robotics and Intelligent Systems.* IRIS is responsible for research on the representation and utilization of knowledge, database design and implementation, robotics and machine intelligence perception and cognition, machine-human interface design, and social science and engineering research fundamental to understanding the social and economic consequences of the wide use of information technologies. It also provides for experimenting with real time systems.

(c) *Division of Microelectronic Information Processing Systems.* MIPS is responsible for research on the design, fabrication and testing of microelectronic integrated systems. This encompasses VLSI architecture, simulation, circuit theory and signal processing; and the development and testing of prototypes of novel computer and information processing systems. It also provides access, for research and education purposes, to a fast turnaround service for implementing microelectronic components, circuits and systems.

(d) *Division of Advanced Scientific Computing.* ASC is responsible for providing academic scientists and engineers with advanced large-scale computers; supporting research on innovative advanced technologies and systems, compound document transmission, and communications and signal processing; and encouraging the sharing of technical information and computational resources by promoting standards and technology development.

4. Assistant Director for Engineering

The Assistant Director participates with the Director in planning, analyzing, and evaluating activities and in establishing and maintaining an effective liaison with the Congress, other Federal agencies, the educational and scientific communities, professional societies, and other interested parties. The Directorate seeks to promote the progress of engineering and technology and to ensure national prosperity and security through the support of engineering research and education at all levels and in all fields of engineering. The overall goals are to ensure that the United States is at the leading edge of engineering research in all fields, to help U.S. engineering schools to produce the world's best engineers, to find new ways for the Nation to benefit from the full research potential of universities, colleges, industry, and Government resources, and to ensure that sufficient fundamental knowledge and expertise are available, along with cross-disciplinary activities, to stimulate advances in private-sector engineering. Six divisions and one office report to the Assistant Director.

(a) *Division of Engineering Science in Chemical, Biochemical, and Thermal Engineering.* CBTE supports research to expand the engineering knowledge base for a large number of industrial processes involving the transformation and transport of matter and energy. The industries served, directly or indirectly, include aerospace, electronics, natural resources, petroleum, biochemical, materials, food and allied industries that use chemical, biochemical and thermal processes.

(b) *Division of Mechanics, Structures, and Materials Engineering.* The aim of this Division is to enlarge and improve the engineering science knowledge base in mechanics, structures, and materials for fields of engineering incorporating these elements. Research directions are driven by intrinsic interest in phenomena arising from engineering application. Research methods include a blend of techniques involving analysis, computer simulation, and experimentation. Upgrading university computational and laboratory equipment is also a high priority. In all of these activities, the ultimate utility of the research is a foremost consideration. Research proposals involving several disciplines are considered jointly with programs in other divisions.

(c) *Division of Electrical, Communications, and Systems Engineering.* This Division supports fundamental research applicable to the analysis, design, and fabrication of devices and systems that generally involve critical electrical and electronic technologies. Further objectives are to support the development of educated engineering manpower needed in industry, government, and education. The importance of this activity lies in the fact that the electronics revolution has affected many aspects of national life and has had profound consequences for economic and military security. Modern microelectronics have vastly increased the computational capabilities available to industries and individuals. Processing and communications of signals from sensors and other sources provide data for more efficient use of complex information. Large complex systems permeate society and need to be better understood.

(d) *Division of Design, Manufacturing, and Computer-Integrated Engineering.* Research supported by this Division is aimed at establishing scientific foundations for design and manufacturing in such fields as mechanical, electrical/electronic, civil, and chemical engineering. Research in these areas has tended to be technology driven, with progress governed mainly by the state of particular technologies rather that by the state of underlying sciences. Despite impressive accomplishments, the areas generally lack a broad base of scientific principles. The creation of such a science base, and of accompanying research communities and research paradigms, is the Division's primary long-term goal.

The programs in this Division interest strongly and are unified by such issues as process planning (from design through the life cycle of a product or system), consistency of computer environments, and self-adaptive processes. Proposals that cut across program boundaries are strongly encouraged.

(3) *Division of Fundamental Research in Emerging and Critical Engineering Systems.* ECES supports fundamental research to increase the knowledge and manpower base in emerging and critical engineering systems, areas that cut across traditional engineering disciplinary lines. Emerging engineering systems show great promise for enhancing the Nation's economy, safety, and security but require development of a strong science base and the academic infrastructure necessary to establish the manpower and research capability for important new industrial fields. Major research topics include biotechnology, bioengineering, research to aid the disabled, and lightwave technology. Critical engineering systems are those essential to the Nation's safety, well-being, and international competitiveness. Research thrusts include earthquake hazard mitigation, the mitigation of other natural and man-made hazards, environmental engineering, and systems engineering for large structures.

(f) *Division of Cross-Disciplinary Research.* CDR supports university research cutting across academic disciplinary lines and includes participation of industrial scientists and engineers. The programs of this Division focus research teams on scientific and engineering areas where the infusion of knowledge from several disciplines and viewpoints will enhance the probability of innovative and industrially relevant research. The objectives of CDR are: to support cross-disciplinary engineering and scientific research; to improve the flow of fundamental engineering and scientific research from universities into industry; to strengthen the links between university research scientists and engineers and their industrial counterparts; and to better prepare students for engineering practice and industrial research. The program support two types of university-industry cooperation: Engineering Research Centers and Industry/University Cooperative Research Centers.

(g) *Office of Engineering Infrastructure Development.* The aim of this office is to develop and provide a Directorate-wide focus for (1) activities that affect one or more of the divisions of the Directorate for Engineering and

will optimize the effective use of university, industry, and other resources, and (2) activities that will advance U.S. engineering through international cooperation.

Specifically, the Office is responsible for operating programs aimed at improving the education of engineers through grants to educational institutions. For example, an experimental program to enable universities and colleges to incorporate engineering practice into engineering education is currently being evaluated. Further, two new grant programs are being started. The first, "Creatively Awards for Undergraduate Engineering Students," is aimed at increasing the visibility and attractiveness of engineering eduction. The other, "Research Experiences for Undergrduates," seeks to introduce engineering undergraduates to engineering research. Announcements on these and other programs are issued from time to time to give the specific terms of the programs and closing dates.

The Office also conducts a Directorate-wide program to identify and provide research support for proposals that are (a) of high-risk/high-return character, (b) especially innovative, or (c) on topics that are not easily identifiable with existing programs. This program is handled internally and is based on examining proposals that are submitted in the regular programs. There are no application procedures for this program.

The Office is responsible for coordination with other organizations concerned with engineering research and engineering infrastructure, including the Office of Science and Technology Policy, the National Academies of Engineering and Science, the National Research Council, foreign research organizations, engineering professional societies, and other parts of the enegineering community.

The Office also coordinates the Directorate's effort to increase the participation of women, minorities, and disabled persons in NSF engineering programs and activities.

5. Assistant Director for Geosciences.

The Assistant Director is the principal advisor to the Director in the development and implementation of research, facilities, and instrumentation support policies; annual programs and budgets; long-range plans and the establishment of research priorities to further national scientific goals, strengthen the scientific potential of global geosciences, and enhance the basic programs in atmospheric, earth, ocean, and polar sciences within the framework of statutory and National Science Board authority. The Geosciences Directorate is composed of four divisions that report to the Assistant Director. The divisions are structured primarily along disciplinary and functional lines. Each division is managed by a Division Director and is subdivided into sections and programs as required for appropriate management and oversight. In addition to the specific areas of research, facilities, and instrumentation support described below, the divisions maintain close liaison with mission-oriented Federal agencies that support similar or complementary areas of research and provide NSF representation on standing interagency committees and joint advisory and planning groups.

(a) *Division of Atmospheric Sciences.* The objective of the Division is to improve fundamental knowledge of the behavior of the earth's atmosphere. The Division, through its Grant Programs Section, provides support for basic research on the physics and chemistry of the earth's atmosphere and its response to solar and terrestrial influences including those of the hydrosphere and biosphere. This research is relevant to national needs of improved prediction and understanding of weather, climate, and the global environmental system. It also provides basic knowledge that can be used to support applications by mission-oriented agencies. The Division's Centers and Facilities Section supports the National Center for Atmospheric Research (NCAR), the Nation's major research center in atmospheric sciences. NCAR is engaged in large-scale atmospheric research projects including those requiring the use of aircraft, specialized instruments, powerful computers, and data archival systems. NCAR's state-of-the-art facilities are utilized by universities and Federal agencies such as NASA, NOAA, and the FAA. Support also is provided for Upper Atmospheric Research Facilities comprising four large incoherent-scatter radar systems in a longitudinal chain from Greenland to Peru that permit scientists to investigate the local and global upper atmosphere.

(b) *Division of Earth Sciences.* The objective of the Division is an increased understanding of the solid earth—its composition and structure, its historical evolution, and the dynamic processes, both internal and external, which formed and continued to modify its features. The Division supports basic research across the broad nature of geoscience disciplines including: Research on the fundamental nature of earthquakes; research on hydrothermal and magmatic systems and their relationship to mineral deposits; research on earth history as reflected by rock stratigraphy, the fossil record, and other evidence of both cataclysmic and gradual events; research on the structures and propoerties of rocks and minerals at the pressures and temperatures existing within the earth; and research on volcanoes and their historical patterns of eruption. The Division's Instrumentation and Facilities program seeks to provide earth scientists in U.S. universities and colleges with essential research instrumentation and provides support for the development of new kinds of instruments or the adaptation of existing instruments for new uses in the geosciences. The Continental Lithosphere program supports medium to large scale projects designed to bring important new tools and approaches into the hands of university-based earth scientists that offer an opportunity to improve dramatically our understanding of the continental lithosphere through the major advances brought about by the application of plate tectonic theory to the study of the continental crust and lithosphere.

(c) *Division of Ocean Sciences.* The Division supports research to improve understanding of the ocean, the ocean floor and their relationships to human activities. Ocean Sciences Research Programs foster research in all aspects of ocean sciences to improve our understanding of the complex interactions of physical, chemical, geological, and biological processes in the ocean and at its boundaries. Oceanographic Facilities programs support operations of ships and specialized facilities and equipment needed by U.S. oceanographers to conduct research. The Ocean Drilling Program supports U.S. scientists participating in the Program and manages the Ocean Drilling Program as an international enterprise, ensuring the financial and scientific participation of scientists from partner nations in jointly sponsored scientific and operational activities.

(d) *Division of Polar Programs.* The Division is responsible for funding and management of the U.S. Antarctic Research Program and for support of a small Arctic Research Program. It also provides staff assistance to plan and coordinate Federal research support in the Arctic. The U.S. Antarctic Research aims at extending knowlege of Antarctica, including its glaciers and geology, the surrounding ice and oceans, its lower and upper atmosphere, and terrestrial and marine biota.

International cooperation contributes to research objectives, to environmental protection, and to strengthening the Antarctic Treaty system. Much polar research relates environmental processes to a global context. As in the Antarctic, the Artic Research Program supports science spanning the full spectrum of the environment from the ocean bottom through the sea ice cover and out into space where the first interactions of solar radiation with the earth's atmosphere begin. Studies of glaciers and land-based ecosystems also ae supported. In addition, the Division has major responsibilities for NSF implementation of the Arctic Research and Policy Act of 1984 that calls for the development and implementation of national policies and research plans and more extensive coordination of planning and budgeting by Federal agencies.

Assistant Director for Mathematical and Physical Sciences.

The Assistant Director serves as an advisor to the Director in the development of long-range plans, annual programs, and research policy in the areas of mathematical and physical sciences, as established under statutory and National Science Board authority; and is responsible for developing and carrying out a program to accomplish the Foundation's research support mission in these areas. Five divisions report to the Assistant Director for Mathematical and Physical Sciences. Each division is headed by a Division Director and generally is subdivided on a disciplinary or functional basis into sections and/or programs. In addition to the specific areas of support discussed below, each division supports appropriate conferences, symposia, and research workshops in the areas of science for which it has responsibility.

(a) *Division of Astronomical Sciences.* The objectives of the Division are to increase our understanding of the physical nature of the universe, particularly that of the solar system, individual stars, star clusters, galaxies, and special objects in space such as molecular clouds and quasars. Through its astronomy project support programs, the Division supports researchers in all areas of ground-based astronomy, including research on the sun, the solar system, the structure and evolution of the stars, stellar distances and motions, the composition and distribution of interstellar gas and dust, and galaxies and quasars. Also, support is provided for research programs of several major university observatories and for the development and acquisition of new instrumentation incorporating the latest technology for the detection and analysis of radiation through the electromagnetic spectrum. In addition, the Division provides developmental and operational support for the three National Astronomy Centers, operated and managed by nonprofit organizations or universities, under contract to NSF. The Centers provide a variety of optical, infrared, radio and other specialized instrumentation, on a competitive basis, to scientists throughout the Nation. Scientific and support staff are maintained at the Centers to support the research programs of visiting scientists, to develop advanced instrumentation, and to participate in national research programs.

(b) *Division of Chemistry.* This Division is responsible for the support of fundamental research in all areas of chemistry, to improve understanding and make possible new applications of chemistry beneficial to other sciences, engineering and technology. The broad subfields supported are organic and macromolecular chemistry, physical chemistry, analytical and surface chemistry, and inorganic, bioinorganic and organometallic chemistry. Special programs exist to assist departments and individual investigators in acquiring advanced instrumentation critical to modern chemical inquiry, and to support interdisciplinary research areas such as the chemistry of life processes and materials chemistry.

(c) *Division of Materials Research.* DMR is responsible for the support of multidisciplinary research designed to gain a deeper understanding of the properties of materials in terms of their composition, structure and processing history and the interactions between their constituents. The broad subfields supported are condensed matter physics, materials chemistry, materials science and engineering, and special programs in materials. The latter includes an instrumentation program, the materials research laboratories, materials research groups, and national facilities for materials research.

(d) *Division of Mathematical Sciences.* DMS is responsible for providing research support in mathematics and statistics, and in their applications to other sciences. The Division has special programs to support conferences, to provide support for postdoctoral fellows, and to assist groups of researchers in acquiring computational equipment. In addition the Division is interested in supporting interdisciplinary groups of researchers developing computational algorithms to be used in studying problems in science and engineering.

(e) *Division of Physics.* The Division is responsible for development of new knowledge about the existence, structure, and interactions of the various forms of matter and energy, and about the basic forces that govern these interactions. The ultimate goal is to understand and predict the effects of nature on a scale ranging from the microscopic to the cosmic. The Division supports research to advance knowledge in the areas of elementary particle physics; nuclear physics; atomic, molecular, and plasma physics; and gravitational physics. Both experimental and theoretical studies are required to produce fuller understanding in each of the areas of interest. The research supported is balanced with respect to the scientific areas as well as to the types of reseach thrusts for certain fields or for major new projects. Examples include development of new techniques and instrumentation; university-based accelerator laboratories, some of which provide centralized facilities for outside user groups; university-based research groups performing experiments at their own laboratories or at centralized facilities; and theoretical interpretation, exploration, and prediction.

7. Assistant Director for Science and Engineering Education.

The Assistant Director is responsible for the initiation of and support for programs to strengthen science education at all levels and to maintain the vitality of science and engineering education in the United States. This responsibility includes improving science and mathematics education of precollege students and addressing the long-term development of a strong human resource base to meet the needs of science and technology. The Directorate has four major long-range goals: To help ensure that a high-quality precollege education in science is available to every child in the United States, thereby enabling those who are interested and talented to pursue technical careers; to help ensure the best possible professional education in science and engineering; to help ensure that college-level opportunities are available to broaden the science backgrounds of nonspecialists; and to support informal science education programs for the public. The Directorate is organized into three Divisions and two Offices.

(a) *Division of Materials Development, Research and Informal Science Education.* DMDRI supports a wide range of projects to expand the knowledge base about effective teaching and learning of mathematics, science

and technology, to provide models and materials resources to improve our precollege educational system in these fields, and to provide a rich and stimulating environment for recreational learning. The Division supports basic and applied research and development projects in the areas of: Instructional Materials Development, Materials and Methods for Teacher Preparation, Application of Advanced Technologies, Informal Science Education Programs, and Research in Teaching and Learning.

(b) *Division of Research Career Development.* DRCD works to assure a steady flow of talented science and engineering students from all sectors and regions through the Nation's educational and research training systems. Specific activities include: Graduate Fellowships, Minority Graduate Fellowships, NATO Postdoctoral Fellowships in Science, Advanced Institute Travel Awards, and Presidential Young Investigator Awards.

(c) *Division of Teacher Preparation and Enhancement.* DTPE works to further develop precollege teacher capabilities in science, mathematics, and technology, to retain good teachers in the school systems, and to provide for a supply of well prepared new teachers. Specific activities include: Teacher Preparation Program, Science and Mathematics Education Networks, Teacher Development Program, and Presidential Awards for Excellence in Science and Mathematics Teaching.

(d) *Office of College Science Instrumentation.* OCSI works to assure the achievement and maintenance of strong, highquality science and engineering programs among the predominantly undergraduate four-year colleges of the United States. This program provides matching support for the purchase of laboratory and instructional equipment.

(e) *Office of Studies and Program Assessment.* OSPA helps determine the status and condition of precollege science, mathematics, and technology by establishing and maintaining data systems. Its overall goal is to assist the Directorate in policy formulation. Examples of project support include analyses and interpretation of existing data on precollege student achievement in science and mathematics, identification of new and improved indicators on student participation and teacher qualifications, and special studies on segments of precollege students and teacher populations.

8. Assistant Director for Scientific, Technological and International Affairs.

The Assistant Director serves as a principal advisor to the NSF Director in the development of long-range plans, programs, and policy for scientific, technological, and international affairs. The Assistant Director has responsibility for providing policy analysis and assessments of scientific and technological issues of interest to decision makers in the Executive Office of the President, the National Science Board, and the Congress. The Directorate is responsible for programs designed to: Collect and analyze data pertaining to U.S. and international science, engineering and technology; study public policy issues related to science and technology; and support research that cuts across scientific disciplines and is directed toward strengthening the science, engineering and technology base, both nationally and internationally. The Directorate consists of five Divisions and two Offices.

(a) *Division of Industrial Science and Technological Innovation.* ISTI provides a focus for small business activities of the National Science Foundation. Opportunities are provided under the Small Business Innovation Research Program for small science and technology-based firms to perform research projects leading to more rapid commercialization of new ideas, products, and processes. An Equipment Donation and Discount Program seeks to obtain donations of or reduced prices on equipment used by NSF awardees.

(b) *Division of International Programs.* INT administers programs for international cooperative scientific activities, including joint research projects, seminars, and scientific visits. It facilitates U.S. scientists' access to unique facilities and sites abroad and provides support for Joint Commissions and other U.S. international scientific efforts. It manages the use of Special Foreign Currency for programs in research and related activities, and coordinates other National Science Foundation programs with international aspects.

(c) *Division of Policy Research and Analysis.* PRA conducts quantitative analyses of national science policy data, and provides the NSF senior staff with estimates of the impacts of alternative policies on the Nation's science and engineering capabilities. Typical issues include supply and demand of scientists and engineers, the role of four-year colleges in support of science infrastructure, economics of academic scientific instrumentation and facilities, geographic distribution of NSF funds, faculty age distribution, and the health of science. Analyses are based on science and engineering personnel and infrastructure data from NSF, Department of Education, the National Institutes of Health, the National Academy of Sciences, other Federal agencies, and professional organizations.

(d) *Division of Research Initiation and Improvement.* RII provides programmatic focus and coordination of NSF activities to enlarge and broaden the human and institutional resources base for science and engineering research. These activities include: Providing research support to predominantly undergraduate institutions; providing support and opportunities for women scientists and engineers to conduct research, including teaching, research and counselling activities as visiting professors at academic institutions; providing support and increased access to research opportunities for minority scientists and engineers; improving research environments at predominantly minority institutions; and supporting and facilitating efforts to improve the research capabilities of institutions in states that receive little Federal research support.

(e) *Division of Science Resources Studies.* SRS is responsible for development and maintenance of a data base dealing with the characteristics, magnitude, and utilization of the Nation's human and financial resources for S&T activities. Studies and analyses provide information on scientific, engineering, and technical personnel, science education, scientific institutions, the funding of S&T activities, the nature and relationship of different types of research and development (R&D) activities, the economic impact of R&D, and related topics. The Division also supports studies designed to develop new or improved techniques for analyzing S&T resources data and new or improved indicators of the inputs, outputs, and impacts of S&T activities.

(f) *Office of Small Business Research and Development.* OSBRD is responsible for fostering communication between the National Science Foundation and the small business community; collecting, analyzing, compiling, and publishing information concerning grants and contracts awarded to small businesses by the Foundation; assisting small businesses in obtaining information regarding programs, policies, and procedures of the Foundation; and recommending to the Director and to the National Science Board any changes in procedures and practices which would enable the Foundation to use more fully the resources of the small business research and development community.

(g) *Office of Small and Disadvantaged Business Utilization.* OSDBU is

responsible for NSF compliance with the provisions of Pub. L. 95–507. It assists small and disadvantaged businesses with information about NSF programs and procurement opportunities.

INFORMATION FOR GUIDANCE OF THE PUBLIC

I. Inquires and Transaction of Business

All inquiries, submittals, or requests should be addressed to the National Science Foundation, Washington, DC 20550. A member of the public may visit Foundation offices at 1800 G Street, NW., Washington, DC during business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday. The Division of Personnel and Management has a Telephonic Device for the Deaf (TDD) which assists individuals with hearing impairment in obtaining information about NSF programs or employment. The TDD number is 202/357–7492. The information provided below indicates the offices members of the public should contact for specific information. Individuals uncertain about which office to contract may write to the Foundation's mailing address or visit the National Science Foundation, Public Affairs Group, Room 527, 1800 G Street, NW., Washington, DC 20550.

II. General Procedures, Forms, Descriptions of Programs

The Foundation accomplishes its mission primarily through the award of grants and other agreements to universities, colleges, and other nonprofit organizations, as well as to individuals and profit-making organizations. In instances where NSF has a specially assigned mission, or where services are being procured, contracts are used rather than grants. Generally, a person or organization desiring support should submit a request, application, or proposal in accordance with NSF guidelines. If the request is approved, NSF will provide financial support. NSF support basic and applied research and education in the sciences and engineering. Ordinarily grants are made on the basis of merit after a review process involving several qualified outside commentators drawn from the scientific, educational, and industrial communities.

III. Honorary Awards

The National Science Foundation annually presents the Alan T. Waterman Award to an outstanding young scientist for support of research and study. This Award provides for up to $300,000 for 3 years of research and study at the institution of the awardee's choice. From time to time, the National Science Board presents the Vannevar Bush Award to a person who, through public service activities in science and technology, has made an outstanding contribution toward the welfare of the Nation and mankind. The two awards together are designed to encourage individuals to seek to achieve the Nation's objectives in scientific and engineering research and education.

The National Science Foundation also provides support for the President's Committee on the National Medal of Science.

IV. Pertinent Publications

The Foundation and the National Science Board publish a variety of booklets and other materials describing the programs and procedures of the Foundation and assessing the status of science in the Nation. All publications and forms may be obtained by writing to the Foundation's mailing address or visiting the National Science Foundation, Public Affairs Group, Room 527, 1800 G Street, NW., Washington, DC 20550, unless otherwise indicated below. The following are key publications of the Foundation.

A. Grants for Scientific and Engineering Research (NSF 83–57)

Provides basic guidelines and instructions for investigators applying to the Foundation for scientific and engineering research project support and for other closely related programs, such as the support of foreign travel, conferences, symposia, and specialized research equipment and facilities. Complete details are given on application procedures. The brochure also provides information on the merit review of proposals for support. It is available for free from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550 or by calling the Foundation at 202/357–7861.

B. NSF Grant Policy Manual

A compendium of basic NSF grant administration policies and procedures generally applicable to most types of NSF grants and to most categories of recipients. The Manual includes fiscal regulations regarding expenditure reporting and use of NSF granted funds and other specific administrative procedures and policies. This Manual, identified by GPO as NSF 77–47, was last revised in April 1983 and is updated periodically. The *NSF Grant Policy Manual* (GPM) is available only by subscription, $12.00 domestic and $16.25 foreign, from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. GPM subscription rules and prices are subject to change by GPO.

C. NSF Bulletin

A monthly publication (except July and August) that summarizes program announcements, deadlines and target dates for proposal submissions, and other NSF activities.

D. NSF Annual Report

An annual presentation to the President, for submission to the Congress, highlighting the activities of the Foundation for the prior fiscal year. The report reflects accomplishments in research support activities and in science and engineering education, along with recent NSF policy or program initiatives and trends. Appendices contain other data on Foundation staff and Board members, financial reports, patents, advisory committees and panels and their membership.

E. National Science Board Reports

National Science Board assessments of the status and health of science and engineering. A report on indicators of the state of science and engineering in the United States is rendered biennially to the President for submission to the Congress. Available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550 or by calling the Foundation at 202/357–7861. Other reports on policy matters related to science and engineering and education in science and engineering are provided from time to time. The most recent report is: *Science Indicators—the 1985 Report.*

F. Publications of the National Science Foundation

Provides a listing of NSF publications available to the public, with prices where they apply.

G. Guide to Programs

Contains general information for individuals interested in participating in NSF support programs. Program listings describe the principal characteristics and basic purpose of each activity, as well as eligibility requirements, closing dates (where applicable), and the address to obtain more information, brochures, or application forms. The guide is available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550 or by telephone at 202/357–7861.

H. Individual Program Announcements and Solicitations

Detailed program publications are issued by individual program areas of the Foundation, announcing and describing award programs and containing critical dates and application procedures.

I. Important Notices

The primary means of general communication by the Director, NSF, with organizations receiving or eligible for NSF support. These notices convey important announcements of NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.

J. Internal Issuances

The Foundation maintains a system of internal issuances for communications within the Agency on matters of policy, procedures, and general information. The internal issuances are published to establish organizations, define mission, set objectives, assign responsibilities, delegate or limit authorities, establish program guidelines, delineate basic requirements affecting activities of the Foundation, and serve other internal needs.

1. Staff Memoranda

Issuances reserved for use by the Director and Deputy Director, for communications with the staff.

2. Circulars

A series of issuances to communicate continuing Agency policies, regulations, and procedures. (NSF is converting all policy and procedures contained in Circulars, Staff Memoranda, and Bulletins into Manuals.)

3. Manuals

Contain NSF policy and detailed information on operating procedures, requirements, and criteria.

4. Handbooks

Contain essential information on NSF programs in a brief form.

5. Bulletins

Issuances to communicate urgent information concerning changes in policy or procedure prior to their incorporation into a Manual, and to communicate information that is pertinent generally for a period of less than 2 years.

K. Mosaic

An interdisciplinary magazine of basic and applied research. Published four times a year. Edited for nonspecialists in the sciences as a way for the Foundation to report on the research it supports. Available from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Subscription is $5.00 per year in the United States and possessions ($6.25 foreign). A single copy may be purchased for $2.50 ($3.13 foreign).

L. Antarctic Journal of the United States

A magazine, published quarterly, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Subscription is $16.00 per year in the United States and possessions ($20.00 foreign). A single copy may be purchased for $1.50 ($1.88 foreign). The *Annual Review Issue of the Antarctic Journal* may be purchased for $10.00 (domestic), $12.50 foreign.

M. About the NSF

Flyer for the general public that briefly describes NSF programs and activities.

V. Availability of Information

Persons desiring to obtain information, including documents, may submit a request by telephone or in writing to the Public Affairs Group, to other Foundation units or, where applicable, under terms of the NSF Freedom of Information Act regulations, 45 CFR Part 612, or the NSF Privacy Act regulations, 45 CFR Part 613. All documents will be made available for inspection or copying, except for those which fall within the exemptions specified in the law and the withholding of which is deemed absolutely necessary.

SOURCES OF INFORMATION

A. Grants

Individuals or organizations planning to submit grant proposals should refer to the *NSF Guide to Programs*, and the *Grants for Scientific and Engineering Research* brochure or other appropriate program brochures and announcements. Single copies of these documents may be obtained by writing to the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550 or by calling the Foundation at 202/357-7861.

B. Contracts

The Foundation publicizes contracting and subcontracting opportunities in the *Commerce Business Daily* and other appropriate publications. Organizations seeking to undertake contract work for the Foundation may contact the Division of Grants and Contracts, 202/347-7842, Room 1140, or the Division of Administrative Services, 202/357-7922, Room 248, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

C. Small Business

Information concerning NSF research and procurement opportunities for small, disadvantaged, or women-owned businesses may be obtained from the Office of Small Business Research and Development/Office of Small and Disadvantaged Business Utilization, 202/357-7464, Room 1250, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

D. Engineering Information Resources

Information concerning engineering resources may be obtained from the Office of the Assistant Director for Engineering, Room 537, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

E. National Science Board Documents

Schedules of Board meetings, agendas, and summary minutes of the open meetings of the Board may be obtained from the NSB Office, 202/357-9582, Room 545, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

F. Committee Meetings

Summary of meeting minutes may be obtained from the contacts listed in the Notice of Meetings published in the Federal Register. General information about the Foundation's advisory groups may be obtained from the Division of Personnel and Management, Management Analysis Section, 202/357-9520; Room 208, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

G. Freedom of Information Act (FOIA) Inquiries

Requests from the public Agency records should be submitted in accordance with the NSF FOIA regulations, 45 CFR Part 612. These requests should be clearly indentified as "FOIA REQUEST" and addressed to Public Affairs Groups, Room 527, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

H. Privacy Act Inquiries

Anyone who wishes to obtain personal records legally available under the Privacy Act of 1974 may submit a request in accordance with the NSF Privacy Act Regulations, 45 CFR Part 613. Address such requests to the NSF Privacy Act Officer, Room 208, 1800 G Street, NW., Washington, DC 20550.

I. Reading Room

Persons who wish to inspect or copy records should contact the NSF Public Affairs Group, 202/357-9498, Room 527, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

J. Employment

Inquiries may be directed to the National Science Foundation, Division of Personnel and Management, 202/357-7840, Room 208, 1800 G Street, NW., Washington, DC 20550. The National Science Foundation is an equal opportunity employer.

Dated: January 8, 1987.

Jeff Fenstermacher,

Assistant Director for Administration.

[FR Doc. 87-835 Filed 1-13-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 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 bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on December 30, 1986 (51 FR 47072).

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 Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 13, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference schedule in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportuinity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be fild with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (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-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (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, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, MD Date of amendment request: July 31, 1986 as supplemented on November 24, 1986.

Description of amendment request: The following proposed technical specification (TS) changes complete the response to BG&E applications dated July 31, 1986 and November 24, 1986. The proposed TS changes are: 1. Move Units 1 and 2 TS Surveillance Requirements 4.6.4.1.4 and 4.6.4.1.5 from TS 3/4.6.4, "Containment Isolation Valves," to the "Containment Leakage" section of TS 3/4.6.1, "Primary Containment," and renumber them TS Surveillance Requirements 4.6.1.2.g and 4.6.1.2.h, respectively. 2. To the Units 1 and 2 TS 3/4.6.4 add Action Statement "e" which states, "The provisions of Specification 3.0.4 are not applicable provided that the affected penetration is isolated." 3. Modify Units 1 and 2 TS Surveillance Requirement 4.6.4.1.2 by changing the required surveillance period for demonstrating the operability of each isolation valve listed in Table 3.6-1 from at least once per 18 months to at least once per refuleling interval where a refueling interval shall be defined as 24 months.

Basis for proposed no significant hazards consideration determination: Change No. 1 proposes the removal of TS Surveillance Requirements 4.6.4.1.4 and 4.6.4.1.5 from TS 3/4.6.4 and their relocation in the "Containment Leakage" section of TS 3/4.6.1. In addition, these surveillance requirements shall be renumbered 4.6.1.2.g and 4.6.1.2.h, respectively.

