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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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700 and 705

Community Development Revolving Loan Program for Credit Unions; Definitions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This regulation establishes a revised program under which loans from the Community Development Credit Union Revolving Loan Fund will be made to participating credit uinons. A proposed regulation was issued by the NCUA Board on April 9, 1987 (52 FR 12427, April 16, 1987). The final regulation sets forth, among other things, the scope and purpose of the program application procedures, types of activities participating credit unions will perform, and how loans will be made and collected under the program. Section 700.1(h)(l) updates the definition of "low income members."

EFFECTIVE DATE: September 16, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Staff Attorney, NCUA, Office of General Counsel, at above address, or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background and General Comments

The NCUA Board issued a proposed regulation on April 9, 1987, entitled Community Development Revolving Loan Program for Credit Unions (Program) to implement the authority Congress granted to it to administer the Community Development Credit Union Revolving Loan Fund (Fund). (*See* 52 FR 12427, April 16, 1987.) The Board received 25 comment letters on the proposed regulation. Nineteen of the comment letters were from credit unions; all of these credit unions are either former recipients of loans from the Fund and/or interested in receiving loans from the Fund under this new regulation. Eighteen of the nineteen credit unions are federally chartered. Three of the commenters were individuals, two were credit union trade associations and one was a state credit union league. Most of the comments received supported the proposed regulation, with some modification. The final regulation contains the same structure as the proposed regulation. The substantive changes made to the regulation are discussed below.

Technical Assistance

The issue that drew the most comment was the need for technical assistance. Comment was requested as to what types of technical assistance credit unions receiving loans from the Fund (participating credit unions) might desire and whether interest payments that the NCUA receives on loans made from the Fund should be used to provide technical assistance. Twenty of the commenters expressed a need for technical assistance. Several noted that money for such assistance should come from the interest received on loans to participating credit unions. A few commenters believed that technical assistance should be paid for from the corpus of the Fund. The commenters suggested that technical assistance was needed in the following areas: staff and board training; business planning; marketing to increase membership; community needs assessment; feasibility and implementation of new services and products; management by objective, liaison with government agencies; linkage with public assistance agencies, obtaining capital from the private sector; computerization; and business lending. Five commenters stated that technical assistance should not be provided by NCUA because NCUA examiners were already overburdened and that they lacked expertise in issues concerning participating credit unions. Many of the commenters believed that technical assistance should be provided by a sole provider that has expertise in the types of credit unions receiving loans from the Fund. One commenter noted that technical assistance should be provided before loan funds are distributed to participating credit unions.

It is the opinion of the NCUA Board that technical assistance is a necessary part of the Program and that Congress intended for some technical assistance to be provided to participating credit unions from the Fund. NCUA plans to contract with a provider that can render necessary technical assistance to credit unions selected for participation in the Program. Technical assistance is to be in the areas set forth above, but is not limited to those areas. In general, the technical assistance to be provided should aid participating credit unions in providing services to their members and in the efficient operation of such credit unions. The NCUA will spend up to one half of the interest monies received on loans that have been paid back into the Fund, but not to exceed $120,000 per year. The resdiual interest payments will be kept as a reserve agasinst losses from loans made to participating credit unions from the Fund. Section 705.10 has been added to the final regulation and addresses technical assistance.

Interest Rate

The issue receiving the most comment, after technical assistance, was the interest rate to be charged to participating credit unions. Fifteen commenters addressed this issue. Almost all of these commenters were in favor of a fixed interest rate, rather than the adjustable rate set forth in the proposed regulation (proposed § 705.7(d)). Commenters stated that participating credit unions do not have the sophistication to charge adjustable rates on loans they will make from the loan proceeds from the Fund. As a result, participating credit unions would be subject to an interest rate squeeze if the rate on the money they owe to the Fund rises while the loans they make from these proceeds are at a lower fixed rate. Commenters suggested that if a fixed rate of interest was not a possibility, then caps should be placed on both the amount of adjustments per year and the maximum interest rate over the life of the loan. Upon evaluation of the comments, the NCUA Board has determined that a fixed rate of interest would better suit the purposes of the Program and the participating credit unions than an adjustable rate. Loans from the Fund will be made to participating credit unions at a fixed

interest rate of 3 percent. An appropriate change has been made to § 705.7(d) of the final regulation.

Participating Credit Unions: Associational and Start-up Credit Unions

Five commenters noted that credit unions participating in the Program should not be limited to community-based credit unions that are already in existence as required by the proposed rule. They reasoned that certain associational-based credit unions should be able to qualify for loans from the Fund when their fields of membership are comprised of civic, housing or anti-poverty organizations. Such credit unions were able to participate in the Program under the two prior regulations. The NCUA Board agrees that such associational-based credit unions should be able to participate in the Program and has deleted the word "community" from the definition of participating credit union found in § 705.3 of the final regulation. Although participating credit unions need not be chartered as community credit unions, in most cases they will be serving the residents and businesses of a clearly defined community or geographic area.

In addition, eight commenters noted that "start-up" credit unions (credit unions that have not yet been chartered) should not be prevented from participation in the Program. Groups sponsoring start-up credit unions could apply for and obtain loans from the Fund under the two prior regulations. The proposed rule limited participants to credit unions already in existence. Commenters suggested that a limited percentage of Fund monies be used to make loans to start-up credit unions. One commenter suggested that provision of technical assistance should alleviate risks associated with start-ups. The Board notes that start-up credit unions have caused most of the losses to the Fund under the prior regulations. Based upon such experience and consistent with the overall purposes of the Fund, it is the NCUA's present position that Program funds be limited to established credit unions. As stated in the preamble to the proposed rule, the program is neither a start-up nor a remedial program. The final regulation reflects this position.

Note Payable v. Nonmember Deposit

Comment was specifically requested on whether Program loans from the Fund to participating credit unions should be recorded on the credit unions books as a note payable, nonmember deposit, or either of the two at NCUA's option. Nine commenters addressed this issue. All but three preferred that the loans be recorded as a nonmember deposit rather than as a note payable. The reason commenters gave for recording the loan as a nonmember deposit rather than a loan was that Federal credit unions are subject to a borrowing limitation of 50% of paid-in and unimparied capital and surplus. The commenters do not believe that Program loans should be subject to the 50% limitation. The NCUA Board wishes to maintain control over how such loans are recorded in that some state-chartered participating credit unions may not be permitted to record the loans as nonmember deposits. In most instances, the Board anticipates that loans will be recorded as nonmember deposits on the credit union's books. Therefore, no change has been made regarding NCUA's discretion to determine how loans are to be recorded. However, the provision has been added to § 705.7(a), and because this latter section already addressed the amount of loans, § 705.3(b) has been deleted as unnecessary. Reference to how loans are recorded has also been added to § 705.7(c)(1).

Matching Requirement

Several commenters reflected on the dollar-for-dollar matching requirement of the proposed regulation (§ 705.7(b)). Participating credit unions must match the loan amount received from the Program with increased shares, dollar for dollar, within one year of approval of their loan application. Commenters suggested a two-to-one match as was required under the prior two regulations (e.g., if a credit union receives a $100,000 loan, it would only have to increase shares by $50,000, rather than $100,000 as the Board has proposed). It is the opinion of the NCUA Board that a dollar-for-dollar matching requirement is appropriate. Federally-chartered participating credit unions will have "low income" status that enables them to accept shares from members as well as nonmembers. It is reasonable to require participating credit unions to build up their share base in the same amount as the amount of funds that they receive from the Program. Section 705.7(b) remains unchanged in the final rule.

State-Chartered Participants

As noted in the final regulation, participation in the Program is open to both state- and federally-chartered credit unions. State credit unions need not be federally insured. In order for NCUA to ascertain that the state-chartered participants are complying with the Program requirements, such participants shall make their examination reports available to NCUA. State-chartered participants shall agree to permit limited examination by NCUA to assure compliance with this Part. NCUA does not anticipate doing routine examinations of these participants. Examination will take place if necessary to protect the assets of the Fund. An appropriate addition has been made to § 705.8 of the final rule.

Additional Comments

Two commenters mentioned the community needs plan (§ 705.6(a)(2)) required by the regulation. They stated that more than the 60 days set forth in the proposed regulation are necessary in order to submit a community needs plan. The NCUA Board believes that 60 days are sufficient to prepare a community needs plan comprised of coordination contacts and a list of community needs that the credit union may provide.

Two commenters asked how long the application period for loans from the Fund will remain open. The Board has determined that a 60-day application period is appropriate. The initial application period will open upon publication of this final rule in the **Federal Register** and will close on November 30, 1987. The November 30 closing date has been added to § 705.9 of the final regulation.

One commenter suggested that NCUA establish an interagency coordinating committee in order to carry out the purposes of the Program. The NCUA Board will make an effort to consult, from time to time, with other agencies to help coordinate efforts of various low income assistance programs.

Lastly, one of the commenters submitted a plan for a central community development credit union without commenting on the proposed regulation. NCUA does not have the authority to establish and charter the central credit union as it was structured by the commenter.

Previous Regulations

Loans made under the Program when it was administered by the CSA were subject to Part 705 of NCUA's Regulations (*See* 45 FR 15171, March 10, 1980). These loans have all been repaid or otherwise accounted for. The prior Part 705 will be deleted and replaced by this new Part 705. Several loans made pursuant to the second regulation promulgated by HHS (45 CFR 1076.60, *see* 48 FR 53560, Nov. 11, 1983) are still outstanding. Those outstanding loans are subject to the HHS regulation. All

loans made henceforth will be subject to this new final rule.

Section 700.1(h)—Definition of Low Income Members

As provided in § 705.3(a), a participating credit union must meet one of three definitions of "low income members" as set forth in § 700.1(h)(1)–(3) of NCUA's Rules and Regulations (12 CFR 700.1(h)(1)–(3)) in order to qualify for the Program. Two commenters suggested that the NCUA Board redefine "low income members" as found in § 700.1(h)(1) of the NCUA Rules and Regulations (12 CFR 700.1(h)(1)). This subsection defines "low income members" as "those members whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics, U.S. Department of Labor." The Bureau of Labor Statistics no longer updates the classification. The classification is now annually updated by the Employment and Training Administration of the U.S. Department of Labor. The NCUA Board has issued a replacement definition of "low income members" for § 700.1(h)(1), concurrent with the issuance of this final rule. The new definition refers to the original lower level standard of living classification set forth by the Bureau of Labor Statistics and annually updated by the Employment and Training Administration of the Department of Labor. The most recent update of the lower level standard of living classification was published in the **Federal Register** by the Employment and Training Administration on July 14, 1987 (*see* 52 FR 26378). NCUA is updating this definition as a final rather than a proposed rule since there is no substantive change to the definition. NCUA is merely specifying the office of the Department of Labor that now annually updates the lower level standard of living classification. The standard set forth in the definition is unchanged.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposed rule will affect only a small number of credit unions and will not impose an additional burden on them. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The final regulation contains the two collection of information requirements as noted in the proposed regulation. Section 705.5 contains the application procedures for a credit union wishing to participate in the Program and § 705.6(a)(2) contains the requirement that participating credit unions develop a community needs plan. These collection requirements were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. The collection requirements were approved by OMB and have been assigned collection number 3133–0109 for use through 6/30/88. OMB noted one additional collection. Section 705.8 requires that state-chartered participants obtain written concurrence from their respective state regulatory authority. OMB requested that the entire collection (three requirements) be resubmitted to them with this final regulation. NCUA will resubmit the collection request to OMB and publish a notification in the **Federal Register** upon their final approval. Any further comments on the collection of information requirements should be submitted to: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Robert Fishman.

List of Subjects in 12 CFR Parts 705 and 700

Credit unions, Community development revolving loan program, Low income.

By the National Credit Union Administration Board this 9th Day of September, 1987.

Becky Baker,

Secretary of the Board.

PART 705—[AMENDED]

Accordingly, NCUA amends its regulations as follows:

1. Part 705 is revised to read as follows:

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

Sec.

705.0 Applicability.
705.1 Scope.
705.2 Purpose of the program.
705.3 Definition.
705.4 Program activities.
705.5 Application for participation.
705.6 Community Development Committee.
705.7 Loans to participating credit unions.
705.8 State-chartered credit unions.
705.9 Application period.
705.10 Technical assistance.

Authority: Pub. L. 97–35, 95 Stat. 498; Pub. L. 99–609, note to 42 U.S.C. 9822.

§ 705.0 Applicability.

Monies from the Community Development Revolving Loan Fund for Credit Unions obligated after October 1, 1987, are governed by this regulation.

§ 705.1 Scope.

(a) This part implements the Community Development Revolving Loan Program for Credit Unions (Program) under the sole administration of the National Credit Union Administration.

(b) This Part establishes the following:

(1) Definitions;

(2) The application process for participation in the program;

(3) Requirements for program participation;

(4) How loan funds are to be made available and their repayment; and

(5) Technical assistance to be provided to participating credit unions.

§ 705.2 Purpose of the program.

The Community Development Revolving Loan Program for Credit Unions is intended to support the efforts of participating credit unions through loans to those credit unions in:

(a) Providing basic financial and related services to residents in their communities; and

(b) Stimulating economic activities in the communities they service which will result in increased income, ownership and employment opportunities for low income residents, and other community growth efforts.

§ 705.3 Definition.

For purposes of this Part, a "participating credit union" means a state- or federally-chartered credit union that is specifically involved in stimulation of economic development activities and community revitalization efforts aimed at benefiting the community it serves; whose membership meets the definitions of "predominantly" and "low income members" as found § 700.1 (h) and (i) of the NCUA Regulations (§ 700.1(h)(4)), or applicable state standards; and has submitted an application and has been selected for participation in the Program in accordance with this Part.

§ 705.4 Program activities.

In order to meet the objectives of the Program, a credit union applicant must provide a variety of financial and related services designed to meet the particular needs of the low income community served. These activities shall include basic member share account and member loan services. In addition,

these activities may include, but are not limited to, the following:

(a) Member services, including:

(1) Financial counseling;

(2) Consumer education programs;

(3) Home owner counseling;

(4) Check cashing;

(5) Money orders;

(6) Bill paying services; and

(7) Direct deposit of recurring payments.

(b) Increased membership and capitalization activities, including:

(1) Membership drives;

(2) Systematic savings plans;

(3) Encouraging community organizations to open and increase share accounts.

§ 705.5 Application for participation.

(a) Application to participate in the Program shall be submitted to:

National Credit Union Administration, Community Development Revolving Loan Program for Credit Unions, 1776 G Street, NW., Washington, DC 20456.

(b) The application shall contain the following information:

(1) Information demonstrating a sound financial position and the credit union's ability to manage its day-to-day business affairs. Credit unions shall submit the following for the most recent month-end and each of the twelve months preceding that month-end:

(i) Balance sheet;

(ii) Income and expense statement;

(iii) Delinquent loan list.

(2) Evidence that the credit union has a need for increased funds in order to improve financial services to its members.

(3) The following information concerning the credit union's field of membership:

(i) Current field of membership as set forth in the credit union's charter;

(ii) Changes, if any, to be made to the field of membership for participation in the Program, including:

(A) Evidence of approval of change by credit union board of directors;

(B) Evidence of submission and approval of change by either NCUA Regional Director or State Supervisor;

(iii) Current designation as a low-income credit union.

(4) Specifics of how the credit union proposes to serve the needs of its members and the community with Program funds. The applicant credit union will also construct and submit a plan for its growth and development. The plan will set forth objectives for financial growth, credit union development and capitalization, and the means for achieving these objectives.

(5) How the credit union proposes to cooperate with existing community development programs of state and Federal agencies, including the Department of Housing and Urban Development and the Department of Health and Human Services as well as others.

(c) NCUA will notify applicant credit unions as to whether or not they have qualified for a loan under this Part. Reasons for nonqualification will be stated.

§ 705.6 Community development committee.

(a) Each participating credit union, in addition to its other committees, shall have a Community Development Committee. The responsibilities of the Community Development Committee fall into two interrelated categories: coordination (liaison) and identification of community needs.

(1) *Coordination.* The Community Development Committee must establish and maintain liaison with government agencies and others having developmental projects in the community. This liaison will help ensure a united effort at redeveloping the community with a minimum of duplication. The Community Development Committee shall see to it that the community is kept informed of the participating credit union's activities.

(2) *Community Needs Plan.* Within 60 days after a credit union has been selected for participation in the Program, the Community Development Committee will prepare and present to the participating credit union's board of directors, a Community Needs Plan. This Plan will set forth the coordination contacts established. The Plan will also contain, in priority sequence, a list of community needs that the credit union may be able to provide. The participating credit union's board of directors will make the decision as to what services the credit union can provide. The Committee's responsibility is to advise the board on needs and to provide sufficient cost estimates and "how to" recommendations to enable the board to reach the best decisions.

(b) The Community Development Committee shall be appointed by the board from among the members of the credit union, one of whom must be a board member of the participating credit union. The board shall determine the number of members on the committee which shall not be fewer than three nor more than five. Regular terms of the committee shall be for one or two years as the board shall determine; *Provided*, however, that all terms shall be for the same number of years and until the appointment and qualification of successors. No members of the Community Development Committee shall be compensated as such.

(c) In addition to the Community Development Committee working with the credit union board of directors, they will report to the credit union members once a year either at the annual meeting or in a written report sent to all members.

§ 705.7 Loans to participating credit unions.

(a) Amount and Recording of Loans. A credit union selected for particpation in the Program will be eligible to receive up to $200,000 in the form of a loan from the Community Development Revolving Loan Fund for Credit Unions. The amount of the loan will be based on the creditworthiness of the participating credit union, financial need, and demonstrated capability of a participating credit union to provide financial and related services to its members. At the discretion of NCUA, a loan will be recorded by a participating credit union as either a note payable or a nonmember deposit.

(b) *Matching requirements.* Participating credit unions will be encouraged to develop, as rapidly as possible, a permanent source of member shares.

(1) Loan monies made available must be matched by the participating credit union by increasing its member and non-member share deposits in an amount at least equal to the loan amount. Participating credit unions must meet this matching requirement within one year of the approval of the loan application and must maintain the increase in the total amount of member share deposits for the duration of the loan.

(2) Drawdown of the loan to a participating credit union may be made in a maximum of two payments only. Upon approval of its loan application, and before it meets its matching requirement, a participating credit union may receive 50% of the loan committed. The remainder of the funds committed will be available to the participating credit union only after it has documented that it has met the match requirement for the total amount of the loan committed.

(3) Failure of a participating credit union to generate the required match within one year of the approval of the loan will result in the reduction of the loan proportionate to the amount of match actually generated. Payment of any additional funds initially approved will be limited as appropriate to reflect the revised amount of loan approved,

and any funds already advanced to the participating credit union in excess of the revised amount of loan approved must be repaid immediately to NCUA. Failure to repay such funds to NCUA upon demand shall result in the default of the entire loan.

(4) Failure by a participating credit union to achieve at least 25% of its proposed match may result in the requirement by NCUA that immediate and full repayment of the loan be made.

(c) *Terms and repayment.* (1) Assistance made available in this Program, whether recorded by the credit union as a note payable or nonmember deposit at NCUA's direction, is in the form of a loan and must be repaid to NCUA. All loans will be scheduled for repayment within the shortest time compatiable with sound business practices and with the objectives of the Program, but in no case will the term exceed five years. The policy of NCUA is to revolve these funds to qualifying credit unions as often as practical, in order to gain maximum economic impact on as many credit unions that are qualified to participate in the Program as possible.

(2) Semiannual interest payments (beginning six months after the initial distribution of a loan) and semiannual principal payments (beginning one year after the initial distribution of a loan) will be required.

(d) *Interest rates.* Loans made under this rule shall bear interest at a fixed annual percentage rate of 3 percent.

(e) *Default, Collections and Adjustments.* The terms of each loan agreement shall provide for the immediate acceleration of the unpaid balance for breach or default in the performance by the participating credit union of the terms or conditions of the loan. This will include misrepresentations, default in making interest/principal payments, failure to report, insolvency, failure to maintain adequate match for the duration of the loan period, etc. The unpaid balance will also be accelerated and immediately due if any part of the loan funds are improperly used, or if uninvested loan proceeds remain unused for an unreasonable or unjustified period of time.

§ 705.8 State-chartered credit unions.

State-chartered credit union applicants approved for participation by NCUA must obtain written concurrence from their respective state regulatory authority. Such participants shall make copies of their state examination reports available to NCUA and shall agree to examination by NCUA for the limited purpose of compliance with this Part.

§ 705.9 Application period.

Applications for participation in the program will be accepted through November 30, 1987. As additional funds become available, new applications will be accepted. Notices of future availability of funds will be published in the **Federal Register.**

§ 705.10 Technical assistance.

NCUA will contract with an outside provider to render technical assistance to participating credit unions. Technical assistance provided will aid participating credit unions in providing services to their members and in the efficient operation of such credit unions. Up to one-half of the interest monies received on loans repaid into the Fund will be spent on technical assistance, but such amount will not exceed $120,000 per year.

PART 700—[AMENDED]

2. The authority citation for Part 700 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1757(6), 1766.

3. Section 700.1(h)(1) is revised to read as follows:

§ 700.1 Definitions.

* * * * *

(h) * * *

(1) Those members whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics and as updated by the Employment and Training Administration of the U.S. Department of Labor;

* * * * *

[FR Doc. 87-21324 Filed 9-15-87; 8:45 am]
BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final regulation amends existent 13 CFR § 105.511(g) to provide that Financial Disclosure Statements required to be filed by Executive Order 11222 (May 8, 1965) may be disclosed to individuals who must have access to them in order to carry out responsibilities established by law.

DATES: Effective September 16, 1987.

ADDRESS: Written comments should be addressed to Martin D. Teckler, Deputy General Counsel, Room 700, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Telephone (202) 653-6642.

SUPPLEMENTARY INFORMATION: Heretofore SBA's regulation implementing Executive Order 11222 has not specifically provided for access to Financial Disclosure Statements (SBA Form 703) other than upon request and by demonstration of good cause to SBA's Administrator, and the approval of the request. This regulation amendment is intended to provide for administrative ease in handling requirements for inspection of the Statements where ligitimately authorized inquiries are concerned. Thus, for example, when the SBA's Office of Inspector General is carrying out a function authorized by the Inspector General Act, Pub. L. 95-452 (October 12, 1978), 5 U.S.C. App., a Statement will be made available upon written request to the Standards of Conduct Counselor in whose custody the Statement resides. The request must reference that it is being made in order to carry out a function authorized by law, and the requester must establish his or her identity as a person operating under authority of law to the satisfaction of the Standards of Conduct Counselor (SBA Inspector General credentials will satisfy this requirement). The Standards of Conduct Counselor will in turn respond in writing to the request, referencing this regulation and the establishment of the identity of the requester and immediately provide the Statement.

With respect to requests from other sources, the Standards of Conduct Counselor will follow the same procedure; determining the identity of the requester, the legal authorization, and determining that he or she finds that the request is or is not granted, and the reasons therefore before providing or not providing the Statement. SBA's Central Office Standards of Conduct Counselor will stand by the advise Regional Standards of Conduct Counselors on the implementation of this amendment, both substantively and procedurally.

This regulation is one which is a matter relating to Agency management or personnel. Therefore, the provisions of 5 U.S.C. 553 do not apply to its promulgation. In addition, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it will not have a significant impact on a substantial number of small entities, and will have no Paperwork Reduction Act (44 U.S.C. ch. 35) implications.

List of Subjects in 13 CFR Part 105

Conflict of interests.

PART 105—[AMENDED]

1. The authority citation for Part 105 continues to read as follows:

Authority: Sec. 5, 72 Stat. 385 (15 U.S.C. 634); E.O. 11222, 3 CFR 1964–65 Comp.; 5 CFR 735.104.

2. In § 105.511, paragraph (g) is revised to read as follows:

§ 105.511 Financial disclosure statements under Executive Order 11222.

* * * * *

(g) Each Statement of Employment and Financial Interests shall be held in confidence by the recipient and no information contained therein shall be disclosed except as the Administrator may determine for good cause shown, or to those individuals who must have access in order to carry out responsibilities under law upon request to the appropriate Standards of Conduct Counselor.

* * * * *

Date: August 27, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–21091 Filed 9–15–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–CE–52–AD; Amdt. 39–5725]

Airworthiness Directive; Bellanca (Champion) Model 8GCBC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Bellanca (Champion) Model 8GCBC airplanes, which requires an inspection of the front and rear spars for compression failures. Such failures have contributed to two accidents. This action is necessary to detect and correct said condition in the spars and thereby preclude in-flight structural failure of the wing.

EFFECTIVE DATE: October 15, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Information pertaining to this action may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Efrain Esparza, Airplane Certification Branch, ASW–150, Aircraft Certification Division, Southwest Region, FAA, Fort Worth, Texas 76193–0159; Telephone (817) 624–5156.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring an inspection of the front and rear wing spars on all Champion Model 7 and 8 series airplanes was published in the **Federal Register** on November 13, 1986 (51 FR 41113). The original comment period, ending December 10, 1986, was extended to April 5, 1987, by the **Federal Register** publication of December 31, 1986 (51 FR 47249) to allow interested persons additional time for response to the NPRM.

The proposal resulted from two accidents that were caused by in-flight airplanes structural failure of the wing on Bellanca (Champion) Model 8GCBC wherein compression failures in the wing's main spar were contributing factors. Compression failures are failures of wood fibers on a plane perpendicular to the wood fiber longitudinal axis. If undetected, such compression failure can result in in-flight structural failure of the wing with loss of the airplane.

The National Transportation Safety Board (NTSB) recommended to the FAA that an Advisory Notice be mailed to all Bellanca (Champion) Model 8GCBC owners regarding in-flight airframe failure accidents involving this airplane. In addition, the NTSB recommended to the FAA that an AD be issued to require compliance with: (1) Bellanca Service Letter No. C–139A, "Inspection Wing Rib/Spar Attachment and Leading Edge Support Block Nails," applicable to Models 7GC, 7GCA, 7GCB, 7GCBA, 7HC, 7KC, 7KCAB, 7ECA, 7GCAA, 7GCBC, 8KCAB, and 8GCBC, (2) Bellanca Service Letter No. 116, "Wing Leading Edge Inspection," applicable to the Model 8KCAB, and (3) Bellanca Service Letter No. 95, "Inspection, Repair, and Modification of Aileron Bay Ribs," applicable to Models 7ECA, 7GCAA, and 7GCBC.

The FAA, after reviewing information from the accident reports, determined that in the two accidents a compression crack in the wing spars contributed to the spar and wing failures. In addition, the FAA could not find evidence that any of the problems associated with Bellanca Service Letters No. C–139A, 116, and 95 contributed to any of the accidents. Therefore, on October 17, 1985, the FAA issued a General Aviation Airworthiness Alert, AC 43–16, "Bellanca Aircraft Possible Wing Failure, Model 7 and 8 Series, to recommend an inspection of the wing spars for compression failures for the Model 7 and 8 series airplanes. The General Aviation Airworthiness Alert was sent to all the Model 7 and 8 series airplane owners in response to the NTSB's first recommendation. However, the level of response from the owners to this AC was very low considering the nature of the problem and the number of airplanes involved.

Since this condition was considered likely to exist or develop on other airplanes of the same/similar type design, the FAA determined that mandatory inspection of the wing spars of Champion (Bellanca) Model 7 and 8 series airplane was necessary to detect and correct compression failures to preclude in-flight structural failure of the wing. Therefore, the proposed AD would have made compliance with specific parts of the instructions in AC 43–16 dated October 17, 1985, mandatory for all Bellanca (Champion) 7 and 8 series airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all matters presented. Substantive changes and changes of an editorial and clarifying nature have been made to the proposed rule upon relevant comments received and further review within the FAA. In general, the comments received address 35 major issues. Ten commenters agreed with the proposal.

Four hundred thirty-one commenters disagreed with the economic impact not being significant. These commenters expressed concern that the required inspection would make it prohibitive to continue flying the airplanes; in addition, they stated that the inspection could amount to as much as 25 percent of the total value of the airplane. They contended that for those airplanes in the aerobatic category, the consequences would be even worse since the inspection would have to be performed at every 100 flight hours. Cutting and patching fabric every 100 flight hours would result in covering of the wings more often and required an additional cost not identified in the economic impact analysis. Therefore, they believed that this would be a significant economic impact contrary to what the NPRM stated. The FAA has revised the AD in light of this comment and as a result of some of the other comments discussed herein. The changes to the AD have resulted in a less severe economic impact than the one given in the original proposal.

One hundred seventy-seven commenters objected to the proposal because they believed that only those airplanes that had wing damage should be inspected. They stated that all in-flight wing failures occurred on airplanes that had previously been overturned, flipped on their back, or had some other kind of damage to their wings. They believed that there was not enough justification to make those airplanes with no damage history comply with the proposed AD. The FAA disagrees and believes that airplane records in some instances are not reliable sources of information especially regarding accident history and latent or undetected damage. The FAA believes that at least a one-time inspection should be performed on those model airplanes regardless of service history.

One hundred fifty-one commenters disagreed with the proposal on including all 7 and 8 series airplanes. The commenters' objections were based on the good service history of these airplanes. They stated that in their association with these airplanes they never had a problem with compression cracks of the type mentioned in the proposal, and thus they felt the proposal should not apply to all Model 7 and 8 airplanes. The FAA agrees. Therefore, only those airplanes which service history justifies AD action will be covered in the AD.

One hundred forty commenters objected to the proposal on the basis that it implied that all Model 7 and 8 series airplanes, especially the aerobatic and normal category airplanes, were the same. The FAA agrees with the comments and the AD will be clarified. Originally, all Model 7 and 8 series airplanes were included in the proposal; however, only Model 8GCBC airplanes will be covered in the AD.

Ninety-nine commenters disagreed with the proposal because of the lack of sufficient accident and incident information to support it. They stated that two airplane accidents out of a fleet of 8,200 airplanes could not justify the drastic and expensive inspection proposed. The FAA agrees that two airplanes out of 8,200 is a very small figure; however, these two airplanes had in-flight structural failure of the wing which resulted in loss of the airplanes. The FAA agrees that there is not sufficient justification to support an AD applicable to all 8,200 airplanes but believes the AD should be applicable to those models that have service history of damaged spars or wing structural failures.

Thirty-seven commenters responded against the proposal because they believe that the Airworthiness Alert issued on October 17, 1985, was sufficient action. They stated that the Alert was given sufficient publicity and distributed to all affected parties. The FAA does not agree that the 1985 Alert has been sufficient to resolve and correct the unsafe conditions that currently exists in the Model 8GCBC airplanes. The FAA does agree that the Alert is an informative tool and, as stated in the Alert, the FAA does encourage all Model 7 and 8 series owners to accomplish the inspections specified in the Alert. However, the FAA believes the aforementioned service history on Model 8GCBC airplanes justifies an AD to insure compliance on those airplanes. Further, the FAA is currently revising the original 1985 Airworthiness Alert to include a discussion of the latest information and findings relative to this AD and plans to reissue the Alert to all owners of Model 7 and 8 series airplanes. The revised Alert will continue to recommend inspections of the wooden spars on both series airplanes, especially if subjected to any accident or other occurrence which may have resulted in structural damage to the wings.

Nineteen commenters disagreed with the inspection procedures outlined in the proposal. They stated that the fabric cutouts jeopardized the structural integrity of the wing and the airplane, especially if performed every 100 flight hours as required for airplanes in the aerobatic category. They believe that the cutting and patching of the fabric would weaken the wing making flying unsafe. The FAA disagrees. If FAA approved methods for cutting and repairing fabric are used, the structural integrity of the fabric and wing should not deteriorate.

Seventeen commenters recommended that inspection rings with plates be used in lieu of fabric cutouts. They argued that this would be more economical especially for repetitive inspections. The FAA agrees, and the AD will allow the use of inspection rings.

Nineteen commenters opposed the proposal because they believe it was drafted as a result of four separate in-flight wing structural failures involving airplanes performing aerobatic maneuvers. They stated that the airplanes, Model 8GCBC Scouts, were not certificated in the aerobatic category and yet their wings failed while performing aerobatic maneuvers. The FAA does agree that unauthorized aerobatic maneuvers may have contributed to some accidents and the AD has been revised to contain instructions to install an "AEROBATICS PROHIBITED" placard on the instrument panel that will supplement the existing operational placard and impose no additional limitation on the operation of Model 8GCBC airplanes.

Fourteen commenters objected to the proposal by stating that annual inspections provided enough inspections to determine the airworthiness of the airplanes. The FAA disagrees. There are no inspections performed on these airplanes to detect compression failures in the spars. The FAA believes that by making the inspection mandatory, the level of safety will be enhanced to assure a minimum acceptable level of safety.

Fourteen commenters disagreed with the proposal by stating that it had originated as a result of improper inspections performed by inspectors and by improper repairs. The FAA agrees that some of the airplanes may not have been properly inspected for compression failures. Therefore, the FAA will require an inspection for compression failures through this AD action.

Eleven commenters recommended that airplanes in the aerobatic category which will be required to have an inspection every 100 hours flight be placarded for nonaerobatics until the wings have to be re-covered. They stated that they could fly their airplane like a normal category airplane, and thus only the initial inspection would have to be performed. The FAA believes that based on the other comments received and the revisions made in the AD, the above recommendation is not appropriate.

Eight commenters recommended that the proposal should only apply to Champion Model 8GCBC airplanes. They stated that since this is the only Model with a service history of wing failures there was not justification to apply it to the other models. The FAA agrees and the AD will be revised to include only the Model 8GCBC airplanes.

Eight commenters recommended that the proposed AD require an inspection of the wing strut-spar attach area rather than the entire spar. They contended that the highest stress concentration during an incident/accident where the wings suffer damage will be this area. They further stated this area will show cracks before any other area does. The FAA agrees, and the AD will cover an inspection of the wing strut attach area in lieu of the entire spar.

Four commenters stated the proposal was not clearly written to specify to which airplanes it applied. They stated that the proposal talks about wing fuel tanks and calls for an inspection of the

spar just outboard of the wing fuel tanks. The commenters stated that some airplanes, specifically the Champion Model 7AC, do not have wing fuel tanks, and thus it is not clear how the proposal applies to them. The FAA agrees that airplanes without wing fuel tanks were overlooked. The AD will reflect this change.

Four commenters stated that existing inspection holes are adequate to determine the condition of the spars and therefore objected to the fabric cutouts as required in the proposal. The FAA disagrees. The existing inspection holes may not provide sufficient access to the wing-spar attach area especially when a magnifying lens and flashlight are to be used. The inspection outlined in the proposal requires that the lens and flashlight be as close to the side surface of the spar as possible, and the existing inspection holes may not provide such access.