TS 4.6.4.1.4 requires the containment purge isolation valves be demonstrated operable while in mode 5, unless the last surveillance test has been performed within the past 6 months or any time after being opened and prior to entering mode 4 by ensuring that the measured leakage rate when added to that determined for all other Type B and C penetrations is less than or equal to 0.60 La.

TS 4.6.4.1.5 requires that the containment purge isolation valve seals be replaced at a frequency such that no individual seal remains in service greater than two conseutive fuel reload cycles.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration.

One of the examples, (i), was "a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specfications . . .". This proposal is one such administrative change for the following reasons:

(1) Limiting Conditions for Operation (LCO's) 3.6.1.2 and 3.6.4.1 are applicable to the same modes, modes 1 through 4.

(2) Failure to comply with TS 4.6.1.2.g or 4.6.1.2.h will prohibit entering mode 4 from mode 5 as would noncompliance with the current TS 4.6.4.1.4 or 4.6.4.1.5.

(3) Determination of noncompliance with TS 4.6.1.2.g or 4.6.1.2.h while in modes 1 through 4 would require the unit to be shutdown in accordance with TS LCO 3.0.3, as would noncompliance with the current TS 4.6.4.1.4 or 4.6.4.1.5.

(4) The surveillance frequencies and requirements are unchanged by this proposal.

(5) These surveillance requirements are more closely relatd to the containment leakage rate requirements of LCO 3.6.1.2 than the containment isolation valve requirements of LCO 3.6.1.2 than the containment isolation valve requirements of LCO 3.6.4.1. Relocation of these requirements in LCO 3.6.1.2 provides greater consistency to the TS containment leakage rate requirements by placing them all in the same TS section.

Based upon the above, the Commission proposes to determine that the relocation of TS 4.6.4.1.4 and 4.6.4.1.5 to TS 3/4.6.1 involves no significant hazard considerations.

Change No. 2 proposes to add to TS 3/4.6.4 the Action Statement "e" which states, "The provisions of Specifications 3.0.4 are applicable provided that the affected penetration is isolated." Currently, a unit may operate in mode 1 with an isolated, inoperable containment isolation valve for an indefinite period of time. If this unit is shutdown, though, it may not be restored to power until the containment isolation valve is made operable. This proposal would permit startup from mode 5 to modes 4 through 1 with any of the containment isolation valves specified in Table 3.6-1 inoperable as long as the affected penetration was isolated.

The NRC staff has reviewed the licensee's proposed change and justifications against the standards in 10 CFR 50.92 and proposes to determine that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

Action Statement "e" would permit heatup and startup only when the penetration affected by the inoperable containment isolation valve was isolated. The purpose of the operable containment isolation valves is to ensure containment isolation capability exists to prevent any possible radiological releases from the containment structure. This capability is guaranteed for inoperable containment isolation valves by isolating their affected penetrations. If it is not feasible or practical to isolate the affected penetration, then the unit would not be permitted to heatup to mode 4. Hence, the containment isolation capabilities would not be appreciably changed as such, the probability or consequences of previously evaluated accidents would not be significantly increased.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change any system design. Operation is affected only in that a penetration whose isolation would not impact unit heatup or startup would be isolated if its associated isolation valve was inoperable. If the affected penetration was needed to be open anytime during unit heatup or startup, the unit would not be permitted to heatup to mode 4 or above until the penetration was isolated or until that affected containment isolation valve was restored to operability. Currently, operation in modes 1 through 4 is permitted with inoperable containment isolation valves for an indefinite period as long as the affected penetrations are isolated.

This proposal would not create the possiblity of a new or different accident as (1) the containment isolation function change is negligible in that rather than requiring the containment isolation valve to close within a certain response time following receipt of an actuation signal, that valve or penetration would already be closed; and (2) if a penetration which is needed open during unit heatup or startup is isolated due to an inoperable containment isolation valve, the unit will not be permitted to heatup or startup.

(iii) Involve a signficant reduction in a margin of safety . . .

The only margin of safety affected by this proposal is the response time required for containment isolation. In the event containment isolation is required, an inoperable containment isolation valve will have its associated penetration already isolated rather than requiring a certain response time before it is isolated. This actually facilitates containment isolation, hence, this proposal does not involve any significant reduction in a margin of safety.

Based upon the above, the NRC staff proposes to determine that the requested addition of Action Statement "e" to TS 3/4.6.1 involves no significant hazards consideration.

Change No. 3 proposes to modify the Units 1 and 2 TS Surveillance Requirement 4.6.4.1.2 by changing the surveillance period from at least once every 18 months to at least once every refueling interval where a refueling interval shall be defined as 24 months. TS 4.6.4.1.2 demonstrates the operability of the containment isolation valves specified in Table 3.6.–1 by verifying that they stroke to their isolation positions upon receipt of their associated isolation actuation signals. The surveillance period of at least once every 18 months matches the current refueling interval. The extension in the surveillance interval to 24 months is requested to facilitate a 24-month operating cycle.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

This proposal only affects events requiring the containment isolation function by extending the time between performances of the containment isolation valve operability demonstrations. The BG&F results from previous performances of this surveillance indicate that the operability and isolation times of the containment isolation valves tested would experience negligible degradation over this 6 month surveillance interval extension. As a result, the containment isolation function would not be significantly affected and the probability or consequences of previously evaluated accidents would not be significantly increased by the extension of this surveillance interval to 24 months.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change system design, operation, or operability requirements other than extending the period between performances of the containment isolation valve opreability determinations. The containment isolation function would be unchanged and the decrease in containment isolation reliability would be negligible. Consequently, this proposed extension in the surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety . . .

As the only consequence of the extension of the surveillance interval by 6 months is a minimal degradation of the reliability of the containment isolation function, there is no significant decrease in the availability or capability of a containment isolation and, therefore, no significant reduction in a margin of safety.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed change to TS Surveillance Requirement 4.6.4.1.2 involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, prince Frederick, Maryland.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ashok C. Thadani.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, MT

Date of amendment request: December 5, 1986.

Description of amendment request: The proposed changes to the Technical Specifications for the Big Rock Point Plant reflect the planned use of new hybrid control rods. The control rods are manufactured by NUCOM, Incorporated. Also, certain proposed changes support the use of Cycle 22 Reload I–2 fuel which would be installed during the 1987 refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists, as stated in 10 CFR 50.92(c). The licensee has performed an evaluation using the criteria given in 10 CFR 50.92(c) and has applied them to the proposed Technical Specification changes. In summary, the evaluation presented is as follows:

This Technical Specification change is being requested to include the use of NUCOM, Incorporated, hafnium/hybrid designed control blades along with the presently used General Electric all B_4C design in the control of reactor power operation during the upcoming fuel cycle. The control blade designs are essentially the same with the exception of material composition. The exterior geometric envelopes of the two designs are the same with regard to dimensions and the designs are mechanically compatible with all of the reactor

systems and components. The respective weights of the control blades are also essentially equal.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the NUCOM blade is approximately equivalent in dimensions, weight, and reactivity worth to the accepted General Electric design, and the materials are compatible with the boiling water reactor environment such that the hafnium/hybrid design can be modeled the same as the standard all B_4C control blade design in use. Therefore, neither the postualated reactivity insertion accidents nor the neutron absorption characteristics/power distribution control have changed. Also, the proposed Technical Specification changes to Table 1 and Table 2 column headings are editorial in nature and, therefore, do not affect any accident. The mechanical, thermal/hydraulic, and neutronic analysis for Big Rock Point Reload I-2 is the same as that for the previously approved Reload I-1 (see Technical Specification Amendment No. 81 and associated Safety Evaluation dated November 1, 1985). The Reload I-2 fuel does not contain any fuel assemblies significantly different from those previously found acceptable to the NRC staff. Therefore, the above mentioned fuel changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the limits are derived in a manner identical to that described in Exxon Nuclear Corporation (ENC) report XN-NF-79-21, revision 1, Big Rock Point LOCA Analysis using the ENC WREM NJP-BWR ECCS Evaluation Model—MAPLHGR Analysis which has been previously reviewed and accepted by the NRC.

These changes do not create the possibility of a new or different kind of accident from any previously evaluated because, as stated above, the hafnium/hybrid design can be modeled the same as the standard all B_4C previously approved design presently in use. Also, for the fuel related administrative changes, the XN-NF-79-21 report covers the required spectrum of accident break locations, sizes and configurations for the Big Rock Point Plant and the column heading changes are editorial in nature and therefore, do not create any new or different accidents.

These changes do not involve a significant reduction in the margin of safety because of the approximate equality of weight and reactivity worth between the NUCOM design and the accepted General Electric design as stated in the "Big Rock Point Hybrid Control Rod Evaluation", dated October 1986 attached to the December 5, 1986 submittal. Also, for the fuel-related administrative changes, as stated in the XN-NF-79-21 report referenced above, reactor operation with the proposed limits assures conformance with 10 CFR 50.46 criteria for maximum cladding temperature, metal-water reaction and hydrogen release. The column heading changes are editorial in nature and therefor, do not reduce any margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John A. Zwolinski.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, FL

Date of amendment request: December 18, 1986.

Description of amendment request: One parameter that is monitored to ensure safe reactor core operation is linear heat rate, as measured in kilowatts per foot. The limitation on linear heat rate ensures that in the event of a loss-of-coolant accident the peak temperature of the fuel cladding will not exceed 2200°F. The linear heat rate is determined to be within its limits by continuously monitoring the reactor core power distribution with either the excore detector monitoring system or with the incore detector monitoring system. When the excore monitoring system is being utilized, the Technical Specifications also require the monitoring of the axial shape index and reactor power level. The axial shape index is defined as the power level detected by the lower excore nuclear instrument detectors minus the power level detected by the upper excore nuclear instrument detectors divided by the sum of these power levels. The way the axial shape index and reactor power level are monitored in this instance is by use of Technical Specification Figure 3.2-2. Figure 3.2-2 represents a plot of fraction of maximum allowable power level versus axial shape index. The figure further illustrates the region of acceptable operation and the region of unacceptable operation for combinations of reactor power levels and axial shape indices.

The current maximum power level for any axial shape index, per Figure 3.2-2, is 88 percent. The licensee proposes to lower the maximum power level for any axial shape index, per Figure 3.2-2, to 85 percent. This represents a decrease in the region of acceptable operation and, thus, is more restrictive than what the current Technical Specifications allow. The licensee states that this change is needed to assure that the plant will operate within safe limits for anticipated core power distributions in future cycles.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will not result in any change to the plant's structure, systems, or components; therefore, there is no increase in the probability of any accident previously evaluated. Reduction of the fraction of maximum allowable power level from 0.88 to 0.85 will ensure operation of the plant within established safety limits for all anticipated power distributions, control rod positions and power levels in future cycles.

In connection with the second standard, the licensee states that:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will result in no changes to the plant's procedures, structures, components or modes of operation; therefore it does not create the possibility of a new or different kind of accident from any accident previously analyzed.

Regarding the third standard, the licensee states that:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed Figure 3.2-2 has been made more restrictive to accommodate the potential for more restrictive axial shapes in future cycles. This change, therefore, does not reduce the margin of safety during the current cycle of operation and is designed to ensure that operation under the proposed Figure 3.2-2 in future cycles will continue to meet all acceptance criteria. Verification that operation under the proposed Figure 3.2-2 meets all acceptance criteria for future cycles is part of each cycle's reload safety analysis.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, it appears that the standards have been met because the proposed figure is more restrictive than the current one and will be periodically reverified as part of each cycle's reload safety analysis, and that there will be no changes to the physical plant or procedures used to utilize it.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, FL

Date of amendment request: December 18, 1986.

Description of amendment request: The amendment would delete the technical specifications associated with core support barrel excessive movement (TS ¾ 4.11). The specifications were instituted on a few Combustion Engineering reactors in the mid-1970's when a core support barrel hold-down ring design problem was found in another plant of similar design. The hold-down ring was subsequently redesigned and the specification was put in place to confirm the adequacy of the new design. Core support barrel movement has been monitored for about 9 years to date and no excessive motion has been found.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the Core Barrel Movement Technical Specification was to verify the effectiveness of the redesigned core barrel hold-down ring by determining the core barrel movement baseline and by monitoring core barrel movement against the baseline. The baseline was determined, and monitoring core barrel movement has been performed for over nine years of plant operation. The results have shown that excessive core barrel movement is not possible with the redesigned core barrel hold-down ring. Because core barrel movement monitoring has been shown to be no longer necessary, and because core barrel movement is not considered in the accident analyses, operation of St. Lucie Unit 1 without a requirement for core barrel movement monitoring will not involve an increase in the probability or consequences of an accident previously evaluated.

In connection with the second standard, the licensee states that:

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment would only delete the requirement for core barrel movement monitoring, and would not alter any of the assumptions or methodologies used in the safety analyses. Furthermore, there is no change to the operation of the plant so that a new or different kind of accident is not possible as a result of this change.

Regarding the third standard, the licensee states that:

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The Core Barrel Movement Technical Specification does not establish any margins of safety, and therefore deletion of the requirement for monitoring core barrel movement will not result in a reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, it appears that the standards have been met because no excessive core support barrel movement has been detected in 9 years of monitoring and the hold-down ring redesign effort appears to be successful.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, FL

Date of amendment request: December 12, 1986.

Description of amendment request: The amendment would delete existing diesel generator fuel oil sampling requirements and replace them with more effective sampling requirements. This includes removing any accumulated water from the engine mounted fuel tanks and storage tanks on a periodic basis, and sampling fuel oil in the storage tanks in accordance with ASTM standards before adding the oil to the storage tanks and on a periodic basis thereafter.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated in that the proposed change involved replacing fuel oil tests currently required by Technical Specifications with Technical Specification Surveillance

Requirements which are more effective in detecting unsatisfactory fuel oil and are simpler to perform.

In connection with the second standard, the licensee states that:

Use of the modified specification would not create the possibility of an new or different kind of accident from any accident previously evaluated.

The proposed amendments would replace fuel oil tests currently required by the Technical Specifications with different tests which are more effective for ensuring quality fuel oil. These changes are:

(a) The proposed testing requirements would improve the capability to detect delivery of diesel fuel contaminated with gasoline or jet fuel (JP-4) by adding a test for flash point.

(b) The proposed Clear and Bright test is more sensitive for detecting water and sediment than the test which is currently required.

(c) The accelerated oxidation stability test which predicts the tendency of the fuel to form particulates during storage would be replaced by a different test performed more frequently which measures actual particulates in the fuel.

(d) Because proposed tests for incoming fuel shipments will ensure its quality, periodic testing would only be required for the parameters which can change during storage. Thus, certain test requirements would be deleted.

(e) Because of the high degree of protection obtain by the tests on incoming fuel prior to addition to the storage tanks, the proposed relaxation of the time limit for complete fuel specification testing from 14 days to 31 days is insignificant.

(f) Since comparative gravity, as proposed, can detect contamination by jet fuel (Jet A) and other types of contamination are detected by tests other than viscosity, viscosity testing is not required if gravity is determined using this method.

(g) Under the proposed amendments, analysis for sulfur using any one of three generally accepted methods would be allowed.

(h) Administrative changes would be made to reference up-to-date industry standards.

(i) The requirement to periodically remove accumulated water from the day tanks would be extended to include the stroage tanks.

Regarding the thrid standard, the licensee states that:

Use of the modified specification would not involve a significant reduction in a margin of safety.

With one exception, the changes described involve either adding surveillance tests or replacing tests with others which are at least as effective. The exception (item (d) above) involves deleting tests which are not meaningful because the parameters tested do not change during storage. Thus, the net effect of the proposed changes would be to increase safety by establishing surveillance requirements which would be more effective for ensuring quality fuel oil.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. In addition, the staff notes that the proposed requirements are essentially the same requirements which have been proposed by other licensees in the past and these have been found to be acceptable. Based upon this review, it appears that the standards have been met because the proposed overall requirements are more effective for ensuring quality fuel oil and similar requirements have previously been proposed by other licensees and they were found to be acceptable.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Viriginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, NJ

Date of amendment request: November 28, 1986 (TSCR 151).

Description of amendment request: The proposed amendment would add limiting conditions for operation (LCO) and surveillance requirements pertaining to control room habitability to the Appendix A Technical Specifications (TS). This amendment would add two new sections numbered 3.17 and 4.17, Control Room Heating, Ventilating and Air-Conditioning System, to the TS. Section 3.17 states when the control room heating, ventilating and air-conditioning (HVAC) system is required to be operable, the actions to be taken if it is determined to be inoperable and the basis for the requirements. Section 4.17 lists the surveillance tests to be made on the HVAC system, the frequency of these tests and the basis for the surveillance.

Basis for proposed no significant hazards consideration determination: By a Confirmatory Order dated March 14, 1983, GPU Nuclear (GPUN) was required to have NUREG-0737, Item III.D.3.4, Control Room Habitability, fully implemented at the Oyster Creek Nuclear Generating Station (OCNGS) before the restart from the Cycle 11 refueling (Cycle 11R) outage. By TS Amendment 105 dated July 15, 1986, GPUN was granted a postponement of full implementation until the Cycle 12R outage provided that interim system upgrades and accident analyses were compeleted. These interim items have been completed with the final item being this submittal of appropriate TS for the control room HVAC system.

The licensee has proposed Technical Specification Change Request (TSCR) No. 151 to add requirements concerning LCO and surveillance for the control room HVAC. It has evaluated TSCR 151 to determine if a significant hazards consideration exists. The results of this evaluation, in terms of the criteria in 10 CFR 50.92(c), are given below:

The control room envelope consists of the control room panel area, the Shift Supervisor's office, toilet room, kitchen, and cable spreading rooms. Normal ventilation is provided by a system utilizing one supply fan with steam coils for heating and a three-stage refrigeration unit for cooling. The ability to recirculate air is provided, with recirculation varying from 0 to 100 percent. A purge mode is provided for operation with 100 percent outside air to prevent the recirculation of smoke in the Control Room and to clear the area of smoke and fumes.

The system is normally operated to maintain room air at 75 degrees F. Under normal operation of the turbine generator unit, the system cools during winter and summer. Heat to maintain 70 degrees F in these areas is anticipated to be required only during the winter when the turbine generator is not operating. Major components of the system are the air conditioning unit and the two heating coils. The system does not include filters to reduce the intake of radioactivity.

Upon the receipt of a LOCA [loss of coolant accident] or high containment radiation signal in the control room, the operators will switch the control room HVAC system to the partial recirculation mode of operation. For this mode of operation, the control room pressure envelope is held at a minimum of ⅛ inch water gauge positive pressure, and the total measured makeup plus infiltration air flow is 1830 cfm.

The radiological analyses ([dated] 6/17/85) previously submitted to the staff were based on the original design of the control room HVAC system. The intent of the original system design was to provide a minimum of 450 cfm infiltration for pressurization and air replacement purposes rather than restrict the infiltration to a maximum of 450 cfm. The three airborne fission product release paths considered where Main Steam Isolation Valve Bypass Leakage, Containment Leakage and Engineered Safety Features Leakage. Since the NRC staff is presently reviewing the iodine source term for the design basis LOCA accident, the analyses were restricted to whole body and beta skin doses from noble gases.

The calculation were revised to determine the effect of higher infiltration rates on the 30-day gamma whole-body and beta skin doses to the operators. The results are presented below:

Flow rate (cfm)	30 day dose (REM)	
	Gamma	Beta
1500	3.05	27.9
2000	3.07	28.2

Although the infiltration rate had increased by as much as a factor of 4, the doses did not increase in the same proportion. The reason for this is that when the infiltration rate is increased, the exfiltration from the control room envelope increased at the same rate, thereby having only a small effect on the isotopic concentrations in the control room at any time over the 30 day period. The revised concentrations produced higher doses to the operators; however, all the doses were less than the S.R.P. [Standard Review Plan] 6.4 limits of 5 rem and 30 rem for gamma and beta doses respectively. Also, the radiological analysis did not rely on the use of goggles or protective clothing to meet the GDC [General Design Criterion] 19 beta skin dose guidelines, a Cycle 12 commitment. Therefore, the control room was determined radiologically habitable for 30 days following a design basis LOCA.

Because the control room HVAC system has no filters to reduce the radioactivity following a LOCA, the loss of the control room HVAC does not change the analysis for meeting the GDC 19 criteria on radiation exposure. The control room operators have time to manually close dampers to isolate the control room from other sources, if needed, so that the proposed action does not significantly increase the consequences of a previously evaluated accident or create a new or different kind of accident.

The effects of natural phenomena in the control room are being excluded from the issue of Control Room Habitability. These effects are being addressed in the Systematic Evaluation Program (SEP) in the following active reviews: Tornado missiles, SEP Topic III-4.A; seismic design considerations, SEP topic III-6; wind and tornado loadings, SEP Topic III-2; and flooding potential and protective requirements, SEP Topic II-3.B. These reviews are discussed in the staff's Integrated Plant Safety Assessment Report for Oyster Creek, NUREG-0822 dated January 1983.

Based upon the hereinbefore discussion, we [the licensee] have evaluated that this change request involves no significant hazards considerations. In summary, we have determined that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated;

—The Control Room HVAC system is not an initiator or mitigator of an accident previously analyzed, and therefore does not change the probability or the consequences of any design basis accidents.

2. Create the probability of a new or different kind of accident from any accident previously evaluated;

—The Control Room HVAC system is not an initiator of a new or different kind of accident, and therefore does not create the probability of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety;

—The Control Room HVAC does not mitigate the consequences of any previously analyzed accident, and therefore does not involve any reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's evaluation. Therefore, the staff proposes to determine that the licensee's application does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr.; Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John A. Zwolinski.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA

Date of amendment request: December 10, 1986.

Description of amendment request: By Order dated December 10, 1982, the Commission required the licensee to install inadequate core cooling indication instruments (which included a Reactor Coolant Inventory Trending System) at TMI-1. The parameters specified in NUREG-0737, Item II.F.2, were to be included in the system. The system is to be operational prior to the startup from the 6R refueling outrage which is tentatively scheduled for March 1987. The proposed amendment would incorporate requirements for operability and calibration frequencies for the Reactor Coolant Inventory Trending System (RCITS) in the TMI-1 Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if it meets three standards as described in 10 CFR 50.92. The licensee has presented a discussion of each standard and the Commission's staff is in basic agreement with the licensee's presentation. Each standard is discussed in turn.

Standard 1—The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The RCITS is not relied upon for reactor trip or initiation of any plant safety system. Further, its operation is not credited nor required in any accident evaluated in the Final Safety Analysis Report (FSAR). Operation of the facility in accordance with the proposed change would not affect the probability or consequences of an accident previously evaluated.

Standard 2—The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is intended solely to enhance the ability of the operator to diagnose accidents and transients by providing the operator with additional corroborative information. No change to normal operating procedures is required. The system is physically connected to the primary system in such a manner so as not to create new or different kinds of accidents from any accident previously evaluated. Operation of the facility in accordance with the proposed change would not create the possibility of a new or different accident from any accident previously evaluated.

Standard 3—The proposed amendment would not involve a significant reduction in a margin of safety. The purpose of the amendment is to enhance accident and transient monitoring capability. No safety margins are reduced. Therefore, operation of the facility in accordance with the proposed change would not involve a significant reduction in a margin of safety.

The Commission's staff concurs with the licensee's analysis on the three standards as discussed above. Therefore, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Indiana and Michigan Electric Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, MI

Date of amendment request: December 5, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications for the Quadrant Power Tilt Ratio to require that limits be verified once per hour for twelve hours or until verified acceptable at 95% or greater rated thermal power.

Basis for proposed no significant hazards consideration determination: The current Technical Specifications require verification of the Quadrant Power Tilt Ratio once every hour until verified acceptable at 95% or greater rated thermal power. With the unit operating at 90% power, for reasons unrelated to the Quadrant Power Tilt Ratio, the current Technical Specifications as written require continuous verification. This continuous verification and the ability to verify the ratio only above 95% power has been recognized to be inappropriate. The Unit 2 and the current Standard Technical Specifications were corrected; the licensee proposes to similarly correct the Unit 1 Technical Specifications.

The Commission's standard for determining whether a significant hazard consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evalued, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The proposed change corrects an error in the application of language previously thought acceptable. The Quadrant Power Tilt Ratio needs to be verified but once verified within the limits, additional hourly verification without a reason for re-verification is unnecessary. The language has also been corrected to recognize that verification can be done at less than 95% power.

The proposed amendment corrects the Technical Specification language to be consistent with the intent of verification of the limits. It does not change any previously evaluated accident condition nor does it change plant operation which would create the possibility of a new accident. Since this is a correction of language to reflect the intent of the Technical Specification, there is no reduction in any safety margin.

On the basis of the above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: B.J. Youngblood.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, MI

Date of amendment request: December 22, 1986.

Description of amendment request: The proposed amendment would delete from the Design Features Section 5.3.1 of the Technical Specifications (TS) the maximum fuel rod weight limit of 2236 grams uranium for Unit 1 and 1983 grams uranium for Unit 2. The purpose of the change would be to permit the use of assemblies slightly over the weight limit. The proposed amendment would also correct several typographical errors.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee submitted the following significant hazards determination:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of previously evaluated accidents?

Response: The variation in fuel rod weight that can occur even without a Technical Specification limit is small based on other fuel design constraints, e.g., rod diameter, gap size, UO-2 density and active fuel length, all of which provide some limit on the variation in rod weight. The current safety analyses are not based directly on fuel rod weight, but rather on design parameters such as power and fuel dimensions. These parameters are either (1) not affected at all by fuel rod weight, or (2) only slightly affected. However, a review of design parameters which may be affected indicated that a change in fuel weight does not cause other design parameters to exceed the values assumed in the various safety analyses, or cause acceptance criteria to be exceeded. The effects are not significant with respect to measured nuclear parameters (power, power distribution, nuclear coefficients), i.e., They remain within their TS limits. Thus, it is concluded that the TS modification does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The creation of a new or different kind of accident from any previously evaluated accident is not considered a possibility. All of the fuel contained in the fuel rod is similar to and designed to function similar to previous fuel. Thus, the existing new and spent fuel storage critically analyses bound the changes observed. This change does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The margin of safety is maintained by adherence to other fuel-related Technical Specification limits and the FSAR design bases. The deletion of fuel rod weight in the Technical Specifications Design Features Section 5.3.1 does not directly affect any safety system or the safety limits, and therefore will not reduce the margin of safety.

Based on the above analysis, the licensee concluded that the proposed amendments do not involve significant hazards considerations. The staff has reviewed the licensee's significant hazards consideration determination and agrees with the licensee's analysis.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of these examples (i) involving no significant hazards consideration is a purely administrative change to technical specifications. The proposed change to correct several typographical errors is directly related to this example. Based on all of these analyses, the staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: B.J. Youngblood.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, CO

Date of amendment request: December 19, 1986.

Description of amendment request: This proposed amendment updates an earlier amendment request made on June 4, 1986 and noticed in the **Federal Register** on August 29, 1986 at 51 FR 27288. The proposed amendment incorporates the requirements for the licensee's Steam Line Rupture Detection/Isolation System (SLRDIS) at the Fort St. Vrain Nuclear Generating Station. Specifically, this proposed amendment adds new limiting conditions for operation and surveillance requirements to assure that

the SLRDIS will perform its design function should the reactor require this protective function. Requirements for the existing Steam Pipe Rupture Detection System will be deleted.

Basis for proposed no significant hazards consideration determination: Based upon PSC Safety Analysis Report (EE-EQ-0014), Steam Line Rupture Detection/Isolation System (SLRDIS), it is concluded that the SLRDIS is capable of performing its intended function to detect and isolate major rupture of high energy steam lines of the secondary cooling system without operator intervention. This was fully discussed in our previous notice referenced above. The specific changes made in this submittal clarify the actions to be taken by the operator when one or more SLRDIS instrument channels becomes inoperative. It also reduces the time in which the operator must take action and adds provision for daily checks of the instrument channels.

Based on the above evaluation, we find no change to our earlier proposed determination that operation of Fort St. Vrain in accordance with the proposed amendment would not: (1) Involve a signficiant 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 the margin of safety. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201-0840.

NRC Project Director: Herbert N. Berkow.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC

Date of amendment request: December 12, 1986.

Description of amendment request: South Carolina Electric & Gas Company requests a revision to Table 3.3-5, "Engineered Safety Features Response Times," of Technical Specification 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and its associated Basis. Due to the possibility of conflicting interpretations, this change clarifies the Service Water System and Reactor Building Cooling Unit response times for Initiating Signal and Functions Two through Five of Table 3.3-5.

Basis for proposed no significant hazards consideration determination: The containment peak pressure predicted by the accident analysis via the CONTEMPT computer code demonstrates that the reactor building cooling unit's (RBCU) contribution to peak pressure control is not a significant factor in the short term. The mass and energy release from the postulated design basis accident together with containment heat sinks are the dominant factors. The peak pressure predicted by this analysis is less than the containment design pressure of 57 psig and provides a considerable margin over the regulatory guide recommendation that maximum containment pressure be 10% (51.3 psig) below the design pressure.

The maximum containment temperature predicted by this analysis was below the equipment qualification temperature, and therefore, the equipment which required transient heat transfer analysis will still be bounded by the equipment surface temperature profiles of Final Safety Analysis Report (FSAR) Figures 3.11-8, 3.11-9, 3.11-10.

The dose levels reported in FSAR Table 15.4-16 are bounded and remain well below 10 CFR Part 100 levels. Additionally, the operator dose levels in the control room remain below 10 CFR Part 50 Appendix A GDC-19 guidelines.

The service water system has been demonstrated by calculation, analysis, and plant surveillance testing to meet design basis accident analyses required times to support safety related functions of components and interfacing systems.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from accidents previously evaluated; or (3) involve a significant reduction in margin of safety The licensee has determined that the requested amendment does not involve significant hazard considerations for the following reasons:

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report is not increased.

The change in Engineered Safety Features (ESF) response times for the service water system and RBCUs does not result in a reactor building peak pressure or temperature increase above that originally submitted in the FSAR. The analyzed pressure provides a considerable margin to the containment design pressure. The equipment qualification will also not be affected.

(2) The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not created.

The plant hardware configuration has not been affected by the change to the ESF response times. Therefore, the results of previously postulated accidents remain unchanged, and the possibility of a different accident or malfunction other than those previously analyzed has not been introduced.

(3) The margin of safety as defined in the basis for any Technical Specification is not reduced.

The previously evaluated accidents or malfunctions have not been changed by the revision of ESF response times; thus, the margin of safety as defined in Technical Specifications remains unchanged.

The staff has reviewed the licensee's determination and finds it acceptable. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, VA

Date of amendment request: April 10, 1986.

Description of Amendment Request: The proposed changes would differentiate between the requirements of Technical Specification (TS) 3/4.3.3.7 for inside and outside containment on fire detection instrumentation. Specifically, the changes would modify the surveillance interval for fire detection instruments in containment to every cold shutdown unless performed within the previous six months. Also, the proposed changes would replace the one hour fire watch requirements for containment fire zones which have inoperable fire detection instrumentation with an inspection once every eight hours or hourly monitoring of containment air temperature. These changes are consistent with the requirements for fire detection instrumentation specified in the

Westinghouse Standard Technical Specifications for Pressurized Water Reactors, NUREG-0452, Revision 4 and appropriately apply to North Anna Units No. 1 and No. 2 (NA-1&2).

NA-1&2 are designed with subatmospheric containments. The corresponding TS requires that the containments be maintained subatmospheric during operations in Modes 1 through 4. Under these specified subatmospheric conditions, the containment environment is oxygen-deficient, thereby requiring respiratory protection. As a consequence, it is prudent to limit personnel entry into containment during subatmospheric modes of operation.

The present surveillance requirement specifies a functional test of fire detection instrumentation every six months. This requires a containment entry every six months to perform the test. Testing of fire detection instrumentation inside containment has resulted in extended stay times, subjecting personnel to radiation exposure as well as the oxygen-deficient environment of the subatmospheric containment. Consistent with Standard Technical Specification 3.3.3.8 on fire detection instrumentation, the licensee has identified "not accessible during plant operation" as referring to "inside containment." Independent of personnel safety concerns, there are a sufficent number of redundant or diverse fire detectors in the containment fire zones to justify the proposed change in surveillance interval.