One commenter requested that the proposal be clarified and that it be revised to address the fact that some airplanes might have metal spars, and thus the proposal would not apply to them. The FAA agrees. The AD will require the inspection only on airplanes with wooden spars. Two commenters stated that the proposal did not give consideration to those airplanes which have been recently re-covered or had their wing spars replaced. They recommended that the FAA revise the proposal to provide some relief to these airplanes. The FAA agrees, and the AD reflects this comment.

One commenter questioned the effectiveness of the inspection procedures to detect compression failures. The commenter did not believe that compression cracks could be detected if only one side of the spar is inspected.

The FAA disagrees. Compression cracks, especially those in the wing strut attach area, are visible from either side. They extend across the thickness of the spar and run across the grain from top to bottom of the spar or vice versa.

Several commenters objected to the proposal being more stringent on aerobatic category airplanes than normal category airplanes. They stated that aerobatic category airplanes are designed to higher load factors than normal category airplanes. The FAA agrees, and the AD reflects this comment.

One commenter recommended that the proposal specify on which surface the fabric cutouts are to be made on top or bottom of the wing. The FAA agrees and the AD incorporates this comment.

One commenter disagreed with the proposal because he believes Bellanca Service Letter No. C-139A is already doing what the proposal requires. The FAA disagrees. Bellanca Service Letter No. C-139A requires an inspection of the wing rib/spar attachment and leading edge support nails but does not require an inspection for compression failures of the wing strut attach area.

Accordingly, the proposal is being adopted with the changes heretofore noted.

Some comments received involved the cost determination. The AD will require 12 inspection cutouts or holes, three at each spar. The FAA has determined that only 233 Model 8GCBC airplanes will be affected by this rule instead of the original 8,200 airplanes as stated in the NPRM.

Therefore, the FAA has determined that this regulation involves 233 airplanes at an approximate one-time cost of $420 for each airplane or a total one-time fleet cost of $97,860. No small entities impacted by this AD own sufficient airplanes to cause their cost of compliance to equal or exceed a significant cost level. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the 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 the following new AD:

Bellanca (Champion): Applies to Model 8GCBC series (all serial numbers) airplanes, certificated in any category when equipped with wooden wing spars. Compliance: Required as indicated in the body of the AD unless already accomplished.

To preclude in-flight structural failure of the wing, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, install the following placard on the instrument panel in full view of the pilot:

"AEROBATICS PROHIBITED"

The placard shall be fabricated of durable material with face size at least .38 inches high and 1.88 inches long and may be locally manufactured. The letters on the placard must be at least .10 inches in height and the letter color must contrast with the background color. The placard must be permanently affixed.

(b) The requirements of paragraph (a) of this AD may be accomplished by the owner/operator on any airplanes which are not used under Part 121 or 135. The person accomplishing these actions must make the appropriate airplane maintenance record entry per FAR 43.9 and 91.173.

(c) Within the next 75 hours' time-in-service (TIS) after the effective date of this AD, unless already accomplished, inspect the wing spars for compression failures as follows:

(1) For the front spar, make rectangular C-shaped cutouts just aft of the front spar with the long side parallel to the spar so that the fabric peels away from the spar. Do this for the rib bay areas adjacent to and including the wing spar-lift strut attach fitting rib bay areas. Make the cutout large enough to allow visual inspection of the exposed section of the spar. The cutouts are to be made on the wing's lower surface. For the rear spar, make the rectangular cutout just forward of the rear spar so that it peels away from the spar. Do this for the rib bay areas adjacent to and including the wing spar-lift strut attach fitting rib bay areas. Accomplish the inspection by using existing or new inspection holes in lieu of fabric cutouts providing they allow an adequate visual inspection. Do not remove the wood pads at the spar-lift strut attach point to accomplish the inspection.

(2) With the use of a 10X hand lens or microscope inspect the side surface of the spar (rear side of front spar/front side of rear spar) with a light striking along the grain at an angle of about 20° with the surface. The point of view should be varied between 45° and the vertical (with respect to the spar side surface) on the same side as the light source. Try other angles of light and vision. With the use of a light and mirror, inspect the bottom edge of the wooden spar at this location.

Note 1.—When viewed in the manner described in this paragraph, a failure appears as an irregular line extending across the grain. When using a 10X hand lens or microscope, the same arrangement with respect to the light source is recommended except that it is best to keep the point of view at a vertical angle due to distortion of the field when any other position is used.

During the examination of the spar with a hand lens and light, care must be taken not to mistake minute breaks in the surface fibers that are sometimes caused by chafing, for compression failures. These surface breaks can be removed with a sharp knife, whereas a compression failure is usually still visible after a thin shaving has been taken off. The knife must be sharp so that a very thin shaving can be removed without crushing the remaining fibers and thereby obscuring a compression failure if present.

(3) If any compression failures are found, prior to further flight, repair or replace the spar.

Note 2.—Other conditions such as loose/missing rib nails should be looked for, and unsatisfactory conditions should be repaired.

(d) After the inspection specified in paragraph (c) of this AD has been accomplished, prior to further flight repair the wing fabric cutout using appropriate maintenance instructions and/or reinstall inspection hole covers, as applicable.

(e) The inspection specified in paragraph (c) of this AD is not applicable to the following airplanes:

(1) Airplanes modified with a metal spar per STC No. SA3829NM, and

(2) Airplanes equipped with wood wing spars providing that:

(a) Within 500 hours TIS prior to the effective date of this AD either the spars were replaced and the wings recovered, or the spars have been inspected for compression failures as described in this AD, and,

(b) Subsequent to the above replacement or inspection, the airplane has not been involved in any accident which may have resulted in structural damage to the wings.

(f) If, at any time, subsequent to the effective date of this AD, the airplane is involved in an accident that may have resulted in structural damage to the wings, prior to further flight reinspect the wing spars in accordance with paragraph (c) of this AD.

(g) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(h) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW-150, FAA, Southwest Regional Office, Fort Worth, Texas 76193-0150.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective October 15, 1987.

Issued in Kansas City, Missouri, on August 31, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-21229 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-117-AD; Amdt. 39-5723]

Airworthiness Directives; Lockheed-Georgia Model 382, 382B, 382E, 382F, and 382G Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model 382 and 382B/E/F/G series airplanes, which requires inspection of the pilot's and copilot's circuit breaker panel wiring for chafing or short circuiting; inspection for proper clearance between wire bundles, wire bundle clamps, and circuit breaker terminals; repair or replacement of any damaged wire; and relocation of wire bundle clamps, if necessary, to maintain minimum clearance. This amendment is prompted by a report of an in-flight fire caused by an electrical short in one of the six circuit breaker panels in the flight deck. This condition, if not corrected, could result in a fire on board the airplane.

EFFECTIVE DATE: September 17, 1987.

ADDRESSES: The applicable service information may be obtained from Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Trammell, Systems Branch, ACE-130A, FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: The FAA has recently received a report of an in-flight fire which occurred on a Lockheed-Georgia Model 382 series airplane (military Model C-130 series airplane), operated by the United States Air Force. During an overwater operation, at Flight Level 210, smoke and fumes were observed in the flight deck. Flames were emitting from the circuit breaker panel, and were extinguished by the flight crew with a halon fire extinguisher. The airplane landed without further incident; there were no injuries. Investigation revealed that the fire originated in the area of the essential DC bus, where the clamp was short circuiting wires coming from the bus. An initial inspection conducted by the Air Force of the Model C-130 series airplanes located at the base nearest where the incident occurred identified more than 20 airplanes having circuit breaker panel wiring bundles which did not meet the required minimum clearance between the affected wire bundles, wire bundle clamps, and circuit breaker terminals. Chafed and abraded wiring was also detected. This condition, if not corrected, can lead to fire on board the airplane.

The FAA has reviewed and approved Lockheed Alert Service Bulletin A382-24-19, dated August 7, 1987, which describes an inspection of the pilot's and copilot's circuit breaker panel areas for chafing or short circuiting, and for proper clearance between wire bundles, wire bundle clamps, and circuit breaker terminals; repair or replacement or any damaged wire; and relocation of wire bundle clamps, if necessary, to maintain minimum clearance.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the circuit breaker panels, wire bundles, wire bundle clamps, and circuit breaker terminals, repair of damaged wire, and relocation of wire bundle clamps, if necessary, in accordance with the Lockheed alert service bulletin previously mentioned.

Since a situation exists 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:

Lockheed-Georgia: Applies to Model 382, 382B, 382E, 382F, and 382G series airplanes; Serial Numbers 3946 through 5024, except 4412, 5022, 5025, 5027, 5029, and 5032; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the potential for smoke or fire occurring in the flight deck, accomplish the following:

A. Within the next 25 hours time-in-service, inspect the 6 pilot's and copilot's circuit breaker panel areas, as follows:

1. Gain access to the following 6 circuit breaker panels in the flight station: pilot's side panel, upper and lower pilot's distribution panel, copilot's side panel, upper and lower copliot's distribution panel.

2. Open each circuit breaker panel and visually inspect for scorching, chafing, or short circuiting between circuit breaker wire terminals, wire bundles, and wire bundle clamps.

3. Inspect for minimum clearance of 0.250 inch between circuit breaker wire terminals, wire bundles, and wire bundle clamps.

4. With circuit breaker door closed, visually inspecting from adjacent door opening, inspect circuit breaker and attached wiring for chafing and minimum clearance. Direct particular attention to wire bundles routed at bottom of panels.

5. If 0.250 inch minimum clearance is present and no wire chafing or damage exists, return airplane to service.

6. If damaged wire is found, prior to further flight repair or replace wire in accordance with the applicable technical manual, SMP 582, Hercules Wiring Diagram Manual.

7. If 0.250 inch clearance does not exist, prior to further flight relocate wire bundle clamps and/or spaces, if necessary, to maintain minimum clearance. Reroute wiring in accordance with the applicable technical manual, SMP 582, Hercules Wiring Diagram Manual.

B. Accomplishment of the inspection, repair, and relocation procedures described in Lockheed Alert Service Bulletin A382–24–19, dated August 7, 1987, constitutes compliance with the requirements of paragraph A., above.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. 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, Atlanta Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia.

This amendment becomes effective September 17, 1987.

Issued in Seattle, Washington, on August 26, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–21231 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ANM–8]

Revision to Hailey, ID, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects **Federal Register** Document 87–19107 which revised the Hailey, Idaho, transition area. An inadvertent error was made in the effective date of this action.

EFFECTIVE DATE: 0901 UTC, September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 87–ANM–8, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 87–19107 was published on August 21, 1987 (52 FR 31614) revising the Hailey, Idaho, transition area. This action was necessary to provide 700-foot controlled airspace to accommodate a Microwave Landing System (MLS) special instrument approach procedure for Horizon Airlines at Hailey, Idaho.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 87–19107, as published in the **Federal Register** on August 21, 1987 (52 FR 31614) is corrected as follows: Change the effective date from 0901 UTC, September 30, 1987, to 0901 UTC, September 24, 1987 (Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69).

Issued in Seattle, Washington, on September 3, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87–21227 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR PART 71

[Airspace Docket No. 87–AGL–13]

Alteration of Transition Area; Huntington, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Huntington, IN, transition area to accommodate a new NDB Runway 9 Standard Instrument Approach Procedure (SIAP) to Huntington Municipal Airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, July 21, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Huntington, IN, transition area (52 FR 27415).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Huntington, IN, transition area to accommodate a new NDB Runway 9 SIAP. This modification consists of decreasing the radius from 7 miles to 5 miles and adds an extension from the 5-mile radius to 8.5 miles west of the airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 15010; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Huntington, IN [Revised]:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Huntington Municipal Airport (lat. 40°51'12"N, long. 85°27'37"W); and within 3.5 miles each side of the 260° bearing from the Huntington NDB, extending from the 5-mile radius to 8.5 miles west of the airport, excluding those portions that overlie the Fort Wayne, IN and Wabash, IN transition areas.

Issued in Des Plaines, Illinois, on August 31, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-21228 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-7]

Designation of Transition Area; Brady, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will designate a transition area at Brady, TX. This action is necessary due to the proposed nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) to the Curtis Field Airport using the Brady NDB (BBD). The intended effect of this action is to provide adequate controlled airspace for aircraft operating under instrument flight rules (IFR) executing the new SIAP to the Curtis Field Airport, and other aircraft operating under visual flight rules (VFR). Coincident with this action, the airport status will be changed from VFR to IFR.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On March 11, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Brady, TX (52 FR 9182).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The only comments received objecting to this proposal came from the United States Air Force. Their objections centered on the following issues:

- The establishment of the transition area would create complications for military aircraft flying Military Training Routes (MTR) in the Brady, TX area.
- When the transition area is in effect, the western third of the Brady Low Military Operating Area (MOA) would be unusable for Low Altitude Training (LOWAT).

The FAA does not agree with these objections. The anticipated number of IFR arrivals to or departures from Curtis Field Airport is not expected to have an adverse effect on aircraft flying MTR's in the area. Standard IFR separation will be provided between aircraft on an IFR clearance to/from Curtis Field Airport and aircraft operating along IFR MTR's in the area.

The FAA is committed to providing protected access to airports having an SIAP. At the same time, the agency is committed to the use of airspace on a real-time basis. Based on the current level of IFR traffic at Curtis Field Airport, the FAA believes that there should be little impact on missions being flown by aircraft using the Brady Low MOA.

Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a 700-foot transition area at Brady, TX. To enhance airport usage, a new instrument approach procedure has been developed for the Curtis Field Airport, TX, utilizing the Brady NDB as a navigational aid. The Brady NDB will provide new navigational guidance for aircraft using the Curtis Field Airport. The development of a new SIAP, based on this navigational aid, entails designation of a transition area at Brady, TX, at and above 700 feet above the ground level within which aircraft are provided air traffic control services.

Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedures under IFR and other aircraft operating under VFR. Coincident with the amendment, the airport status will change from VER to IFR.

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

List of Subject in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brady, TX [New]

The airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Curtis Field Airport, (Latitude 31°11'00" N., Longitude 99°19'27" W.) and within 3 miles each side of the 355 bearing from the Brady nondirectional radio beacon (NDB) (Latitude 31°10'42.6" N., Longitude 99°19'22.4" W.), extending from the 6.5-mile radius area to 8 miles north of the Curtis Field Airport.

Issued in Fort Worth, TX, on September 2, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-21225 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25369; Amdt. No. 1356]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES:

Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase— Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The Complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an

effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the afffected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on September 4, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS-DME, MLS-RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPS; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective January 14, 1988

Valdez, AK—Valdez Nr 2, MLS/STOL-1 RWY 6, Amdt. 2, CANCELLED

. . . Effective October 22, 1987

Fullerton, CA—Fullerton Muni, VOR-A Amdt. 5
Sacramento, CA—Sacramento Metropolitan, NDB RWY 16L, Orig.
Sacramento, CA—Sacramento Metropolitan, NDB RWY 16R, Amdt. 9
Sacramento, CA—Sacramento Metropolitan, NDB RWY 34L, Amdt. 4
Sacramento, CA—Sacramento Metropolitan, NDB RWY 34R, Orig.
Sacramento, CA—Sacramento Metropolitan, ILS RWY 16R, Amdt. 12
Sacramento, CA—Sacramento Metropolitan, ILS RWY 34L, Amdt. 4
Cordele, GA—Crisp County-Cordele, VOR/DME RWY 22, Amdt. 8
Cordele, GA—Crisp County-Cordele, NDB RWY 9, Amdt. 2
Springfield, IL—Capital, ILS RWY 22, Amdt. 4
Springfield, IL—Capital, RADAR-1, Amdt. 6
Kosrae Island Federated States of Micronesia, Kosrea, NDB/DME-A, Original
Baltimore, MD—Baltimore-Washington Intl, VOR/DME RWY 4, Orig.
Mansfield, MA—Mansfield, Muni, NDB RWY 32, Amdt. 2
Marshall, MI—Brooks Field, VOR RWY 28, Amdt. 11
Mora, MN—Mora Muni, NDB RWY 35, Orig.
Laurel/Hattiesburg, MS—Pine Belt Regional, LOC BC RWY 36, Orig.
Morristown, NJ—Morristown Muni, ILS RWY 23, Amdt. 5
Teterboro, NJ—Teterboro, ILS RWY 6, Amdt. 25
Akron, OH—Akron-Canton Regional, VOR RWY 5, Orig.
Charleston, WV—Yeager, ILS RWY 5, Amdt. 3
Charleston, WV—Yeager, ILS RWY 23, Amdt. 27

. . . Effective August 31, 1987

Crossville, TN—Crossville Memorial, ILS RWY 26, Amdt. 8

[FR Doc. 87-21226 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5518/R889/FRL-3261-1]

Pesticide Tolerances in Foods; Avermectin B_1; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in the preamble of the final rule that established a food additive and a feed additive regulation for residues of the miticide/insecticide avermectin B_1, which appeared in the **Federal Register** of May 13, 1987 (52 FR 17941).

FOR FURTHER INFORMATION CONTACT: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-11032 in the issue for Wednesday, May 13, 1987, the following correction is made on page 17941, third column, thirty-second line: Change "NOEL of 0.02 mg/kg/day" to "NOEL of 0.2 mg/kg/day."

Dated: September 2, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-21341 Filed 9-15-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-87-1728; FR-2398]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the limits for Rutland County, Vermont, Johnston County, North Carolina and Horry County, South Carolina. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter,

Director, Single Family Development Division, Room 9270; telephone (202) 755-6720. For manufactured homes: Christopher Peterson, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158; telephone (202) 755-5210; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. 1710-1749, authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured home lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. Third, it made changes to the list based on a new definition of "metropolitan area".

On October 1, 1986 (51 FR 34961), the Department published its annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act and the applicable limits for each area.

This Document

Today's document revises the high-cost mortgage amounts for Rutland County, Vermont, Johnston County, North Carolina and Horry County, South Carolina.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, × the dollar amount in the "one family" column of Part II of this list by .80. For example, Horry County, South Carolina has a one-family limit of $73,600. The combination home and lot loan limit for Horry County is $73,600 ×.80, or $58,880.00.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Horry County, South Carolina has a one-family limit of $73,000. The lot loan limit for Horry County is $73,600 ×.20, or $14,720.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. (40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900. (13,500 × 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

REGION II.—HUD FIELD OFFICE—ALBANY OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Rutland County	$85,000	$95,750	$116,350	$134,250

REGION IV.—HUD FIELD OFFICE—GREENSBORO OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Johnston County	$71,250	$80,250	$97,500	$112,500

REGION IV.—HUD FIELD OFFICE—COLUMBIA OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Horry County	$73,600	$82,900	$100,750	$116,250

Dated: September 8, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-21387 Filed 9-15-87; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. N-87-1694; FR-2318]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation; Orange County, NY

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This final Notice announces new Fair Market Rents for the Orange County market area of New York State. These rents are necessary to provide fair market rents comparable to market rents for new construction in this market area.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410-0500. Telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The predecessor to this final notice (see the proposed notice of June 29, 1987, 52 FR 24172) offered some background information on the Housing Assistance Payments (HAP) Program. That notice explained that under the programs authorized by Section 8 of the United States Housing Act of 1937,

HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. . . . FMRs [are established by HUD and] are based primarily

on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff. In addition, for the Fair Market Rents most recently promulgated by the Department [see 51 FR 28486, August 7, 1986], these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

As further explained in the proposed notice, this action revises the entire Fair Market Rent schedule for the Orange County, New York market area. According to the June 29, 1987 notice,

The 1986 FMRs reflected data submitted by the New York Regional Office (NYRO), as well as the cost containment efforts implemented for all 1986 New Construction and Substantial Rehabilitation rents. While the data submitted by the field office was proper, it reflected comparables all built during the 1970s, because there has been no construction of modestly designed rental housing in Orange County for the past several years. HUD's procedures, which are consistent with sound appraisal practices, permit the use of such comparables, which are then adjusted for all variables, including age. Further, where comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

[A]nalysis of the 1986 FMRs for the [Orange County] market area indicate[s] that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even where it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of FMRs for this market area is needed. . . .

Public Comments

The proposed notice of June 29, 1987 (52 FR 24172) invited comments from the public on the proposal to adjust the FMRs in Orange County. One comment was received. The commenter claimed that the "proposed rents would not support [its] project." The commenter, however, offered no data to support its assertion. In light of this comment, the Department wishes to point out that since the FMRs principally reflect building costs and rentals as a whole in a given market or jurisdiction, not the costs associated with building a particular project or the rentals necessary to service the debt on that project, the Department could not properly change the FMRs to accommodate the higher rentals that the commenter's project may demand.

Accordingly, the Department is adopting the same FMR schedule published in the notice of June 29, 1987.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the FMRs adopted in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following new Fair Market Rent schedule is adopted for the Orange County, New York market area:

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies' Programs)

REGION 2—NEW YORK REGIONAL OFFICE
MARKET: ORANGE

Structure Type	Number of bedrooms				
	0	1	2	3	4
Detached			757	859	931
Semi-Detached Row	529	572	684	815	892
Walkup	466	534	649	762	843
Elevator 2-4 STY	623	674	852		
Elevator 5+ STY	669	766	935		

Date: September 8, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-21386 Filed 9-15-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Cleveland Regulation 87-01]

Safety Zone Regulations; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing seven safety zones in the Cuyahoga River and the adjoining shore area. The zones are needed to protect life and property associated with moored, standing or anchored vessels from a safety hazard arising from the transit of vessels over 1600 gross tons. Entry into these zones is generally prohibited unless authorized by the Coast Guard Captain of the Port, Cleveland, OH. However, vessels may transit, but not moor, stand or anchor in, these zones as necessary to comply with the Inland Navigation Rules or otherwise facilitate safe navigation.

EFFECTIVE DATES: This regulation becomes effective on September 3, 1987. It terminates on December 31, 1987 unless sooner terminated by the Captain of the Port, Cleveland.

ADDRESS: Comments should be mailed to Commanding Officer, Marine Safety Office, 1055 East Ninth Street, Cleveland, OH 44114. The comments will be available for inspection and copying at the same location. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Cdr. John H. Distin, Captain of the Port, (216) 522-4406.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the vessels involved or further injury to the people involved.

Although this regulation is published as an emergency final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Cdr. John H. Distin, the Captain of the Port, Cleveland, and Lcdr. Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstance requiring this regulation results from large vessels (lakers) transiting the Cuyahoga River an average of twice a day through areas used increasingly by a large number of small, mainly recreational vessels. A pattern of collisions between large, underway vessels and small vessels located on the insides of bends in the river has been identified. On August 31, 1987, one such collision resulted in severe damage to two recreational boats, one of which had persons on board.

Seven areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of the river bends by Shooters, Nautica Stage, Columbus Road bridge, Upriver Marina and Riverfront Yacht Services. Preventing mooring, standing or anchoring of vessels in these areas will decrease danger to lives and property.

This regulation is issued pursuant of 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new § 165.T0901 is added to read as follows:

§ 165.T0901 Cuyahoga River, Cleveland, Ohio—Safety zones.

(a) *Location.* The waters of the Cuyahoga River extending ten (10) feet into the river at the following seven (7) locations, including the adjacent shorelines, are safety zones:

(1) From the western end of Shooter's dock to fifty (50) feet east of 41 degrees 29'55.1" N., 81 degrees 42'27.6" W. which is the north point of the pier at Shooter's Restaurant.

(2) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9" N., 81 degrees 42'10.7" W. which is the knuckle toward the downriver corner of the Nautica stage.

(3) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5" N., 81 degrees 42'9.7" W. which is the knuckle toward the upriver corner of the Nautica stage.

(4) The fender on the west bank of the river at 41 degrees 29'45.2" N., 81 degrees 42'10" W. which is the knuckle at Bascule Bridge (railroad).

(5) The two hundred seventy (270) foot area on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8" N., 81 degrees 42'02.3" W.) to the chain link fence at the upriver end of Commodore's Club Marina.

(6) Fifty (50) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'24.5" N., 81 degrees 41'57.2" W. which is the knuckle at the Upriver Marina fuel pump.

(7) Twenty-five (25) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'41" N., 81 degrees 41'38.6" W. which is the end of the chain link fence between Jim's Steak House and Riverfront Yacht Services.

(b) *Effective Date:* This regulation becomes effective on September 3, 1987. It terminates on December 31, 1987 unless sooner terminated by the Captain of the Port.

(c) *Regulations*—(1) *General rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in § 165.23 of this part.

(2) *Exception.* Vessels may transit, but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1600 gross tons (GT) or greater are not navigating in the proximate area. Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1600 GT or greater.

Dated: September 3, 1987.

John H. Distin,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland, OH.

[FR Doc. 87-21096 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Removal of Monetary Rates

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: The Veterans Administration (VA) has amended its adjudication regulations to remove references to monetary benefits rates and income limitations and to replace them with the statutory citations or methods of computation that are the basis for those monetary rates and income limitations. The amendments are necessary to eliminate the cost of annual regulatory amendments based solely on legislative rate changes or changes made by standardized computation methods. The effect of these amendments will be to reduce unnecessary regulatory burdens and publication costs while maintaining an adequate method of advising the public of periodic changes in benefit rates and income limitations through publication in the "Notices" section of the **Federal Register.**

DATES: These amendments are effective October 16, 1987.

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

SUPPLEMENTARY INFORMATION: On pages 17773-77 of the **Federal Register** of May 12, 1987, the VA published proposed amendments removing monetary rates from 38 CFR Part 3. Interested persons were given until June 9, 1987, to submit comments on the proposed amendments. Two comments were received.

Both commenters expressed the view that some method should be retained whereby the public would have access to current monetary rate schedules. One commenter suggested that an appendix to 38 CFR Part 3 be created so that monetary rates would be available to the public from a single source. The other commenter suggested leaving the monetary rates in the regulations or abolishing the regulations altogether as unnecessary.

Title 38 of the Code of Federal Regulations is revised each year as of July 1 and is printed and distributed for public use late in the year. Most of the monetary rates in 38 CFR Part 3 are adjusted each year effective December 1. Therefore, the monetary rates in each revision of title 38 are almost always out of date.

Creation of an appendix to 38 CFR Part 3 would not improve the situation because an appendix would have to be updated by publishing a regulatory amendment in the **Federal Register.**

Since this is the same method currently used for updating the regulations, nothing would be gained by taking the monetary rates out of the regulations and putting them in an appendix.

Public notice of changes in monetary rates will not be affected by these amendments. Rate changes were previously published in the "Rules and Regulations" section of the **Federal Register** but now will be published in the "Notices" section. In addition, current information on monetary rates will continue to be available at all VA regional offices and may be obtained by calling the toll-free number listed for each regional office in the white pages of the telephone directory.

Since we have determined that no changes are warranted based on the comments received, the amendments are adopted as proposed.

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these regulations impose on regulatory burdens on small entities, and there will be no direct effect on claimants for VA benefits.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that these regulations are non-major for the following reasons:

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

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

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.101, 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

Approved: August 28, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, Adjudication, is amended as follows:

PART 3—[AMENDED]

1. In § 3.23, the heading and paragraphs (a) and (c) and revised to read as follows:

§ 3.23 Improved pension rates—Veterans and surviving spouses.

(a) *Maximum annual rates of improved pension.* The maximum annual rates of improved pension for the following categories of beneficiaries shall be the amounts specified in 38 U.S.C. 521 and 541, as increased from time to time under 38 U.S.C. 3112. Each time there is an increase under 38 U.S.C. 3112, the actual rates will be published in the "Notices" section of the **Federal Register.**

(1) Veterans who are permanently and totally disabled.

(Authority: 38 U.S.C. 521(b) or (c))

(2) Veterans in need of aid and attendance.

(Authority: 38 U.S.C. 521(d))

(3) Veterans who are housebound.

(Authority: 38 U.S.C. 521(e))

(4) Two veterans married to one another—combined rates.

(Authority: 38 U.S.C. 521(f))

(5) Surviving spouse alone or with a child or children of the deceased veteran in the custody of the surviving spouse.

(Authority: 38 U.S.C. 541 (b) or (c))

(6) Surviving spouses in need of aid and attendance.

(Authority: 38 U.S.C. 541(d))

(7) Surviving spouses who are housebound.

(Authority: 38 U.S.C. 541(e))

* * * * *

(c) *Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by the amount specified in 38 U.S.C. 521(g), as increased from time to time under 38 U.S.C. 3112. Each time there is an increase under 38 U.S.C. 3112, the actual rate will be published in the "Notices" section of the **Federal Register.**

(Authority: 38 U.S.C. 521(g))

2. In § 3.24, the heading and paragraphas (b) and (c) are revised to read as follows:

§ 3.24 Improved pension rates—Surviving children.

* * * * *

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (see § 3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate specified in 38 U.S.C. 542, as increased from time to time under 38 U.S.C. 3112, reduced by the amount of the child's countable annual income. Each time there is an increase under 38 U.S.C. 3112, the actual rate will be published in the "Notices" section of the **Federal Register.**

(c) *Child in the custody of person legally responsible for support*—(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5), and the sum of the annual income of such child and the annual income of such person or, the maximum annual pension rate under paragraph (b) of this section, whichever is less.

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than the maximum annual pension rate under paragraph (b) of this section) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than the maximum annual pension rate under paragraph (b) of this section, or the maximum annual pension rate under paragraph (b) of this section times the number of eligible children, whichever is less).

(Authority: 38 U.S.C. 542)

3. Section 3.25 is revised to read as follows:

§ 3.25 Parents' dependency and indemnity compensation (DIC)—method of payment computation.

Monthly payments of parents' DIC shall be computed in accordance with the following formulas:

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent, the monthly rate specified in 38 U.S.C. 415 (b)(1), as increased from time to time under 38 U.S.C. 3112, reduced by $.08 for each

dollar of such parent's countable annual income in excess of $800. No payments of DIC may be made under this paragraph, however, if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 415(b)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 a month.

(b) *One parent who has remarried.* If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under paragraph (a) or paragraph (d) of this section, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined countable annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(c) *Two parents not living together.* The rate computation method in this paragraph applies to

(1) Two parents who are not living together, or

(2) An unremarried parent when both parents are living and the other parent has remarried.

The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 415(c)(1), as increased from time to time under 38 U.S.C. 3112, reduced by an amount no greater than $.08 for each dollar of such parent's countable annual income in excess of $800, except that no payments of DIC may be made under this paragraph if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 415(c)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 3112, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the **Federal Register** as provided in paragraph (f) of this section.

(d) *Two parents living together or remarried parents living with spouse.* The rate computation method in this paragraph applies to each parent living with another parent and to each remarried parent when both parents are alive. The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 415(d)(1), as increased from time to time under 38 U.S.C. 3112, reduced to an amount no greater than $.08 for each dollar of such parent's and spouse's combined countable annual income in excess of $1,000 except that no payments of DIC may be made under this paragraph if such parent's and spouse's combined countable annual income exceeds the amount specified in 38 U.S.C. 415(d)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 3112, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the **Federal Register** as provided in paragraph (f) of this section.

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by the amount specified in 38 U.S.C. 415(g), as increased from time to time under 38 U.S.C. 3112, if such parent is

(1) A patient in a nursing home, or

(2) Helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(f) *Rate publication.* Each time there is an increase under 38 U.S.C. 3112, the actual rates will be published in the "Notices" section of the **Federal Register.**

(Authority: 38 U.S.C. 210(c))

4. Section 3.26 is revised to read as follows:

§ 3.26 Section 306 and old law pension annual income limitations.

(a) The annual income limitations for section 306 pension shall be the amounts specified in section 306(a)(2)(A) of Pub. L. 95–588, as increased from time to time under section 306(a)(3) of Pub. L. 95–588.

(b) If a beneficiary under section 306 pension is in need of aid and attendance, the annual income limitation under paragraph (a) of this section shall be increased in accordance with 38 U.S.C. 521(d), as in effect on December 31, 1978.

(c) The annual income limitations for old-law pension shall be the amounts specified in section 306(b)(3) of Pub. L. 95–588, as increased from time to time under section 306(b)(4) of Pub. L. 95–588, as increased from time to time under section 306(b)(4) of Pub. L. 95–588.

(d) Each time there is an increase under section 306 (a)(3) or (b)(4) of Pub. L. 95–588, the actual income limitations will be published in the "Notices" section of the **Federal Register.**

(Authority: 38 U.S.C. 210(c))

5. In § 3.27 paragraphs (a) and (b) are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

(a) *Improved pension.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, the VA shall, effective on the dates such increases become effective, increase by the same percentage each maximum annual rate of improved pension.

(Authority: 38 U.S.C. 3112(a))

(b) *Parent's dependency and indemnity compensation—maximum annual income limitation and maximum monthly rates.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, the VA shall, effective on the dates such increases become effective, increase by the same percentage the annual income limitations and the maximum monthly rates of dependency and indemnity compensation for parents.

(Authority: 38 U.S.C. 3112(b)(1))

* * * * *

6. Section 3.28 is revised to read as follows:

§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.

Whenever the maximum annual rates of improved pension are increased by reason of the provisions of 38 U.S.C. 3112, the following will be increased by the same percentage effective the same date:

(a) The maximum annual income limitations applicable to continued receipt of section 306 and old-law pension; and

(b) The dollar amount of a veteran's spouse's income that is excludable in determining the income of a veteran for section 306 pension purposes. (See § 3.262(b)(2))

These increases shall be published in the **Federal Register** at the same time that increases under § 3.27 are published.

(Authority: Sec. 306, Pub. L. 95–588)

Cross References: Section 306 and old-law pension annual income limitations. See § 3.26.

7. In § 3.262 paragraph (b)(2) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(b) * * *

(1) * * *

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95–588, to a veteran

who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, the amount of the spouse income exclusion specified in section 306(a)(2)(B) of Pub. L. 95–588 as increased from time to time under section 306(a)(3) of Pub. L. 95–588 or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. Each time there is an increase in the spouse income exclusion pursuant to section 306(a)(3) of Pub. L. 95–588, the actual amount of the exclusion will be published in the "Notices" section of the **Federal Register.** The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements.

(Authority: 38 U.S.C. 521(f); sec. 306(a)(2)(B) of Pub. L. 95–588)

* * * * *

8. In § 3.802 the first sentence of paragraph (b) is revised to read as follows:

§ 3.802 Medal of Honor.

* * * * *

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 562 will be made as of the date of filing of the application with the Secretary concerned. * * *

9. In § 3.1600 the first sentence of paragraphs (a) and (g); the first sentence of the introductory text of paragraphs (b) and (f); and paragraph (c) are revised to read as follows:

§ 3.1600 Payment of burial expenses of deceased veterans.