Likewise, the present action statement requires an hourly fire watch patrol in containment to inspect those containment fire zones which had inoperable fire detection instrumentation. This requirement is impractical, independent of personnel safety concerns, due to the difficulty of implementing hourly entries into containment. A containment entry/exit typically takes 10 minutes due to the time for depressurization/pressurization in the air lock. This does not consider the time to don/remove anti-contamination clothing and respirator and travel through access control areas. Furthermore, hourly inspection of containment spaces is not justified given the relative lack of consumable material compared to areas outside of containment. Monitoring containment air temperature on an hourly basis or a visual inspection of containment every eight hours is an appropriate compensatory action to take in the event of instrument inoperability until the minimum required number of fire detection devices have been restored operable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Specifically, the proposed changes do not increase the likelihood of an undetected fire in containment. The proposed compensatory measures of hourly temperature monitoring or visual inspection of containment every eight hours provide adequate interim fire detection capability until the minimum required number of fire detection devices have been restored operable. Likewise, the proposed change to the functional testing interval for fire detection instrumentation in containment merely modifies the test frequency during sustained power operations. As mentioned before, there are a sufficient number of redundant or deverse fire detectors in the containment fire zones to ensure detection and justify the proposed change in surveillance interval. These changes do not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Since the proposed change does not modify the present design, the possibility of a different type of accident other than that previously analyzed has not been created.

(3) Involve a significant reduction in the margin of safety. The proposed changes still require adequate functional testing of fire detection instrumentation and compensatory inspections of hourly temperature monitoring consistent with the Westinghouse Standard Technical Specifications for Pressurized Water Reactors, NUREG-0452, Revision 4, which appropriately apply to NA-1&2.

Therefore, the proposed changes meet the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed changes involve no significant hazards considerations, and that operation of the facility in accordance with the proposed changes would not involve a significant hazards consideration.

Local Public Document Room Location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, VA

Date of amendment requests: December 11, 1985, as supplemented May 13, 1986.

Description of amendment requests: The proposed change would revise the Technical Specification Section 3.10 to allow the movement of the transfer canal door over the spent fuel pool if necessary.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed change would allow the movement of the 3600 lb transfer canal door over the spent fuel pool if necessary. By letter dated December 11, 1985, as supplemented May 13, 1986, the licensee discussed the transfer canal door drop analysis and the approach being used to meet the guidelines of Standard Review Plan (SRP) 9.1.5, and NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants."

For heavy loads to be transported over the spent fuel pool, the guidance provided in Sections 5.1 and 5.1.1 of NUREG-0612 should be met. During the Phase I review of the control of heavy loads at Surry, completed on May 16,

1984, the Surry load handling systems were evaluated against the guidelines of Section 5.1.1 of NUREG–0612. The load handling systems met the guidelines and were foind acceptable. Since no load handling system procedure changes, except as noted below, or design changes are necessary for the requested Technical Specification change, the Phase I evaluation remains valid. However, since the transfer canal door would be traveling over spent fuel, the criteria specified in Section 5.1 of NUREG–0612 needs to be addressed. Only Criteria I, II and III are applicable for this case; these criteria are:

I. Releases of radioactive material that may result from damage to spent fuel based on calculations involving accidental dropping of a postulated heavy load produce doses that are well within 10 CFR Part 100 limits of 300 rem thyroid, 25 rem whole body (analyses should show that doses are equal to or less than ¼ of Part 100 limits);

II. Damage to fuel and fuel storage racks based on calculations involving accidental dropping of a postulated heavy load does not result in a configuration of the fuel such that K_{eff} is larger than 0.95; and

III. Damage to the reactor vessel or the spent fuel pool based on calculations of damage following accidental dropping of a postulated heavy load is limited so as not to result in water leakage that could uncover the fuel (makeup water provided to overcome leakage should be from a borated source of adequate concentration if the water being lost is borated).

The licensee stated in their May 13, 1986 letter that no spent fuel would be damaged if the transfer canal door was dropped onto the spent fuel pool racks. However, a control rod assembly could be damaged, resulting in the release of radioactivity. A licensee evaluation performed in Section 14.4.1.3 of the Updated Final Safety Analysis Report for a fuel handling accident in the spent fuel pool, assuming all 204 fuel rods in a fuel assembly fail, shows that the radiological consequences are below the guidelines of 10 CFR Part 100. Since a control rod does not contain fissionable material, the licensee concluded that any radioactivity released from a damaged control rod in a transfer canal door drop accident would be much less than that which could be released from a damaged fuel assembly in a fuel handling accident, with radiological consequences lower than the fuel handling accident and well within the criteria of 10 CFR Part 100 limits. The staff concurs with the licensee's evaluation that there would be no fuel assembly damage, and that the consequences of damaging a control rod would satisfy Criterion I of NUREG–0612, Section 5.1, and 10 CFR Part 100.

In the May 13, 1986, letter the licensee stated that for the worst case scenario of a dropped transfer canal door, only one cell in the spent fuel rack would be damaged. The resulting damage would be limited to local crushing of the top 2.42 inches of the impacted spent fuel rack cell. Dislodging the impacted cell from the rack would entail only a vertical movement of the cell, and the center-line distance between the cells would remain unchanged in the active fuel area. Thus, subcriticality (K_{eff} less than 0.95) would be maintained. The staff concurs with the licensee's conclusion; thus, Criterion II of NUREG–0612, Section 5.1 is satisfied.

The most limiting case with respect to damage to the spent fuel pool liner is a postulated drop of the transfer canal door over a leak test channel located on the pool floor. The licensee's analysis showed that the liner plate would deform a maximum of 0.132 inches, and that the concrete surrounding the test channel would absorb the remaining impact energy. The licensee stated that the stainless steel liner would yield along the edge of the channel but would not fracture because of the high ductility of the stainless steel. Thus, there would be no leakage of water from the pool. The staff concurs with the conclusion; therefore, Criterion III of NUREG–0612 Section 5.1 is satisfied.

Based on above evaluation, the staff concludes that movement of the transfer canal door, using the spent fuel pool load handling system at Surry Power Station, meets the guidelines of SRP Section 9.1.5, and NUREG–0612. As discussed in Criterion I of NUREG–0612, the radiological consequences for a transfer canal door drop accident are much lower than the consequences of a fuel handling accident evaluated in the Updated Final Safety Analysis Report. Fuel handling accidents and canal door drop accidents are basically similar in nature. The probability of dropping the canal door into the spent fuel pool is very small considering that the door will be traveling over the spent fuel pool very infrequently and the operation of the canal door movement remains unchanged. Therefore, the staff concludes that movement of the transfer canal door in the proposed manner will not involve a significant increase in the probability or consequences of an accident previously evaluated.

As discussed above, the licensee evaluated the radiological consequences of a fuel handling accident in the Updated Final Safety Analysis Report. In addition, by letters dated September 23, 1982, and January 17, 1983, the licensee evaluated the consequences of a dropped fuel cask into the spent fuel pool. The staff reviewed the licensee's analysis and issued a Safety Evaluation by Amendment No. 84 to Facility Operating License No. DPR–32 and Amendment No. 85 to Facility Operating License No. DPR–37 for the Surry Power Station, Unit Nos. 1 and 2, respectively. The transfer canal door drop accident is fundamentally no different than such previously analyzed accidents. Therefore, based on the above, the staff concludes that the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Based on the above evaluation for Criteria II and III of Section 5.1 of NUREG–0612, the staff concludes that the proposed change does not involve a significant reduction in a margin of safety as subcriticality (K_{eff} less than 0.95) would be maintained and the fuel would not be uncovered as there would not be any leakage of water from the pool, in the event that the transfer canal door is dropped in the spent fuel pool.

Based on the above, the staff proposes to determine that the proposed change does not involve a significant hazard consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Lester S. Rubenstein.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, MA

Date of amendment request: October 20, 1986, as modified December 18, 1986.

Description of amendment request: The amendment request submitted proposed Technical Specification (TS) changes that would modify the manner in which some core performance analysis results such as rod insertion limits are included in the TS. A new TS Section, 6.17, on Analysis Methods would also be added by the proposed change.

NRC action on the above parts of the proposed change is deferred pending further discussion with the licensee as noted in the December 18, 1986 letter.

The remaining part of the amendment request would modify TS Section 5.3.1 to change the limitation on reload fuel from a nominal enrichment of 3.7 weight percent U–235 to a maximum nominal

enrichment of 4.0 weight percent U-235. This part of the proposed change is the subject of this notice.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazaards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazrds consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Section 5 of the TS provides descriptive information of features of the plant. The change to the enrichment in TS 5.3.1 is consistent with maximum enrichments that were approved by the NRC for reload fuel used in some previous cycles. Fuel enrichment is not an independent factor by itself in the safety analysis or for plant operations. The enrichment is used with other parameters such as the number of assemblies to derive measurable core parameters important to safe operation, such as rod worths and peaking factors. Plant operational characteristics, such as rod position, temperatures and protection system trip settings are then established. All of these parameters are controlled by limiting conditions for operation, action statements and surveillance requirements in sections 3 and 4 of the TS; these requirements are unchanged by the proposed TS change. The change to the maximum enrichment does not affect the analysis methods or plant operation. Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any previously evaluated, and does not involve a significant reduction in a margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly 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, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Baltimore Gas & Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, MD

Date of application for amendments: April 26, 1985, supplemented September 30, 1985.

Brief description of amendments: The amendments change the Unit 1 and Unit 2 Technical Specifications (TS) to: (1) Reflect a clarification of surveillance requirements of TS 4.6.1.6.2, "Containment Structural Integrity," concerning containment tendon end anchorages and adjacent concrete surfaces and a change to TS 4.6.1.6.3, "Liner Plate"; (2) reflect an increase in the required diesel generator test load specified in TS 4.8.1.1.2.c.2, "A.C. Sources"; (3) delete TS 3/4 3/3/8, "Radioactive Gaseous Effluent Monitoring Instrumentation" and incorporate these requirements in TS Tables 3.3-6 and 4.3-3, "Radiation Monitoring Instrumentation"; (4) provide simplification, additions and clarifications concerning the fire protection instrumentation in TS Table 3.3-11, "Fire Protection Instruments"; (5) revise limiting conditions and surveillance requirements for the hvdrogen analyzers, TS 3/4.6.5, "Combustible Gas Control-Hydrogen Analyzers"; and (6) revise limiting conditions and surveillance requirements for the auxiliary feedwater system (TS 3/4.7.1.2).

Date of issuance: December 9, 1985.

Effective date: December 9, 1985.

Amendment Nos.: 109 and 92.

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1985 (50 FR 31061 at 31062) and November 6, 1985 (50 FR 46210).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas & Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, MD

Date of application for amendments: July 31, 1986, supplemented November 5, 1986.

Brief description of amendments: The amendments modified the Technical Specifications (TS) by (1) linking the completion of the reactor coolant pump (RCP) flywheel inspection required by TS surveillance 4.4.10.1.1 to the RCP motor overhaul program, and (2) making the administrative change prescribed by General Letter 84-13, "Technical Specifications for Snubbers," by deleting the list of safety related

hydraulic snubber provided in Table 3.7-4 from the TS.

Date of Issuance: December 19, 1986.

Effective date: December 19, 1986.

Amendment Nos.: 125 and 106.

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41843 at 41845).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, Dockets Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, NC

Date of application for amendments: April 23, 1986.

Brief description of amendments: The amendments change the Technical Specifications (TS) Table 3.3.4-1 by clarifying the conditions under which the control rod withdrawal block is initiated relative to intermediate range monitor detector position.

Date of issuance: December 24, 1986.

Effective date: December 24, 1986.

Amendments Nos.: 102 & 132.

Facility Operating Licenses Nos. DPR-71 and DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 (51 FR 22232). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, NC

Date of application for amendments: December 16, 1985, as supplemented November 24, 1986.

Brif description of amendments: The amendments change the expiration dates for the Unit 1 license to June 12, 2021, and for the Unit 2 license to March 3, 2023.

Date of issuance: December 23, 1986.

Effective date: December 23, 1986.

Amendment Nos.: 67 and 48.

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the operating licenses.

Date of initial notice in **Federal Register.** June 4, 1986 (51 FR 20370) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1986 and in an environmental assessment dated December 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, PA

Date of application for amendment: November 7, 1985.

Brief description of amendment: The amendment changes the license for Beaver Valley Unit No. 1, extending its expiration date from June 25, 2010 to January 29, 2016.

Date of issuance: December 30, 1986.

Effective date: December 30, 1986.

Amendment No. 106.

Facility Operating License No. DPR-66. Amendment revised the license.

Date of initial notice in Federal Register: January 15, 1986 (51 FR 1874).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1986, and in an Environmental Assessment dated December 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, FL

Date of application of amendment: October 17, 1986.

Brief description of amendment: The amendment permitted a fuel rod to have a nominal active fuel length between 134.1 and 136.7 inches. In addition, individual fuel assemblies will contain fuel rods of the same nominal active fuel length.

Date of issuance: December 22, 1986.

Effective Date: December 22, 1986.

Amendment No.: 76.

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41843 at 41853).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Indiana and Michigan Electric Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, MI

Date of applications for amendment: October 1, 1986 and October 31, 1986.

Brief description of amendment: The amendment changes the Technical Specifications to include a new Section 4.0.6 which by specific reference will allow certain tests normally designated as 18 months surveillances to be delayed until the end of the next refueling outage currently scheduled to begin during the second quarter of 1987. These tests include those that would require the plant to be shutdown and tests that could be done at power but with some increase in risk from possible reactor trips and plant transients.

Date of issuance: December 20, 1986.

Effective date: December 20, 1986.

Amendment No.: 100.

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** November 5, 1986 (51 FR 40279) and November 19, 1986 (51 FR 41855).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MI

Date of application for amendment: September 2 as amended on October 4, 13, 24 and as supplemented on November 20, 21, and December 2 and 3, 1986.

Brief description of amendment: This amendment implements the authorization to transfer control and performance of licensed activities from the Mississippi Power and Light Company (MP&L) to System Energy Resources, Inc., (SERI) (formerly named

Middle South Energy, Inc.). This amendment considers the technical and financial aspects associated with this transfer of control and performance of licensed activities. Licensees MP&L and SERI will be held to the terms of the existing antitrust conditions pending completion of review of the antitrust considerations of the amendment application. The Commission has also, pursuant to 10 CFR 50.80, duly authorized transfer of control over activities licensed under license NPF-29 by letter dated December 20, 1986.

Date of issuance: December 20, 1986.

Effective date: December 20, 1986.

Amendment No.: 27.

Facility Operating License No. NPF-29. This amendment revised the Technical Specifications, the Environmental Protection Plan and License.

Date of initial notice in **Federal Register:** November 3, 1986 (51 FR 39927).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1986.

No significant hazards consideration comments received: Comments were addressed in Safety Evaluation.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, NY

Date of amendment request: September 15, 1986.

Brief description of amendment: The amendment modifies Technical Specification Sections 6.2.2, 6.3 and Table 6.2-1 to reflect changes required to conform to the Nuclear Regulatory Commission's "Policy Statement on Engineering Expertise on Shift," Generic Letter 86-04.

Date of issuance: December 29, 1986.

Effective date: December 29, 1986.

Amendment No.: 90.

Facility Operating License No. DPR-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37517).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, CT

Date of application for amendment: September 26, 1986.

Brief description of amendment: This amendment modified the Technical Specifications by renumbering TS 3/4.9.3 "Decay Time" and incorporating the following new requirement in the TS: (1) A limiting condition for operation (LCO) and associated surveillance requirement (SR) addressing the need for fuel, newly discharged from the reactor at the end of the fuel cycle, to have a minimum decay time of 504 hours prior to suspending operability of the spent fuel pool cooling system; and (2) an LCO and SR requiring that the reactor remain shutdown in Modes 5 or 6 until discharged fuel has achieved a decay time of 504 hours.

Date of issuance: December 19, 1986.

Effective date: December 19, 1986.

Amendment No.: 114.

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 5, 1986 (51 FR 40274 at 40281).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, OR

Date of application for amendment: November 24, 1984, as superseded December 27, 1985.

Brief description of amendment: The amendment modifies Technical Specification (TS) Sections 3.4.1.1 and 3.4.1.2 with respect to the number of reactor coolant loops required to be in operation in MODE 3 and during low power operation, adds a new surveillance requirement to TS 4.4.1.2 regarding control rod drive mechanisms, and incorporates minor editorial changes to the TS.

Date of issuance: December 16, 1986.

Effective date: December 16, 1986.

Amendment No.: 122.

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 8000), as superseded May 7, 1986 (51 FR 16933).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, NY

Date of application for amendment: June 25, 1986.

Brief description of amendment: The amendment changes the Technical Specifications to reflect a lowering of the reactor water level setpoint of the Main steam Isolation Valves from Level 2 to Level 1.

Date of issuance: December 19, 1986.

Effective date: December 19, 1986.

Amendment No.: 103.

Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32279).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, SC

Date of application for amendment: June 20, 1986.

Brief description of amendment: The amendment involves administrative changes and functional definition clarifications.

Date of issuance: December 16, 1986.

Effective date: December 16, 1986.

Amendment No.: 56.

Facility Operting License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29013).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, SC

Date of application for amendment: August 2, 1985, as supplemented September 11, 1986.

Brief description of amendment: The amendment revises the qualification requirements for individuals performing certain safety reviews required by Technical Specification Section 6.5.3.1.

Date of issuance: December 22, 1986.

Effective date: December 22, 1986.

Amendment No.: 57.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41869).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, SC

Date of application for amendment: August 25, 1986, as supplemented October 15, 1986.

Brief description of amendment: The amendment revises the corporate and plant organizations.

Date of issuance: December 22, 1986.

Effective date: December 22, 1986.

Amendment No. 58.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1986 (51 FR 41869). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1986.

No significant hazards considerations comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, OH

Date of application for amendment: August 27, 1984 (Item 2 only), supplemented on August 29, 1985.

Brief description of amendment: This amendment modifies TS sections 3.7.1.2 and 4.7.1.2 and the associated Bases to clarify the applicability of the Limiting Condition for Operation and to add new surveillance requirements for the auxiliary feedwater system.

Date of issuance: December 22, 1986.

Effective date: December 22, 1986, and shall be implemented within 14 days.

Amendment No. 96.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 20, 1985 (50 FR 47877). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

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, VA

Date of application for amendments: August 22, 1986, as supplemented December 5, and December 10, 1986.

Brief description of amendments: The amendments change the license expiration date for NA-1 from February 18, 2011, to April 1, 2018, and change the license expiration date for NA-2 from February 19, 2011, to August 21, 2020. The amendments are consistent with section 103.c of the Atomic Energy Act and §§ 50.56 and 50.57 of the Commission's regulations.

Date of issuance: December 30, 1986.

Effective date: December 30, 1986.

Amendment Nos.: 89 & 75.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised License.

Date of initial notice in **Federal Register**: September 24, 1986 (51 FR 33959).

The December 5, and December 10, 1986, letters provided supplemental information and did not change the initial determination published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1986, and in an Environmental Assessment dated December 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, VA

Date of application for amendments: August 22, 1986, as supplemented December 5, December 10, and December 23, 1986.

Brief description of amendments: The amendments change the expiration date for the Unit 1 Facility Operating License, DPR-32, from June 25, 2008, to May 25, 2012, and change the expiration date for the Unit 2 Facility Operating License, DPR-37, from June 25, 2008, to January 29, 2013.

Date of issuance: December 31, 1986.

Effective date: December 31, 1986.

Amendment Nos. 111 & 111.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 8, 1986 (51 FR 36107). The December 5, December 10, and December 23, 1986, letters provided supplemental information and did not change the initial proposed action as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1986, and in an Environmental Assessment dated December 24, 1986.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, WI

Date of application for amendment: April 29, 1986.

Brief description of amendment: The amendment revises the heatup and cooldown Technical Specifications (TS). In addition, editorial corrections and minor administrative changes are made to the TS.

Date of issuance: December 18, 1986.

Effective date: December 18, 1986.

Amendment No.: 70.

Facility Operating License No. DPR-43. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1986 (51 FR 20377). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

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 bi-weekly 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 rule 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 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, 1717 H Street, NW., Washington, DC, 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 Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By February 13, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a

supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (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-Bethesda, 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) through (v) and 2.714(d).

Connecticut Yankee Atomic Power Company, Docket No. 50-213 Haddam Neck Plant, Middlesex County, CT

Date of application for amendment: December 17, 1986 as supplemented December 19, 1986.

Brief description of amendment: The amendment would establish a plant configuration which provides assurance that adequate cooling will be maintained during sump recirculation while satisfying single failure requirements. That configuration involves repositioning and locking flow control valve RH-FCV-796 in the Residual Heat Removal (RHR) system in the partially open position and initiating, under prescribed conditions, charging system flow to assure proper flow distribution and pump operability in the event the specific break at issue were to occur.

Date of issue: December 24, 1986.

Effective date: December 24, 1986.

Amendment No.: 88.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final no significant hazards considerations determination are contained in a Safety Evaluation dated December 24, 1986. Mr. K. McCarthy of the State of Connecticut was consulted concerning the proposed emergency technical specification change on December 19 and December 22, 1986. After discussion of the proposed change, Mr. McCarthy indicated that all his comments have been resolved.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

NRC Project Director: Christopher I. Grimes.

Public Service Electric and Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, NJ

Date of application for amendment: December 5 and 8, 1986.

Brief description of amendment: The amendment revises the Hope Creek Technical Specifications to include a Minimum Critical Power Ratio (MCPR) curve for instances when the End-of-Cycle Recirculation Pump Trip (EOC-RPT) is inoperable.

Date of issuance: January 5, 1987.

Effective date: December 9, 1986.

Amendment No.: 1.

Facility Operating License No. NPF-57: Amendment revised the Technical Specifications.

Public comments requested as to proposed No Significant Hazards Consideration: No.

The Commission's related evaluation of the amendment and final No Significant Hazards Consideration Determination are contained in a Safety Evaluation dated January 5, 1987.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

Local Public Document Room location: Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

NRC Project Director: Elinor Adensam.

Dated at Bethesda, Maryland, this 7th day of January, 1987.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A

(FR Doc. 87-688 Filed 1-13-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

Georgia Power Co. et al; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 and 10 CFR 50.34(b)(2)(i) as it pertains to General Design Criteria (GDC) 2, 61, and 62 to Georgia Power Company, Oglethorpe Power Coporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee) for Vogtle Electric Generating Plant, Unit 1 located at the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of proposed actions

Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR 50 states "Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such period at not less than P_a." The exemption to this paragraph would relax the requirement for air lock leakage testing in that such a test would not be necessary before entering mode 4 each time that an air lock has been opened in mode 5 or mode 6. This exemption would apply to situations when the periodic 6-month test requirement of paragraph III.D.2(b)(i) and the 3-day test requirement of paragraph III.D.2(b)(iii) are current, no maintenance has been performed on the air lock, and the air lock is properly

sealed. Whenever maintenance has been performed on an air lock, the requirements of paragraph III.D.2(b)(ii) must still be met. The staff's technical evaluation of this request was published in section 6.2.6 of the Vogtle Safety Evaluation Report (NUREG-1137, June 1985). This exemption is responsive to the licensee's request for exemption which is set out in the Vogtle Final Safety Analysis Report.

The schedular exemption to 10 CFR 50.34(b)(2)(i) as it pertains to GDC 2, 61, and 62 will allow the use of the spent fuel pool racks for initial core loading under dry conditions before determination of seismic adequacy of the redesigned racks. The schedular exemption will apply to that time period through approval of the seismic adequacy of the racks and before irradiated fuel is stored in the racks. The staff's technical evaluation of this request will be published in Supplement 5 to the Vogtle Safety Evaluation Report scheduled for issuance in January 1987. This exemption is responsive to the licensee's request for exemption dated December 29, 1986.

The need for the proposed actions:

The proposed exemption to paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is needed because this requirement is overly restrictive and would slow the process of returning to operation. The schedular exemption to 10 CFR 50.34(b)(2)(i) is needed to allow the licensee to load fuel and initiate plant operation.

Environmental impacts of the proposed actions

With regard to potential radiological impacts to the general public, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect the potential for or consequences of radiological accident and do not affect radiological plant effluents. The exemptions have no effect on non-radiological impacts of facility operation. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemptions.

Alternative to the proposed actions:

Because we have concluded that the environmental effects of the proposed actions are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative in each case would be to deny the requested exemptions. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility or delay licensing.

Alternative use of resources

These actions involve no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for the Vogtle Electric Generating Plant, Units 1 and 2.

Agencies and persons consulted

The NRC staff reviewed the licensee's request and no other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the environmental assessment, we conclude that the proposed actions will not have a significant effect on the quality of the human environment.

For details with respect to these actions, see the request for schedular exemption dated December 29, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC., and at the Burke County Public Library, 4th Street, Waynesboro, Georgia.

Dated at Bethesda, Maryland, this 9th day of January 1987.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, PWR Project Directorate #4, Division of PWR Licensing-A.

[FR Doc. 87-844 Filed 1-13-87; 8:45 am]

BILLING CODE 7590-01-M

Northeast Nuclear Energy Co., et al., Millstone Nuclear Power Station, Unit No. 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Northeast Nuclear Energy Company, et al. (the licensee), for the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

Environmental Assessment

Identification of proposed action: The exemption would grant relief from the requirements of Appendix R, section III.J, as these requirements relate to fixed, 8-hour battery lighting units for operation of safe shutdown equipment (and access/egress associated with this equipment). The exemption is only applicable to vital electrical Bus 24F.

The exemption is responsive to the licensee's application for exemption dated October 8, 1986.

The need for the proposed action: The proposed exemption is needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant for this item are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental impacts of the proposed action: The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative use of resources: This action involves no use of resources not previously considered in the Final Environmental Statements for the Millstone Nuclear Power Station, Unit No. 2.

Agencies and persons consulted: The NRC staff reviewed licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we concluded that the proposed action will not have significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated October 8, 1986 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49

Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 8th day of January 1987.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Director, PWR Project, Directorate #8, Division of PWR Licensing-B.

[FR Doc. 87-845 Filed 1-13-87; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S SPECIAL REVIEW BOARD

Meeting

Summary: The President established by Executive Order 12575 of December 1, 1986 (51 FR 43718, December 3, 1986) the President's Special Review Board to review activities of the National Security Council. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Board announces the following meeting:

Date: Wednesday, January 14, 1987.

Time: Beginning at 10:00 a.m.

Place: Room 5221, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503.

Type of Meeting: Closed.

Contact Person: Herbert Hetu, Public Affairs Officer, President's Special Review Board, Room 5221, New Executive Office Building, 726 Jackson Place, NW. Washington, DC 20503. (202/395-2566).

Purpose of Meeting: To discuss and deliberate facts determined as a result of Board interviews and briefings and to consider the status and course of the Board's review.

Supplementary Information: The President's Special Review Board was established and appointed with three distinguished former leaders of the government to conduct a comprehensive study of the future role and procedures of the National Security Council (NSC) staff in the development, coordination, oversight, and conduct of foreign and national security policy; to review the NSC staff's proper role in operational activities, especially extremely sensitive diplomatic, military, and intelligence missions; and provide recommendations to the President based upon its analysis of the manner in which foreign and national security policies established by the President have been implemented by the NSC staff. This meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1) and (C)(9)(B) in the interests of national security and because the nature of the meeting is likely to disclose information which, if disclosed prematurely, would be likely to significantly frustrate implementation of proposed action by the President's Special Review Board.

It was not reasonable to provide 15 days notice of the meeting because of the following exceptional circumstances: The meeting was required to be held promptly due to the Presidential direction that the Board review the activities of the National Security Council and submit its findings and recommendations to the President within 60 days of issuance of Executive Order 12575 dated December 1, 1986.

Michael L. Weinstein,

Committee Management Officer, President's Special Review Board.

[FR Doc. 87-977 Filed 1-13-87; 11:44 am]

BILLING CODE 3195-01-M

POSTAL RATE COMMISSION

[Order No. 735; Docket No. A87-6]

Palms, Michigan 48465 (Don Wismer, et al., Petitioners), Notice and Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Issued January 8, 1987.

Docket Number: A87-6

Name of Affected Post Office: Palms, Michigan 48465

Name(s) of Petitioners(s): Don Wismer and others

Type of Determination: Closing

Date of Filing of Appeal Papers: December 29, 1986

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal service [39 U.S.C. 404(b)(20(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one of more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before January 13, 1987.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

December 29, 1986—Filing of Petition

January 8, 1987—Notice and Order of Filing of Appeal

January 23, 1987—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]

February 2, 1987—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

February 23, 1987—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

March 10, 1987—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

March 17, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

April 28, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 87-848 Filed 1-13-87; 8:45 am]

BILLING CODE 7715-01-M

[Order No. 736; Docket No. A87-7]

Pearl Beach, Michigan 48052 (Mrs. Arlene Shaffer, Petitioner), Notice and Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Issued January 8, 1987.

Docket Number: A87-7

Name of Affected Post Office: Pearl Beach, Michigan 48052

Name(s) of Petitioners(s): Mrs. Arlene Shaffer

Type of Determination: Consolidation

Date of Filing of Appeal Papers: December 31, 1986

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Procedural requirements [39 U.S.C. 404(b)(5)(B)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one of more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C.

404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before January 13, 1987.

(B) The Secretary shall publish this Notice and Order and Precedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Docket No. A87-7, Pearl Beach, Michigan 48052

December 31, 1986—Filing of Petition

January 8, 1987—Notice and Order of Filing of Appeal

January 26, 1987—Last day of filing of petitions to intervene [*see* 39 CFR 30001.111(b)]

February 4, 1987—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

February 24, 1987—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

March 11, 1987—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

March 18, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

April 30, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 87-849 Filed 1-13-87; 8:45 am]

BILLING CODE 7715-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a previously unpublished system of records, USPS 010.060, Collection and Delivery Records—Free Matter for Blind and Visually Handicapped Persons. This system collects the names and addresses of postal customers who are blind or visually handicapped, and who are receiving postage-free service in their delivery area.

DATE: Any interested party may submit written comments regarding this proposal. Comments must be received on or before February 13, 1987.

ADDRESS: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5010, or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in Room 8121.

FOR FURTHER INFORMATION CONTACT: Martha Smith, Program Manager, Records Office, (202) 268-2931.

SUPPLEMENTARY INFORMATION: The Postal Service has determined that notice of an information collection activity, which may have been initiated as early as October 1985, and constituting a system of record, has not previously been published. Federal law provides free mailing privileges for certain types of material to blind and visually handicapped persons who are certified by competent authority as unable to read normal reading material. 38 U.S.C. 3403-3405. In some cases, uncertainty as to the eligibility of an individual to qualify for the free mailing privilege has led to undue delays and complaint processing. To alleviate this problem, it has been decided that postmasters should collect certain identifying information about their blind and visually handicapped customers who have applied to use the free mail privilege. The new system contains the names and addresses of these customers and, with respect to those customers who are new to a delivery area, statements of competent authority (licensed medical doctors, ophthalmologists, etc.) certifying that the customers are unable to read conventionally-printed material. This information indicates to postal employees the eligibility of these customers to mail and receive certain specified materials free of postage, and is used by postal employees in the performance of their mail collection and delivery duties. Use of this system, as established, should not result in infringement of the covered individuals' privacy rights.

A new system report, as required by 5 U.S.C. 552a(o) and OMB Circular A-130, dated December 13, 1985, has been provided to OMB and the Congress.

Accordingly, the proposed new system description follows:

USPS 010.060

SYSTEM NAME:

Collection and Delivery Records—Free Matter for Blind and Visually Handicapped Persons, USPS 010.060.