* * * * *

(a) *Service-connected death and burial allowance.* If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed the amount specified in 38 U.S.C. 907 (or if entitlement is under § 3.8 (c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. * * *

(b) *Nonservice-connected death and burial allowance.* If a veteran's death is not service-connected, an amount not to exceed the amount specified in 38 U.S.C. 902 (or if entitlement is under § 3.8 (c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. * * *

* * * * *

(c) *Death while properly hospitalized.* If a person dies from nonservice-connected causes while properly hospitalized by the VA, there is payable an allowance not to exceed the amount specified in 38 U.S.C. 903(a) for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. For burial allowance purposes, the term "hospitalized by the VA" means admission to a VA facility (as defined in 38 U.S.C. 601(4)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 610 or 611(a), or admission (transfer) to a nursing home under the authority of 38 U.S.C. 620 for nursing home care at the expense of the United States. (If the hospitalized person's death is service-connected, entitlement to the burial allowance and transportation expenses fall under paragraphs (a) and (g) of this section instead of this paragraph.)

(Authority: 38 U.S.C. 903 (a))

* * * * *

(f) *Plot or interment allowance.* When a veteran dies from nonservice-connected causes, an amount not to exceed the amount specified in 38 U.S.C. 903(b) (or if the entitlement is under § 3.8 (c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c)) may be paid as a plot or interment allowance. * * *

* * * * *

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or nonservice-connected disability pension would have been entitled to disability compensation at time of death), there is payable, in addition to the burial allowance (either the amount specified in 38 U.S.C. 902 or the amount specified in 38 U.S.C. 907 if the cause of death was service-connected), an additional amount for payment of the cost of transporting the body to the national cemetery for burial. * * *

10. In § 3.1601 paragraphs (a)(1)(i) and (a)(2)(i) and the last sentence of paragraph (a)(2)(iii) are revised to read as follows:

§ 3.1601 Claims and evidence.

(a) * * *

(1) * * *

(i) The funeral director, if the entire bill or any balance is unpaid (if the unpaid bill or the unpaid balance is less than the applicable statutory burial allowance, only the unpaid amount may be claimed by the funeral director); or

* * * * *

(2) * * *

(i) The funeral director, if he or she provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if the unpaid bill or the unpaid balance is less than the statutory plot or interment allowance, only the unpaid amount may be claimed by the funeral director); or

* * * * *

(iii) * * * Any remaining balance of the plot or interment allowance may then be applied to interment expenses; or

* * * * *

11. In § 3.1604 the introductory text of paragraph (a), the last sentence of paragraph (b)(2), and paragraphs (c) and (d)(3) are revised to read as follows:

§ 3.1604 Payments from non-VA sources.

(a) *Contributions or payments by public or private organizations.* When contributions or payments on the burial expenses have been made by a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran only the difference between the entire burial expenses and the amount paid thereon by any of these agencies or organizations, not to exceed the applicable statutory burial allowance, will be authorized. Contributions or payments by any other public or private organization such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company, will bar payment of the burial allowance if such allowance would revert to the funds of such organization or would discharge such organization's obligation without payment.

Authority: (38 U.S.C. 902; 907)

* * * * *

(b) * * *

(1) * * *

(2) * * * In such cases only the difference between the total burial expense and the amount paid thereon under such provision, not to exceed the amount specified in 38 U.S.C. 902, will be authorized.

(Authority: 38 U.S.C. 902(b))

* * * * *

(c) *Payment of plot or interment allowance by public or private organization except as provided for by*

§ 3.1604(d). Where any part of the plot or interment expenses has been paid or assumed by a State, any agency or political subdivision of a State, or the employer of the deceased veteran, only the difference between the total amount of such expenses and the amount paid or assumed by any of these agencies or organizations, not to exceed the statutory plot or interment allowance, will be authorized.

(Authority: (38 U.S.C. 903(b))

(d) * * *

* * * * *

(3) *Amount of the allowance.* A State or an agency or political subdivision of a State entitled to payment under this paragraph shall be paid the maximum statutory amount as a plot or interment allowance without regard to the actual cost of the plot or interment.

(Authority: 38 U.S.C. 903(b))

* * * * *

12. In § 3.1612 paragraph (e)(2)(ii) is revised and paragraph (e)(2)(iii) is added to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(e) * * *

(2) * * *

(ii) The average actual cost, as determined by the VA, or headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased.

(iii) The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of the VA's costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by the VA during that fiscal year and rounding to the nearest whole dollar amount. The resulting average actual cost is published at the end of each fiscal year in the "Notices" section of the **Federal Register.**

(Authority: 38 U.S.C. 906 (d))

* * * * *

[FR Doc. 87-21354 Filed 9-15-87; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans; Correction

AGENCY: Veterans Administration.

ACTION: Final regulation; correction.

SUMMARY: In the **Federal Register** of Thursday, September 10, 1987 (52 FR 34218) the Veterans Administration (VA) published increases in maximum interest rates on guaranteed manufactured home units loans, lot loans, and combination manufactured home unit and lot loans. An increase appearing in 38 CFR 36.4311(a) was inadvertently omitted. This document is to correct the text of § 36.4311(a).

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: George Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3042.

Dated: September 11, 1987.

Priscilla B. Carey,

Chief, Directives Management Division.

On page 34218 of the **Federal Register** of September 10, 1987, Volume 52, § 36.4311(a) is correctly revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10½ per centum per annum, effective September 8, 1987, the interest rate on any home manufactured home/lot loan guaranteed under 38 U.S.C. 1810, or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such a date may not exceed 10½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

[FR Doc. 87-21337 Filed 9-15-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2F2680/R911; FRL-3260-4]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid (AMPA) in or on coconut at 0.1 part per million (ppm). The regulation was requested by Monsanto Co. and establishes the maximum permissible level for residues of the herbicide in or on coconut.

EFFECTIVE DATE: September 16, 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: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 412, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 23, 1982 (47 FR 27126), which announced that Monsanto Co., 1101 17th Street, NW., Washington, DC 20036, had submitted a pesticide petition, PP 2F2680, to EPA proposing the establishment of a tolerance for combined residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid (AMPA) in or on the raw agricultural commodity copra at 1.0 ppm. Food additive tolerances were proposed under food additive petition (FAP) 2H5339 for the combined residues of the herbicide and its metabolite on coconut oil, desiccated coconut, and copra meal at 0.1 ppm.

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

The petitioner subsequently amended the petition to propose the establishment of a tolerance for the combined residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodity (RAC) coconut at 0.1 ppm. The food additive tolerances on coconut oil, desiccated coconut, and copra meal were withdrawn.

The data submitted in the petition and other relevant material have been evaluated. The data evaluated include a 2-year oncogenicity study in mice fed

dosages of 0, 150, 750, and 4,500 milligrams/kilogram/day (mg/kg/day); a chronic feeding/ oncogenicity study in rats fed dosages of 0, 3, 10, and 31 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL greater than 31 mg/kg/day; a 1-year chronic feeding study in dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOEL of 500 mg/kg/day; a teratology study in rats fed dosage levels of 0, 300, 1,000, and 3,500 mg/kg/day with no teratogenic effects occurring up to and including 3,500 mg/kg/day (HDT), maternal and fetotoxic NOELs of 1,000 mg/kg/day; a teratology study in rabbits fed dosage levels of 0, 75, 175, and 350 mg/kg/day with no teratogenic effects occurring up to and including 350 mg/kg/day (HDT), a maternal NOEL of 175 mg/kg/day, and a fetotoxic NOEL of 350 mg/kg/day (HDT); a three-generation reproduction study in rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a NOEL of 10 mg/kg/day; a mutagenicity test—chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S-9 activation); a mutagenicity test—DNA repair in rat hepatocytes (negative); a mutagenic test—*in vivo* bone marrow cytogenic in rats (negative); a mutagenicity test—rec-assay with *B. subtilis* (negative); a mutagenicity test—reverse mutation with *S. typhimurium* (negative); a mutagenicity (Ames) test with *S. typhimurium* (negative); and a dominant lethal mutagenicity test in mice (negative).

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 10 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and unpublished but approved tolerances is 0.0047 mg/kg/day. The current action will contribute 0.000001 mg/kg/day to the TMRC and will not increase the percentage of the ADI utilized. Published tolerances utilize 4.65 percent of the ADI.

Desirable data lacking are a repeat of the mouse and rat oncogenicity studies. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which the tolerance is sought. The oncogenic potential of glyphosate is not fully understood. Because of the equivocal (uncertain) nature of the oncogenic response in mice, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" classification. After reviewing all available evidence, the SAP proposed that glyphosate be classified as a "Class D Oncogen" or having "inadequate animal evidence of oncogenicity," and that there be a Data Call-In for further studies in rats and/or mice to clarify unresolved questions. After rereview of all available information, the Agency decided to classify glyphosate as a "Class D Oncogen" and also to request a repeat of the mouse oncogenicity study. Also, because of the large difference between the high dose tested in the rat and mouse oncogenicity studies, the rat oncogenicity study was rereviewed. The rereview indicated that a maximum tolerated dose (MTD) may not have been reached in that study. Therefore, the Agency decided to also request a repeat of the rat oncogenicity study at doses high enough to read an MTD. The Agency's policy has been to issue new use registrations in which the resulting change in TMRC is less than 1 percent; however, any significant new use registrations will be handled on a case-by-case basis and will not be issued until issues in the Glyphosate Registration Standard have been resolved. Monsanto Co. has been notified of these conclusions and deficiencies by the Glyphosate Registration Standard dated June 30, 1986.

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography with a phosphorous-specific flame photometric detector) is available for enforcement purposes. Existing tolerances will accommodate residues occurring in meat, fat, and meat byproducts of cattle, horses, hogs, sheep, and goats and milk, poultry, or eggs resulting from this use.

Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerance 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, Environmental Protection Agency, Room M-3708 (A-110), 401 M Street, SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations 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. 610 through 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: September 1, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

2. In § 180.364, paragraph (a) is amended by adding and alphabetically inserting the listing for coconut, to read as follows:

§ 180.364 Glyphosate; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Coconut	0.1
* * * * *	

[FR Doc. 87-20909 Filed 9-15-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5F3170/R910; FRL-3260-6]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises the tolerance expression for combined residues of glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid (AMPA) to include plant growth regulator uses as well as herbicidal uses for the raw agricultural commodity sugarcane at 2.0 parts per million (ppm) and liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.5 ppm. This rule to revise the tolerance expression was requested by Monsanto Co.

EFFECTIVE DATE: September 16, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M St., 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, 401 M Street, SW., Washington, DC 20460.
Office location and telephone number: Room 412, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 17, 1985 (50 FR 15219), which announced that Monsanto Co., 1101 17th Street, NW., Washington, DC 20036, had submitted a pesticide petition, PP 5F3170, to EPA proposing to amend 40 CFR 180.364(b) by revising the tolerance expression to read as follows: "Tolerances are established for the combined residues of glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid resulting from application of glyphosate isopropylamine salt for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt for growth regulator purposes in or on the following raw agricultural commodities." The tolerance levels for the commodities listed in the table therein remain the same.

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. The data evaluated include a 2-year oncogenicity study in mice fed dosages of 0, 150, 750, and 4,500 milligrams/kilogram/day (mg/kg/day) with an equivocal (uncertain) oncogenic effect at 4,500 mg/kg/day; a chronic feeding/oncogenicity study in rats fed dosages of 0, 3, 10, and 31 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (highest dose tested [HDT]) and a systemic no-observed-effect level (NOEL) greater than 31 mg/kg/day; a 1-year chronic feeding study in dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOEL of 500 mg/kg/day; a teratology study in rats fed dosages levels of 0, 300, 1,000, and 3,500 mg/kg/day with no teratogenic effects occurring up to and including 3,500 mg/kg/day (HDT), maternal and fetotoxic NOELs of 1,000 mg/kg/day; a teratology study in rabbits fed dosage levels of 0, 75, 175, or 350 mg/kg/day with no teratogenic effects occurring up to and including 350 mg/kg day with no teratogenic effects occurring up to and including 350 mg/kg/day (HDT), a maternal NOEL of 175 mg/kg/day, and a fetotoxic NOEL of 350 mg/kg/day (HDT); a three generation reproduction study in rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a NOEL of 10 mg/kg/day; a mutagenic test—chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S-9 activation); a mutagenic test—DNA repair in rat hepatocytes (negative); a mutagenicity test—*in vivo* bone marrow cytogenic in rats (negative); a mutagenicity test—rec-assay with *B. subtilis* (negative); a mutagenicity test—reverse mutation with *S. typhimurium* (negative); a mutagenicity (Ames) test with *S. typhimurium* (negative); and a dominant lethal mutagenicity test in mice (negative).

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 10 mg/kg/day) and using a hundred-fold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published and unpublished but approved tolerances is 0.0047 mg/kg/day, which utilizes 4.65 percent of the ADI. This revision does not increase the TMRC and will not increase the percentage of the ADI utilized.

Desirable data lacking are a repeat of the mouse and rat oncogenicity studies. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The oncogenic potential of glyphosate is not fully understood. Because of the equivocal (uncertain) nature of the oncogenic response in mice, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" classification. After reviewing all available evidence, the SAP proposed that glyphosate be classified as a "Class D Oncogen" or having "inadequate animal evidence of oncogenicity," and that there be a Data Call-In for further studies in rats and/or mice to clarify unresolved questions. After reveiew of all available information, the Agency decided to classify glyphosate as a "Class D Oncogen" and also to request a repeat of the mouse oncogenicity study. Because of the large difference between the high dose tested in the rat and mouse oncogenicity studies, the rat oncogenicity study was rereviewed. The rereview indicated that a maximum tolerated dose (MTD) may not have been reached in that study. Therefore, the Agency decided also request a repeat of the rat oncogenicity study at doses high enough to read an MTD. The Agency's policy has been to issue new use registrations in which the resulting change in TMRC is less than 1 percent; however, any significant new use registrations will be handled on a case-by-case basis and will not be issued until issues in the Glyphosate Registration Standard have been resolved. Monsanto Co. has been notified of these conclusions and deficiencies by the Glyphosate Registration Standard dated June 30, 1986.

The nature of the residue is adequately understood, and an adequate analytical method (gas liquid chromatography with a flame photometric detector) is available for enforcement purposes in Volume 2 of the Food and Drug Administration Pesticide Analytical Manual. No additional residues of glyphosate and AMPA are expected to occur in the liver and kidney of cattle, goats, hogs, horses, poultry, or sheep from the proposed use; therefore, the established tolerances on these commodities are considered adequate to cover residues of glyphosate and AMPA resulting from the proposed use of glyphosate isopropylamine salt on sugarcane.

Based on the information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerance 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, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M Street, SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations 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. 610 through 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: September 1, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

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

2. In § 180.364, the introductory text of paragraph (b) is revised to read as follows:

§ 180.364 Glyphosate; tolerance for residues.

* * * * *

(b) Tolerances are established for the combined residues of glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid resulting from application of glyphosate isopropylamine salt for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt for growth regulator purposes in or on the following raw agricultural commodities:

* * * * *

[FR Doc. 87-20908 Filed 9-15-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 7E3474/R908 (FRL-3260-5)]

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide iprodione, its isomer, and its metabolite in or on the raw agricultural commodity carrots. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: September 16, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 7E3474/R908], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 15, 1987 (52 FR 26536), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3474 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methyl-ethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methyl-ethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on the raw agricultural commodity carrots at 5 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 through 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).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 1, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

2. Section 180.399(a) is amended by adding and alphabetically inserting the listing for the raw agricultural commodity carrots, to read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Carrots	5.0
* * * * *	

[FR Doc. 87-20910 Filed 9-15-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-267; RM-5306, RM-5407]

Radio Broadcasting Services; Beverly Hills and Odessa, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Beverly Hills, Florida, as a first FM service, at the request of Raymond P. Starke. Additionally, a conflicting petition to add Channel 246A to Odessa, Florida, as a first FM service at the request of Bridget Vinson, has been denied. Under our priorities for evaluating conflicting proposals, Beverly Hills is favored as the more populous community. A late counterproposal submitted by T and B Broadcasting for Channel 246A at Spring Hill, Florida, is dismissed. With this action, this proceeding is terminated.

DATES: Effective October 19, 1987; The window period for filing applications will open on October 20, 1987, and close on November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-267, adopted August 18, 1987, and released September 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), of the Rules the Table of FM Allotments, the entry for Beverely Hills, Florida, Channel 246A is added.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-21108 Filed 9-15-87; 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 Pediocactus despainii (San Rafael Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Pediocactus despainii* (San Rafael cactus). The two known populations of this plant consist of 2,000-3,000 individuals each. Both occur in Emery County in central Utah, mainly in areas administered by the Bureau of Land Management. This rare species is sought by cactus collectors, one population is heavily impacted by recreational use of off-road vehicles, and approximately half of each population is in areas covered by oil and gas leases and mining claims for gypsum or other minerals. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *P. despainii.*

DATE: The effective date of this rule is October 16, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, 134 Union Boulevard, fourth floor, Lakewood, Colorado, and the Fish and Wildlife Enhancement Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John Anderson, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement Office, 529 25½ Road, Suite B113, Grand Junction, Colorado 81505 (303/241/0563 or FTS 322-0348), or John Larry England at the Salt Lake City address above (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

Pediocactus despainii (San Rafael cactus) was discovered in 1978 by Kim Despain on the San Rafael Swell, a large anticline (geologic upwarp) in Emery County, Utah. Additional material was collected in 1979 by Despain, E. Neese, and K. Thorne of Brigham Young University, and also by K. Heil of San Juan College, Farmington, New Mexico (Heil 1984). The description of *Pediocactus despainii* was published by Welsh and Goodrich (1980). A second population on the San Rafael Swell, approximately 25 miles from the first, was located in 1982 by S. Brack, a cactus nurseryman from Belen, New Mexico. In 1984, Heil conducted a status survey and did not locate any new populations. The San Rafael cactus is thus known from just two populations, one in an area 3 miles (5 kilometers) across, and the other in an area 1 mile (1.6 kilometers) across. Each population contains 2,000 to 3,000 individual plants (Heil 1984).