SYSTEM LOCATION:

Local Delivery Post Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal customers who are blind or visually handicapped and cannot use or read conventionally printed material and who are receiving postage-free service in their delivery area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of individual, and statement of competent authority certifying that the individual is unable to read conventional reading material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404, 3403, 3404, 3405

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—To assist local postal management in processing mail matter for blind or visually handicapped persons without undue delay or uncertainty concerning such persons' eligibility to mail or receive items free of postage.

Use—

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

3. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to the appropriate Federal, State, or local agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing of implementing the statue, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper files.

RETRIEVABILITY:

Customer name and address.

SAFEGUARDS:

Records are maintained in locked file cabinets with access limited to those persons having an official need to know in the performance of their duties.

RETENTION AND DISPOSAL:

Retained as long as the customer resides in delivery area and then destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Marketing Department, Headquarters.

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to their local postmasters. Inquiries should contain full name and address.

RECORD ACCESS PROCEDURES:

See Notification Procedure above.

CONTESTING RECORD PROCEDURES:

See Notification Procedure above.

RECORD SOURCE CATEGORIES:

Individual, and licensed medical doctors, ophthalmologists, optometrists, registered nurses, professional staff members of hospitals, other institutions or agencies or other competent authority.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-801 Filed 1-13-87; 8:45 am]

BILLING CODE 7710-12-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on January 27-28, 1987 at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, VA.

The Subcommittee on Diagnostic and Therapeutic Practices will meet in Potomac Room I and II at 9:00 a.m. on January 27, 1987. The Subcommittee on Hospital Productivity and cost-effectiveness will meet in Potomac Rooms V and VI at 9:00 a.m. on January 27, 1987.

The Full Commission will convene at 2 o'clock p.m. January 27, 1987, in Potomac Rooms V and VI. On January 28, 1987 the Full Commission will convene at 9:15 a.m. in Regency Rooms A and B.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87-880 Filed 1-13-87; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-12843]

Application and Opportunity for Hearing: Dow Corning Corp.

January 7, 1987.

Notice is hereby given that Dow Corning Corporation (the "Compay") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank", N.A. ("Citibank") under an indenture dated as of April 1, 1975 (the "1975 Indenture") between the Company and Citibank which Indenture was heretofore qualified under the Act, and under an Indenture dated as of October 1, 1986, (the "1986 Indenture") between The Economic Development Corporation of the County of Midland (the "Economic Development Corporation") and Citibank, as Trustee, which has not been qualifed under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

In support of its application the Company alleges:

(1) Pursuant to the 1975 Indenture, the Company has outstanding on the date hereof approximately $50,000,000 aggregate principal amount of its 9⅝% sinking Fund Debentures Due April 1, 2005 (the "Debentures"). The 1975 Indenture was filed as an exhibit to Registration Statement No. 2-52909 under the Securities Act of 1933, as amended (the "Securities Act"), and has been qualified under the Act.

(2) Pursuant to the 1986 Indenture, there are outstanding the Adjustable Rate Economic Development Limited Obligation Revenue Refunding Bonds (Dow Corning Corporation Project) Series 1986 in the aggregate principal amount of $31,800,000. The proceeds of the sale of the Bonds were loaned to the Company pursuant to a Loan Agreement dated as of October 1, 1986 between the Economic Development Corporation and the Company. The Bonds are payable by the Economic Development Corporation solely from revenues received by the Economic Development Corporation from such Loan Agreement, together with any interest or other revenues available under the 1986 Indenture for such purpose. The rights of the Economic Development Corporation under the Loan Agreement have been assigned to the Trustee to secure the payment of the Bonds. The Bonds are exempt from registration under the Securities Act, and the 1986 Indenture was not qualified under the Act.

(3) The provisions of the 1975 Indenture and 1986 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under said indentures.

(4) The Company's obligations with respect to the Debentures and under the Loan Agreement with respect to the Bonds are in each case wholly unsecured and rank *pari passu* with each other.

(5) There is no default under the 1975 Indentures or the 1986 Indenture.

The Company has waived notice of hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-12843 at 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that interested persons may, not later than January 28, 1987 request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC

20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-795 Filed 1-13-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23965; File No. SR-NASD-86-36]

Self-Regulatory Organizations; Filing and Order Granting Immediate Effectiveness to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Code of Aribitration Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Resolution of the Board of Governors following section 4 of the Code of Arbitration Procedure. It increases the honorarium paid to arbitrators from $100 per hearing session to $150 per single session and $225 per double session; provides an additional honorarium of $50 for the chairperson of the panel; and provides an honorarium of $50 for travel to a cancelled hearing.

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 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 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 present honorarium of $100 per hearing session was approved in 1982. The Assocation believes that in recognition of the time and effort expended by individuals who determine controversies involving the business of Association members, this figure should be increased as provided in the proposed amendment. This increase will allow the Association to continue to attract and retain qualified persons to serve on arbitration panels. The retention of qualified arbitrators will ensure the continued effectiveness of the arbitration system, which enables members of the securities industry and the public to resolve their disputes efficiently and economically. The same fee schedule is proposed to be adopted by all self-regulatory organizations that provide arbitration forums.

The Association has adopted the proposed rule change pursuant to section 15A(b)(6) of the Securities Exchange Act of 1934, which requires that the Association's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

The Association does not believe that the proposed rule change will affect any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectivenes of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 (the Act) and subparagraph (e) of SEC Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 5th 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 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 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 4, 1987.

It is therefore ordered, pursuant to section 19(b)(3) of Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 7, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-791 Filed 1-13-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23966; File No. SR-NYSE-86-27]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Monthly Expirations for Stock Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 23, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend to January 17, 1986, its pilot program allowing the listing of series in stock options to provide two near-term expiration months. The new termination date for the pilot program would be reflected in Rule 703, Supplementary Material .20(b). All other aspects of the pilot program as described in that section remain the same.

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 and is set forth in Sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to extend to January 17, 1987, the pilot program allowing monthly expirations in stock options. The purpose of the extension is to give the Exchange additional time to evaluate the effect of this proposal on its stock option marketplace. At the end of this period, the Exchange will decide whether to make the program permanent.

Because stock options were just starting at the Exchange when the pilot program was approved for it and the other options exchanges, the Exchange did not place any stock options in the pilot program. But after the approval of this filing, the Exchange anticipates placing several of its options on listed stocks into the pilot program.

The statutory basis of the proposed rule change is Section 6(b) of the Securities Exchange Act of 1934 (the "Act"), in general, and in particular, paragraph (5) of section 6(b), which requires that the rules of a national securities exchange remove impedients to and perfect the mechanism of a free and open market, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was approved by the Options Market Performance Subcommittee, comprised of members and representatives of member organizations of the Exchange. Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated effectiveness of the proposed rule change pursuant to section 19(b)(2) of the Act. Similar extensions of the pilot program were approved by the Commission for the Chicago Board Options Exchange, Inc. ("CBOE") and the American ("Amex") and Philadelphia ("Phlx") Stock Exchanges. Approval of the Exchange's proposal will reduce investor confusion by providing for uniformity among exchange rules.

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 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the rule change is substantively the same as proposals filed previously by the CBOE, Phlx and Amex and approved by the Commission.[1]

VI. 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 the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 4, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-referenced rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: January 7, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-792 Filed 1-13-87; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 23461 (July 23, 1986), 51 FR 22296 (July 30, 1986).

[Release No. 34-23964; File No. SR-PHLX 86-14]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to $.025 Strike Price Intervals for Options on the British Pound

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 1, 1986, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") proposes to revise certain of its strike price policies to permit the orderly introduction of $.025 strike price intervals for British pound put and call option contracts.

II. Self Regulatory Organization's Statement Regarding 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-regulatoy 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 Statements of the Purpose of, and Statutory Basis for the Propsed Rule Change

This proposal will provide for the orderly introduction of $.025 strike price intervals for British pound options. Currently, the Exchange has in place $.0.5 strike price intervals for all series.

The proposed rule change is consistent with section 6(b)(5) of the Exchange Act in that it will promote just and equitable principles of trade. This rule change will provide investors in a non volatile currency with more choices as to their participation in this market. The flexibility of switching to $.025 intervals will enable the Phlx to be competitive with the Chicago Mercantile Exchange, which currently has $.025 intervals on its British pound options contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not pose any 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.

III. Date of Effectiveness of the Proposed Rule Change 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 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 accordancce 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 4, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 7, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-793 Filed 1.13-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23969; File No. PHLX 86-46]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Floor Procedure Advices

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1986 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc., ("PHLX"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend Option Floor Procedure Advices B-9, C-3, and G-1 as follows: (Brackets indicate deletions; italics indicate additions.)

B-9 Use of tickets

When an issue of parity arises, [U]*unless* the field which reads "closing" on an options ticket is checked, the order for a Registered Options Trader shall be presumed to be an opening order.

C-3 Handling Registered Options Traders Orders

When an issue of parity arises, [A] *a* floor broker must announce to the trading crowd when he is handled an order for a Registered Options Trader and must state whether such order is opening or closing. In addition, in handling such orders for an ROT the Floor Broker must comply with Commentaries .10, .11, .12, and .13 of Rule 1014.

Fine Schedule—No change

G-1 Exercise Requirements

All Specialists, Registered Options Traders, Customers, and Firms must use an exercise advice form when exercising 25 contracts or more in a particular index series.

Specialists, Registered Options Traders, Customers, and Firms must time stamp and submit the exercise advice form to the Exchange staff at the Correction Post no later than 4:10 PM (EST) on the day of the exercise with respect to the Gold/Silver Index and no later than 4:15 PM (EST) on the day of the exercise with respect to the Value Line and the National Over-the-Counter Index (with the exception of the final expiration trade date).

Any individual who controls more than one (1) account must aggregate the exercise of a particular series.

Fine Schedule

G-1

1st Occurrence—Warning

2nd Occurrence—$100.00

3rd Occurrence—$250.00

4th Occurrence—and thereafter—Sanction is discretionary with the Business

Conduct Committee

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 section (A), (B), and (C) below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Advice B-9 currently provides that unless the options order ticket is marked to indicate that a Registered Options Trader ("ROT") is closing, the order shall be presumed to be an opening one. A ROT's opening order must yield to customer orders, while a ROT's closing order is on parity with customer orders and therefore need not yield. The intent of Advice B-9 is solely to aid in enforcement of parity rules, and the proposed amendment would make this intent clear. A conforming amendment has also been proposed for Advice C-3 so that a floor broker is only required to announce whether an ROT's order is opening or closing in instances where an issue of parity is raised by the trade.

Advice G-1 details the exercise procedure to be followed when more than 25 contracts in a particular index series are to be exercised. The PHLX proposes the following fine schedule for violation of this procedure.

The proposed amendments to Advices C-3 and G-1 are intended to be incorporated into the Exchange's minor rule violation plan. This plan was filed with the Commission as SR-PHLX 86-11 and approved in Release No. 23296, June 4, 1986. In footnote 1 of SR-PHLX 86-11, the Exchange noted that it anticipated adding changes to the plan's list of minor rule violations from time to time, and that such changes would be submitted to the Commission for approval. By the instant filing, the Exchange seeks to incorporate amended Advices C-3 and G-1 into its minor rule violation plan.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it will facilitate transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any 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 either solicited or received.

III. Date of Effectiveness of the Proposd Rule Change 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 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 in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 4, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 7, 1987

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-794 Filed 1-13-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23297]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 8, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 2, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation et al. (70-6877)

Central and South West Corporation ("CSW"), a registered holding company, and its wholly owned subsidiary company, CSW Energy, Inc. ("Energy"), both of 2400 San Jacinto Tower, Dallas, Texas 75201, have filed post-effective amendments to the application-declaration in this matter pursuant to sections 6(a), 7, 9(a), 10, and 13(b) of the Act and Rules 86, 87, 90, and 91 thereunder.

By orders in this matter dated August 4, 1983 (HCAR No. 23021) and March 12, 1985 (HCAR No. 23627), CSW and Energy were authorized to invest in cogeneration and small power production projects ("cogeneration projects") and to conduct preliminary studies, investigations, and research of energy-related business and investment opportunties. Energy was authorized to engage in financing of $49 million for cogeneration projects and $3 million for the studies, investigations, and research. It is now requested that said authorization be extended until December 31, 1988. In all other respects the transactions remain unchanged.

New England Electric System et al. (70-7088)

New England Electric System ("NEES"), a registered holding company,

and eight of its subsidiaries, Massachusetts Elecric Company ("Mass Electric"), Granite State Electric Company, The Narragansett Electric Company, NEES Energy, Incorporated, New England Electric Corporation, New England Energy, Incorporated, New England Power Company, and New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment to the application-declaration in this matter pursuant to sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order in this matter dated March 26, 1985 (HCAR No. 23642), Mass Electric was authorized to borrow amounts not exceeding $30 million outstanding at any one time from banks, from the NEES money pool, and through dealers in commercial paper through March 31, 1987. Mass Electric now requests an increase in such short-term borrowing authority to not exceeding $50 million outstanding at any one time. The additional borrowings are needed to meet unanticipated seasonal working-capital requirements. At December 31, 1986, Mass Electric had $26.25 million of short-term borrowings outstanding.

The Columbia Gas System, Inc. (70-7347)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company incorporated in the State of Delaware, has filed a declaration pursuant to sections 6(a)(2), 7(a) and 12(e) of the Act and Rules 62 and 65 promulgated thereunder.

Columbia proposed to amend Certificate of Incorporation ("Charter"): (1) To adopt a limitation on directors' liability for money damages for breach of the duty of care, pursuant to a recent change in Delaware General Corporation Law, and (2) to include revised director, officer and employee indemnification provisions, formerly contained in Columbia's By Laws. Columbia proposes to solicit proxies from its common stockholders in connection with these proposed Charter amendments. Approval of these Charter amendments requires the affirmative vote of the holders of a majority of the outstanding shares of common stock. In the event that the proposed Charter amendment with regard to the indemnification is not approved by the Stockholders, the Delaware General Corporation Law permits the Board of Directors to adopt a similar By-law amendment without Stockholder approval.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-834 Filed 1-13-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23951; File No. SR-Amex-86-32]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Issuances of Dual Classes of Common Stock With Different Voting Rights

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1986, 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. 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

Amex proposes to rescind section 122 ("Common Voting Rights") of the Amex *Company Guide* and its published listing guidelines relating to issuances of dual classes of common stock with different voting rights.

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

For many years the Amex has admitted to listing companies having classes of common stock with different voting rights. Dual stock classes have been subject to a prohibition on non-voting stock under section 122 ("Common Voting Rights") of the Amex *Company Guide*, as well as to specific Exchange policies on disparate voting formulated in 1976 in connection with the Amex listing of Wang Laboratories, Inc. These policies require (1) that the voting ratio between the shares with higher and lower voting power may not exceed 10 to 1; (2) that the lower voting issue, voting separately as a class, must have the right to elect at least 25% of the board of directors; (3) that, if the percentage of outstanding common stock represented by the higher voting stock becomes less than 12½%, then the lower voting class acquires the right to vote with the higher voting class for the remaining 75% of the directors; and (4) that no additional stock can be issued that diminishes the voting power of holders of lower voting stock. Approximately 91 Amex companies currently have classes of common stock with different voting rights.

On September 16, 1986, the NYSE filed with the Commission its proposal to eliminate its longstanding prohibitions on the issuance by its listed companies of shares of common stock with disparate voting rights (File No. SR-NYSE-86-17). Under its proposal, NYSE listed companies would be permitted to have classes of common stock with disparate voting rights, subject to approval by a majority of votes eligible to be cast by public shareholders (*i.e.*, excluding insiders), and a majority of the company's independent directors.[1]

During the last two years, the Exchange has strongly advocated the need for a uniform voting rights standard among the Amex, the NYSE and the NASD. However, in view of the pending NYSE filing, and because the

[1] The Commission recently held public hearings on the NYSE's proposal. Arthur Levitt, Jr., Chairman of Amex, testified at those hearings. *See* Statement of Arthur Levitt, Jr., before the Commission, December 16, 1986.

NASD has declined throughout this period to adopt voting rights standards for NASDAQ companies, the Exchange believes rescission of its existing restrictions on classes of stock with different voting rights is necessary for it to maintain its competitive position in attracting new listings and retaining current listings. Following this rule change, Amex listed companies would be permitted to issue dual stock classes in accordance with applicable State laws.

After thorough consideration of a number of possible alternative proposals, the Exchange determined that it was most appropriate to set no guidelines in the area of shareholder voting rights because of the significant competitive burdens any restrictions would impose on the Amex and its listed companies. The Exchange recognizes that smaller developing companies with strong managements, typical of many new Amex listings, may require flexibility in structuring the corporation to maintain the strength of existing management, and that it is necessary and appropriate for the Exchange to tailor its dual class requirements to such needs.

In addition, a public shareholder approval requirement, such as that proposed by the NYSE, could impose disproportionate financial burdens on smaller growth companies with respect to the substantial dividends that might be required to elicit the required approval by a majority of public shareholders. Moreover, such companies often experience greater difficulty than larger corporations in eliciting a significant public shareholder vote on any issue. Thus, it could be disproportionately more difficult for a smaller company to obtain public shareholder approval.

The Exchange recognizes that there are strong policy reasons for not eliminating shareholder voting rights standards for the largest corporation. In Congressional testimony in May 1985, Chairman Arthur Levitt, Jr. detailed these reasons and expressed concern that the proliferation of stock classes with disparate voting rights could have serious long term repercussions on the ability of corporations to operate free of federal charterning or similar interference.[2] The Exchange, however, recognizes and understands the dilemma which prompted the NYSE to file its proposed rule change. Indeed, the Exchange shares similar competitive pressures with the NYSE and the Exchange's proposal, like that of the NYSE, reflects the difficulties inherent in any single marketplace perpetuating standards of corporate governance that deter companies from listing or remaining listed.

(2) Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and with section 6(b)(5), in particular, which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just the equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and that they not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange. The Amex believes that the proposed rule change is also consistent with section 6(b)(8) of the Act which requires that Exchange rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In addition, the Amex believes that the proposed rule change is consistent with section 11A(a)(1)(C)(ii) of the Act, which states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Moreover, the proposed rule change will remove or lessen existing burdens on competition in that the proposed rule change will permit Exchange listing of companies curently precluded from listing.

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 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 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 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 28, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 2, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-831 Filed 1-13-87; 8:45 am]

BILLING CODE 8010-01-M

[2] *See* Statement of Arthur Levitt, Jr., Chairman, Amex, before the Subcommittee on Telecommunication, Consumer Protection and Finance of the House Energy and Commerce Committee, May 22, 1985.

[Release No. 23971; File No. SR-NYSE-86-35]

Self-Regulatory Organizations; Proposed New Rule by the New York Stock Exchange, Inc., Relating to the Institution of an Examination Development Fee for the Series 7 Examination

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 December 9, 1986 the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed new rule change as described in Items I, II, III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed new rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed new Rule Change relating to the new examination development fee for the Series 7 Examination

The Exchange is instituting an examination development fee for the Series 7 Examination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed New Rule Change.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed new rule change and discussed any comments it received on the proposed new 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 section (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 Changes

(1) The purpose of this change is to offset in part the costs of supplying services provided by the Exchange. These costs include industry meeting, manpower, supplies, overhead and other costs associated with developing and maintaining the test.

(2) *Basis Under the Act for the Proposed Rule Change.* The basis under the Act for the proposed new rule change is section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed new 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 New Rule Change Received from Members, Participants, or Others

The Exchange has not formally solicited written comments regarding the proposed rule change and no unsolicited written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change 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 seasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed new rule change, or

(B) Institute proceeding to determine whether the proposed new 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 subsqeuent amendments, all written statements with respect to the proposed new rule change that are filed with the Commission, and all written communications relating to the proposed new 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 the NYSE. All submissions should refer to the file number in the caption above and should be submitted by February 4, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 8, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-832 Filed 1-13-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23963; File No. SR-PSE-86-23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Establishment of a Rule Allowing for the Utilization of the SCOREX System for the Transmittal of Market and Limit Orders in Local Issues

The Pacific Stock Exchange, Inc. ("PSE") submitted, on October 14, 1986, copies of a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend PSE Rule III, section 12 to permit market and limit orders in exclusive, or locally issued, securities to be transmitted to the PSE specialist through the SCOREX system for execution.[1] The proposal would permit only the routing of local orders, and would not include the utilization of the automatic execution feature of SCOREX. The size of limit local orders would be determined by the PSE Board of Governors.[2]

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 23837, November 21, 1986) and by publication in the **Federal Register** (51 FR 43703, December 3, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the

[1] *See* PSE III, section 12(a). SCOREX is a communication, order routing, and execution system for securities that is made available to PSE members. SCOREX allows for automatic execution on the PSE equity floor of specifically prescribed orders meeting certain conditions. *id.*

[2] In its filing, PSE indicated that there will be a six month review and analysis of the program to measure its effectiveness. The Commission would expect to be notified of any problems or modifications that may be necessary as a result of this review.

requirements of Section 6 and Section 11 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 9(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 7, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-833 Filed 1-13-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart D), notice is hereby given of the exemptions granted in December 1986. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3187-X	DOT-E 3187	Silor Optical of Florida, Inc., St. Petersburg, FL.	49 CFR 173.119(m), 173.21(b), 173.218, 173.221(a)(3).	To authorize shipment of flammable liquids or organic peroxides in various non-DOT Specification containers. (Mode 1.)
6929-P	DOT-E 6929	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.88(e)(2)(ii), 173.92(b)	To become a party to Exemption 6929. (Modes 1, 3.)
7052-X	DOT-E 7052	ENDECO, Inc., Marion, MA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classes as a flammable solids. (Modes 1, 2, 3, 4.)
7657-X	DOT-E 7657	Welker Engineering Company Sugar Land, TX.	49 CFR 173.302(a)(1), 173.304(a)(1), 713.304(b)(1), 175.3, 178.42.	To authorize natural gas (methane) and crude oil (petroleum) as additional commodities. (Modes 1, 2, 3, 4.)
7778-X	DOT-E 7778	Distilled Spirits Council of the United States, New York, NY.	49 CFR 172.400(a), Part 107, Appendix B, Subpart B.	To authorize barrels of distilled spirits to be transported without being labeled or having the exemption number marked on the barrel or shipping papers. (Modes 1, 2.)
9839-X	DOT-E 8839	Poly Cal Plastics, Inc., French Camp, CA.	49 CFR 172.101, 173.114a(h)(3), 173.266, 176.415, 176.83, 178.19, Part 173, Subpart D, F.	To authorize an additional classification of blasting agent. (Modes 1, 2, 3.)
8942-X	DOT-E 8942	Poly Processing Company, Inc., Monroe, LA.	49 CFR 173.266, 176.415, 178.19, 178.251, 178.253, Part 173, Subpart D, F.	To authorize manufacture, marking and sale of steel jacketed non-DOT specification rotationally molded, cross-linked polyethylene portable tanks, for shipment of flammable liquids, corrosive liquids and an oxidizer. (Modes 1, 2, 3.)
8942-X	DOT-E 8942	Poly Cal Plastics, Inc., French Camp, CA.	49 CFR 173.266, 176.415, 178.19, 178.251, 178.253, Part 173, Subpart D, F.	To authorize an additional classification of blasting agent. (Modes 1, 2, 3.)
9181-X	DOT-E 9181	Honeywell, Inc., Horsham, PA	49 CFR 173.206, 173.21, 173.247	To authorize an additional lithium battery device similar to the one presently approved. (Mode 1.)
9340-X	DOT-E 9340	Pioneer Plastics & Services Co., Ltd., Brampton, Ont., Canada.	49 CFR 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear medium-density polyethylene portable tank enclosed in a steel frame, for shipment of corrosive liquid. (Modes 1, 2.)
9374-X	DOT-E 9374	Poly Cal Plastics, Inc., French Camp, CA.	49 CFR 173.114a(h)(3), 173.119, 173.256, 173.266, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize an additional classification of blasting agent. (Modes 1, 2, 3.)
9374-X	DOT-E 9374	Poly Processing Company, Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.256, 173.266, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize an alternate metalwork design frame to contain a polyethylene portable tank for shipment of certain corrosive or flammable liquids or an oxidizer. (Modes 1, 2, 3.)
9400-X	DOT-E 9400	Poly Cal Plastics, Inc., French Camp, CA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize an additional classification of blasting agent. (Modes 1, 2, 3.)
9498-X	DOT-E 9498	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.370	To authorize water as an additional mode of transportation. (Modes 1, 2, 3.)
9668-X	DOT-E 9668	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92, 173.94	To authorize transport of very large segments of a space shuttle without packaging over short section of public highway. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9616-N	DOT-E 9616	James Russell Engineering Works, Inc., Boston (Dorchester), MA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To authorize manufacture, marking and sale of non-DOT specification protable tanks, designed and constructed in accordance with Section VIII of the ASME Code, for transportation of nonflammable refigerated (cryogenic) liquid. (Modes 1, 3.)
9653-N	DOT-E 9653	Stauffer Chemical Company; Westport, CT.	49 CFR 173.31(c)	To authorize use of a DOT Specification 105A500W tank car which is overdue for retesting, for a one-time shipment of a nonflammable gas. (Mode 2.)
9655	DOT-E 9655	Chevron U.S.A. Inc., El Segundo, CA.	49 CFR 173.245b	To authorize use of a 3,930 gallon capacity, non-DOT specification steel portable bin, for transportation of a corrosive solid. (Mode 1.)
9657-N	DOT-E 9657	Noranda Sales Corporation, Toronto, Ont.	49 CFR 173.272, 179.201-1	To authorize use of DOT Specification 111A100W2 tank cars with bottom outlets, for transportation of sulfuric acid or oleum, classed as a corrosive material. (Mode 2.)
9670-N	DOT-E 9670	Hercules Incorporated, Wilmington, DE.	49 CFR 173.65(j)	To authorize DOT Specification 21C fiber drums to be marked on the side instead of both ends as required in Section 173.65(j) when the ends of the drums have been dipped in wax. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
EE 9110-P	DOT-E 9110	Kerr McGee Chemical Corp., Oklahoma City, OK.	49 CFR 173.163	To become a party to Exemption 9110. (Modes 1, 2, 3.)

Issued in Washington, DC, on January 7, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-774 Filed 1-13-87; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Exemptions; Pepsi-Cola Co., et al

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes February 13, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
9707-N	Pepsi-Cola Company, Purchase, NY	49 CFR 172.400	To authorize shipment of flavoring syrups classed as flammable liquids in DOT specification packagings without labeling. (Mode 1.)
9708-N	U.S. Department of Energy, Washington, DC	49 CFR 173.220(b)	To authorize shipment of magnesium metal pellets, a flammable solid, in DOT Specification 44-C multiwall paper bag. (Mode 1.)
9709-N	Crown Rotational Molded Products, Inc., Marked Tree, AR.	49 CFR 173.3(c)	To manufacture, mark and sell polyethylene, removable head, drum of 85 gallon capacity as a salvage drum for overpacking damaged or leaking packages of hazardous materials, or for packing hazardous materials that have spilled or leaked, for repackaging of disposals. (Modes 1, 2.)
9710-N	Union Carbide Corporation, Danbury, CT	49 CFR 173.318(g)	To authorize the one way travel time discription required to be marked on cargo tanks containing flammable cryogenic liquids to be described in the abbreviated form of OWTT. (Modes 1, 2, 3.)
9711-N	Konica USA, Inc./Konica Business Machine USA, Inc., Englewood Cliff, NJ.	49 CFR 173.245	To authorize shipment of a corrosive liquid, contained in a polyethylene bag of 1.22 gallon capacity overpacked in a fiberboard carton two of which are overpacked in a DOT Specification 12B fiberboard box. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 7, 1987.

J. Suzanne Hedgepeth,

Chief Exemptions Branch Office of Hazardous Materials Transportation.

[FR Doc. 87-750 Filed 1-13-87; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption; Raytheon Co. et al.

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes January 29, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportion, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2709-X...	Independent Exposives Co. of Pennsylvania, Scranton, PA.	2709
3109-X...	Raytheon Co., Lowell, MA.	3109
4177-X...	Hydrodyne Industries, Inc., Hauppauge, L.I., NY.	4177
4884-X...	Union Carbide Corp., Danbury, CT (see footnote 1).	4884
5206-X...	Atlas Powder Co., Dallas, TX.	5206
6267-X...	Hydrotech Chemical Corp., Marietta, GA.	6267
6531-X...	Tavco, Inc., Chatsworth, CA.	6531
6614-X...	Bison Laboratories, Inc., Buffalo, NY.	6614
6752-X...	Pennwalt Corp., King of Prussia, PA.	6752
6961-X...	Monsanto Co., St. Louis, MO.	6961
7071-X...	Clayton Chemical, Los Angeles, CA.	7071
7495-X...	Brewer Chemical Corp., Honolulu, HI.	7495
7641-X...	American President Lines, Ltd., Oakland, CA.	7641
7768-X...	Plasti-Drum Corp., Lockport, IL (see footnote 2).	7768
7822-X...	Air Products and Chemicals, Inc., Allentown, PA.	7822
7862-X...	General Electric Co., New Berlin, WI.	7862
7876-X...	General Chemical Corp., Morristown, NJ (see footnote 3).	7876
8495-X...	Walter Kidde, Wilson, NC..	8495
8523-X...	Dehon & Prochimac, Paris, France (see footnote 4).	8523
8536-X...	Pennwalt Corp., Buffalo, NY.	8536
8552-X...	Brenner Tank Inc., Fond du Lac, WI.	8552
8555-X...	Morton Thiokol, Inc., Brigham City, UT (see footnote 5).	8555
8620-X...	Polar Tank Trailer, Inc., Holdingford, MN.	8620
8955-X...	Dresser Industries, Inc., Houston, TX.	8955
8968-X...	Degussa Corp., Teterboro, NJ.	8968
8995-X...	Olin Corp., Stamford, CT...	8995
9019-X...	Completion Services, Inc., Lafayette, LA.	9019
9024-X...	Arbel-Fauvet-Girel, St Laurent Blangy, France.	9024
9024-X...	SLEMI, Paris, France.....	9024
9066-X...	Volvo North America Corp., Rockleigh, NJ (see footnote 6).	9066
9220-X...	Custom Packaging Systems, Inc., Manistee, MI.	9220
9308-X...	Pennwalt Corp., Buffalo, NY.	9308
9331-X...	Rio Linda Chemical Co., Sacramento, CA.	9331
9343-X...	Aluminum Co. of America, Pittsburgh, PA.	9343
9344-X...	Industrial Farm Tank, Inc., Lewiston, OH.	9344
9351-X...	Bemco Inc., Chatham, Ontario, Canada.	9351
9377-X...	Atlas Powder Co., Dallas, TX.	9377
9623-X...	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE (see footnote 7).	9623
9633-X...	McDonnell Douglas Astronautics Co., Titusville, FL.	9633
9681-X...	Space Ordnance Systems, Canyon Country, CA (see footnote 8).	9681

[1] To authorize shipment of Boron trichloride and silicon chloride, corrosive materials, and trichlorosilane, a flammable liquid in Type 304 or Type 316 stainless steel cylinders.

[2] To authorize a 20-gallon open-top poly drum as an additional container.

[3] To authorize an additional mixture to be shipped as etching acid, liquid, n.o.s.

[4] To authorize chloropentafluoroethane (R 115), classed as nonflammable gas, as an additional commodity.

[5] To renew and to authorize an additional rocket motor configuration.

[6] To authorize use of DOT Specification 12B fiberboard box.

[7] To authorize use of additional cargo tanks approved under other exemptions for the shipment of blasting agents a oxidizers.