Pediocactus despainii is a small barrel-type cactus, 1.5 to 2.3 inches (3.8 to 6.0 centimeters) tall and 1.2 to 3.8 inches (3.0 to 9.5 centimeters) wide. Each areole or spine cluster contains 9 to 13 white, flattened, pectinate (comblike) radial spines that partially obscure the stem, but no central spines are present. The small flowers are about 1 inch (2.5 centimeters) across and are peach to yellow in color with a bronze tint. This cactus is distinguished from other closely related members of its genus by its larger stem size, and naked (hairless) areoles, and by the bronze tint to its flowers. With its diminutive size and peculiar habit of shrinking underground for several months a year during dry or cold seasons, it is not surprising that *P. despainii* was only recently discovered. It is only noticeable for a short time in the spring when in bloom. Otherwise, even if the exact location of its populations are known, it cannot be seen and is easily overlooked. It grows on hills, benches, and flats of the Colorado plateau's semiarid grasslands. This habitat is savannahlike and contains scattered junipers, pinyon pines, low shrubs, and annual and perennial herbs. The occupied area is mostly administered by the Bureau of

Land Management (BLM), but the State of Utah owns one section.

The genus *Pediocactus* contains eight species, one with two varieties and another with three (Heil *et al.* 1981). Except for one wide-ranging species, all are rare endemics of the Four Corners region (Utah, Colorado, Arizona, and New Mexico). *Pediocactus bradyi, P. knowltonii, P. peeblesianus* var. *peeblesianus,* and *P. sileri* are currently listed as endangered. *Pediocactus paradinei, P. peeblesianus* var. *fickeiseniae,* and *P. winkleri* are candidates for addition to the List of Endangered and Threatened Plants. These disjunct species are probably relicts of a once-more-widespread genus with a distribution that was fractured by the current climatic regime (Benson 1982).

Since *P. despainii* is a newly described rare cactus and a member of a group of cacti eagerly sought by collectors both in this country and abroad, it is endangered by collection pressures. The type locality is near a popular, though undeveloped, camping area and receives heavy use from off-road and all-terrain vehicles. Approximately half of the range of the species is covered by oil and gas leases and mining claims for gypsum or other minerals. Surface disturbance associated with exploration for gypsum has occurred near the type locality. The effect of livestock grazing on the species is unknown.

In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a notice of review for plants, which included *P. despainii* in Category 1. Category 1 comprises taxa for which substantial biological data are available to support listing. No comments on this taxon were received in response to the 1980 notice. In the **Federal Register** of November 28, 1983 (48 FR 53640), the Service published a supplement to the 1980 notice of review, in which *P. despainii* was changed to Category 2. Category 2 comprises taxa for which the Service has information indicating the possible appropriateness of a proposal to list the taxa, but for which more substantial data are needed. The status survey of Heil (1984), compiled through contract to the Service, provided the needed data. In the **Federal Register** of September 27, 1985 (50 FR 39526), the Service published a revised notice of review, in which *Pediocactus despainii* was redesignated as Category 1.

Taxa included in the 1980 and 1985 plant notices of review, and the 1983 supplement, are treated as if under petition pursuant to the Act. The 1982 Amendments to the Act required that petitions that were pending as of October 12, 1982, be treated as having been received on that date. Section 4(b)(3) of the Act requires that within 12 months of the receipt of such a petition a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other activity involving additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. Therefore, on October 13, 1983, the Service made the finding that determination of endangered status for *P. despainii* was warranted but precluded by other listing activity. With such a finding, the petition is recycled, and another finding becomes due within 12 months. On October 12, 1984, and again on October 11, 1985, additional findings of warranted but precluded were made with respect to the listing of *P. despainii.* In the **Federal Register** of March 27, 1986 (51 FR 10560–10563), the Service proposed to determine endangered status for *P. despainii,* and that proposal incorporated a finding that the petitioned action was warranted.

Summary of Comments and Recommendations

In the March 27, 1986, proposed rule (51 FR 10560) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Emery County Progress* on April 16, 23, and 30, 1986, and in the *Deseret News* and *Salt Lake Tribune* on April 15, 16, and 17, 1986. Four comments were received and are discussed below. No public hearing was requested.

The State of Utah supported the listing. The International Union for Conservation of Nature and Natural Resources made an informational comment.

The Emery County Commission requested an informal meeting to discuss concerns arising from information included in a newspaper article. A meeting, including a field trip to one of the cactus population sites, was held on June 6, 1986. The Service's oral and written response to the Commission is summarized here. The Commission questioned whether there were sufficient threats to the species to warrant a designation of endangered, and if such threats could be removed by other means. The Service maintains that significant threats, such as collecting and off-road vehicle damage, exist to the San Rafael cactus and will be difficult to remove. Therefore, the endangered determination is accurate. The Commission questioned whether the effects of grazing on the San Rafael cactus were actually known, since present grazing levels are lower than historic levels. The Service is interested in the effects of grazing on the fragile semidesert grassland habitat with which the San Rafael cactus is associated, but at present has no data documenting the impact of grazing on the species. The Commission was concerned that the designation of the San Rafael cactus as an endangered species would affect land use in the San Rafael Swell outside of its occupied habitat. Management of the entire San Rafael Swell is beyond the control of the Service in protecting the cactus and its habitat. Land-use decisions made by Federal agencies that could affect this species will be handled through the section 7 consultation process (see "Available Conservation Measures," below). Appropriate conservation measures would be directly related to the species' occupied habitat, which is only a small part of the San Rafael Swell.

The Bureau of Reclamation (1) commented on the taxonomy of *P. despainii;* (2) questioned whether listing would popularize the species and increase collecting while not reducing other threats such as off-road vehicle impacts, mineral exploration, and mining activities; and (3) questioned the change in candidate status among the three notices of review. The Service's response to the Bureau of Reclamation's comment is summarized here. *The Cacti of the United States and Canada* (Benson 1982) does not contain a discussion of *P. despainii* (beyond a reference in the appendix) because the book was in press for several years and does not contain references later than 1979. It was for this reason that no discussion was made of *P. despainii,* and not because the taxonomy of the species was in question. The threat of collecting will be addressed through the Service's Law Enforcement Division and through the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Regarding other threats, Federal agencies are legally required to insure that their actions in managing Federal land, such as authorizing off-road vehicle use and administering mineral leasing programs, are not likely to jeopardize listed species. Inasmuch as a significant portion of the habitat of this species is located on land administered by the Bureau of Land Management, listing could provide important protection from

such activities. A change in candidate category indicates not necessarily a change in the degree of urgency of listing, but a recognition of the need for more information to document the need for listing. After *P. despainii* was changed from Category 1 to 2, the Service contracted for a status survey to obtain additional information (Heil 1984).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *P. despainii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pediocactus despainii* Welsh and Goodrich (San Rafael cactus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The type locality of *P. despainii* is being heavily impacted by off-road vehicles, as it is near a popular recreation area. The level of impact is such that, in one area, individual plants were literally growing among the crisscrossed off-road vehicle tracks. About half of the area occupied by both populations contains oil and gas leases and mining claims for gypsum or other minerals. While no commercial development has taken place, surface disturbances from associated exploration and annual assessment work will continue to be a threat. The San Rafael cactus has some natural protection afforded by its habit of shrinking into the ground for part of the year. However, it forms buds in the fall that overwinter to become the next spring's flowers (Heil *et al.* 1981). These flowering buds at ground level may be vulnerable to surface disturbance, increasing the portion of the year that the species' reproductive capacity is vulnerable. Semiarid grassland parks and understory vegetation of pinyon-juniper woodlands are fragile habitats. They are easily invaded by aggressive native shrub and tree species or exotic weedy species when they are mechanically disrupted or when native grass species are removed. Another grassland cactus, *Opuntia imbricata* (tree cholla), was found to be significantly positively associated with some of the same native perennial grass species as is *P. despainii*, and negatively associated with weedy species indicative of range deterioration, in the short grass prairie in El Paso County, Colorado (Kinraide 1978). Maintenance of the desert grassland parks and understory vegetation of pinyon-juniper woodland may be an essential habitat requirement for *P. despainii*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* As indicated earlier, this rare plant is highly desired by cactus collectors. It is known that collectors "make the rounds" through the Four Corners area, from the habitat of one species of *Pediocactus* to the next, to collect a complete set (Heil, pers. comm.). The small size of these species makes them easy to hide and therefore hard to detect in interstate or international commerce.

C. *Disease or predation.* The effect of livestock grazing on *P. despainii* is unknown. Because of the small size of this cactus and its habit of shrinking underground for part of the year, grazing is not thought to be directly significant to its survival. However, there are cattle-watering reservoirs within the range of the first discovered population, which may cause localized concentrations of livestock and the possibility of trampling of a portion of that population. The effect of livestock grazing on the trend and condition of surrounding desert grassland and pinyon-juniper understory vegetation needs to be evaluated to determine its impact on *P. despainii*. Service botanists have observed that the species is susceptible to infestations of insect larvae.

D. *The inadequacy of existing regulatory mechanisms.* No treaties, except the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and no Federal or State laws, directly protect *P. despainii*. CITES regulates international import and export but not interstate commerce, collecting for possession, or impacts to habitat.

E. *Other natural or manmade factors affecting its continued existence.* The fragile nature and vulnerability of the desert grassland and pinyon-juniper ecosystem in which *P. despainii* occurs have been mentioned previously. Also, because there are only two populations and a low number of plants, the possibility exists that a catastrophic disturbance, either natural or manmade, could destroy a significant portion of the species.

The Service has carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *P. despainii* as endangered. With only 4,000 to 6,000 individuals, and just two populations, collecting could lower its numbers significantly, and surface disturbances are impacting the ecosystem in which it occurs. For the reasons given below, it would not be prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," *P. despainii* is threatened by taking, an activity difficult to prevent and not regulated by the Act with respect to plants, except for a prohibition against removal of endangered plants from areas under Federal jurisdiction and reduction to possession. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and landowners have been notified of the location of populations and importance of protecting this species' habitat. Such protection will be addressed through the recovery and section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against 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. 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 adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Known Federal activities that may affect *P. despainii* are sanctioned use of off-road vehicles within its habitat, permitting actions in response to oil and gas development, and approval of mining plans. BLM is already consulting with the Service regarding such matters, and effects on that agency's activities due to this listing are expected to be minimal.

Section 9 of the Act and 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. 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 State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Because of horticultural interest in *P. despainii*, trade permits may be sought, but few permits for plants of wild origin would ever be issued since the species is not common in the wild. Plants of cultivated origin are available and permits may, under certain circumstances, be issued for trade in those. Requests for copies of 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).

On July 29, 1983, *P. despainii* was included on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that both export and import permits are required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species, and cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed.

National Environmental Policy Act

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

References Cited

Benson, L. 1982. *The Cacti of the United States and Canada.* Stanford University Press, 1044 pp.

Heil, K. 1984. Status report on *Pediocactus despainii*, U.S. Fish and Wildlife Service, Denver, Colorado, 14 pp.

Heil, K., B. Armstrong, and D. Schleser, 1981. A review of the genus *Pediocactus. Cactus & Succulent Journal* 53:17-39.

Kinraide, T.B. 1978. The ecological distribution of cholla cactus (*Opuntia imbricata* (Haw.) DC.) in El Paso County, Colorado. *Southwestern Naturalist* 23:117-134.

Welsh, S.L., and S. Goodrich. 1980. Miscellaneous plant novelties from Alaska, Nevada, and Utah. *Great Basin Naturalist* 40:78-88.

Author

The primary author of this final rule is John L. Anderson; John L. England acted as editor (see ADDRESSES section above).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 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 alphabetical order under the family Cactaceae, 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					
Cactaceae—Cactus family:						
Pediocactus despainii	San Rafael cactus	U.S.A. (UT)	E	286	NA	NA

Dated: August 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-21286 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 70616-7183]

Red Drum Fishery of the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). This final rule (1) establishes primary and secondary fishing areas and prohibits harvest of red drum from secondary areas, (2) revises quota provisions to include allocations for shrimp vessels and recreational fishing vessels, (3) revises the closure requirement to apply to shrimp and recreational vessels, (4) prohibits the sale of fish taken under the bag limit, (5) establishes that fish harvested in the exclusive economic zone (EEZ) will be landed in conformance with State laws, and (6) revises the procedure for specifying total allowable catch (TAC) and modifying quotas for the primary area. The intended effect is to protect and rebuild the red drum resource throughout its range through cooperative State/Federal management and to prevent overfishing while achieving optimum yield (OY) from the red drum fishery on a continuing basis.

EFFECTIVE DATE: October 16, 1987.

ADDRESS: Copies of the environmental assessment and the supplemental regulatory impact review/initial regulatory flexibility analysis may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Willian R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce (Secretary) prepared the FMP under the authority of section 304(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Implementing regulations for the FMP were effective December 19, 1986 (51 FR 46678, December 24, 1986). Earlier, the Secretary promulgated an emergency rule (51 FR 23553, June 30, 1986) that limited directed net harvest of red drum from the EEZ to one million pounds during its 90-day effective period (June 25 to September 23, 1986); it also limited incidental catch in other commercial fisheries to five percent of red drum by weight of the total catch aboard a vessel. The directed fishery was closed on July 20, 1986 (51 FR 26554, July 24, 1986; corrected at 51 FR 27413, July 31, 1986). The Secretary extended the emergency rule (51 FR 34220, September 26, 1986) for a second 90-day period, until December 22, 1986.

In Amendment 1 to the FMP, the Gulf of Mexico Fishery Management Council (Council) revised and restated the management unit, problems in the fishery, management objectives, OY, the procedure for specifying harvest levels from the EEZ, allowable harvest levels, and other provisions. The preamble to the proposed rule to implement Amendment 1 (52 FR 22822, June 16, 1987) described these changes and their rationale and is not repeated here.

Comments and Responses

Comments criticizing the proposed rule and amendment were received from Organized Fishermen of Florida, Alaska Factory Trawler Association, Southeastern Fisheries Association, National Fisheries Institute, Pacific Seafood Processors Association, Fish Consumers Association, one commercial purse seine captain, and a minority report signed by two members of the Council. Mixed comments indicating support for some measures and problems or potential problems with others were received from the Florida Department of Natural Resources, Florida Marine Fisheries Commission, U.S. Coast Guard, and U.S. Fish and Wildlife Service. Letters in support of Amendment 1 and the proposed rule where received from approximately 3,000 members of the Coastal Conservation Association and from several recreational fishing organizations. In general, critical comments challenged the composition and structure of the management unit, procedures for specifying harvest levels, and the deletion of provisions describing supersession of State law when landing red drum taken from the EEZ during a directed commercial fishery. Other miscellaneous comments were received, but most were related to these topics and all are addressed below.

Management Unit

One organization indicated that blue runner, black drum, ladyfish, and crevalle jack should be included in the management unit because they occur in close association with red drum. Although not genetically related, these species were originally proposed for inclusion in the FMP. It was generally believed that the market could expand for one or more of these species in search of a substitute for red drum, and that their inclusion in the FMP would provide a basis for accumulating data in the event the management became warranted. Based on comments received on the proposed rule to implement the FMP, these species were eliminated from the management unit. The reason was discussed in the preamble to the final rule for the FMP.

Other comments indicated that there is no justification for dividing the Gulf of Mexico EEZ into primary and secondary management areas. Although there is no direct genetic evidence on red drum to support stock differences in these areas, indirect evidence from mark-recapture studies, harvest data, and socio-economic considerations support the division. Historically, more than 98 percent of the total recreational and commercial catch of red drum from the EEZ has been harvested from the primary area. Data from Florida and Texas, the States bordering the secondary areas, indicate high fishing mortality rates in those areas. Further, owing to the nine-mile jurisdictional authority of these two States in the Gulf of Mexico, red drum in these secondary areas appear concentrated in waters under State control. Available data on red drum migration indicate little intermixing between areas. Although limited, considered together this information suggests that escapement from State waters bordering the secondary areas has been insufficient to maintain the offshore brood stock of red drum. Total closure of the secondary areas coupled with intensified conservation efforts evident on the part of the States is expected to protect and enhance rebuilding of the offshore red drum population in those areas. Such constraints should result in relatively slight socioeconomic impacts, as less than two percent of the total of the red drum harvest has been from the secondary areas.

Specification of Harvest Levels

Comments in this category generally were concerned with who specifies the allowable catch levels and by what process. Additionally, there was concern with the 20-percent level of juvenile escapement targeted for inshore waters and its relationship to allowable catch, its measurement, and its scientific basis.