[8] To renew and to authorize rail freight and cargo vessel as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
6926-P...	Rhone-Poulenc Inc., Monmouth Junction, NJ.	6926
7052-P...	Priebe Electronics, Redmond, WA.	7052
7052-P...	Tractor Applid Sciences, Inc., Alexandria, VA.	7052
7052-P...	Engineered Assemblies Corp., Clifton, NJ.	7052
7052-P...	TerraTek Geoscience Services, Salt Lake City, UT.	7052
7628-P...	Allied-Signal, Inc., Morristown, NJ (see footnote 1).	7628
8099-P...	Rhone-Poulenc Inc., Monmouth Junction, NJ.	8099
8445-P...	Rhone-Poulenc Inc., Monmouth Junction, NJ.	8445
8451-P...	Goex, Inc., Cleburne, TX...	8451
8526-P...	Rohm and Haas Co., Philadelphia, PA.	8526
9066-P...	Porsche Cars North America, Inc., Reno, NV.	9066
9082-P...	Rhone-Poulenc Inc., Monmouth Junction, NJ.	9082
9108-P...	Atlas Power Co., Dallas, TX.	9108
9256-P...	U.S. Department of Energy, Washington, DC.	9256
9449-P...	Rhone-Poulenc Inc., Monmouth Junction, NJ.	9449
9466-P...	Rhone-Poulenc Inc., Monmouth Junction, NJ.	9466
9467-P...	Red Star Express Lines of Auburn, Inc., Auburn, NY.	9467
9467-P...	ANR Freight System Denver, CO.	9467
9610-P...	Federal Cartridge Co., Anoka, MN.	9610

[1] Request party status and to authorize use of safety vent or an approved safety relief valve on DOT-111A100W5 tank cars for shipment of hydrofluoric or hydrofluosilicic acid.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 8, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch Office of Hazardous Materials Transportation.

[FR Doc. 87-751 Filed 1-13-87; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Administrator's Educational Assistance Advisory Committee; Meeting

The Veterans Administration gives notice that a meeting of the Administrator's Educational Assistance Advisory Committee, authorized by section 1792, Title 38, United States Code, will be held at the Veterans Administration Central Office, 810

Vermont Avenue NW., Washington, DC, on February 11, 1987, at 9 a.m. in the Omar N. Bradley Conference Room. The meeting will be for the purpose of reviewing alternative procedures to term-by-term certification by institutions of higher learning and to consider a report entitled "Cost-Effectiveness Study of School Liability Procedures Under 38 U.S.C. section 1785".

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity and the need for building security, it will be necessary for those wishing to attend to contact Ms. Mary F. Leyland, Deputy Director, Vocational Rehabilitation and Education Service (22), Veterans Administration Central Office (phone 202-233-2152), before February 4, 1987.

Interested persons may attend, appear before or file statements with the committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 2:30 p.m. on February 11, 1987.

Dated: December 30, 1986.

By direction of the Administrator.

Robert W. Schultz,

ADA for Public and Consumer Affairs.

[FR Doc. 87-755 Filed 1-13-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 9
Wednesday, January 14, 1987

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).

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANOUNCEMENT OF PREVIOUS CITATION: Vol. 52—No. 2 P. 348.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 8, 1987 at 10:00 a.m.

CHANGES: Agenda revised January 8, 1987 to add OS#3408 (previously scheduled for January 8) and to move item previously scheduled for January 14 to January 15, 1987.

Listed below is the revised agenda:

Commission Meeting, Wednesday, January 14, 1987, 10:00 a.m.
Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Closed to the Public

Enforcement Matter OS #3408

The staff will brief the Commission on issues related to enforcement matter OS #3408.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 87-838 Filed 1-9-87; 4:32 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 52—899.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Thursday, January 15, 1987.

CHANGES: Agenda revised January 8, 1987 to add Program Overview item (previously scheduled for January 14, 1987) and to delete Compliance Status Report item orginally scheduled for January 15, 1987.

Listed below is the revised agenda:

Commission Meeting, Thursday, January 15, 1987, 10:00 a.m.
Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Open to the Public

Program Overview: Electrical; Mechanical; Children's

The staff will brief the Commission on an overview of activities on electrical, mechanical and children's products.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 87-839 Filed 1-9-87; 4:33 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:13 a.m. on Thursday, January 8, 1987, the Board of Directors of the Federal Deposit Insurancce Corporation met in closed session, by telephone conference call, to:

(A)(1) accept the bid submitted by Bowie State Bank, Bowie, Texas, newly-chartered State nonmember bank for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bowie National Bank, Bowie, Texas, which was expected to be closed later in the day by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency; (2) approve the applications of Bowie State Bank, Bowie, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in Bowie National Bank, Bowie, Texas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(B)(1) accept the bid submitted by The Security National Bank and Trust Company of Norman, Norman, Oklahoma, a newly-chartered national bank for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Security National Bank and Trust Company of Norman, Norman, Oklahoma, which was expected to be classed later in the day by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency; and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(C)(1) accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of assets of and the assumption of the liability to pay deposits made in American National Bank of Grand Junction, Grand Junction, Colorado, which was expected to be closed later in the day by the Deputy Comptroller of the Currency, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type of transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

(D)(1) accept the bid submitted by The National Bank of Canton, Canton, Illinois, for the purchase of certain assets of and the assumption of the liability to pay deposits made in State Bank of Cuba, Cuba, Illinois, which was expected to be closed later in the day or the following day by the Commisisoner of Banks and Trust Companies for the State of Illinois; and (2) provide such final assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. Willam Seidman, concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considerd in a closed meeting pursuant to subsections (c)(8); (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 12, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 87-895 Filed 1-12-87; 12:06 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m. Tuesday, January 20, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-840 Filed 1-9-87; 4:34 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 12, 19, 26, and February 2, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW, Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 12

Wednesday, January 14

10:00 a.m.
Briefing on Status of Palisades (Public Meeting)

Thursday, January 15

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 19—Tentative

Thursday, January 22

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 26—Tentative

Wednesday, January 28

2:00 p.m.
Status Briefing on Rancho Seco (Public Meeting)

Thursday, January 29

10:00 a.m.
Periodic Briefing on Near Term Operating Licenses (NTOLs) (Open/Portion Closed—Ex. 5 & 7)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, January 30

10:00 a.m.
Briefing on Final Version of Draft NUREG-1150 (Source Term) (Public Meeting)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Byron-2 (Public Meeting)

Week of February 2—Tentative

Thursday, February 5

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Tentative)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, February 6

10:00 a.m.
Briefing on Chernobyl (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Amendments to 10 CFR Part 20 to Require the Use of Accredited Personnel Dosimetry Processors" and "Streamlining the Process for Referring Hearing Requests to the Licensing Board" are scheduled for Friday, January 9. Affirmation of "Proposed Order on Shearon Harris" scheduled for January 9, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

January 8, 1987.

[FR Doc. 87-847 Filed 1-9-87; 4:57 p.m.]

BILLING CODE 7590-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 1275 (January 12, 1987).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (e.s.t.), Wednesday, January 14, 1987.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTERS: The following items are added to the previously announced agenda;

Personnel Items

D-9. Contract No. TV-71144A between TVA and Stemar Corporation, Charlottesville, Virginia, covering arrangements for management services related to the nuclear power program.

D-10. Contract No. TV-71143A between TVA and Basic Energy Technology Associates, Inc., Annandale, Virginia, covering arrangements for personal services related to the nuclear power program.

D-11. Supplement to Contract No. TV-68879A with Stone & Webster Engineering Corporation, Boston, Massachusetts, covering arrangements for services related to TVA's nuclear power program.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Dated: January 9, 1987.
Approved.

C.H. Dean, Jr.,

Director and Chairman.

John B. Waters,

Director.

[FR Doc. 87-860 Filed 1-12-87; 10:28 am]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 52, No. 9
Wednesday, January 14, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/28L FRL-3137-4]

Inorganic Arsenicals; Preliminary Determination To Cancel Registrations of Pesticide Products Containing Inorganic Arsenicals Registered for Nonwood Preservative Use; Availability of the Draft; Notice of Intent To Cancel

Correction

In notice document 86-29494 beginning on page 132 in the issue of Friday, January 2, 1987, make the following corrections:

1. On page 134, in the third column, in paragraph designated "b.", in the 11th line, remove the "asterisk (*)".

2. On the same page, in the same column, in paragraph designated "(1)", in the 12th line, "+" should read "=".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/28M; FRL-3137-3]

Pentachlorophenol; Amendment of Notice of Intent To Cancel Registrations

Correction

In notice document 86-29493 beginning on page 140 in the issue of Friday, January 2, 1987, make the following corrections:

1. On page 144, in the first column, in the fifth complete paragraph, the second line should read: "explicitly defined above are used in this".

2. On page 146, in the second column, in the third complete paragraph, in the 14th line, "therefore" should read "thereafter".

3. On the same page, in the third column, in the sixth complete paragraph, the 12th line should read: "the registration for such product set forth in this".

4. On page 147, in the first column, under the heading *D. Requirements Concerning End-Use Products*, in the first line, "a." should read "1."

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 704 and 721

[OPTS-50559 and OPTS-82029; FRL-3137-5]

Trichlorobutylene Oxide; Epibromohydrin; Hexafluoropropylene Oxide; Proposed Significant New Uses of Chemical Substances; Submission of Notice of Manufacture, Import, or Processing

Correction

In proposed rule document 86-29492 beginning on page 107 in the issue of Friday, January 2, 1987, make the following correction:

On page 110, in the first column, in the second paragraph, in the 10th line, "972." should read "792.".

BILLING CODE 1505-01-D

federal register

Wednesday
January 14, 1987

Part II

Environmental Protection Agency

40 CFR Part 403

General Pretreatment Regulations for Existing and New Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[OW-FRL 3006-4]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 10, 1984, the Environmental Protection Agency (EPA) suspended the provisions in the General Pretreatment Regulations defining the terms "interference" and "pass through" (40 CFR 403.3 (i) and (n), respectively). This action was taken in response to the decision of the United States Court of Appeals for the Third Circuit in *National Association of Metal Finishers v. EPA*, 719 F.2d 624 (3rd Cir. 1983) *(NAMF)*. In the June 19, 1985 **Federal Register**, EPA proposed revised definitions of "interference" and "pass through." (50 FR 25536). Today, EPA is issuing a final rule defining "interference" and "pass through" to replace the previously suspended provisions of the pretreatment regulations. Today's rule also establishes two affirmative defenses to violations of the general prohibitions against interference and pass through in § 403.5(a) and of the specific prohibitions in § 403.5(b) (3), (4) and (5).

DATES: The effective date of this regulation is February 13, 1987.

In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), these regulations shall be considered issued for purposes of judical review at 1:00 p.m. eastern time on January 28, 1987. In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulation may be submitted on or before March 16, 1987. The effective date of these regulations will not be delayed by consideration of such comments.

ADDRESSES: Comments of a technical or nonsubstantive nature should be addressed to: Debora Clovis, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record for this rulemaking, including all public comments received on the proposal, will be available for inspection and copying from 8:00 a.m. to 4:30 p.m. at the EPA Public Information Reference Unit, Room 2904, 401 M Street SW., Washington, DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: George E. Young, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9539.

SUPPLEMENTARY INFORMATION:

I. Background
II. History
A. Prior Rulemakings and Litigation
1. Interference
2. Pass Through
B. Recommendations of the Pretreatment Implementation Review Task Force
C. The Proposed Regulation
III. Final Rule
A. Summary of Rule
B. General Discussion
C. Causation
D. Multiple Discharge Causation
E. Affirmative Defenses
1. Local Limit Compliance Defense
2. "Unchanged Discharge Defense
F. Knowledge Criterion
G. Permit Violation and Sludge Impairment Criteria
H. Drafting Changes
IV. Response to Comments
V. Executive Order 12291
VI. Regulatory Flexibility Analysis
VII. Paperwork Reduction Act
VIII. List of Subjects in 40 CFR Part 403

I. Background

Sections 307 (b)(1) and (c) of the Clean Water Act (CWA) direct EPA to establish pretreatment standards "to prevent the discharge of any pollutant through treatment works . . . which are publicly owned, which pollutant interferes with, passes through, or is otherwise incompatible with such works." These sections address the problems created by discharges of pollutants from non-domestic sources to municipal sewage treatment works or pass through the works to navigable waters untreated or inadequately treated. Pretreatment standards are intended to prevent these problems from occurring by requiring non-domestic users of publicly owned treatment works (POTW) to pretreat their wastes before discharging them to the POTW. In 1977, Congress amended section 402(b)(8) of the CWA to require POTWs to help regulate their industrial users (IU) by establishing local programs to ensure that industrial users comply with pretreatment standards.

In establishing the national pretreatment program to achieve these pretreatment goals, the Agency adopted a broad-based regulatory approach that implements the statutory prohibitions against pass through and interference at two basic levels. The first is through the promulgation of national categorical standards which apply to certain industrial users within selected categories of industries that commonly discharge toxic pollutants. Categorical standards establish numerical, technology-based discharge limits derived from an assessment of the types and amounts of pollutants discharges that typically interfere with or pass through POTWs with secondary treatment facilities. (See discussion at 46 FR 9415-16, January 28, 1981 concerning pass through. See also, 40 CFR Part 425, 47 FR 52870, November 23, 1982, for an example of a categorical standard that addresses the problem of interference.) EPA has promulgated categorical standards for many major and minor industry categories. *See* 40 CFR Parts 400 through 469. The Agency will be evaluating these industries and other industries for the control of additional toxic pollutants.

Implementation of the categorical standards, however, is not a remedy for all the interference and pass through problems that may arise at a POTW. The potential for many pass through or interference problems depends not only on the nature of the discharge but also on local conditions (e.g., the type of treatment process used by the POTW, local water quality, POTW's chosen method for handling sludge), and thus needs to be addressed on a case-by-case basis. Such problems can result from discharges to a POTW of pollutants not covered by a categorical standard or from non-domestic sources which are not in one of the industrial categories regulated by the categorical standards. Since categorical standards are established industry-wide, they cannot consider site-specific conditions and therefore may not be adequate to prevent all pass through and interference even for the regulated pollutants. The second level of EPA's regulatory approach, contained in the General Pretreatment Regulations (40 CFR Part 403), addresses these areas of concern. First, § 403.5(b) establishes specific prohibitions which apply to all non-domestic users and are designed to guard against common types of pollutant discharges that may result in interference and pass through (e.g., no discharge of flammable, explosive, or corrosive pollutants). Second § 403.5(a) establishes a general prohibition against pass through and interference which serves as a back-up standard to address localized problems that occur. In addition, POTWs must develop and enforce specific local limits as part of their local pretreatment programs to prevent pass through and interference. POTWs not required to develop

pretreatment programs must also develop local limits if they may have recurring pass through and interferences (§ 403.5(c)). All of these regulatory provisions, which provide the framework for the national pretreatment program, were not at issue in the *NAMF* pretreatment litigation and have continued in effect.

The definitions of interference and pass through are designed to help implement the general prohibitions in § 403.5(a), the specific prohibitions in § 403.5(b) (3), (4) and (5), and the requirement to develop local limits in § 403.5(c). These definitions do not play a direct role in the Agency's development of national categorical standards, but instead, together with the prohibited discharge provisions, describe when site-specific pass through and interference problems must be addressed and enforced. (See 49 FR 9415–9416, January 28, 1981, for a discussion of how pass through is defined for purposes of developing national categorical standards.) Today's final rule establishes definitions of pass through and interference to replace those suspended in accordance with the court's ruling in *NAMF*.

II. History

A. Prior Rulemakings and Litigation

1. Interference

EPA first promulgated a definition of interference in the June 26, 1978, General Pretreatment Regulations (43 FR 27736). (Before this rule, the pretreatment regulations prohibited the discharge of wastes that interfered with the operation or performance of the POTW, but did not separately define interference. *See* 40 CFR Part 128, 38 FR 30983, November 11, 1973. In addition, some specific categorical regulations included provisions that prohibited discharges that would "upset" the treatment works or reduce their "efficiency." One of these regulations was struck down by the courts as unduly vague. *See CPC International v. Train*, 515 F.2d 1032 (8th Cir. 1975).) The 1978 regulations defined interference as an "inhibition or disruption of a POTW's sewer system, treatment processes or operations which *contributes to* a violation of any requirement of its NPDES Permit" (emphasis added). This definition was challenged by various parties, who argued that the "contributes to" language was too vague and overly broad, potentially subjecting an indirect discharger to liability even where no link existed between its discharge and the POTW's NPDES permit violation.

In response to this argument, EPA proposed to revise the provision to define interference as the introduction of a pollutant which "is a cause of or significantly contributes to" a POTW permit violation or a POTW's ability to properly and lawfully dispose of its sludge (44 FR 62260, October 29, 1979). In addition, the proposed definition contained a "safe harbor" provision which stated that if an industrial user (also called an indirect discharger) is in compliance with all applicable Federal, State and local pretreatment requirements, its discharges to a POTW cannot be considered interference and thus a violation of the general prohibition, even if those discharges in fact cause or significantly contribute to a permit violation or sludge problem.

EPA's final amended definition, published after consideration of many public comments on the issue, retained the proposed "cause of or significantly contributes to" language (46 *FR* 9404, January 28, 1981). Also in response to comments, EPA clarified the "significantly contributes to" language by specifying that it applied only if the industrial user: (1) Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by Federal, State or local law; (2) discharges wastewater which substantially differs in nature or constituents from the user's average discharge; or (3) knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a POTW permit violation or prevent lawful sewage sludge use or disposal. In response to comments, the amended definition did not include the proposed "safe harbor" provision. The Agency concluded that it would be confusing and logically inconsistent to exclude from the definition of interference industrial users who were in fact causing or significantly contributing to a permit violation or sludge problem. *See*, 46 FR at 9414 (January 28, 1981).

This definition of interference was one of the pretreatment provisions challenged in the Third Circuit Court of Appeals in the *NAMF* case (*NAMF, supra*, 719 F.2d at 638–641). Industry litigants argued that the definition violated the Act since indirect dischargers could be liable under the "significantly contribute" criterion even if they were not a cause of the POTW's violation. The court remanded the definition to the Agency after finding that it would be inappropriate to hold an industrial user liable if the inhibition or disruption of a POTW were caused not by wastewater discharged by the industrial user but rather by a mistake or malfunction at the POTW. *Id.* at 640–41. The court interpreted EPA's definition of interference (which allowed a finding of interference in cases of significant contribution alone) to not require a showing that the industrial discharge caused the permit violation or sludge problem and held that this approach contravened the intent of Congress: "[W]e conclude that given the language and purpose of the [Clean Water] Act, an indirect discharge [sic] cannot be liable under the prohibited discharge standard unless it is *a cause* of the POTW's permit violation of sludge problem" (emphasis added) (*NAMF, supra*, 719 F.2d at 641).

2. Pass Through

EPA first defined pass through in the 1981 amendments to the General Pretreatment Regulations (40 CFR 403.3(n)). Pass through was defined as "the Discharge of pollutants through the POTW into navigable waters in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation)." Like the interference definition, the pass through provision further defined what constituted a significant contribution.

This regulatory definition of pass through also was challenged in the pretreatment litigation. Petitioners' substantive arguments against the definition essentially paralleled those proffered against the interference definition. Since a pass through definition has never been proposed by EPA but only issued as a final rule, the Agency conceded procedural error and requested that the court remand the definition for repromulgation in accordance with the requirements of the Administrative Procedure Act. Because of this procedural error, the Third Circuit declined to review substantively the existing definition prior to its submission for public comment and remanded it to the Agency. (*NAMF, supra*, 719 F.2d at 641).

In accordance with the court's ruling in *NAMF*, the definitions of pass through and interference were suspended on February 10, 1984 (49 FR 5131).

B. Recommendations of the Pretreatment Implementation Review Task Force

On February 3, 1984, EPA established the Pretreatment Implementation Review Task Force (PIRT). The Task Force, formed in accordance with the requirements of the Federal Advisory

Committee Act, 5 U.S.C. (App. I) section 9(C), was established to examine the common pretreatment implementation problems experienced by industry, States and municipalities, to develop and debate options for program development, to discuss the need for guidance, training programs, technical assistance and interpretative policy, and to discuss possible regulatory changes. *See* 49 FR 5108 (February 10, 1984). The Task Force included several members of each of the following groups that are affected by the pretreatment program: regulated industries, State regulatory agencies, POTWs, environmental interest groups and EPA's Regional offices.

In its *Final Report to the Administrator* issued on January 30, 1985, the Task Force presented a set of recommendations, adopted by consensus, including a recommendation addressing the definition of interference. After briefly discussing the *NAMF* decision, the Task Force set forth its views as follows:

The recommended definition below has been written to clearly establish the required causation. In addition, the three criteria illustrating what constitutes "significant contribution" to a POTW permit violation have been dropped. PIRT felt that these criteria are neither inclusive of all possibilities nor necessarily accurate. The function of a listing of "significant contributing causes" is one of guidance. It can best be fulfilled it is instead incuded in a separate guidance document, as previously recommended [in the Task Force's Interim Report].

PIRT believes that EPA needs to issue a new definition of "interference" as soon as possible. It would be useful in the development of local limits. PIRT recommends that EPA propose and promulgate as soon as possible, through rulemaking, the following definition of the term "interference":

The term "interference" means an inhibition or disruption of the POTW, its treatment processes or operations, or its sludge processes, use or disposal which is a cause in whole or in part of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or to [sic] the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, and the Toxic Substances Control Act.

PIRT also recommended that EPA propose and promulgate the following definition of pass through:

The term "pass through" means the discharge of pollutants through the POTW into navigable waters in quantities or concentrations which are a cause in whole or in part of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

C. The Proposed Regulation

On June 19, 1985, EPA proposed a definition of interference substantially the same as that recommended by PIRT:

The term "Interference" means a Discharge by an Industrial User which, alone or in conjunction with discharges by other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations) . . .

Consistent with the Third Circuit's decision and PIRT's recommendation, EPA deleted the phrase "or significantly contributes to" and the criteria further clarifying that phrase. Instead, under the proposed definition an interference violation would have been established when an industrial user's discharge, either alone or in conjunction with the discharge from one or more sources, was found to have inhibited or disrupted the POTW, causing a violation of the POTW's discharge permit or preventing the lawful use or disposal of its sludge.

In the preamble, EPA explained that it was not proposing more specific criteria on what constitutes "cause" because it believed, as the Task Force stated, that any such criteria would necessarily be either over-inclusive or under-inclusive. EPA tentatively concluded, therefore, that the most workable and equitable approach is to establish a more general definition of interference—causation of POTW noncompliance—in the regulation. Specific instances of such causation could then be determined by assessing the facts in each particular case.

Accordingly, the proposed definition did not include the three criteria that had been used in the remanded definition to clarify the meaning of significant contribution. The first two criteria would have held an industrial user liable for interference if its discharge exceeded that allowed by contract or applicable law, or if it discharged wastewater which differed substantially from its average discharge. The proposed regulation recognized, in view of the *NAMF* decision, that the key issue in defining interference is causation. These two criteria are relevant but not dispositive in determining whether a certain discharge has caused an interference violation.

The third criterion included in the remanded interference definition would have held an industrial user liable for interference if it knew or had reason to know that its discharge, alone or in conjunction with discharge from other indirect sources, would result in a POTW permit violation or sludge problem. Noting that causation of the POTW's violation is the key factor, not the state of mind of the actor, EPA decided not to include a knowledge criterion in the proposed definition of interference.

The proposal also did not contain a "safe harbor" provision for the same reason stated above. EPA continued to agree with those comments submitted during the rulemaking on the 1981 pretreatment regulations that found it inconsistent to exempt an industrial user from liability for interference when its disharge is *in fact* causing interference at a POTW (50 FR 25528, June 19, 1985). EPA further reasoned that the presence or absence of causation should be determined by analyzing the facts in a particular case.

EPA's proposed definition of pass through also followed closely the PIRT recommendation. The Agency proposed to define pass through as the introduction of pollutants by an industrial user into a POTW which leave the treatment plant in quantities or concentrations that, alone or in conjunction with the discharges from other sources, cause a violation of a POTW's NPDES permit. Following the reasoning of the *NAMF* decision, EPA proposed to make causation of POTW permit violations the operative criterion in defining pass through. Thus, the proposed pass through provision, like the proposed interference definition, did not include the phrase "significantly contributes to" or a safe harbor provision.

III. Final Rule

A. Summary of Rule

After careful consideration of all comments, EPA has decided to promulgate final definitions of pass through and interference that are substantially the same as those in the June 1985 proposal. Interference is

defined as an industrial user discharge that, alone or in conjunction with other discharges, disrupts the POTW or sludge processes and the disruption in turn causes a POTW NPDES permit violation or prevents the POTW from using its chosen sludge use or disposal practice. Pass through is defined as an industrial user discharge that exits the POTW to waters of the United States in quantities or concentrations which, alone or in conjunction with other discharges, causes a POTW NPDES permit violation. An industrial user whose discharge is found to cause pass through or interference is liable for violating the general prohibitions in § 403.5(a) and therefore may be subject to a federal enforcement action pursuant to section 309 of the Clean Water Act.

The key factor in today's rule in determining pass through or interference by an industrial user is to find that the industrial user's discharge caused, in whole or in part, a POTW's permit violation or, in the case of interference, prevented the lawful sewage sludge use of disposal practice selected by the POTW. Thus, today's rule differs from the definitions remanded by the court in *NAMF* by not imposing liability on the basis of "significant contribution." The court found that under at least two of the three criteria defining "significant contribution" in the remanded definition, an industrial user potentially could have been held liable for a pass through or interference violation even if there had been no demonstrated causal link between the user's discharge and the POTW's noncompliance. As discussed, the court stated that to the extent the definitions created liability without cause, they were invalid under the CWA. Today's final rule establishes liability only upon cause and therefore is consistent with the *NAMF* decision.

In addition, to address significant concerns raised by commenters on the proposed definitions, the Agency is amending § 403.5(a) to establish affirmative defenses to liability for violations in two limited situations for industrial users whose discharges could be determined to have caused interference of pass through. These defenses are available where the industrial user did not know or have reason to know that its discharge, alone or in combination with discharges from other sources, would result in a POTW permit violation or prevent lawful sewage sludge use of disposal, and can demonstrate either that (1) the discharge was in compliance with local limits developed pursuant to § 403.5(c) for each pollutant(s) that caused interference or pass through, or (2) if those local limits have not been established, the discharge directly prior to and during the pass through or interference occurrence did not differ substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the requirements of its permit and applicable sludge regulations. These affirmative defenses arise directly out of the comments on the proposed definitions of interference as well as previous proceedings concerning these defintions. However, because they are intended to apply only as a defense in actions to enforce the general prohibitions in § 403.5(a) and the specific prohibitions in § 403.5(b) (3), (4), and (5), they are being promulgated in an amendment to § 403.5(a) rather than as an exclusion from the definitions of interference and pass through.

B. General Discussion

The task of formulating the definitions of interference and pass through has been an extraordinarily difficult and lengthy one for the Agency. During the Agency's development of these definitions, the Agency has proposed and promulgated a variety of approaches, each of which has proven to be highly controversial and, in certain instances, been ruled invalid by the courts. The recurring issue faced by EPA has been how best to balance two competing considerations: First, the need for definitions which hold industrial users accountable under the general prohibition for discharges that adversely affect POTW facilities, operations, treatment processes, sludge use/disposal practices, and receiving waters; and second, the Agency's responsibility to provide adequate notice to industrial users about their pretreatment obligations.

On one hand, the potential problems caused by inadequately treated industrial user discharges to the POTWS are diverse and include damage to the POTW's physical facilities, threats to the health and safety of POTW workers, inhibition of POTW treatment processes, the discharge of toxic and other pollutants to the waters of the United States, contamination of the POTW's sludge, and emission of volatile pollutants from the POTW's sewer and treatment systems into the air. A precise determination of when one of these problems is likely to occur is not always possible because the effects of industrial user discharges vary from site to site, depending on a number of factors such as the design of the plant and the types and amounts of wastes discharged by other users. Therefore, implementation of the statutory directive to prevent pass through and interference would be enhanced by definitions which encompass any industrial user discharge that is determined to have caused an adverse effect at the POTW or on the environment.

On the other hand, EPA recognizes its statutory duty to promulgate "pretreatment standards," i.e., apprise the regulated community as to the nature of their pretreatment obligations. Definitions which are too broad or general may not be sufficiently precise to enable industrial users to determine whether their discharges will comply with the general prohibition. Members of the regulated community have advocated very specific notice of applicable limits and some have argued that liability cannot be imposed unless a user violates a numerical discharge limit. The degree of specificity sought by industry, however, must be balanced against the need for definitions inclusive enough to address a variety of site-specific and sometimes unpredictable problems.

EPA has concluded that today's final rule achieves an appropriate balance between providing adequate notice to industrial users of their pretreatment responsibilities and establishing a standard that effectively implements the statutory directive to prevent pass through and interference. The definitions define pass through and interference as being whenever an industrial user discharge is a cause of the POTW's noncompliance with its NPDES permit or, in the case of interference, the POTW's sludge requirements. Thus, an industrial user's liability for violating the general prohibitions will depend on whether its discharge is a cause of the POTW's noncompliance, rather than on violating a specific list of prohibited acts. This allows liability to be determined on an assessment of the facts in each case. (This factual assessment would be similar to that commonly used in tort litigation.)

The definitions also clearly notify industrial users of their pretreatment obligations under the general prohibitions: Do not discharge pollutants so as to cause the POTW to violate its NPDES permit or, in the case of interference, applicable sludge requirements. The permit violation/sludge contamination criteria provide objective and ascertainable measures specifying the threshold at which the adverse effect of an IU discharge is deemed significant enough to warrant legal liability and possible enforcement action. Industrial users are encouraged to contact their POTW to determine the

applicable NPDES permit and sludge requirements and the POTW's treatment processes and capability, and coupled with an analysis of their own pollutant discharges, determine whether their discharges may cause POTW noncompliance.

Today's final rule further minimizes uncertainty about an industrial user's pretreatment obligations and legal liability by allowing the industrial user to establish an affirmative defense in two situations.

The first defense addresses the situation where compliance with a local limit established for a particular pollutant in accordance with § 403.5(c) has led the industrial user to conclude that its discharge would not cause interference or pass through. The industrial user can thus overcome uncertainty concerning its compliance obligations and legal liability by identifying the pollutants in its discharge that are introduced to the POTW at significant levels and requesting that the POTW develop local limits for those pollutants in accordance with § 403.5(c). For those pollutants, the discharger need only comply with the local limits unless it subsequently knows or has reason to know that it is causing or would cause interference or pass through. The second defense addresses the situation where local limits have not been established, but a POTW's history of compliance with its NPDES permit and applicable sludge requirements has led the industrial user to conclude that the user's continued, substantially unchanged discharge would not cause pass through or interference. Note, however, that the affirmative defense would be available in either situation described above only if the industrial user did not know or have reason to know that its discharge would cause POTW noncompliance.

Not only do the affirmative defenses address the goal of providing adequate notice to industrial users of their pretreatment obligations, but also they advance the primary goal of preventing interference and pass through. The Agency intends that the first defense in particular will act as a major incentive for the development of sound local limits that prevent interference and pass through. Industrial users seeking to avoid liability under the general prohibition may be expected to fully characterize the nature of their wastewaters, provide detailed information to the POTWs, and encourage their POTWs to conduct the analyses needed to establish sound local limits. The development of such limits should in turn result in pretreatment to assure compliance with those limits, thereby furthering the goal of preventing interference and pass through.

While the affirmative defenses help specify industrial users' compliance obligations under the general and specific prohibitions, today's rule nevertheless continues to implicitly encourage industrial users to ascertain relevant information about the POTW's treatment processes and capability and the general nature of other discharges to the POTW in order to comply with the general prohibition (e.g., by obtaining information from the POTW about the nature of its influent and its ability to treat the influent). EPA has determined that generally holding industrial users accountable for their discharges to the extent they cause POTW noncompliance is supported by sound policy and the goals of the CWA.