The achievement of a 20-percent level of juvenile escapement to offshore waters does not trigger the opening of a directed commercial fishery. It is simply a prerequisite which will foster rebuilding of the offshore spawning stock biomass to levels that could support renewed fishing effort. A

general rule of thumb used by fishery biologists is that spawning stock biomass should not be reduced below 20 to 40 percent of the level existing before exploitation. Certain fisheries exploited beyond this level have collapsed. Therefore, the Council has recommended that the States take measures to allow the escapement of 20 to 40 percent of the juveniles that would have escaped from nearshore waters in the absence of an inshore fishery. An initial goal of 20 percent escapement is recommended. NMFS, through its Southeast Fisheries Center, will annually review the stock assessment data to determine if the 20-percent (or any future) escapement level is appropriate to achieve the objectives of the amendment. NMFS will also monitor the States' efforts to increase juvenile escapement to the determined levels and to provide estimates of escapement. On the basis of the best scientific information currently available, escapement is the determining factor in increasing the offshore spawning stock biomass. Based on annual stock assessments, NMFS will determine current levels of escapement and what levels are required over time to reach a spawning stock biomass that ensures optimum recruitment and enhancement of inshore and offshore populations. NMFS is presently funding and will evaluate the success of State projects conducted under the Marine Fisheries Initiative (MARFIN) program to measure levels of escapement.

The opening of a directed commercial fishery in the primary area will not occur until stock assessment data identifies a level of surplus spawning stock that can be safely removed while incurring little risk of overfishing. Accordingly, NMFS will provide an annual assessment of the red drum stock that will be used to specify a range of acceptable biological catch (ABC) for the primary area. The Council in turn will use that information to make necessary adjustments to the amount of allowable catch from within or below the range of ABC and to establish appropriate quotas for forthcoming fishing seasons. These decisions are within the authority of the Council, subject to conformance with the national standards of 50 CFR Part 602. Under the FMP prepared by the Secretary, the Regional Director was responsible for these decisions. The use of FMP amendment procedures to specify allowable catch and quotas ensures a greater cross-section of review, promotes conservation, minimizes risk to the resource, and takes advantage of statutory deadlines in making timely adjustments to TAC and quotas.

State/Federal Cooperative Management

Several respondents commented that deletion of supersession provisions in Amendment 1 is in direct conflict with responsibilities recognized in the Secretarial FMP, and sets an improper precedent for managing other fisheries under the Magnuson Act. According to the comments, use of State landing laws to control harvest in the EEZ appears contrary to the intent of the Magnuson Act and an abdication of management authority by the Secretary.

NOAA does not agree that the Secretary has relinquished management responsibility to the States or that the actions embodied in Amendent 1 are contrary to the Magnuson Act. Rather, the changes represent a shift to a more pragmatic approach, where the States and the Federal government share more equitably the burdens and responsibilities of red drum management. It recognizes that the States play an integral role in preserving and rebuilding offshore stocks. State inshore fisheries, where the majority of the harvest has historically taken place, are totally dependent on offshore spawners. State implementation of conservation fishing regulations not only protects inshore red drum fisheries, but should also ensure adequate escapement to restore offshore stocks and subsequent resumption of the offshore fishery. The 20 percent escapement provision emphasizes the necessity for a shared research and development program. Amendment 1 focuses on both inshore and offshore stock problems as equally important to restoration of this resource. It provides that State landing and possession laws apply to all presently allowable EEZ bag limits and commercial incidental catch. Further, Amendment 1 continues to provide for the landing and sale of lawfully captured red drum from the EEZ whenever a directed fishery is resumed. Such fish will be properly documented and landed as "imports." This will allow marketing of these fish in a way that is compatible with State laws where sale of domestically landed red drum is prohibited, but where certified imports are exempt and can be legally marketed. This approach supports and strengthens State conservation programs without diluting or disrupting enforcement capabilities.

Other Comments

One agency supported the short-term goal of protecting offshore spawners while encouraging and supporting the States' efforts to protect juveniles in estuarine waters, but expressed concern with the long-term management strategy because it could result in the resumption of offshore harvest. The direction of future management of red drum resources depends upon how the stocks respond to current management practices as reflected by the annual stock assessments. Permanent closure of the EEZ to a directed commercial harvest of red drum would constitute an inflexible management approach oblivious to factual biological information emerging from ongoing studies, be insensitive to user-group concerns and allocation responsibilities under the Magnuson Act, and obstruct the Council's deliberative processes.

Another agency indicated that the identification of problems in Amendment 1 should be expanded to include, "competition between recreational and commercial uses," and that the document should contain greater elaboration of this issue. User-group competition is included in problem (4) as identified in the proposed rule and Amendment 1. NOAA believes that the management approach described in Amendment 1 reasonably addresses problems associated with the competition for access to this resource in an atmosphere of State-Federal cooperation and is consistent with conservation decisions.

One agency commented that defining allowable incidental catch in terms of landed catch precludes enforcement at sea of incidental catch limitations. Where possible, the final rule prohibits possession of red drum in or from the EEZ or a primary or secondary area. Compliance with restrictions which apply on a trip basis, however, must be determined on landed catch. A vessel which catches red drum in excess of five percent by weight early in a fishing trip should not be considered to be in violation when it could end the trip within the legal limit. NOAA expects that relevant observations at sea will be communicated to and coordinated with authorized officers ashore to maximize enforcement efforts. Enforcement at sea is required to detect illegal transfers of red drum and to document any fishing operations that do not minimize wastage.

One agency recommended that the final rule define the eastern boundary of the secondary area off Florida to clarify its limits off the southern tip of Florida. A clear definition of that boundary, based on the delineation between the Gulf of Mexico and the Atlantic Ocean as contained in 50 CFR 601.12(c), is included in the definition of secondary areas.

One agency expressed concern that the language of the existing § 653.3(c), making the regulations applicable within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico, is inconsistent with an avowed purpose of Amendment 1, i.e., deletion of the exemption from State landing laws. NOAA does not view § 653.3(c) as operating to displace laws which are otherwise made applicable to these types of areas. This general language ensures protection of the resource throughout its range in the EEZ compatible with other applicable restrictions.

One agency recommended a minimum size of 18 inches for all red drum taken from the EEZ to aid State enforcement when a directed net harvest is resumed. Consideration of such a recommendation would be appropriate when resumption of a directed commercial fishery is contemplated.

A commenter, concerned about the "dumping" of excess red drum because nets were set around too many fish, proposed a prohibition on and a severe penalty for dumping. The final rule contains prohibitions on fishing operations which cause wastage of red drum.

Changes From the Proposed Rule

Section 653.1 is reorganized for simplicity and clarity, language is added to clarify that the regulations apply only to fishing vessels of the United States, and reference to § 653.22(g) as an exception to applicability of the regulations only in the EEZ of the Gulf of Mexico is removed. The provision allowing continued application of State landing and possession laws to certain red drum harvested in the EEZ is contained in § 653.2(d) of this rule and does not constitute an exception to the applicability of the rules of this part.

In § 653.2, the terms and definitions for *Commercial quota* and *Non-directed commercial red drum fishing (fishery)* are no longer used and are removed. The latter term implied that there could be a commercial fishery in which catch of red drum is a secondary or tertiary target species. Such is not the case. Red drum taken in any commercial fishery other than the directed commercial red drum fishery is incidental catch in other commercial fisheries. Removal of the term *Non-directed commercial red drum fishing (fishery)* is reflected in rewording throughout the final rule. In the definition of *Directed commercial red drum fishing (fishery)*, the exemption for shrimp trawling is removed. All commercial fishing activity in which the weight of red drum landed exceeds five percent of the total weight of all other fish on board is a directed red drum fishery. The terms *Commercial fishing* and *Recreational fishing* are replaced by *Commercial fishing (fishery)* and *Recreational fishing (fishery)* and their definitions are revised for clarity and consistency. The definition of *Authorized officer* is revised to be more specific as to the participants in any agreement whereby a Federal or State officer becomes an authorized officer. In the definition of *Center Director*, the telephone number is corrected. Reference to Figure 2 is removed from the definitions *of Primary area* and *Secondary areas* and the figure is removed as it is not necessary for a clear understanding of the areas. In the definition of *Primary area*, the western boundary is clarified. Specification of the eastern boundary of the EEZ seaward of the fishery jurisdiction of Florida is added to the definition of *Secondary areas*.

In § 653.3, paragraph (b) is revised to clarify that the U.S. Coast Guard is not a party to the State/Federal agreement for data collection.

In § 653.3(d), the requirement that certain persons landing red drum must comply with "other fishery" laws of the State where landed is removed. Specifying compliance with only the "landing and possession" laws of the State where landed is in accord with Amendment 1 and avoids the ambiguity of the phrase "other fishery" laws.

In § 653.5, a change to paragraph (b) is added because of the removal of the term "non-directed red drum fishery".

In § 653.7, excess verbiage in paragraph (a)(1) is removed, paragraphs (a)(7) and (8) are revised consistent with the creation of primary and secondary areas, and paragraphs (a) (17) through (22) are added to provide specific prohibitions for failure to meet the requirements of § 653.22.

In § 653.21, paragraph (a) is revised to substitute "primary area" for "EEZ" and to clarify that the quota is for each fishing season.

Section 653.22 is reorganized for clarity and to apply the prohibition on wastage of red drum to all fisheries. Paragraph (c) of the proposed rule (paragraph (b)(2) in this final rule) is revised to clarify that a commercial vessel with an allowable bycatch of red drum must have a permit and that a commercial vessel over the allowable limit is considered as conducting a directed commercial red drum fishery. Paragraph (g) is removed as the applicability of State landing and possession laws is covered in § 653.3(d). Paragraph (h) [Reserved] is removed. Landing restrictions will be included in paragraph (b)(1) when directed commercial red drum fishery is authorized.

In § 653.23 paragraph (a) is no longer applicable and is removed and paragraphs (b) and (c) of the proposed rule are designated as (a) and (b) and revised for clarity.

In § 653.24, paragraph (d) is revised to clarify that a change in TAC will be by amendment to the FMP and paragraph (e) is revised to clarify that the percentage of any excess red drum which may be included in the TAC will be set by the Council no more frequently than annually.

Classification

The Regional Director determined that Amendment 1 is necessary for the conservation and management of the red drum fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 1. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Southeast Region of NMFS (see ADDRESS).

The Administrator of NOAA determined that this is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. The amendment's management measures are designed to maintain the productivity of each user group to the maximum extent possible while preventing overfishing of red drum and restoring the red drum stock. The major benefit of this rule is restoration and maintenance of the red drum stock.

The Council prepared a supplemental regulatory impact review (SRIR) which concluded that this rule will have the following economic effects. Greater long-term benefits, in terms of overall poundage produced, will result than from the other alternatives. The impact of the prohibition of red drum harvest from the secondary areas is expected to be negligible since, historically, 98 percent of recreational and commercial catch from the EEZ has been from the primary area. The impact of a bag limit of one fish and the impact of prohibiting directed commercial fishing for red drum, continued in Amendment 1, were described in the RIR and initial regulatory flexibility analysis (IRFA). No additional costs to participants for permits are anticipated as a result of the amendment.

Federal enforcement costs of the regulatory action are not changed by the

proposed rule. Annual State enforcement costs, estimated to be as high as $1 million, are anticipated to be significantly reduced by the provisions which operate to preserve applicable State landing and possession laws.

A copy of the RIR/IRFA for the FMP and SRIR for Amendment 1 may be obtained from the Southeast Region of NMFS (see ADDRESS).

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic impact on a substantial number of small entities. This is because it will not signficantly alter current fishing practices. Although all present participants in the fishery will now be required to land red drum in conformance with State law, landings will not be affected since harvesting will be permitted in those States (Alabama, Mississippi, Louisiasna) where 98 percent of the historical catch has occurred, and fish can continue to be landed in accordance with State law. The Council prepared an IRFA as part of the SRIR which concluded that this proposed rule will have an insignificant effect on fishing entities. These effects are included in the SRIR, which is summarized above. The action will enhance enforcement activities and will provide benefits in the form of an improved resource and higher landings in the long term.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act. The collection of information requirements of the FMP were approved under OMB Control Number 0648-0117.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, Alabama, Mississippi, and Lousiana. Texas does not have an approved coastal zone management program. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies of Florida and Louisiana agreed with this determination. The State agencies of Alabama and Mississippi failed to comment during the statutory time period and, accordingly, concurrence is implied.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 11, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 653 continues to read as follows:

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

2. Section 653.1 is revised to read as follows:

§ 653.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) prepared by the Secretary of Commerce and amended by the Gulf of Mexico Fishery Management Council. The regulations in this part, except for § 653.5, apply to fishing for red drum by fishing vessels of the United States in the EEZ in the Gulf of Mexico. The reporting requirements in § 653.5 apply to vessels of the United States and persons participating in the fishery in both the EEZ and State jurisdictions.

3. In § 653.2, the definitions for *Commercial quota* and *Non-directed commercial red drum fishing (fishery)* are removed; definitions for *Commercial fishing, Recreational fishing,* paragraph (c) under the definition for *Authorized officer, Directed Commercial red drum fishing (fishery),* and the telephone number under *Center Director* are revised; a phrase is added to the definition for *Exclusive economic zone (EEZ)* between the words "means the" and the word "area"; and new definitions for *Primary area, Secondary area,* and *Total allowable catch (TAC)* are added in alphabetical order to read as follows:

§ 653.2 Definitions.

* * * * *

Authorized officer means

* * * * *

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

* * * * *

Center Director * * * telephone 305-361-4200 * * *

Commercial fishing (fishery) means fishing or fishing activities which result in the harvest of fish one or more of which (or part thereof) is sold, traded or bartered.

* * * * *

Directed commercial red drum fishing (fishery) means any commercial fishing activity in which the weight of red drum landed exceeds five percent of the total weight of all other fish on board.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is the area * * *

* * * * *

Primary area means the EEZ seaward of the fishery jurisdictions of Alabama, Mississippi, and Louisiana, bounded on the east by a line directly south from the boundary between Alabama and Florida (87°31.1' W. longitude) to its intersection with the outer limit of the EEZ, and bounded on the west by a line beginning at the boundary between Texas and Louisiana (midpoint between the gulfward extension of the Sabine Pass jetties) to 29°32.1' N. latitude, 93°47.7' W. longitude, thence directly south to its intersection with the outer limit of the EEZ.

* * * * *

Recreational fishing (fishery) means fishing or fishing activities which result in the harvest of fish none of which (or part thereof) is sold, traded, or bartered.

* * * * *

Secondary areas means (a) the EEZ seaward of the fishery jurisdiction of Florida in the Gulf of Mexico and (b) the EEZ seaward of the fishery jurisdiction of Texas, with boundaries consistent with the immediately adjacent boundaries described for the primary area. For the purposes of this definition, the eastern boundary of the EEZ in the Gulf of Mexico is a line from the outer limit of the EEZ north along 83°00' W. longitude to the outer limit of the waters of Florida off the Dry Tortugas Islands, thence in a clockwise direction around that outer limit to 24°35' N. latitude, thence east along 24°35' N. latitude to the outer limit of the waters of Florida off the Marquesas Keys.

* * * * *

Total allowable catch (TAC) means the maximum permissible annual harvest from the primary area set from within or below the ABC range after consideration of biological, economic, and social factors and the risk of inducing recruitment overfishing associated with that harvest level.

* * * * *

4. In § 653.3, paragraph (b) is revised and a new paragraph (d) is added to read as follows:

§ 653.3 Relation to other laws.

* * * * *

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a State/Federal agreement for data collection and a tripartite agreement among the State, the U.S. Coast Guard, and the Secretary for enforcement.

* * * * *

(d) A person landing red drum from the recreational fishery or from a commercial fishery, other than a directed red drum fishery, must comply with the landing and possession laws of the State where landed.

5. In § 653.4, paragraph (a) is revised to read as follows:

§ 653.4 Permits and fees.

(a) *Applicability.* A permit is required for a commercial vessel fishing in the EEZ, other than a shrimp fishing vessel, to possess or land red drum.

* * * * *

6. In § 653.5, paragraph (b), introductory text, is revised to read as follows:

§ 653.5 Reporting requirements.

* * * * *

(b) *Other commercial fisheries.* An owner or operator of a commercial fishing vessel, other than a shrimp fishing vessel, which possesses or lands red drum as incidental catch, if selected by the Center Director, must

* * * * *

7. In § 653.7, the word "or" at the end of paragraph (a)(15) is removed; the period at the end of paragraph (a)(16) is removed and a semi-colon is added in its place; paragraphs (a)(1), (7), and (8) are revised; and new paragraphs (a)(17) through (22) are added to read as follows:

§ 653.7 Prohibitions.

(a) * * *

(1) Retain or land red drum in a commercial fishery, other than the shrimp fishery, without a permit as required by § 653.4(a).

* * * * *

(7) Retain on board a vessel or possess red drum in or from the secondary areas as specified in § 653.22(a);

(8) Retain on board a vessel or possess red drum in or from the primary area under a quota specified in § 653.21(b) or (c) after such quota is reached and notice is published in accordance with § 653.23(a);

* * * * *

(17) Conduct a directed commercial red drum fishery in the primary area as specified in § 653.22(b)(1) and (2);

(18) Retain on board a vessel or possess red drum in or from the primary area in a recreational fishery in excess of the bag limit specified in § 653.22(b)(3) or as modified in accordance with § 653.23(b);

(19) Sell, barter, or trade red drum taken under the bag limit specified in § 653.22(b)(3)

(20) Conduct fishing operations in a way that causes wastage of red drum as specified in § 653.22(c);

(21) Transfer at sea red drum harvested from or possessed in the EEZ from fishing vessel to any other vessel as specified in § 653.22(d); or

(22) Possess in the EEZ or land red drum from the primary area without the head and fins intact as required by § 653.22(e).

8. Section § 653.21 is revised to read as follows:

§ 653.21 Quotas.