First, the legislative history indicates that Congress intended direct and indirect discharges generally to be treated to the same extent. Requiring industrial users to pretreat their wastes so as not to cause POTW noncompliance assures the public that dischargers cannot contravene the statutory objectives of eliminating or at least minimizing discharges of toxic and other pollutants simply by discharging indirectly through POTWs rather than directly to receiving waters.

Second, prohibiting discharges that cause POTW noncompliance fairly allocates treatment responsibilities between the POTW and its users. The discharge results from the industrial user's activities; equitably, the burden of treating the discharge should thus be imposed on the entity that creates it, and not on the local or Federal ratepayers and taxpayers. It also makes sense to put some of the burden of anticipating and determining how to avoid discharges that could cause noncompliance on the industrial user, because it is in a better position than the POTW to know what pollutants are currently being discharged and are most likely to be discharged in the future. This is especially true of industrial users with complex and varying production processes. Moreover, this duty is not unlike the sort of duty that is routinely applied in the common law to entities that engage in risk-creating activities. Because they create risk, such entities are commonly held liable if their activities cause harm to persons or property. Their duty is to ascertain the nature and scope of the risks which they create and to take preventative measures to assure that potential harm does not occur.

Finally, the causation standard incorporated in today's final rule follows the recommendation of PIRT. As noted, PIRT had substantial representation from each of the constituencies interested in the pretreatment program. PIRT not only considered the concepts at issue in today's rule, but also considered the needs and problems of the entire pretreatment program in making its recommendations. Accordingly, the Agency has given PIRT's judgment important consideration in developing the final rule.

C. Causation

Industrial users' discharges can inhibit or disrupt a POTW and thereby cause POTW noncompliance by physically disrupting the flow of wastewater through the POTW's system, by chemically or physically inhibiting the treatment processes, or by hydraulically overloading the plant so that proper settlement does not occur or wastes are retained for too short a time to receive adequate treatment before discharge. Pollutants discharged by industrial users may also contaminate the sewage sludge that is a by-product of the POTW's treatment processes and thereby prevent the POTW from complying with requirements governing its chosen sewage sludge use of disposal practices. Establishing interference under today's definition requires a showing that industrial user discharge(s) were a cause of an inhibition or disruption of the POTW and that the inhibition or disruption resulted in a violation of any requirement of the POTW's NPDES permit or prevented lawful sludge use or disposal.

The pollutants discharged by the industrial user that cause the POTW to violate its permit may be the same as, or different from, the pollutants discharged in violation of the permit. For example, if an industrial user discharges toxic pollutants that inhibit the POTW's treatment process and thereby cause the POTW to violate its BOD permit limits, that discharge constitutes interference. Similarly, if a user's BOD discharge disrupts treatment processes and causes the POTW to violate its TSS limits (or vice versa), interference occurs. Of course, interference also occurs if the BOD discharge which disrupts the POTW's treatment processes instead causes the POTW to exceed its BOD limits.

Pass through, on the other hand, is not necessarily related to an inhibition or disruption of the POTW processes. Instead, it is based on pollutant discharges from an industrial user which

are not susceptible to treatment by the POTW and therefore pass through to the receiving waters in amounts or concentrations that exceed the POTW's NPDES limits. Therefore, establishing pass through requires a showing that a pollutant was a cause of a violation of the POTW's permit and that an industrial user discharged that pollutant. Typically, the pollutant discharged by an industrial user that passes through a POTW will violate a permit limit for that same pollutant. However, this will not necessarily be true in all cases. For example, the POTW's permit may contain toxicity-related limits that are not pollutant-specific. If the pollutant discharged by the industrial user causes the POTW to violate these toxicity limits, pass through has occurred.

As noted, for purposes of today's rulemaking, an industrial user's discharge will be considered to be interference or pass through only if the discharge is a cause of the POTW's noncompliance. If a malfunction or improper operation by the POTW, rather than an industrial user's discharge, causes the POTW's noncompliance with its NPDES permit or sludge requirements, interference and/or pass through are not occurring. As stated in the preamble to the proposal (50 FR 25527, June 19, 1985), EPA intends the definitions to be interpreted and implemented consistent with the Congressional intent that pretreatment technology not be required as a substitute for adequate operation and maintenance of the POTW. Thus, if the POTW's improper operation alone prevents it from meeting the BOD effluent limitations in its NPDES permit, the POTW must correct its operational problem. In other words, when the POTW is the sole cause of its noncompliance, the industrial user is not violating the general prohibition against pass through and interference. Similarly, an industrial user would not be considered to have violated the general prohibition against pass through and interference when the POTW's inability to comply with effluent limitations based on secondary treatment is due to its failure to upgrade its treatment facilities from primary treatment.

Nonetheless, because the industrial user's discharge need only be *a* cause of the POTW's noncompliance, a user may be held liable for violating the prohibitions against pass through and interference (assuming, of course, that the enforcement authority has demonstrated that the discharge is a cause of the POTW's noncompliance) even though another factor, such as POTW operating difficulties which reduced treatment efficiency or a storm event which increased the flow beyond the POTW's hydraulic capacity, existed which also could be determined to have been a cause of the POTW's noncompliance.

The definitions also provide that interference or pass through exist where an industrial user's discharge causes an "increase in the magnitude or duration of a [NPDES permit] violation." The Agency does not intend this language to mean, as one commenter feared, that an industrial user can be held liable any time the POTW has a permit violation simply by virtue of the industrial user's continued discharge. (See also the discussion below of the affirmative defenses.) The industrial user's discharge must be a cause of the POTW's violation before pass through or interference exists. For example, a POTW may disrupt its treatment processes through improper operation and, as a result, violate its permit. Given the nature of influent normally introduced into the POTW, the POTW could correct the problem and return to compliance within five days. On the third day, however, it receives a discharge from an industrial user which nullifies its remedial efforts and causes the POTW to remain in noncompliance for an additional five days. Here the industrial user can be said to have caused an increase in the duration of the permit violation and has violated the general prohibition against interference separately for each additional day it has caused the POTW's noncompliance. Similarly, where a discharge from one industrial user causes interference at the treatment works and a second industrial user subsequently discharges pollutants that cause an increase in the duration of the POTW's noncompliance, the second industrial user has also caused interference. The second industrial user is not excused from potential liability simply because another industrial user had initially caused the permit violation. The "increase in magnitude or duration" language thus provides a basis for an enforcement action if efforts by the POTW or industrial users to remedy an existing problem are frustrated by an industrial user who causes a new problem before the first has been fully corrected. (Note that, depending on the facts in a particular case, an affirmative defense may be available.)

A different situation is presented if an industrial user's discharge causes the initial inhibition or disruption that incapacitates the POTW's treatment processes and causes the POTW to violate its permit over a period of several days. Here, the industrial user does not cause an increase in the duration of the permit violation, but instead has caused the permit violation in the first place and its liability, including the duration of its liability, will depend on the particular facts of the case. Under section 309 of the CWA, each day of a violation constitutes a separate offense. Therefore, if an industrial user discharges a pollutant that kills the biomass in the POTW's activated sludge and, as a result, the POTW needs seven days to adequately replenish the biomass and return to compliance with its permit, the industrial user has committed seven days of interference violations under the general prohibition. (The ultimate extent of the user's liability, however, may depend on the potential applicability of the affirmative defenses.)

D. Multiple Discharge Causation

As noted, an industrial user need not be the sole cause of the interference or pass through occurrence to be potentially liable for a pass through or interference violation. Consistent with the PIRT recommendation, the phrase "alone or in conjunction with discharges from other sources" is intended to establish pass through or interference where discharges from more than one industrial user, or from a combination of industrial users and other sources, cause the POTW noncompliance. This means that an industrial user would be potentially liable if its discharge were a cause of the POTW's noncompliance even if discharges from other domestic or nondomestic sources were also determined to have been independent causes of the noncompliance or where the combined effect (whether the discharges occurred simultaneously or sequentially) of such discharges were a cause of the POTW's noncompliance.

For example, a leather tannery may discharge chromium in an amount that alone would not significantly inhibit the POTW's treatment capacity, but together with simultaneous discharges of chromium from other tanneries could cause a failure of the biological treatment processes and consequently result in the POTW's noncompliance with its NPDES permit. Because the discharges together have caused the POTW's noncompliance, each discharge is a cause of the POTW's permit violation. Similarly, two industrial users may each discharge excessive amounts of cadmium to a POTW, thereby causing the POTW to violate the applicable sludge requirement for its chosen disposal method of application to land used to grow food chain crops. (*See* 40 CFR 257.3–5.) Each of these discharges

of cadmium is a cause of the POTW's noncompliance with its sludge requirement. When a POTW violates a toxic pollutant effluent limitation in its permit, each industrial user that discharges that pollutant may be a cause of the permit violation and consequently may be liable for pass through.

Providing for liability in the multiple discharger situation is necessary because joint causation of pass through and interference is likely to be a common occurrence in any POTW with multiple industrial users. The biological processes used in most secondary treatment facilities can be overwhelmed when the concentration or strength of the wastes exceeds their capacity or when the processes are exposed to a new type of waste to which they have not had sufficient time to acclimate. Multiple discharges of wastes, varied in both amount and constituents, increase the likelihood that a combination of discharges will disrupt the POTW's treatment capacity even though each discharge alone would not have a significant adverse effect. If liability for the occurrence of interference or pass through could be established only when an industrial user is the sole cause of POTW's permit violation, many POTW permit violations caused entirely by industrial user discharges would not be enforceable (as violations of the general prohibition) against industrial users.

Imposing liability on each industrial user whose pollutant discharge is a cause of the POTW's noncompliance is consistent with common law principles generally applied in cases where multiple sources cause pollution (or other types of indivisible harm). It is also consistent with the court's decision in *NAMF*. The court stated that "an indirect discharge[r] cannot be liable . . . unless it is *a* cause of the POTW's permit violation or sludge problem." *NAMF*, 719 F.2d at 641 (emphasis added). This statement indicates that the industrial user need not be the sole cause before liability can be imposed. Judge Gibbons' concurring opinion reinforces this interpretation. It stated that "[i]f it is established that the interference is caused by a pollutant, and a user of the POTW is a source of such pollutant, the three [significant contribution criteria] for determining responsibility for the interference satisfy both the Clean Water Act and due process." *NAMF* at 667.

E. Affirmative Defenses

Although EPA has concluded that basing pretreatment liability on causation generally is both fair and necessary, the Agency also has concluded that the pretreatment goals of the Act and fundamental notions of fairness support two exceptions to such liability. Accordingly, today's rule establishes two affirmative defenses to actions brought to enforce the general prohibitions against pass through and interference in § 403.5(a) and the specific prohibitions in § 403.5(b) (3), (4) and (5) which are based on interference. These defenses represent instances where the Agency has determined that an industrial user should reasonably be able to conclude that its discharge will not cause interference and pass through. An industrial user who successfully establishes one of these defenses will have a defense against liability for past violations of the general prohibition in § 403.5(a) and the specific prohibitions in § 403.5(b) (3), (4) and (5). The affirmative defenses, however, do not shield industrial users from new requirements. Thus, if after the interference or pass through occurs, a POTW develops local limits (or revises existing local limits which proved inadequate) to prevent the industrial user's discharge from again causing pass through or interference, the industrial user would be subject to the new local limits.

The affirmative defenses do not apply when the industrial user knows or has reason to know that its discharge, albeit unchanged or in compliance with local limits, will cause POTW noncompliance. This might occur, for example, where the POTW has notified the industrial user that it must reduce or cease its discharges on a temporary or permanent basis to avoid causing interference or presenting an endangerment to the environment (see e.g., § 403.8(f)(1)(vi)(B)). Here, an industrial user has specific notice that its discharge could cause POTW noncompliance and thus is not entitled to the protection provided by the affirmative defense. Accordingly, under the amendment to § 403.5(a) the affirmative defenses are not available when the industrial user knows or has reason to know that its discharge, alone or in combination with discharges from other sources, would result in pass through or interference. To assert the defense, the industrial user has the initial burden of demonstrating that it did not know or have reason to know that its discharge would result in pass through or interference. To meet this burden, the industrial user does not need to prove a negative. The user, however, does need to make a good faith demonstration. The burden would then shift to the enforcement agency to rebut this demonstration.

The unavailability of the affirmative defenses prevents an industrial user from being shielded when that user has knowledge or reason to know that its discharge is continuing to cause POTW noncompliance. Once warned of the situation, either by the POTW or from other sources, the industrial user must cease causing the POTW violation or else be subject to an enforcement action for injunctive relief or penalties. The user is subject to the same standard that he would be required to meet if the affirmative defenses were not available—the user must avoid causing violations. If the industrial user continues to cause pass through or interference after he has knowledge that the discharge may violate the general prohibitions, EPA, the State, or the POTW will take actions to eliminate the noncompliance with the general prohibitions. Such actions could include revising the local limits (and requiring the user to meet the tighter limits), requiring installation of additional treatment systems, or enforcement to eliminate the noncompliance. Obviously, the appropriate action will depend upon the circumstances of the particular case. In any case, EPA retains authority under section 504 of the CWA to bring a court action to immediately restrain any source or combination of sources that presents an imminent and substantial endangerment to public health or welfare.

1. Local Limit Compliance Defense

Under today's final rule, an industrial user may establish as an affirmative defense that its discharge of each pollutant causing pass through or interference (as the case may be) was in compliance with a local limit developed in accordance with § 403.5(c) for that pollutant and that the user did not know or have reason to know that its discharge would be a cause of POTW noncompliance. The industrial user has the burden of demonstrating that it did now know or have reason to know that its discharge would be a cause of pass through or interference, and demonstrating that its discharge was in compliance with a local limit for the pollutant causing the problem, and that the local limit was developed in accordance with § 403.5(c) to prevent pass through and/or interference at the treatment works.

The Agency intends this defense to protect a user whose discharge is a cause of a pass through or interference occurrence, despite compliance with a local discharge limit specifically designed to prevent the particular problem that occurred. To convey this

intent, the regulation uses the phrase "local limit designed to prevent Pass Through and/or Interference, as the case may be." EPA expects that in setting a local limit for a particular pollutant, POTWs will analyze the pollutant's potential for causing each of the prohibited effects—inhibition of the treatment processes or operations, contamination of the sewage sludge, and discharge through the treatment works into waters of the United States without adequate treatment—and set one limit for that pollutant at the lowest level necessary to prevent any one of these problems from occurring. Compliance with a local limit established in this manner would allow a user to assert the affirmative defense regardless whether the user's discharge caused either pass through or interference. If, on the other hand, the local limit for a pollutant was developed to prevent only interference (e.g., where available data allowed the POTW to consider only potential interference occurrences), but the user's discharge of that pollutant caused pass through, the affirmative defense would not be available.

The existence of a POTW ordinance or other local limit that results in some control of pollutant discharges is not in itself sufficient to support this affirmative defense; the limit must have been established to prevent pass through and/or interference in accordance with § 403.5(c). The development of local limits under § 403.5(c) involves three basic steps. First, the POTW must determine which, if any, of the pollutants discharged by its industrial users have a reasonable potential to pass through or interfere with the POTW. For each of the pollutants the POTW concludes may be of concern, the POTW must then determine the maximum loading that it can accept and yet still prevent the occurrence of pass through and interference. Finally, after maximum allowable headworks loadings are determined for each of the pollutants of concern, the POTW must implement a system of local limits applicable to industrial users to assure that these loadings will not be exceeded.

The POTW may choose how to implement its local limits (e.g., uniform maximum allowable concentrations applied to all dischargers of the pollutant of concern; proportionate reduction of the pollutant by each industrial user that discharges the pollutant based on the industrial user's flow or mass loading; or technology-based limitations applied selectively to the significant dischargers of the pollutant) so long as the selected method accomplishes the required objectives. POTWs must update these limits as necessary to reflect the changing conditions, such as increased domestic wastewater flow, changes in the industrial user wastewater characteristics or population, and new limits or requirements in the POTW's NPDES permit or applicable sludge regulations.

Local limit development represents the most important stage in the future implementation of the national pretreatment program. Now that most categorical pretreatment standards have been promulgated and local pretreatment programs required by § 403.8 of the General Pretreatment Regulations are in place, the Agency is placing increased emphasis on the implementation of local limits to prevent site-specific pass through and interference. As mentioned, the limited affirmative defense is intended in part to encourage industrial users to work with their POTWs to develop effective and technically sound local limits. The POTW's risk of liability for permit or sludge violations caused by industrial users should continue to provide a significant incentive to POTWs to respond positively to users' requests to establish appropriate local limits.

EPA recognizes that this approach may create a surge in the demand for local limits. While this would be a positive result of the regulation, it may place a technical and resource burden on many POTWs. EPA will continue to assist POTWs in this regard as it has in the past. Procedures for conducting headworks analyses, calculating maximum allowable headworks loadings, and implementing local limits are explained in the EPA *Guidance Manual for POTW Pretreatment Program Development* (October 1983). The Agency also has developed a computer program that greatly reduces the time required to perform the necessary calculations. (Infomation about the computer program is available from Robert F. Eagen, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9529.) In accordanace with PIRT recommendations, EPA is also preparing additional guidance on ways to resolve interference problems and to develop local limits.

This limited affirmative defense does not relieve the industrial discharger from its general duty to be aware of and control its discharges. However, it assures that a discharger working with the POTW in good faith to establish appropriate technically-based local limits will not be penalized if those limits are subsequently found to be technically flawed. It also provides industrial users with an opportunity to minimize uncertainty as to their pretreatment obligations, as requested by many commenters. Any industrial discharger can study its raw material and processes, and analyze its wastewater effluent to determine which pollutants may be discharged continuously, periodically or occasionally to the POTW. The discharger may then contact the POTW and request that the POTW establish local limits for those pollutants that assure compliance with the general and specific prohibitions. Compliance with those local limits affords an affirmative defense with respect to the discharge of those pollutants (provided, of course, that the industrial user does not otherwise know or have reason to know that its discharge would cause a POTW violation).

Although today's rule establishes a limited affirmative defense with respect to pollutants for which local limits have been set, EPA continues to disagree with commenters who favored a broad safe harbor provision like the one proposed in 1979. That proposal would have excluded from the definitions of interference and pass through any discharge in compliance with all applicable national categorical standards and State and local pretreatment standards and requirements even though its discharge in fact interfered with or passed through the POTW. This safe harbor would have provided industrial users with greater certainty about which discharges would or would not lead to violation of the general prohibition. However, it would have relieved industrial users from responsibility in a large variety of situations in which they caused pollutants to pass through or interfere with POTWs, contrary to the goals established by Congress for the pretreatment program (e.g., where an unregulated pollutant in the discharge caused pass through or interference, or where compliance with a categorical standard did not prevent pass through or interference from occurring at a particular POTW).

As indicated above, compliance with national categorical standards necessarily does not address all local environmental problems. While the local limit program under § 403.5(c) is designed to prevent localized incidents of pass through and inteference, it does not at present or for the foreseeable future present a complete solution to preventing such incidents. Setting local

limits is a relatively new endeavor for most POTWs and will require time for POTWs to develop the necessary expertise, especially given their often limited resources. Some municipalities in the past have not regulated industrial users, except perhaps by collecting fees based on the amount of wastewater discharged to or treated by the POTW. Many existing local limits predate the promulgation of § 403.5(c) and therefore are based on the POTW's analysis of what discharge limits are needed to prevent general plant problems and do not necessarily reflect the analysis required to develop site-specific pass through and interference local limits as required under § 403.5(c). Even at larger POTWs which have developed local pretreatment programs and performed the necessary analysis, local limits typically addess only a small number of toxic metals and conventional pollutants. Moreover, even after local limits are established following a reasonably thorough analysis of the POTW's influent and capacity to treat that influent, it remains possible that particular pollutants not covered by local limits would be discharged and cause POTW upsets or other problems. Such discharges may result from spills, process changes, raw material changes, or other sources not identified by industrials users or anticipated by the POTW. In each of these cases, an industrial user whose discharge caused pass through or interference would be shielded from liability under a broad safe harbor provision because the discharge would be in compliance with existing standards.

In summary, a broad safe harbor is unacceptable because it would inappropriately and unfairly shift to the POTW the entire burden of anticipating and regulating all discharges that may interfere with or pass through the POTW. While the POTW obviously has an obligation under § 403.5(c) to take reasonable measures to ascertain the potential for such discharges and set limits for them, the ultimate duty to pretreat industrial discharges to assure compatibility with the POTW must rest with the users that generate the discharge.

Therefore, rather than establish a broad safe harbor, EPA has promulgated an affirmative defense limited to situations where the POTW has conducted a detailed technical analysis of the potential impact of a particular pollutant and has established a limit in accordance with § 403.5(c), the industrial user complies with the limit, and the industrial user does not know or have reason to know that its discharge would cause POTW violations. In this situation, the industrial user and POTW have conducted precisely the type of localized analysis intended by the general prohibitions in § 403.5, and the local limit in effect functions as a site-specific application of the general prohibition. Thus, unlike the broad safe harbor, the affirmative defense supports the general prohibition rather than undermines it.

2. "Unchanged Discharge" Defense

The second affirmative defense added to today's rule applies when an industrial user can demonstrate that its discharge directly prior to and during the POTW's noncompliance was substantially the same (in nature and constituents) as its discharge(s) at a previous time when the POTW was regularly in compliance with its NPDES permit and applicable sludge use or disposal requirements and that the user did not know or have reason to know that its discharge would be a cause of pass through or interference. Two reasons support this affirmative defense. As with the first affirmative defense, it protects an industrial user against liability in situations where it has a sound basis to conclude, based on past experience, that its discharge would not cause pass through or interference problems. In addition, the fact that the industrial user's discharge has remained substantially the same suggests that the unchanged discharge is at most a minor cause of the POTW's initial noncompliance.

The "unchanged discharge" defense is intended primarily to address concerns that in a multiple discharger situation a particularly large discharge (in terms of either volume or concentration of pollutants) by one industrial user could, when combined with other discharges, trigger a psss through or interference occurrence. This could potentially subject all other dischargers of the same pollutant to liability for violating the general prohibition even if their discharges were no different than the ones discharged the day before without causing POTW noncompliance. More broadly, the "unchanged discharge" affirmative defense protects dischargers who are not subject to local limits, either because the POTW has not yet developed local limits or because the POTW has determined, based on its current information about the nature and amount of discharges to its system, that a pollutant is not of concern or that a particular user's discharge of a pollutant of concern should not be regulated under the POTW's scheme for allocating discharge limits to ensure that maximum allowable headworks loadings for that pollutant are not exceeded. If, on the other hand, the user is subject to local limits for the pollutant discharge determined to have caused the pass through or interference, the user may not assert the "unchanged discharge" defense. This prevents a chronic violator of local limits from disclaiming liability for causing pass through or interference because its discharge remained substantially unchanged.

Under today's final rule, a discharger who could prove that is discharge directly prior to and during the POTW's noncompliance had not changed substantially from its prior discharges and that the POTW, while receiving the prior discharges, was able to comply with its NPDES permit (and, in the case of interference, applicable sludge requirements), would have a defense against an interference or pass through violation. Like the first affirmative defense, this defense is not available if the industrial user knew or had reason to know that its discharge would cause POTW noncompliance. For example, if the POTW notified the industrial user that due to changes in the POTW's treatment operation, lower discharges of a particular pollutant would subsequently be required, this defense would not be available. (In this situation, POTWs with pretreatment programs ultimately would be expected to develop local limits to address the changed circumstances. In the meantime, however, an industrial user that had been notified by the POTW that reduced discharges would be necessary would not be able to assert the affirmative defense.)

To assert this defense successfully, a discharger must demonstrate a relatively consistent discharge pattern that coincides with a history of POTW compliance. This discharge pattern could consist of similar daily discharges (e.g., discharges of substantially the same flow, type, and concentration of pollutants on a daily or continuous basis) or a variable, but regular, pattern of discharges (e.g., substantially similar discharges from batch processes that occur on a regular schedule). However, the defense would not be available for unpredictable discharges or varying amounts of flow and pollutant characteristics even if the industrial user could prove a stable past history of POTW compliance. The defense also would be unavailable if the POTW previously has not been regularly in compliance with its NPDES permit or sludge use or disposal requirements, even if the industrial user could prove

that its discharge has been consistent over time.

F. Knowledge Criterion

The proposed definitions did not require that an industrial user know or have reason to know that its discharge would cause a POTW's permit violation before pass through or interference could be established. Instead, the existence of pass through and interference was proposed to be based solely on causation of the occurrence by discharge(s) from industrial users. Thus, as in the case of other types of pretreatment and NPDES permit violations, the occurrence of a pass through or interference violation would not depend on the discharger's state of mind. The Agency explained that while knowledge should be a factor in determining the degree of an industrial user's culpability (e.g., civil or criminal liability, amount and appropriateness of penalties), it had no relevance in determining the existence of pass through or interference. Moreover, if a "know or have reason to know" standard were incorporated as a necessary element of proof that a violation has occurred, enforcement would be unduly difficult, if not impossible, in most cases even where causation could be established.

The Agency has decided to continue defining the basic existence of pass through and interference based solely on causation without regard to the discharger's state of mind. As discussed above, the final rule encourages the industrial user to assume responsibility for determining whether its discharge will cause problems at the POTW. Although an industrial user is not subject to a legally enforceable duty to undertake specified activities, it bears the risk that failure to ascertain how to prevent its discharges from causing POTW noncompliance will result in legal liability. The industrial user thus has an implicit duty, if not an express legal duty, to assess the potential impact of its discharge. Moreover, under the affirmative defenses established today, the industrial user is encouraged to work with the POTW to develop sound local limits. Inclusion of a knowledge criterion in the definitions of pass through and interference would defeat this purpose. For this reason, as well as those stated in the proposal, the Agency has not incorporated a knowledge criterion in the definitions themselves.

However, the affirmative defenses promulgated today address the knowledge issue in two ways. First, neither defense is available where the industrial user knew or had reason to know that its discharge, alone or in combination with discharges from other sources, would result in the POTW's noncompliance. Second, the defenses provide benchmarks against which an industrial user can judge the probable impact of its discharge on the POTW. When complying with local limits specifically designed to prevent interference and/or pass through from occurring at a particular POTW, an industrial user has, absent knowledge to the contrary, a rational basis for assuming that its discharge will not violate the prohibition against pass through and/or interference; conversely, violating those local limits puts the industrial user on notice that its discharge could cause pass through or interference. (Of course, in this situation, the discharger would also be liable for violating its local limits.) Similarly, an industrial user whose discharge activity (i.e., type of pollutant in the discharge and amount of flow) has followed a consistent pattern while the POTW has been regularly in compliance with its permit has reason to assume that continuation of the same discharge activity will not result in a pass through or interference violation. On the other hand, the industrial user should know that any significant variation in its typical discharge activity could adversely affect the POTW's capacity to treat its wastes and maintain compliance with the NPDES permit limits. (Note also that § 403.5(b)(4) specifically prohibits "slug loads.")

The Agency continues to agree with commenters that knowledge should be considered in determining an appropriate enforcement response. Under section 309(c)(1) of the CWA, EPA may seek criminal penalties only for willful or negligent violations of section 307 (the pretreatment authority). Willful generally means that the defendant undertook his actions knowingly, intentionally, and deliberately, and intended the natural and probable consequences of those actions. Negligence does not require an intentional or deliberate act, but instead refers to a failure to exercise ordinary care under the circumstances. The ordinary care required varies according to the forseeability of the harm; generally, the more foreseeable the harm, the more care required. Thus, in effect, section 309(c)(1) insures that an industrial user who violates the general prohibition against pass through and interference will not be held criminally liable unless it knew or had reason to know (i.e., a person exercising ordinary care would know) that the user's discharges would cause the POTW to violate its permit. Also, as explained in the response to comments, a discharger's lack of knowledge may be an appropriate mitigating factor to consider even in civil actions.

G. Permit Violation and Sludge Impairment Criteria

As did previous versions, today's final definitions specify that interference or pass through exists only if an industrial user's discharge results in a violation of the POTW's NPDES permit (or impairs the POTW's chosen sludge use or disposal option, in the case of the interference definition). Thus, these definitions are distinguishable from the earliest pretreatment regulations which broadly prohibited discharges that would upset the treatment works or reduce their efficiency but were judicially remanded because they did not adequately warn industry of the scope of the prohibited conduct. *See e.g., CPC International v. Train,* 515 F.2d 1032 (8th Cir. 1975). The permit violation and sludge impairment criteria provide industrial users with clear notification of the harm to be avoided. An industrial user can readily ascertain the POTW's NPDES permit limits and chosen sludge use or disposal practice. Under today's final rule, the industrial user has an implicit duty, if not an express legal duty, to determine what level of treatment is needed to avoid causing POTW noncompliance with these requirements.

The nexus to permit and sludge violations also establishes an objective and easily ascertainable enforcement standard. An exceedance of a POTW permit limit is readily apparent; such determinations have been made for years under the NPDES program. Impairment of sludge use or disposal results when the POTW's sludge no longer meets applicable requirements for its chosen use or disposal alternative. Thus, if the POTW has elected to apply the sludge to land and industrial discharges prevent the lawful use of this method, a violation of the general prohibition occurs. An industrial user cannot avoid liability by claiming or proving that, despite the impairment of the POTW's preferred sludge use or disposal option due to the user's discharge, other disposal options (e.g., incineration) are still legally available.

The permit violation criterion also recognizes that under the CWA, water quality goals are implemented through effluent limitations in NPDES permits issued to direct dischargers. The CWA contemplates that adverse water quality impacts that could potentially result from industrial user discharges in the

POTW's effluent will be taken into account when limits are established in the POTW's NPDES permit. Once a water quality standard is translated into an NPDES permit limit, it is appropriate to require the industrial users to control their discharges to ensure that they do not cause the POTW to violate the permit limit.

EPA recognizes that the regulatory scheme for achieving water quality goals through effluent limitations in NPDES permits has not yet been fully implemented. Many States do not yet have numerical water quality criteria for toxic or nonconventional pollutants of concern, although all States have a narrative prohibition against the discharge of toxic pollutants in toxic amounts. Even where numerical criteria have been developed, wasteload allocations to achieve compliance with the standards may not have been completed in many States, further complicating the task of developing appropriate effluent limits for POTWs' NPDES permits. Because some pollutants that cause water quality problems are not yet addressed in the POTWs' permits, industrial users' discharges of those pollutants will not be causing permit violations and thus will not cause "pass through" as that term is defined in today's rule.

EPA expects that increasing numbers of POTW permits will contain limits on toxic pollutants contributed by industrial users in addition to the usual limits on BOD, TSS and pH. In the issuance of third-round permits now underway, EPA has emphasized the application of the "Policy on Water Quality-Based Permit Limits for Toxic Pollutants" (49 FR 9016, March 9, 1984). This policy calls for an integrated strategy to address toxic and nonconventional pollutants through both chemical and biological methods. Where State standards contain numerical criteria for toxic pollutants and the POTW's effluent contains significant amounts of those pollutants, limits to achieve the water quality standards are required in NPDES permits. Where numerical criteria are not yet available, NPDES permitting authorities are expected to use biological techniques and available data on chemical effects to assess toxicity impacts and human health hazards and then develop permit conditions that establish effluent toxicity limits or require further testing as necessary. POTWs will then be expected to develop local limits to ensure these permit limits will not be violated. If an industrial user discharge causes the POTW to violate any toxicity-related permit condition, the discharge would also violate the general prohibitions in § 403.5(a). While this process of including controls on toxic pollutants is not complete, EPA has concluded that at present the most direct and appropriate resolution of this situation lies in modifying inadequate POTW permits, rather than in changing the definitions of pass through and interference.

The regulations promulgated today not only describe certain circumstances in which an industrial user's discharge may result in legal liability but also specify in part when a POTW must develop local limits under § 403.5(c). When the definitions are used for the purpose of determining the need for local limits, the permit violation nexus is not intended to restrict POTWs solely to the consideration of existing permit limits and sludge requirements in establishing local limits. Local limits are supposed to be preventative, as well as reactive. Accordingly, EPA encourages POTWs to consider all relevant information in setting local limits, including water quality criteria and standards and the presence of pollutants which could adversely affect workers' health and safety. *See, EPA's Guidance Manual for Pretreatment Program Development* (October 1983). Where POTWs anticipate potential problems, they should set local limits even if there is no permit limit addressing the problem. Similarly, POTWs are encouraged to anticipate changes in their NPDES permit limits or sludge regulations that will consequently require additional local limits. (It is also important to note that demonstrating a POTW permit violation or sludge impairment is necessary only for purposes of federal enforcement actions brought to enforce violation of the general prohibition in § 403.5(a) or the specific prohibitions in § 403.5(b) (3), (4), and (5). This demonstration is not necessary in actions to enforce local limits. As standards established under the authority of State or local law, these local limits are independently enforceable by the State or POTW. Local limits also are independently enforceable under federal law. Section 403.5(d).)

EPA is concerned, however, that the minimum local limit requirements in § 403.5(c) are being interpreted, both by POTWs and industrial users, as limits on the POTW's authority to establish local limits. Consequently, some POTWs are not developing limits to prevent known environmental or health problems or adverse impacts to their physical plant unless associated with a POTW permit violation or prevention of lawful sludge use or disposal. This was and is not EPA's intent. Accordingly, the Agency is considering initiating a separate rulemaking to specify the circumstances in which POTWs must develop and enforce local limits which are different from or more stringent than the NPDES permit violation/sludge impairment enforcement thresholds used in the definitions of pass through and interference promulgated today.

A final aspect of the permit violation nexus requires additional clarification. Although the POTW always remains ultimately accountable for its NPDES permit violation, an enforcement action against the POTW is not a prerequisite to an enforcement action against an industrial user for violating the general prohibition in § 403.5(a) or the specific prohibitions in § 403.5(b). Moreover, the prohibitions are violated even where the POTW's noncompliance is excused. In particular, the permit violation nexus in the definition does not preclude enforcement actions against an industrial user where the POTW can avoid liability for its permit violation under the bypass and upset provisions in the NPDES regulations.

40 CFR 122.41(m) of the NPDES regulations prohibits bypass, or the intentional diversion of waste streams from any portion of a treatment facility. However, EPA regulations excuse the POTW's bypass where it was unavoidable to prevent loss of life, serious injury or severe property damage, the POTW had no feasible alternative to the bypass, and the POTW complied with certain notice requirements. 40 CFR 122.41(m)(4). The bypassing discharge may result in an exceedance of the POTW's permit limits, albeit an excused one.

An upset is an exceptional incident which creates an unintentional and temporary noncompliance with technology-based permit limits due to factors beyond the POTW's control. 40 CFR 122.41(n). It provides an affirmative defense if the POTW proves that an upset occurred and can identify its cause, that the facility was being properly operated, that required notices were submitted, and that appropriate measures to mitigate damage to human health and the environment were taken.

Upsets or bypasses by POTWs, although they may result in violations of the NPDES permit, are excused by the regulation, allowing the POTW to avoid civil liability. This does not mean, however, that an industrial user whose discharge causes the POTW to bypass or upset and in turn is a cause of the POTW's NPDES permit violation, can avoid liability for violating the

prohibition against pass through and interference (as those terms are defined in today's regulations) by claiming that the violation of the POTW's NPDES permit is not actionable against the POTW.

H. Drafting Changes

Today's final rule also includes several minor drafting changes from the proposed definitions. These changes are technical and are not intended to affect the meaning of the definitions.

First, in the definition of interference the phrase "by an Industrial User" to modify "Discharge" has been omitted. Section 403.3(h) of the General Pretreatment Regulations defines "Industrial User" to mean a source of "Indirect Discharge." "Indirect Discharge" or "Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act. Section 403.3(g). Thus, the word "Discharge" in the definition of interference already encompasses the term "Industrial User" and makes that term superfluous. Accordingly, it has been omitted.

Second, we have substituted "therefore" for the second "which" in the interference definition and have added subparagraph indicators to clarify the interrelationship between the industrial user's discharge, the inhibition or disruption of the POTW, and the consequent NPDES permit violation or sludge impairment. This change also tracks more closely the practical application of the definition in determining an interference occurrence. If the discharge causes an inhibition or disruption at the POTW, and that inhibition or disruption causes a permit or sludge violation, the discharge is a cause of the permit or sludge violation.

The third change involves the definition of pass through. The phrase "navigable waters" has been replaced by the phrase "waters of the United States" to be consistent with the terminology used in the NPDES regulations (40 CFR 122.2). Also, in the definition of pass through, we have replaced the word "through" with the phrase "which exists." Again both terms convey the same meaning, but the new wording avoids the circularity problems inherent in using the word "through" in defining "pass through."

In addition, we have made several changes in other parts of § 403.5 to conform to changes made by the rule promulgated today. First, the sentence establishing the general prohibitions in the newly-designated § 403.5(a)(1) has been redrafted in the active voice and reworded to refer to "Interference," the term defined today, rather than to "Interfere," which is not a defined term. Similarly, the words "non-domestic source" have been changed to "User." Although both terms refer to the same group of entities (see 40 CFR 403.3(g) and (h)), the Agency concluded that using only defined terms and minimizing the number of interchangeable terms in the regulations would minimize any potential confusion.

In the second sentence of the general prohibition paragraph, we have changed "all Users" to "each User" in describing to whom the general prohibitions apply. This more clearly indicates that the standard applies to each individual User, not Users as a class.

Finally, we have made two drafting changes to § 403.5(c)(1). First, the cross-reference to "paragraphs (a) and (b) of this section" has been changed to "paragraphs (a)(1) and (b) of this section" to reflect the new designation for the general prohibitions. Second, the directive in this paragraph has been redrafted from the plural to the singular. Again, this change merely clarifies that the requirement described applies to individual POTWs, not to POTWs as a class.

IV. Response to Comments

EPA received 21 comments in response to the June 19, 1985, proposal from environmental groups, POTWs, industries subject to pretreatment requirements, and various industry associations. Environmental groups and some industry groups supported the proposed definitions. Others, including POTWs and industry representatives, raised objections to the proposal and concerns about how the definitions would be applied in various situations.

The major issues raised by commenters on the proposed definitions have been discussed in the explanation of the final rule. Comments not specifically addressed in the final rule section are discussed below.

A. Causation

EPA proposal to rely chiefly on causation of an NPDES permit violation as the key threshold factor in defining pass through and interference generated numerous comments related to the interpretation of the *NAMF* decision. Several POTWs expressed concern that the absence of the "significantly contribute to" language in the definitions would effectively prevent them from bringing enforcement actions either because causation would be difficult to prove in a multiple discharger situation or because the definitions could be read to require proof that an industrial user was the sole cause of the permit violation. Some industry commenters, on the other hand, correctly read the proposed definitions to provide for liability where multiple industrial user discharges combine to cause POTW noncompliance, but argued that *NAMF* requires proof that an industrial user was the sole cause of the violation. In a related vein, several commenters claimed that the phrase "alone or in conjunction with discharges from other sources" reintroduced the significant contribution standard rejected by the court. Still other commenters argued that *NAMF* requires that both causation and significant contribution be incorporated in the definitions.

In general, we disagree with these conflicting interpretations of *NAMF*. The court in *NAMF* held that Congress did not contemplate liability without causation and therefore a lesser standard based merely on significant contribution was invalid as contrary to the CWA if causation were not an element of the standard. *NAMF*, 719 F.2d at 638–641. Accordingly, Federal law requires that the definitions apply a causation standard. Today's final rule is consistent with that decision. However, under section 510 of the CWA, States and local governments are free to adopt and enforce more stringent requirements to the extent allowed by State or local law. Any such requirements would be enforceable under State or local law without regard to the definitions promulgated today as part of the Federal regulations.

EPA also does not read the *NAMF* decision to require any standard in addition to a causation standard. Commenters who argued that both causation and significant contribution are required misconstrued the court's statement at 641 that "[i]f the definition of 'interference' required that an indirect discharger be both 'the cause of' *and* 'significantly contribute to' the POTW's permit violation, it would be consistent with the causation requirement." (Emphasis in original.) The courts statement was in response to EPA's argument in the *NAMF* case that the significant contribution factor was intended to incorporate causation and merely agreed that if EPA's interpretation were accurate, the causation requirement would be satisfied. The court did not hold or even imply that significant contribution was a statutory prerequisite. Therefore, EPA disagrees with commenters that EPA is required to incorporate the concept of "significant contribution" in addition to a causation standard in the definitions.

Similarly, nothing in the court's opinion suggested that liability can attach under the CWA only when an industrial user is the sole cause of the POTW's permit violation. To the contrary, as explained above in section II.A.1 of this preamble, the court stated that an industrial user's discharge need only be *a* cause and therefore did not preclude liability for joint causation. Recognizing that there may be more than one cause of POTW noncompliance in the definitions also does not reintroduce "significant contribution" as a basis for liability because proof a a causal link between the industrial user's discharge and consequent POTW noncompliance is required in all cases.

Some (though not all) industrial commenters objected to the multiple causation language as imposing an impossible burden of coordinating one's discharge with all other industrial users' discharges. This is not the case. Rather, it encourages the user to be aware of its own discharge as well as the POTW's permit and sludge requirements and the general nature of the POTW's influent. If the industrial user is discharging a pollutant that may be contained in the POTW's influent at excessive levels, this indicates a need for the industrial user to reduce its discharge of that pollutant or request that the POTW establish a local limit at a level that assures that the user's discharge does not cause POTW violations. Thus, the industrial user may reasonably ascertain its own pretreatment obligations without the need to examine in detail each individual industrial user's discharges to the POTW. As discussed previously, compliance with local limits can serve as part of the basis for an affirmative defense against liability. Also, in appropriate cases, an industrial user whose discharge is consistent over time may be able to assert the affirmative defense based in part on the "unchanged discharge" (see discussion of final rule).

EPA has concluded that it would be inappropriate at this time to specify in the definitions and the general prohibition the precise conduct expected of industrial users. Instead, under the present regulations, undustrial users have considerable flexibility in determining how best to meet their compliance obligations (although, in EPA's view, working with the POTW to determine the need for and develop adequate local limits is the preferred mechanism). Some flexibility is desirable because the type and level of effort necessary to ascertain the impact of an industrial user's discharge obviously will vary depending on the particular circumstances. However, EPA recognizes that it may be possible to identify specific mandatory duties that would be applicable to all industrial users to ensure that their discharges comply with the general prohibitions. Accordingly, the Agency will consider the imposition of additional affirmative duties on industrial users as one of several options the Agency will explore during its deliberations on ways to strengthen the pretreatment program and to implement the recommendations in the Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works (EPA, February 1986) ("Domestic Sewage Study"). See also, Advance Notice of Proposed Rulemaking, 51 FR 30166 (August 22, 1986).

A few commenters argued that the definitions effectively shift liability to industrial users in lieu of requiring POTWs to adequately design, operate, and maintain their treatment works because they assume any pollutant is capable of causing pass through or interference. This, the commenters argued, would contravene Congress' intent as expressed in the legislative history that "[i]n no event is it intended that pretreatment facilities be required for compatible wastes as a substitute for adequate municipal waste treatment works." S. Conf. Rep. No. 1236, 92d Cong., 2d Sess. 130. The comments received on this issue also reveal confusion about the respective responsibilities of industrial users and POTWs to treat "compatible" wastes, which requires further clarification.

EPA disagrees that the definitions conflict with Congressional intent. As stated in the discussion about causation, an industrial user will not be held liable for interference or pass through where a malfunction or improper operation by the POTW, rather than an industrial user's discharge, solely causes the POTW's noncompliance. Moreover, POTWs are under a continuing obligation to operate and maintain their treatment facilities properly. 40 CFR 122.41(e). POTWs also remain ultimately accountable for any noncompliance with their permit limits, regardless of the cause. Where improper operation and maintenance cause noncompliance, the POTW must correct the operation or maintenance problem. The POTW also remains responsible for returning to compliance with its permit when discharges from its industrial users cause noncompliance, but may do so in a number of ways (e.g., developing local limits, taking an enforcement action against the industrial user, or adding new treatment facilities). The definitions do not relieve the POTW of its proper operation and maintenence obligations or strict liability for permit noncompliance. (Note, however, that under the NPDES regulations, a POTW may be excused from liability if it can establish that its permit violation was caused by an excusable upset or bypass.)

The definitions also do not contravene Congressional intent regarding the POTW's treatment of "compatible" waste. POTWs traditionally have been designed and built to treat domestic sewage and other similar biological waste. In enacting section 307(b), Congress took into account the fact that a POTW's existing capacity to treat wastes compatible with its system could make pretreatment of those wastes by industrial users unnecessary to meet the levels of pollutant reduction required by the POTW's permit. Thus, Congress sought to avoid costly, duplicative treatment by industrial users where the POTW could adequately treat the user's waste. This does not mean, however, that POTWs are solely responsible for treating any and all biological waste discharged to their facilities by industrial users.

Comments, however, seem to have misinterpreted compatible wastes as being equivalent to conventional pollutants, and in effect, argue that whenever they discharge BOD and TSS, they are discharging compatible wastes and thus should not be required to pretreat their wastes. This clearly was not the Congressional intent. In the same legislative history cited by the commenters, Congress further explained that:

> Pretreatment of biological waste that is compatible with the treatment provided by a publicly owned waste treatment plant (POTW) into which such waste is introduced *may* not be necessary . . . where the *composition and proportion* of such effluent is compatible with the municipal waste treatment system.

Conf. Rep. No. 1236, 92d Cong. 2d Sess. 130 (1972). (emphasis added). Industrial waste can differ substantially in composition and amount from that contained in domestic sewage. Although wastes from both sources may be characterized and limited in terms of BOD and TSS (the "conventional" pollutant parameters limited in all POTW NPDES permits), these measurements only indicate general characteristics of the wastestream and do not describe all the pollutants present. The fact that POTW can treat the TSS in domestic sewage does not mean it can equally treat the same

amount of TSS in waste discharged by, for example, and iron and steel plant which is likely to include toxic metals. Similarly, BOD may in some cases represent a wastestream that contains organic toxic pollutants.

Any pollutant, including conventional and biological pollutants, can be incompatible, if discharged in concentrations or flows that exceed the POTW's capacity. A discharge of biological waste with concentrated levels of BOD (e.g., blood from a poultry processing plant) may be just as capable of causing interference by overwhelming the biological treatment process as certain inherently incompatible pollutants like toxic metals. These facts, together with the legislative history, indicate that "compatible" is a relative concept that must be determined on a case-by-case basis, considering such factors as the capacity of the treatment system and the composition and proportion of the biological waste discharged to the POTW from industrial users.

In a related vein, several commenters suggested that users should not be held liable for violating the general prohibition when the POTW has agreed to accept discharges that exceed its capacity. As noted in the discussion of the final rule, interference with treatment processes can be caused by hydraulic overloads, with the volume of wastewater entering the plant exceeding its capacity and flushing the wastewater through to receiving waters without adequate treatment. Consequently, controlling the volume of wastewater entering the plant so as not to exceed the POTW's hydraulic capacity is often an important element in a PTOW's effort to prevent interference. EPA agrees that when interference results from hydraulic overload, liability for causing the interference generally should be determined in the same way as for other discharges causing interference. Thus, an industrial user could assert an affirmative defense if it did not know or have reason to know that its discharge, alone or in combination with the discharges from other sources, would cause interference and could demonstrate that either it was in compliance with flow limits designed to prevent hydraulic overload or the volume of its discharge at the time of the POTW's noncompliance was substantially the same as its discharge volume previously when the POTW was regularly in compliance with its NPDES permit and appropriate sludge use or disposal requirements.

B. Safe Harbor and Knowledge Criterion

Nearly all commenters addressed the safe harbor issue. Those who objected to a safe harbor noted many of the same problems identified above in the discussion of the final rule and objected in particular that a broad safe harbor would preclude enforcement even where the industrial user knew that its discharge would cause pass through or interference. Some commenters who supported EPA's proposal to exclude the broad safe harbor nonetheless urged the Agency to consider good faith compliance with existing standards in enforcement decisions consistent with EPA's statement that it supported the intent of the safe harbor. Many other commenters, however, argued that EPA should codify a safe harbor if the Agency in fact supported its intent, in part because EPA's enforcement discretion was irrelevant in citizen suits. In addition, these commenters stated that a broad safe harbor was necessary to provide a definite standard of conduct and argued that compliance with existing limits should absolve industrial users of any further responsibility in much the same way as section 402(k) of the CWA protects direct dischargers who comply with their NPDES permits. Finally, in addition to the few commenters specifically advocating a knowledge criterion, several commenters urged adoption of a broad safe harbor as a way to incorporate a knowledge standard in the definitions, thereby protecting industrial users from liability where they do not have control over or knowledge about the conduct of the POTW or other industrial users.

As discussed above, EPA disagrees that a broad safe harbor is needed to give industrial users adequate notice about their pretreatment obligations. Congress neither required nor prohibited a safe harbor for indirect dischargers comparable to section 402(k). Section 307 gives discretion to EPA to determine how best to fashion a regulatory program to achieve the goals of preventing pass through and interference. The general prohibitions in § 403.5, augmented by today's definitions of pass through and interference, are an important part of EPA's program to implement the statutory pretreatment goals. Moreover, a broad safe harbor comparable to section 402(k) would greatly undermine the effectiveness of the general prohibitions against pass through and interference and thus would frustrate Congressional pretreatment goals. Accordingly, EPA has rejected it. However, EPA agrees that immunity from liability is justified in certain limited circumstances and therefore has established the two affirmative defenses described in the discussion of the final rule.

The Agency continues to agree that good faith compliance with categorical standards and attempts to comply with the general prohibitions should be carefully considered in making enforcement decisions. EPA will consider these factors, as well as the industrial user's knowledge, compliance history, cooperation with the POTW, efforts to mitigate any damage, and other relevant facts, in determining an appropriate enforcement response. EPA also anticipates that courts will consider such factors when exercising their discretion to fashion appropriate relief in enforcement actions brought under the citizen suit provision in section 505 of the CWA.

C. Permit Violation and Sludge Impairment Criteria

None of the comments received by EPA raised major objections to using the permit violation or sludge contamination criteria in the definitions as thresholds for enforcement purposes. However, one commenter argued that water quality impacts and other impacts on POTW operations not reflected in NPDES permit limits should be considered when determining the need for local limits. EPA agrees that different concepts of pass through and interference are needed to address different program purposes. (See the discussion in the preamble to the proposed rule about the differences between the use of the term pass through in developing categorical pretreatment standards and its use in the General Pretreatment Regulations, 50 FR 25529.) Also, EPA shares the commenter's concern that local limits often are developed only to protect the POTW's existing NPDES permit limits. Accordingly, as noted in the discussion of the final rule, EPA is evaluating whether a separate regulation is needed to require local limits in situations where the POTW is not violating its permit or applicable sludge requirements.

V. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it merely defines terms used in the Act and existing regulations and imposes no new requirements; thus,

it meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule was submitted to the Office of Management and Budget for review.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, I hereby certify, pursuant to 5 U.S.C. 605(b), that this regulation will not have a significant impact on a substantial number of small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3050/ *et seq.*, EPA must submit a copy of any rule that contains a collection of information requirement to the Director of the Office of Management and Budget for review and approval. This proposed regulation contains no additional information collection requirements, and therefore the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: January 6, 1987.

Lee M. Thomas,

Administrator.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

For the reasons set out in the preamble, 40 CFR Part 403 is amended as follows:

1. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95–217), Secs. 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92–500), as amended by the Clean Water Act of 1977.

2. Section 403.3 is amended by revising the introductory text and paragraphs (i) and (n) to read as follows:

§ 403.3 Definitions.

For purposes of this part:

* * * * *

(i) The term "Interference" means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

* * * * *

(n) The term "Pass Through" means a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

* * * * *

3. Section 403.5 is amended by revising paragraph (a) and redesignating it as paragraph (a)(1), by adding a new paragraph (a)(2), and by revising paragraph (c)(1) to read as follows:

§ 403.5 National pretreatment standards: prohibited discharges.

(a)(1) *General prohibitions.* A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

(2) *Affirmative Defenses.* A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3), (4) and (5) of this section where the Users can demonstrate that:

(i) It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and

(ii)(A) A local limit designed to prevent Pass Through and/or Interference, as the case may be, was developed in accordance with paragraph (c) of this section for each pollutant in the User's Discharge that caused Pass Through or Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or

(B) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed in accordance with paragraph (c) of this section for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

* * * * *

(c) *When specific limits must be developed by POTW.* (1) Each POTW developing a POTW Pretreatment Program pursuant to § 403.8 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section.

* * * * *

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Wednesday
January 14, 1987

Part III

Department of Energy

Office of the Secretary

48 CFR Part 970
Acquisition Regulation; Final Rule

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: This rule amends the Department of Energy Acquisition Regulation (DEAR) and implements the requirements of the Department of Defense (DOD) Authorization Act, 1986 (Pub. L. 99-145, November 8, 1985) (hereafter referred to as the "Act"), which at section 1534 of Title XV, Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986, requires the Secretary of Energy to prescribe regulations to implement section 1534. The DEAR amendments apply to DOE's management and operating (M&O) contractors, including DOE's national laboratories, and are intended to make unallowable for reimbursement under M&O contracts the costs cited to be not allowable in section 1534 of the Act.

EFFECTIVE DATE: This regulation will be effective January 14, 1987.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
E. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rule is to revise the DEAR as necessary to implement the requirements of section 1534(a) of the Act which specifies, in part, that the following costs are not allowable:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fee.

Cost prohibitions virtually identical to those listed in section 1534(a) were also established in section 911 of the Act for contracts awarded by DOD. Implementing regulations applicable to both DOD and DOE contracts placed with commercial organizations (the cost principles in Federal Acquisition Regulation (FAR) Subpart 31.2, Contracts with Commercial Organizations), but not to DOE M&O contracts, were appropriately amended under the FAR amendment process. (Final rule published in **Federal Register** at 51 FR 12296, 4-9-86).

Consistent with the intent of the Act, the DEAR amendments being promulgated today incorporate, to the maximum extent practicable, the implementing language contained in the counterpart amendments to FAR Subpart 31.2. Where not adopted verbatim, DOE modified the amended FAR language to reflect the unique circumstances applicable to DOE's M&O contractors as permitted by section 1534(b) of the Act which provides that implementing DOE regulations may establish appropriate definitions, exclusion, limitations and qualifications. A brief description of the DEAR amendments follows:

Under Subpart 970.31, Contract Cost Principles and Procedures, section 970.3101-6, Advance understandings on particular cost items, is expanded to include Lobbying costs, Public relations and advertising costs, and Travel and relocation costs as items of cost where advance agreements would be particularly important. Existing section 970.3102-7, Lobbying costs, is replaced in its entirety to clarify that the costs of self-initiated contractor lobbying activities to influence legislation are unallowable but that, among other things, the cost of providing factual and technical information or scientific advice of M&O contractor-employed experts requested by Members of Congress and State legislatures, and their staff members, continues to be an allowable cost. Section 970.3102-17, Travel costs, is amended to clarify that it is DOE policy to require the use of the lowest available commercial airfare and further provide that the cost of air travel by other than commercial carrier (e.g., by corporate aircraft) in excess of the allowable cost of travel of commercial carrier is generally unallowable. Sections 970.3102-19, Public relations and advertising, 970.3102-20, Defense of Fraud, and 970.3102-21, Fines and penalties are added as new cost principle guidance.

Under DEAR Subpart 970.52, Contract Clauses for Management and Operating Contracts, section 970.5204-13, "Allowable costs and fixed fee, (CPFF management and operating contracts)," and section 970.5204-14, "Allowable Costs and Fixed Fee (support contracts)," are amended to incorporate certain language clarifications and additions required to implement the cost prohibitions specified in section 1534.

This final rule does not amend or supplement the cost principles issued by the Office of Management and Budget (OMB); i.e., OMB Circulars A-87, for State and local governments, A-21, for Educational Institutions, and A-122, for Nonprofit Organizations. In the preamble to the Notice of Proposed Rulemaking (NOPR), DOE expressed the belief that the referenced OMB circulars should be amended to incorporate the cost prohibitions of section 1534 of the Act for any such costs not currently unallowable under the circulars. Although section 1534 seeks to apply the Act's cost prohibitions to certain non-M&O acquisition contracts, DOE has concluded such application, if applied to DOE contracts only, would result in an inequitable and administratively burdensome situation for any

organization otherwise subject to the OMB cost principles. DOE will continue to pursue the need for changes to the applicable OMB circulars with OMB. In the even the OMB determines that changes to the circulars are unnecessary, DOE may propose to apply the cost prohibitions of Section 1534 under applicable DOE contracts awarded to organizations subject to the referenced OMB cost principles.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulations," requires that certain regulations be reviewed by OMB prior to their promulgation. OMB Bulletin 85-7 exempts all but certain types of procurement regulations from such review. This rule does not involve any of the topics requiring prior review under the bulletin and is accordingly exempt from such review.

B. Review Under the Regulatory Flexibility Act

This rule reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No additional information collection and recordkeeping requirements are imposed by this rule.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95-91, the DOE Organization Act, the Department did not hold a public hearing on this rule.

III. Public Comments

This final rule is based on the NOPR that DOE published in the **Federal Register** on March 4, 1986 (51 FR 7469), wherein public comments were invited for the 30-day period ending April 4, 1986. DOE extended the comment period by another 30 days to close May 3, 1986 (51 FR 11701, 4-4-86). Public comments were received from fifteen (15) organizations. Several comments were also received from Members of Congress and other Federal Officials. The comments and suggestions pertinent to the NOPR and DOE actions taken in response thereto are summarized in the paragraphs that follow:

Comments Regarding Applicability of Section 1534

Comment: Nine commenters questioned the propriety of DOE's proposed application of section 1534 cost prohibitions to all M&O contracts rather than to just "covered contracts" as defined in the Act.

Response: Although section 1534 defines the term "covered contract" as a DOE contract in excess of $100,000 which obligates funds appropriated for national security programs of the DOE, the intent of Congress was for DOE to utilize the DOE's implementing criteria to the maximum extent practical. By incorporation of DOD's section 911 cost prohibition criteria in the FAR, the Act's cost prohibitions have been uniformly extended to all Federal acquisition and financial assistance awards placed with commercial organizations subject to FAR Subpart 31.2. It is DOE's view that application of the section 1534 cost prohibitions to all M&O contracts is consistent with the DOD's implementation under the FAR. Further, DOE believes the establishment of two sets of cost prohibitions for M&O contracts, as inferred by the commenters, to be impractical and too costly with the potential that M&O contractors would have to maintain two sets of allowable cost records whenever DOE provided funds under covered and noncovered programs. For Federal-wide uniformity and practicality of implementation, this final rule will apply to all M&O contracts.

Comment: Four commenters recommended that M&O contracts awarded on a not-for-profit or no-fee basis be exempted from section 1534 cost prohibitions.

Response: DOE believes that the promulgation of a DEAR amendment exemption *all* not-for-profit or no-fee M&O contracts from section 1534(a) cost prohibitions would be contrary to the Act which did not specifically exempt such contracts. Although section 1534(b) authorizes DOE to establish appropriate definitions, exclusions, limitations and qualifications, it is not evident that such flexibility should be utilized by DOE for purposes of making allowable under such contracts the types of costs cited to be unallowable under the Act. Such blanket exemption would also be inconsistent with DOD's implementation since amended FAR Subpart 31.2 is fully applicable to cost-reimbursement contracts in which the contractor receives no fee (See FAR 16.302(a) and FAR 16.307(a)).

Comments Regarding Lobbying Costs

Comment: Two commenters recommended deletion of the proposed provision at DEAR 970.3102-7(A)(5) pertaining to unallowable legislative liaison activities because, in their view, it could be used to disallow legitimate and necessary activities.

Response: The intent of the referenced provision is to distinguish the cost of a contractor's routine (legitimate and necessary) monitoring and analyzing of legislative activities, an allowable cost, from the cost of liaison activities knowingly conducted to support a determined effort to influence legislation, an unallowable cost. DOE has retained the proposed language to ensure the cost of contractor liaison activities conducted to influence legislation; e.g., the providing of unsolicited advice or information, is disallowed.

Comment: Seven commenters felt that the proposed DEAR 970.3102-7(b)(1) provisions describing allowable activities were too restrictive and, as a result, would impede the flow of technical and scientific advice of contractor-employed experts to Congress or State legislatures. Several congressional members expressed similar concerns. The primary area of concern was that it appeared DOE would no longer reimburse contractors for the cost of providing requested technical and scientific advice to Congress or State legislatures where:

(1) Such advice was provided in response to an undocumented request; e.g., a telephone call.

(2) Travel costs were incurred in response to a request made by a congressional member (other than a request made by Chairman or Ranking Minority Member of a congressional committee or subcommittee for hearing testimony), a congressional staff

member, or a staff member of a legislative committee.

(3) Travel costs were incurred in order to make a requested presentation to a State legislature.

(4) The advice was not "readily obtainable" or could not be "readily put in deliverable form."

(5) Such advice was provided during a "drop-in" visit to the DOE laboratory by congressional members and/or staff.

Response: In formulating the proposed lobbying cost principle provisions, it was not DOE's intent to adversely impact the work of Congress by establishing regulations that would preclude M&O contractors from providing any technical and scientific advice sought by Congress. In the applicable Conference Report (S. Rep. No.118, 99th Cong., 1st Sess. 515 (1985)) the conferees directed that the DOE regulations, to the maximum extent practicable, be consistent with those promulgated by the Secretary of Defense. During House debate of the Act, Mr. Nichols, in a colloquy with Mr. Davis (see page H9282 of the *Congressional Record,* Volume 131, dated October 29, 1985), affirmed that the provisions of Section 1534 were not intended to inhibit the flow of technical and scientific advice of DOE's contractor-employed experts but that the provisions of section 1534 were intended to "prevent DOE contractors from attempting to influence legislation to a contractor's own advantage while using Department of Energy funds to support such efforts."

Consequently, in the NOPR, DOE utilized the corresponding lobbying cost principle language incorporated in DOD contracts awarded to commercial organizations (FAR 31.205-22, Legislative lobbying costs) and added thereto the phrase "or providing congressional members with technical and scientific advice of contractor-employed experts." DOE's intent was to comply with the expressed intent of Congress by clarifying that the cost of making requested technical and scientific presentations to Congress is an allowable cost.

Based on the comments received, DOE agrees that the proposed DEAR 970.3102-7(b)(1) provisions are too restrictive for application to M&O contractors. The amendment being promulgated today has been significantly revised to make explicit that the cost of providing Congress, State legislatures or subdivisions thereof, members of their staffs, or staffs of legislative committees with factual and technical information or scientific advice of M&O contractor-employed experts is allowable, provided such information is requested, orally or in writing, by Members of Congress or State legislatures, their staffs or staffs of legislative committees, and further provided such information is concurrently furnished to DOE, through the cognizant Contracting Officer or designee. The latter requirement is believed essential to DOE's ability to fully consider the concerns and interests of Congress and State legislatures when implementing programs and formulating policies. Without such feedback, DOE officials would not always be aware of such inquiries and concerns or of the M&O contractor's related views on topics directly related to contract performance.

As revised, DEAR 970.3102-7(b)(1) is intended to allow the cost of providing requested information to legislative bodies and to preclude the reimbursement of costs incurred when a contractor provides unsolicited information in a determined effort to influence legislation for the contractor's own benefit. Proposed DEAR 970.3102-7(f) was revised to reflect minor editorial clarifications. For practicality of implementation, proposed DEAR 970.3102-7(g) has also been revised to require the establishment of advance agreements concerning compliance with the amended lobbying cost principle. DOE's specific responses to the public comments summarized above follow:

(1) *Documentation.* Contractors may respond to oral or telephone requests for technical and scientific information made by Members of Congress and State legislatures, their staffs or staffs of legislative committees provided the M&O contractor concurrently furnishes DOE with the information or advice provided the requestor.

(2) *Travel Costs to Congress.* The newly added provisions of DEAR 970.3102-7(b)(1) provide that travel costs incurred for making requested technical and scientific presentations to Congress are allowable contract cost provided such presentations are requested by a congressional member, their staff or a staff member of a legislative committee. The revised provisions, however, also require that, in order for such travel costs to be reimbursable as allowable contract cost, legislative requests for informal contractor presentations (not involving testimony at a regularly scheduled hearing) must be made through DOE. The proposed travel cost proviso that contractor testimony at a regularly scheduled hearing must be requested, in writing, by the Chairman or Ranking Minority Member of the committee conducting the hearing, has been retained and such formal requests need not be processed through DOE.

(3) *Travel Costs to State Legislatures.* Revised DEAR 970.3102-7(b)(1) subjects travel costs to State legislatures to the same provisions established for travel costs to Congress. Accordingly the proposed word "congressional" has been replaced by the word "legislative." Also, the proposed DEAR 970.3102-7(b)(1) travel cost proviso for providing testimony to Congress has been appropriately rephrased to clarify that travel costs incurred for purposes of offering hearing testimony to Congress and State legislatures are allowable when such formal presentations are requested by the Chairman or Ranking Minority Member of the committee conducting the hearing.

(4) *Readily Available Data.* The objectionable limitations were deleted from the revised DEAR 970.3102-7(b)(1) language. An M&O contractor's response need not be limited to "readily available data" or data that can be "readily put in deliverable form." However, DOE expects that the costs of responding to legislative requests will be kept to reasonable levels.

(5) *Drop-In Visits.* It is DOE's intent to allow the cost of providing requested technical and scientific information. Accordingly, the cost of providing information in response to a request made by a congressional member or staff member during a "drop-in" visit would be recognized as an allowable cost, provided such information is concurrently provided DOE.

Comment: One commenter suggested that proposed DEAR 970.3102-7(b)(2) incorporate the word "Federal" so that a contractor could also influence Federal legislation in order to reduce contract costs or avoid material impairment of the contract performance as is permitted at the State level.

Response: The intent of the DOD/FAR-based provision is to permit a Federal contractor to influence State legislation in order to better perform a Federal Contract. Where Federal legislation would increase contract cost or impair performance, the matter should be brought to the attention of the Contracting Officer for appropriate action by DOE. In that regard, DOE also believes an M&O contractor should notify DOE of any impending State legislation that might increase contract cost or impair performance. Accordingly, the referenced provision has been amended to require approval of the Contracting Officer prior to the incurrence of contractor costs to so influence a State legislature.

Comment: Five commenters objected to the proposed provisions at DEAR 970.3102-7 (c), (d) and (e) requiring the

separate identification and reporting of unallowable lobbying costs, and/or an additional contractor certification that unallowable lobbying costs were excluded from the contractor's reimbursement claims.

Response: Annually, M&O contractors are required to certify that no unallowable costs have been claimed for reimbursement under the contract (DEAR 970.5204-16(e)). To avoid the incurrence of any unnecessary bookkeeping and reporting costs, DOE will not require M&O contractors to separately report the cost of any unallowable lobbying costs. DOE will continue to perform annual audits of the M&O contractors' cost reimbursement claims and rely on the presently required annual contractor certifications. The provisions at DEAR 970.3102-7 (c), (d) and (e), respectively, have been revised to explicitly indicate that unallowable lobbying costs shall not be claimed, that the annual certifications also pertain to unallowable lobbying costs and that adequate contractor records are required to support such claims and certifications. Consequently, the proposed amendments to the contract clauses at DEAR 970.5204-13(e)(31) and DEAR 970.5204-14(e)(29) are no longer considered necessary and the existing language has been retained.

Comment: One commenter stated that the cost of maintaining employee logs or calendars when an employee spends more than 25 percent of the time in lobbying, as required by proposed DEAR 970.3102-7(f), would be an unallowable cost.

Response: The cost of maintaining additional time logs, calendars or similar records for purposes of complying with DEAR 970.3102-7 when an employee is engaged in lobbying more than 25 percent of the time is not prohibited by DEAR 970.3102-7(f).

Comments Regarding Commercial Air Travel Costs

Comments: Two commenters stated that the proposed requirement that the "lowest available discount airfare" be used by M&O contractor employees goes beyond the statutory requirement of section 1534 which only requires that airfares not exceed "standard commercial fare."

Response: The requirement to use the lowest available discount airfare already exists in the cost principle found at DEAR 970.3102-17(a), Air travel, and is consistent with prudent travel management. The proposed revisions merely retain the existing air travel cost requirement at DEAR 970.3102-17(a)(1) and incorporate that requirement in the applicable contract clause language (DEAR 970.5204-13(e)(27) and 970.5204-14(e)(24)). With respect to the latter, it is DOE's intent to establish standard contract clause provisions for discount airfare use rather than to establish such requirements in the contract's personnel appendix as has been done in the past.

Comment: Three commenters recommended that the phrase "lowest available discount fare" be better defined and one asked if the contract airfares negotiated by the Government for use by Federal and cost-reimbursement contractors travelers were included.

Response: The proposed language has been revised as follows:

(1) The term, "Government contract airfare," has been added directly after the term in question, and

(2) The proposed phase, "other less than first-class commercial air accommodations," was replaced by "customary standard (coach, or equivalent) airfare" to more fully conform with the statutory term "standard" and the amended DOD cost principle now found at FAR 31.205-46(d).

The revisions are intended to clarify that it is DOE policy to require the use of the lesser of the lowest available commercial discount airfare, Government contract airfare or customary standard (coach or equivalent) airfare.

Comment: Five commenters objected to the proposed language requiring M&O contractors to justify and document why the lowest available commercial discount airfare was not used. That requirement would, in the opinions of the commenters, result in continuous disputation and "auditor second-guessing" regarding the availability of a particular fare at the time the decision was made to use or not use a discount fare.

Response: DOE intended that the M&O contractors would be required to establish travel policies and implementing procedures requiring the use of discount airfares whenever such air accommodations are available and that resulting practicies would evidence reasonable compliance with such policies. The imposition of an additional paperwork burden for purposes of satisfying after-the-fact reviews was not intended. The proposed cost principle (DEAR 970.3102-17(a)(1)) and contract clauses (DEAR 970.5204-13(e)(27) and 14(e)(24)) have been appropriately revised to clarify DOE's intent. The proposed documentation and justification requirement has, however, been retained for air travel costs incurred in excess of customary standard airfares; e.g., when first class airfare is use.

Comments Regarding Public Relations and Advertising Costs

Comment: Seven commenters advised that the proposed cost principle provisions of DEAR 970.3102-19, Public relations and advertising, were not in the best interests of DOE because they would make unallowable the cost of numerous functions presently carried on by M&O contractors in support of DOE and its mission; e.g., the cost of:

(1) Contractor involvement in and support of community service activities; e.g., outreach programs, services of employees provided to community organizations, etc.

(2) Informing the public of the DOE mission by maintaining visitor centers, publication of brochures, dissemination of educational materials, etc.

(3) Certain technology transfer activities which appear to be prohibited as unallowable public relations costs in proposed DEAR 970.3102-19(f).

(4) Advertising associated with the competitive acquisition of supplies, services, leases, equipment, etc.

Response: It was not DOE's intent to make unallowable the costs of such activities whose primary purpose is to facilitate contract performance in support of the DOE mission. Accordingly, the proposed cost principle provided for advance approvals by the Contracting Officer for any public relations and advertising costs where allowability and eventual reimbursement by DOE was not self-evident. In consideration of the commenter's concern and to further clarify DOE's intent, the proposed cost principle provisions have been revised as follows:

(1) The definition of public relations at DEAR 970.3102-19(a)(2) has been expanded to include the term "community service."

(2) In DEAR 970.3102-19(d), the proposed phrase "by DOE laboratories" (DEAR 970.3102-19(d)(4)) was deleted because M&O contractors not classified as a DOE laboratory may also engage in technology transfer activities sanctioned by DOE. Also, the list of allowable advertising activities has been expanded to include advertising for contract-required supplies and services (DEAR 970.3102-19(d)(5)).

(3) In DEAR 970.3102-19(e)(2)(ii), the term "local communities" and certain communications with the news media were added to the description of allowable public relations costs.

(4) DEAR 970.3102-19(e)(3) was revised to include as allowable public

relations expenses, the cost of "outreach programs" and employee services or contractor-owned property provided to community organizations.

(5) DEAR 970.3102-19(e)(4) was revised to include the term "visitor centers."

(6) DEAR 970.3102-19(f) was revised to exempt costs incurred for contract required technology transfer activities and stimulation of production activities (e.g., uranimum enrichment sales) from the unallowable public relations and advertising costs described in paragraphs (f)(1) through (f)(5). The revised coverage is also required for consistency with the DOD allowable cost criteria for dissemination of technical information and stimulation of production activities (FAR 31.205-43(c)). The remaining proposed paragraphs (f)(6) through (f)(8) describing unallowable activities were redesignated as paragraphs (g)(1) through (g)(3). Redesignated paragraph (g)(3) was modified to include advertising costs, to recognize that the cost of M&O contractor sales activities, if required by DOE, are allowable, and to appropriately revised subparagraph cross-references. The intent of the latter revisions is to establish, as general DOE policy, that public relations and advertising costs are unallowable unless such sales activities are required under the M&O contract to support the DOE mission.

(7) The contract clauses at DEAR 970.5204-13(e)(1) and DEAR 970.5204-14(e)(1) were appropriately revised for consistency with the foregoing changes.

Comment: One commenter recommended that DEAR 970.3102-19(e)(3) be revised to make cash contributions to a charitable or community service organization an allowable public relations cost under M&O contracts.

Response: The intent of DOE's proposed provision is to recognize, as an allowable public relations cost, the M&O contractor's cost of services or contractor-owned property (non-cash) provided to a local charity or community service organization; e.g., the contractor's cost of making payroll deductions for employee contributions to a charity, or other similar nominal in-kind participation. The proposed provision is an exception to the section 1534 cost prohibition which specifies that the cost of contributions or donations, regardless of recipient, is not an allowable contract cost. The DOE exception is predicated on the DOD exception found at FAR 31.205-1(e)(3) which is not intended to allow the cost of cash contributions. With similar intent, DOE does not intend to recognize the cost of a contractor's cash contribution or donation as an allowable public relations cost, regardless of the recipient. Further, DOE believes it would be inappropriate, without explicit statutory authority, for DOE to directly provide appropriated Federal funds to a charity or community service organization or to indirectly pass through such DOE funds by allowing an M&O contractor to make such contribution or donation on its own behalf. Moreover, allowing direct cash contributions would appear inconsistent with OMB Circular A-122, Cost Principles For Nonprofit Organizations (applicable to DOE's Non M&O contracts awarded to nonprofit organizations), which provides in Appendix B, Item 8, that contributions and donations to others are unallowable.

The proposed DEAR 970.3102-19(e)(3) language was modified to make it explicit that the cost of cash contributions or donations is not to be considered an allowable public relations cost. Also, the word "administrative" in the proposed phrase "administrative costs of participation" was replaced by an explanatory sentence that was added to clarify that a contractor's nominal cost of employee services or contractor-owned property provided to community service organizations are allowable.

Comments Regarding Defense of Fraud

Comment: Two commenters took issue with the proposed phrase "similar proceedings" at DEAR 970.3102-20(b) unless such proceedings involve due process.

Response: Generally, judicial proceedings are the proper forum for determining guilt or innocence in an alleged fraud situation. As revised, DOE's language conforms with the amended DOD criteria established to implement section 911 of the Act (FAR 31.205.47, Defense of fraud proceedings) except that the FAR references for debarment and suspension proceedings were replaced with the appropriate DOE references for debarment and suspension (10 CFR 1035.5 (a) and (b)) and an explanatory phrase that only the fraudulent, criminal or dishonest acts listed under 10 CFR 1035.5(a)(1) are subject to the cost prohibitions of DEAR 970.3102-20.

Comment: One commenter raised the question as to whether the cost of investigation by a contractor which identified a dishonest employee would result in the cost of the investigation being unallowable if the employee were, as a result, charged with a crime and convicted.

Response: DEAR 970.3102-20 provides that costs incurred by an M&O contractor in defending its agents or employees are unallowable when they are convicted or otherwise found liable. The costs of M&O contractor initiated investigations to disclose "fraudulent" acts of its employees are not subject to the DEAR 970.3102-20 cost prohibitions.

Comment: One commenter stated that DEAR 970.3102-20(b)(4) can be read to imply that an M&O contractor assumes responsibility for the fraudulent acts of its employees, and that DOE must understand that in the event of fraud committed by an employee, the Government's remedy is against the employee not the contractor.

Response: When an employee performs a fraudulent act not sanctioned or authorized by the contractor, only the employee would be charged. DEAR 970.3102-20(b) provides that the contractor's cost of defending the contractor, its agents or employees, from fraud or similar charges (including filing of false certification) are unallowable if they are convicted or otherwise found liable. The phrase "its agents or employees" was added to the contract clause provisions at DEAR 970.5204-13(e)(33) and DEAR 970.5204-14(e)(31) to clarify that the contractor's cost of defending its agents or employees convicted or otherwise found liable of fraudulent acts will be disallowed.

Comment: One commenter was concerned that DEAR 970.3102-20 could preclude the defense of its employees for civil or criminal claims arising out of actions taken within the scope of their employment.

Response: Employee performance of contract-required duties; e.g., guard services, where such actions result in a civil or criminal action brought against the employee is not a fraudulent act subject to the referenced cost prohibitions.

Comments Regarding Fines and Penalties

Comment: Five commenters objected to the proposed language changes to DEAR 970.5204-13(e)(12) and DEAR 970.5204-14(e)(10) which would make unallowable the cost of certain fines and penalties due to contractor failure to comply with Federal, State, local, or foreign laws and regulations unless incurred as a result of contractor compliance with specific contract terms or written instructions from the Contracting Officer. The commenters interpreted the proposal as a change in DOE policy in that DOE would no longer allow the cost of fines and penalties incurred:

(1) As a result of compliance with general contract provisions.

(2) Based on after-the-fact approvals by the Contracting Officer.

(3) Without deliberate intent and solely through inadvertence or negligence on the part of an employee.

Four of the commenters recommended that DOE retain the existing contract clause language and one recommended that no clause be promulgated.

Response: DOE believes the existing contract clauses and related DOE policies to be in compliance with the requirements of section 1534(a)(4) except that a reference to foreign laws is needed. DOE proposed to revise the contract clause language, however, in order to add the word "foreign" and to conform the existing DOE language with the language applicable to DOD contracts which is found at FAR 31.205-15, Fines and Penalties, pursuant to the congressional direction contained in the previously referenced Congressional Report. The language changes were not intended to implement any DOE policy changes.

The commenters' primary objections appear to center on the interpretation of the phrase "specific terms and conditions" and the apparent deletion of language concerning advance Contracting Officer authorizations to make such payments. Those concerns are valid. Certain M&O contracts provide specific mission statements but contain "general" rather than "specific" work statements since the M&O contractor is expected to make decisions, on behalf of DOE, regarding contract performance matters. With regard to advance authorizations, that statutory language was not included by DOE because it was not adopted by DOD. DOD concluded the existing FAR language was, in that regard, in compliance with the Act.

The absence of the statutory phrase "authorizing in advance such payments" could result in the interpretation that unless the Contracting Officer authorizes in writing the M&O contractor's specific action that led to the fine, the payment of the fine is an unallowable cost even though incurred by the M&O contractor in performance of the contract. DOE believes that Congress intended to allow the contracting officer to determine the allowability of the fine after the occurence of the event that led to the fine and to indicate the determination of allowability by authorizing the M&O contractor to pay the fine. Accordingly, DOE has restructured its existing contract clauses by:

(1) Adding the word "foreign" as originally proposed,

(2) Replacing the existing exception language with the statutory language except that the statutory phrase "specific terms and conditions" was expanded to "scope of work, specific terms and conditions, or other provisions," and

(3) Including the statutory phrase "authorizing in advance such payments."

Also, a new cost principle has been added at DEAR 970.3102-21, Fines and penalties, to reaffirm DOE's policy concerning the reimbursement of fines and penalties incurred by M&O contractors. The new cost principle reflects the special contractual relationship established between M&O contractors and DOE. M&O contractors are expected to follow DOE's general contract guidelines, as well as specific orders, guidelines, etc., regarding performance and utilize DOE's financial resources to assure, among other things, health, safety, and protection of the environment. In carrying out these functions under the broad cost-reimbursement nature of M&O contracts, it is contemplated that M&O contractors will not assume significant financial risks.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on December 23, 1986.

G.L. Allen,

Deputy Director, Procurement and Assistance Management Directorate.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

2. Section 970.3101-6 is amended by revising paragraphs (a)(3) and (a)(8), and adding new paragraphs (a)(10), (a)(11) and (a)(12) to read as follows:

970.3101-6 Advance understandings on particular cost items.

(a) * * *

(3) Professional or technical consulting services;

* * * * *

(8) Unemployment insurance experience ratings;

* * * * *

(10) Lobbying costs;

(11) Public relations and advertising; and

(12) Travel and relocation costs as related to special or mass personnel movements and as related to travel via contractor-owned leased, or chartered aircraft.

* * * * *

3. Section 970.3102-7 is revised to read as follows:

970.3102-7 Lobbying costs.

(a) Costs associated with the following activities are unallowable:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or knowing preparation for an effort to engage in unallowable activities.

(b) The following activities are excepted from the coverage of (a) of this section:

(1) Providing members of Congress, State legislatures or subdivisions thereof, or their staff members or staff of cognizant legislative committees, with factual, technical and scientific

information or advice of contractor-employed experts on topics directly related to the performance of the contract, through hearing testimony, statements or letters in response to a request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, staff member or legislative committee staff member; provided such information or advice is concurrently furnished to DOE through the Contracting Officer or designee; and further provided that costs under this paragraph for transportation, lodging or meals incurred for the purpose of providing factual, technical and scientific information or advice directly to legislative members, or their staff members or staff of legislative committees, are unallowable unless incurred pursuant to a request for such informal presentation made through DOE, or, in the case of providing testimony at a regularly scheduled legislative hearing, incurred pursuant to a written request for such formal presentation made by the Chairman or Ranking Minority Member of the committee or subcommittee conducting the hearing.

(2) Any lobbying made unallowable under paragraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract if authorized by the Contracting Officer.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Annually when submitting a cumulative claim for net costs incurred under the contract (i.e., Voucher Accounting For Net Expenditures Accrued pursuant to 970.5204–16(e), or annual cost statement for nonintegrated contractors), management and operating contractors shall be required to exclude total unallowable lobbying costs incurred, if any, from such claims.

(d) The management and operating contractor's annual certification, submitted as part of its annual claim or cost statement, shall also serve as the contractor's certification that the requirements and standards of this subsection have been complied with.

(e) Management and operating contractors shall be required to maintain adequate records to demonstrate that the annual certifications of cost comply with the requirements of this paragraph.

(f) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this subsection during any particular calendar month when: (1) The employee engages in lobbying (as defined in paragraphs (a) and (b) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the management and operating contractor has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) paragraph are met, contractors shall not be required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) paragraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during any calendar month.

(g) An advance agreement with respect to compliance with this subsection will be established in the management and operating contract or by use of a separate written agreement. During the contract performance, existing procedures should be utilized to resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning the interpretation or application of this paragraph.

4. Section 970.3102–17 is amended by revising paragraph (a) to read as follows:

970.3102–17 Travel costs.

(a)(1) *Commercial air travel.* It is the policy of the DOE to require management and operating contractors to use the lowest commercial airfare accommodations for all necessary travel under the contract, except when such accommodations are not reasonably available. Airfare costs in excess of the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) airfare, shall be disallowed except where the use of such accommodations would: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. The contractor shall be required to establish appropriate airfare travel policies and procedures requiring the use of the lowest available commercial airfare consistent with the foregoing and prudent travel management. Where a contractor can reasonably demonstrate to the Contracting Officer, or designee, the nonavailability of discount airfare or Government contract airfare for a particular trip or, on an overall basis, that it is the contractor's practice to make routine use of such airfare, specific contractor determinations of nonavailability should generally not be questioned, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable; e.g., use of first-class airfare, the contractor must be able to justify and document on a case-by-case basis the applicable condition(s) set forth above.

(2) *Air travel by other than commercial carrier.* "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance and other related costs. Costs of travel via contractor-owned, -leased, and -chartered aircraft shall not exceed the cost of commercial air travel accommodations, unless the management and operating contractor can demonstrate that costs in excess of such amounts are necessary for contract performance and that the increase in cost, if any, in comparison with alternative means of transportation is commensurate with the advantage gained.

* * * * *

5. Section 970.3102–19 is added to read as follows:

970.3102–19 Public relations and advertising.

(a) "Public relations" means all functions and activities dedicated to:

(1) Maintaining, protection, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term "public relations" includes activities associated with areas such as advertising, customer relations, community service, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this section regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, trade

papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this section.

(d) The only advertising costs that are allowable are those specifically required by contract, approved in advance by the Contracting Officer, or that arise from requirements of the contract and that are exclusively for:

(1) Recruiting personnel required for contract performance;

(2) Acquiring scarce items for contract performance;

(3) Disposing of scrap or surplus materials acquired for contract performance;

(4) The transfer of federally owned or originated technology to State and local governments and to the private sector; or

(5) Obtaining supplies and services including contract-required equipment, leases, banking services, etc.

Costs of this nature are allowable to the extent that they are determined by the Contracting Officer to be reasonable, necessary, and incident to contract performance.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract, or approved in advance by the Contracting Officer.

(2) Costs of—

(i) Responding to inquiries on company policies and activities.

(ii) Communicating with the public, press, stockholders creditors, local communities, and customers, including responses to inquiries from and initiation of press releases and other communications with the news media.

(iii) Conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information environmental impact of plant operations, etc.

(3) Costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, outreach programs, etc.), exclusive of contractor cash contributions and donations which are unallowable. The contractor's cost of services or contractor-owned property provided to support community service activities (e.g., the contractor's cost of making payroll deductions for employee contributions to a charity, cost of employee services provided to community organizations, or other similar, nominal in-kind participation) is allowable.

(4) Costs of plant tours, visitors centers, and open houses (but see paragraph (f)(5) of this section).

(f) Unallowable public relations and advertising costs include the following activities except when the principal purpose of the activity or event is to disseminate technical information or stimulate production in accordance with contract requirements:

(1) All advertising costs other than those specified in paragraph (d) of this section.

(2) Costs of air shows and other special events, such as conventions and trade shows including:

(i) Costs of displays, demonstrations and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(3) Costs of sponsoring meetings, symposia, seminars, and other special events.

(4) Costs of ceremonies such as corporate celebrations and new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to benefit the contractor's organization by calling favorable public attention to contractor activities.

(g) Unallowable public relations and advertising costs include the following:

(1) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(2) Cost of memberships in civic and community organizations.

(3) All advertising and public relations costs, other than as specified in paragraphs (d), (e) and (f) of this section, whose primary purpose is to benefit the contractor's organization by promoting the sale of products or services by stimulating interest in a product or product line or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services unless such sales activities are required under the management and operating contract to support the DOE mission. Nothing in this paragraph (g)(3) modifies the express unallowability of costs listed in paragraphs (f), (g)(1) and (g)(2). The purpose of this subparagraph is to provide criteria for determining whether advertising and public relations costs not specifically identified should be unallowable.

6. Section 970.3102-20 is added to read as follows:

970.3102-20 Defense of fraud proceedings.

(a) Definitions.

(1) "Costs," as used in this subsection, include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; the salaries and wages of employees, officers, and directors; and any of the foregoing costs incurred before commencing the formal judicial or administrative proceedings which bear a direct relationship to the proceedings.

(2) "Fraud," as used in this subsection, means (i) acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents, (ii) acts specified under 10 CFR 1035.5(a)(1) which constitute a cause for debarment or suspension (see 10 CFR 1035.5 (a) and (b)) and (iii) acts which violate the False Claims Act, 31 U.S.C. sections 3729–3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(b) Costs incurred in connection with defense of any (1) criminal or civil investigation, grand jury proceeding, or prosecution, (2) civil litigation, or (3) administrative proceedings such as debarment or suspension proceedings for acts specified under 10 CFR 1035.5(a)(1), or any combination of the foregoing, brought by the Government against a contractor, its agents or employees, are unallowable when the charges, which are the subject of the investigation, proceedings, or prosecution, involve fraud or similar offenses (including filing of a false certification) on the part of the contractor, its agents or employees, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the contractor, its agents or employees, or decision to debar or suspend, or are resolved by consent or compromise.

(c) In circumstances where the charges of fraud are resolved by consent

or compromise, the parties may agree as to the extent of allowability of such costs as a part of such resolution.

(d) Costs which may be unallowable under this subsection, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding or investigation covered by paragraph (b) of this section, the Contracting Officer should generally withhold payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the contractor to repay all unallowable costs, plus interest, if a conviction or judgment is rendered against it.

7. Subsection 970.3102-21 is added to read as follows:

970.3102-21 Fines and penalties.

It is DOE policy to reimburse management and operating contractors for fines and penalties that are incurred in the performance of their contracts. Any such reimbursement for fines and penalties incurred under the contract will be made as long as such fines and penalties are not the result of the willful misconduct or lack of good faith on the the part of the contractor's corporate officers, directors or supervising representatives.

970.3102 [Correctly designated as 970.3103]

8. The section designation for 970.3102, entitled "Contract clauses," published at 49 FR 12090, March 28, 1984, is correctly designated as section "970.3103."

9. In section 970.5204-13, the clause is amended by revising paragraphs (e)(1), (e)(8), (e)(11), (e)(12) and (e)(27), and by adding new paragraph (e)(33) and (e)(34) to read as follows:

970.5204-13 Allowable costs and fixed fee (CPFF management and operating contracts).

* * * * *

(e) * * *

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs (i) specifically required by the contract, (ii) approved in advance by the Contracting Officer as clearly in furtherance of work performed under the contract, (iii) that arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance, disposing of scrap or surplus materials, the transfer of federally owned or orginated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, or (iv) where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.

* * * * *

(8) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

* * * * *

(11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in the contract.

(12) Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, State, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments.

* * * * *

(27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. Individual contractor determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by DOE when the contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

* * * * *

(33) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Government where the contractor, its agents or employees, is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(34) Costs of alcoholic beverages.

* * * * *

10. In section 970.5204-14, the clause is amended by revising paragraphs (e)(1), (e)(6), (e)(9), (e)(10), and (e)(24), and by adding new paragraphs (e)(31) and (e)(32) to read as follows:

970.5204-14 Allowable costs and fixed fee (support contracts).

* * * * *

(e) * * *

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs (i) specifically required by the contract, (ii) approved in advance by the Contracting Officer as clearly in furtherance of work performed under the contract, (iii) that arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance disposing of scrap or surplus materials, the transfer of federally owned or originated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, publicizing community involvement, or (iv) where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.

* * * * *

(6) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

* * * * *

(9) Entertainment, including costs of amusement, diversion, social activities; any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and

gratuities; costs of membership in any social, dining or country club or organization, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in the contract.

(10) Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, State, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments.

* * * * *

(24) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. Individual contractor determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by DOE when the contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

* * * * *

(31) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Government where the contractor, its agents or employees, is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(32) Costs of alcoholic beverages.

* * * * *

[FR Doc. 87-803 Filed 1-13-87; 8:45 am]
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federal register

Wednesday
January 14, 1987

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of January 1, 1987, of 28 deferrals contained in the two special messages of FY 1987. These messages were transmitted to the Congress on September 26, and December 15, 1986.

Rescissions (Table A and Attachment A)

As of January 1, 1987, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of January 1, 1987, $9,636.3 million in 1987 budget authority was being deferred from obligation and $3.8 million in 1987 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1987.

Information from Special Messages

This special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986
Vol. 51, FR p. 47356, Wednesday, December 31, 1986

James C. Miller III,
Director.

Table A.—Status of 1987 Rescissions

[In millions of dollars]

	Amount
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

Table B.—Status of 1987 Deferrals

[In millions of dollars]

	Amount
Deferrals proposed by the President	11,006.3
Routine Executive releases through January 1, 1987 (OMB/Agency releases of $1,366.2 million and cumulative adjustments of $ 0 million)	−1,366.2
Overturned by the Congress	0
Currently before the Congress	[a] 9,640.1

[a] This amount includes $3.8 million in outlays for a Department of the Treasury deferral (D87-21).

Attachments.

BILLING CODE 3110-01M

Attachment A - Status of Rescissions - Fiscal Year 1987

As of January 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1987

As of January 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 1-1-87
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit.....	D87-22	4,040,441		12-15-86	600,000				3,440,441
Economic support fund.....	D87-1	95,000		9-26-86					
	D87-1A		2,351,470	12-15-86	607,072				1,839,398
Military assistance.....	D87-23	847,000		12-15-86	38,000				809,000
International military education and training.....	D87-24	2,000		12-15-86					2,000
Agency for International Development									
International disaster assistance.....	D87-25	57,000		12-15-86	38,837				18,163
Special Assistance for the Nicaraguan Democratic Resistance									
Assistance for the Nicaraguan Democratic Resistance.....	D87-26	60,000		12-15-86					60,000
Promotion of stability and security in Central America.....	D87-27	1,000		12-15-86					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....	D87-2	111,202		9-26-86					111,202
Timber salvage sales.....	D87-3	29,731		9-26-86					29,731
Cooperative work.....	D87-4	526,938		9-26-86					526,938
Gifts, donations, and bequests for forest and rangeland research.....	D87-5	200		9-26-86					200
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense.....	D87-6	2,350		9-26-86					
	D87-6A		1,316,152	12-15-86	12,514				1,305,988
Family Housing									
Family housing, Defense.....	D87-7	76,943		9-26-86					
	D87-7A		190,022	12-15-86	65,143				201,822

Attachment B - Status of Deferrals - Fiscal Year 1987

As of January 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 1-1-87
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D87-8	1,065		9-26-86	40				1,025
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance.....	D87-9	165		9-26-86					165
Southwestern Power Administration, Operation and maintenance.....	D87-10	7,554		9-26-86					7,554
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Health Resources and Services Administration									
Indian catastrophic health emergency fund..	D87-28	10,000		12-15-86					10,000
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).....	D87-11	2,900		9-26-86					2,900
Social Security Administration									
Limitation on administrative expenses (construction).....	D87-12	7,073		9-26-86					7,073
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund.....	D87-13	70,000		9-26-86					70,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive.....	D87-14	6,100		9-26-86					6,100

Attachment B - Status of Deferrals - Fiscal Year 1987

As of January 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 1-1-87
Other									
Assistance for implementation of a Contadora agreement.....	D87-15	2,000		9-26-86	2,000				0
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D87-16	803,877		9-26-86					
	D87-16A		295,611	12-15-86					1,099,488
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund.....	D87-17	74,149		9-26-86	23				74,126
Local government fiscal assistance trust fund.....	D87-21	5,981		9-26-86	2,208				3,773
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine									
Salaries and expenses.....	D87-18	100		9-26-86					100
Office of the Federal Inspector for the Alaska Natural Gas Transportation System, Salaries and expenses.....	D87-19	411		9-26-86	411				0
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund.....	D87-20	11,873		9-26-86					11,873
TOTAL, DEFERRALS.....		6,853,054	4,153,255		1,366,248	0		0	9,640,061

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

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[FR Doc. 87-865 Filed 1-13-87; 8:45am]
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Wednesday, January 14, 1987

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