(a) The total allowable harvest of red drum for the directed commercial red drum fishery in the primary area is zero for each fishing season.

(b) The total allowable harvest of red drum taken as incidental catch in other commercial fisheries, excluding the shrimp fishery, in the primary area is 100,000 pounds for each fishing season.

(c) The total allowable harvest of red drum taken as incidental catch in the commercial shrimp fishery in the primary area is 200,000 pounds for each fishing season.

(d) The total allowable harvest of red drum for recreational fishing in the primary area is 325,000 pounds for each fishing season.

(e) The TAC in the primary area is 625,000 pounds for each fishing season.

9. Section § 653.22 is revised to read as follows:

§ 653.22 Harvest and landing limitations.

(a) *Harvest from secondary areas.* No red drum may be harvested or possessed in or from the secondary areas. Red drum caught in the secondary areas must be released immediately with a minimum of harm.

(b) *Harvest from the primary area—*

(1) *Directed commercial red drum fishery.* No red drum may be harvested from the primary area in the directed commercial red drum fishery.

(2) *Incidental catch in other commercial fisheries.* A commercial vessel which fishes in the primary area and which takes red drum as incidental catch may not land red drum in excess of five percent of the total weight of all other fish and/or shrimp on board. A commercial fishing vessel which lands red drum in excess of this limitation will be considered as conducting a directed commercial red drum fishery. Any commercial vessel which takes red drum, other than a shrimp fishing vessel, must have a permit as required by § 653.4(a).

(3) *Recreational bag limit.* A person in a recreational fishery may not possess red drum in or from the primary area in excess of one red drum per person per trip. Red drum in excess of this bag limit must be released immediately with a minimum of harm. Red drum harvested under the bag limit may not be sold.

(c) *Wastage prohibited.* A person or vessel must conduct fishing operations in a way that minimizes wastage of red drum.

(d) *Transfer at sea.* Red drum harvested from or possessed in the EEZ may not be transferred from a fishing vessel to any other vessel.

(e) *Head and fins intact.* Red drum possessed in the EEZ, or harvested from the primary area and landed, must have head and fins intact.

10. Section § 653.23 is revised to read as follows:

§ 653.23 Closures.

(a) The Secretary, by publication of a notice in the **Federal Register**, will prohibit the retention on board or landing of red drum taken as incidental catch in a commercial fishery in or from the primary area under a quota specified in § 653.2 (b) or (c) for the remainder of a fishing season when the respective quota for that fishery is reached or is projected to be reached.

(b) The Secretary, by publication of a notice in the **Federal Register**, will set the recreational bag limit specified in § 653.22(b)(3) at zero and prohibit further retention on board or landing of red drum in the recreational fishery in or from the primary area for the remainder of a fishing season when the quota specified in § 653.21(d) is reached or is projected to be reached.

11. Section 653.24 is revised to read as follows:

§ 653.24 Allowable catch and allocation procedures.

(a) Prior to October 1, each year, the Center Director will

(1) Update the stock assessment for red drum;

(2) Reassess the MSY level;

(3) Specify the best estimate of the standing stock and its age composition;

(4) Reexamine and specify the level of offshore standing stock necessary to

optimize larval recruitment to the inshore fishery;

(5) Specify the geographical variations in stock abundance, mortality, juvenile escapement, and recruitment;

(6) Summarize current and historical information on migratory movements of the stock; and

(7) Analyze social and economic data available in the fishery.

(b) The Council will appoint a scientific assessment group that will review the Center Director's reports, current harvest statistics, and economic, social, and other relevant data and will prepare a written assessment report to the Council specifying a range of ABC for the primary area. The report will

(1) Set forth a risk analysis showing the probabilities of adversely impacting the spawning stock biomass (SSB) through fishing at each level of ABC and the economic and social impacts of those levels;

(2) Include consideration of the fishing mortality rates relative to F_{MSY} and $F_{0.1}$, abundance relative to optimum SSB, trends in recruitment, and whether overfishing is occurring for the stock as a whole or upon a portion of the stock in any geographical area;

(3) In specifying ABC, separately identify the quantity of the offshore population, in excess of the SSB necessary to optimize recruitment, that may be harvested; and

(4) When requested by the Council, include information on bag limits, size limits, specific gear harvest limits, and other restrictions required to prevent a user group from exceeding its allocation or quota under a TAC specified by the Council, along with the economic and social consequences of such restrictions.

(c) The Council will consider the report and recommendations of the scientific assessment group and relevant public comments. A public hearing will be held at the time and place the Council takes action on the report. Other public hearings may be held. The Council may convene its Red Drum Advisory Panel and Scientific and Statistical Committee to provide advice before taking action.

(d) In specifying TAC, the Council will consider the recommendations, comments, and advice provided for in paragraphs (b) and (c) of this section and will set TAC from within or below the ABC range by FMP amendment.

(e) If an offshore population (above annual surplus production) exceeds a SSB necessary to optimize recruitment, the percentage of the excess which may be included in the TAC will be set by the Council periodically but no more frequently than annually.

(f) The Council will make changes in use group allocations for the primary area, if any, by FMP amendment.

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Proposed Rules

Federal Register
Vol. 52, No. 179
Wednesday, September 16, 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 THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 639]

Wild Horse Valley Viticultural Area; California

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area in the mountains between Napa and Solano Counties, California, to be known as Wild Horse Valley. The proposed viticultural area is located just five miles east of the City of Napa. It contains vineyards in both Napa and Solano Counties. The petition was submitted by John Newmeyer of Napa and four other interested persons. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to further specify the origin of wines they offer for sale to the public.

DATE: Written comments must be received by November 2, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC, 20044–0385 (Notice No. 639) Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguised by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area; based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area encompassing a valley near Napa, California, approximately five and one-third miles long and one and two-thirds miles across at its widest point. The total area of the proposed viticultural area is 3,300 acres or 5.16 square miles. Currently there are seventy-three acres of winegrapes in the proposed Wild Horse Valley viticultural area. According to the petitioner, recent studies of other sites in the area indicate the feasibility of more than tripling the number of acres planted to winegrapes, and additional plantings are being considered. There are currently no bonded wineries in the proposed viticultural area, but two small wineries are planned. According to the petitioner, the first winery will begin operation for the crush of 1987 or 1988.

The petitioner claims that because of its proximity to San Francisco Bay and its elevation, the viticultural conditions in Wild Horse Valley are different from grape-growing conditions in other valleys in the eastern coast ranges of Napa County, such as Wooden, Gordon, Pope, Foss and Chiles Valleys, which tend to be more continental in climate, as well as more fertile. The petitioner claims that Wild Horse Valley's soils, climate, and elevations are also different from the nearby Green Valley in Solano County (known as Solano County Green Valley) and the adjacent Coombsville area of Napa Valley. According to the petitioner, the long growing season of the proposed Wild Horse Valley, its rocky soil, and windy conditions produce grapes that are well-suited to winemaking.

Location Compared To American Viticultural Areas

The proposed viticultural area is within the North Coast viticultural area. The proposed area partially overlaps the Napa Valley and Solano County Green Valley viticultural areas. The Suisin Valley viticultural area is approximately 2.5 miles east of the proposed Wild Horse Valley. It is separated from the proposed viticultural area only by the Solano County Green Valley viticultural area.

Evidence of Name

According to the petitioner, the name Wild Horse Valley is well documented. The petitioner provided references to books identifying the area as Wild Horse Valley as early as 1866. According to early accounts, wild horses

roamed the area during that period, thus the intriguing name Wild Horse Valley was coined.

Today, the name Wild Horse Valley is found on U.S.G.S. maps and on Napa County road maps. One of the two roads leading to the valley is named "Wild Horse Valley Road," and a creek flowing from the southeast portion of the valley into Solano County Green Valley, is named "Wild Horse Creek." According to the petitioner, the large, locally known horse ranch and equestrian center, Wild Horse Valley Ranch, located at the north end of the valley, has given the name ample publicity in recent years.

The petitioner claims that the first vineyard used for wine production in Wild Horse Valley was that of Joseph Vorbe who in 1881 had 50 acres. The wine historian, William F. Heintz, published a report entitled, "Wild Horse Valley's Viticultural History." Part of the report includes a transcript of an interview with a long time Napa resident conducted by Mr. Heintz on July 28, 1986. The transcript of the interview was included with the petition. The interview describes the historical use of the name Wild Horse Valley, as well as its viticultural significance.

Evidence of Boundaries

According to the petitioner, the boundaries of the Wild Horse Valley are defined by the natural terrain of the area. This hilly upland valley is rimmed by higher peaks on all sides. In its center are two large man-made lakes which supply water to the City of Vallejo. To the west, south, and southeast, mountainous terrain soon gives way to alluvial plains. To the north and northeast the terrain is ruggedly mountainous.

For ease of definition, the petitioner drew the boundary of the proposed viticultural area with straight lines for the most part, connecting prominent peaks surrounding the valley. According to the petitioner, this approximation is quite accurate, enclosing the area which has been historically known as Wild Horse Valley.

Geographical Evidence

Climate and Elevation

The petitioner claims that the valleys in the coast ranges east of Napa Valley generally tend to have a drier, more continental climate than the Napa Valley floor and vineyard sites in the mountains to the west. Many factors, including distance from sources of marine air, sunny exposure, and heat-absorbing rocky outcroppings, contribute to warmer summertime temperatures. The petitioner believes that because of its location, Wild Horse Valley is an exception to this generalization.

The petitioner states that the area of southern Napa Valley and Wild Horse Valley have lower annual temperatures and smaller annual temperature ranges as compared with the northern Napa Valley and most of the eastern Coast Ranges of Napa County, which have higher annual temperatures and larger annual temperature ranges.

According to the petitioner, Wild Horse Valley's southerly location near San Pablo and Suisun Bays expose it to cool westerly winds blowing in from the ocean and the bay, especially in spring and summer. The petitioner claims that its proximity to the Carquinez Straits and its unprotected position rising out of bayshore flatlands on two sides make Wild Horse Valley an unusually windy location. The California Energy Commission Wind Resource Map (submitted by the petitioner) depicts Wild Horse Valley to be on the edge of a zone where wind speeds average eleven to fourteen miles per hour. According to the petitioner, the effect of its windy location is enhanced by its elevation. Diurnal local winds created by the sun's warming of the ground tend to flow upslope or upcanyon during the day. This air movement combines with the marine breezes blowing in the same direction to make Wild Horse Valley windier than the lower elevation of the Coombsville district of Napa Valley to the west, and the more inland coast range mountains and valleys to the north, and the more sheltered Solano County Green Valley viticultural area. Generally speaking, those surrounding areas have wind speeds averaging less than eleven miles per hour.

The petitioner contends that the proposed viticultural area also enjoys longer hours of sunlight than Coombsville and Green Valley. The petitioner says that summer fogs that blanket the lower elevations in the evening and early morning often stop below the altitude of Wild Horse Valley. Early mornings in the Wild Horse Valley are clear and bright. Around nine in the morning the fog will sometimes rise briefly into the valley as it warms and dissipates. In spite of the longer period of daylight, Wild Horse Valley's customary cool winds keep afternoon temperatures low. A thermograph study done in 1965 at the ranch of James Birkmyer in the north end of the valley indicated that this site has a Region I climate (less than 2,500 degree days) as classified by the University of California at Davis system of heat summation.

According to the petitioner, the experience of growers in Wild Horse Valley confirms that the growing season climate is cool. James Birkmyer's twenty-two year old plot of Johannisberg Riesling on his ranch in the proposed viticultural area consistently ripens late with high acid levels at the end of September or beginning of October. The petitioner claims the climate of the proposed Wild Horse Valley viticultural area and the overlapping Solano County Green Valley are different. Available thermograph studies (1973–74) of Solano County Green Valley, places the climate in mid-Region III. In contrast, available thermograph data (1965), places Wild Horse Valley's climate in Region I. Solano County Green Valley is more sheltered and on the average, warmer than Wild Horse Valley. This is in part due to the simple difference in elevation. When air rises, in general it expands and cools at the rate of about five and one-half degrees Fahrenheit per thousand feet.

The elevation of the proposed viticultural area is generally higher than the surrounding valleys. Wild Horse Valley's elevation ranges from 1,000 to 2,000 feet above sea level.

Many areas of Solano County Green Valley have much lower elevations than the proposed area ranging from 400 to 800 feet above sea level. Because of the difference in elevation, fog is more prevalent in Solano County Green Valley than in Wild Horse Valley. The average annual rainfall in Solano County Green Valley is twenty to twenty-five inches per year. Over the last twenty years the rainfall in Wild Horse Valley has averaged thirty-two inches per year.

Soils

The soils in Wild Horse Valley also set it apart from neighboring vineyard districts. The soils in Wild Horse Valley are primarily shallow, well-drained, sloping stony loams of the Hambright-Toomes association found only in mountainous uplands. Specific soil types include Hambright, Toomes, Gilroy, Coombs, Sobrante and Trimmer loams. Vineyards in Wild Horse Valley have been established on Hambright and Trimmer soils. The petitioner's reseach has established that Wild Horse Valley has the only vineyard planted on Trimmer soil in either Napa or Solano Counties. The soil in the overlapping Solano County Green Valley is primarily Conejo clay loam, a nearly level, deep, fine-textured alluvial soil found only at low elevations. Soil in the nearby Coombsville district of Napa Valley

immediately west of Wild Horse Valley consists of Coombs loam with areas of Kidd, Haire, Forward, and Sobrante soils. The soils found in other Napa County grape-growing areas to the north and east are primarily Yolo loam, Pleasanton loam, Diablo clay and Millsholm loam in the Cappel Valley. In Foss Valley they consist of Maxwell clay, Bale clay loam and Aiken loam. In Gordon Valley they are mostly Bale clay loam, Cole silt loam, Yolo loam and Bressa-Dibble complex. In the Wooden Valley they mostly are Bale clay loam, Sobrante loam, Cole silt loam, Hair clay loam, Diablo clay, Clear Lake clay, Bressa-Dibble complex. In Chiles Valley they are primarily Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehema silt loam, Maxwell clay, and Bressa-Dibble complex. In Pope Valley the soils consist primarily of Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehema silt loam, Maxwell clay and Bressa-Dibble complex.

Conclusion

The petitioner believes that the Wild Horse Valley is a unique and distinctive grape-growing area. Historically considered a "tributary" of the Napa Valley, it has again earned a reputation in modern times for producing quality winegrapes. However, this single geographical area has lost its historic identity, because it is split by the political boundary between two counties (Napa and Solano) into two separate viticultural areas. The petitioner believes Wild Horse Valley's establishment as an American viticultural area and subsequent use as an appellation on wine labels will enable this small area to preserve its heritage as an established grape-growing and wine producing region. Based on the petitioner's evidence provided in this notice, it is the petitioner's opinion that the proposed Wild Horse Valley viticultural area defines a region with unique climate and growing conditions different from the surrounding areas.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected: (1) To have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 34, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirements to collect information are proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the viticultural area named "Wild Horse Valley." However, comments concerning other possible boundaries or names for this viticultural area will be given full consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Viticultural areas, Consumer protection, Wine.

Authority and Issuance

27 CFR Part 9—*American viticultural areas*, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.124 Wild Horse Valley.

Par. 3. Subpart C is amended by adding § 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.124 Wild Horse Valley.

(a) *Name.* The name of the viticultural area described in this section is "Wild Horse Valley."

(b) *Approved map.* The appropriate map for determining the boundaries of the "Wild Horse Valley" viticultural area is one U.S.G.S. Quadrangle (7.5 Minute Series) map. It is titled Mt. George, California (1951), photorevised 1968.

(c) *Boundaries.* The boundaries of the proposed Wild Horse Valley viticultural area (in Napa and Solano Counties) are as follows:

(1) The beginning point is on the section line boundary between section 33, Range 3 West, Township 6 North and section 4, Range 3 West, Township 5 North, Mount Diablo Range and Meridian, marked with an elevation of 1,731 feet, which is a northwest corner in the boundary between Napa and Solano Counties.

(2) From the beginning point, the boundary runs in a north-northeasterly direction approximately .9 mile to the

summit of an unnamed hill having a marked elevation of 1,804 feet.

(3) Then northeasterly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 1,824 feet;

(4) Then south-southeasterly approximately .6 mile to the summit of an unnamed hill having a marked elevation of 1,866 feet;

(5) Then south-southeasterly approximately .5 mile to the summit of an unnamed hill having a marked elevation of 2,062 feet;

(6) Then southerly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 2,137 feet;

(7) Then south-southeasterly approximately .4 mile to the summit of an unnamed hill having a marked elevation of 1,894 feet;

(8) Then southerly approximately 2.3 miles to the midpoint of the section line boundary between sections 15 and 22, Township 5 North, Range 3 West, Mount Diablo Range and Meridian;

(9) Then southwesterly approximately 1.3 miles to the summit of an unnamed hill having a marked elevation of 1,593 feet;

(10) Then west-northwesterly approximately 1.2 miles to the summit of an unnamed hill, on the Napa/Solano County boundary, having a marked elevation of 1,686 feet;

(11) Then north-northeasterly approximately 1.5 miles to the summit of an unnamed hill having a marked elevation of 1,351 feet;

(12) Then north-northeasterly approximately 1.2 miles to the summit of an unnamed hill having a marked elevation of 1,480 feet; and

(13) Then north-northwesterly approximately 1.0 mile to the point of beginning.

Approved: August 31, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-21141 Filed 9-15-87; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 641]

Cayuga Lake Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in New York State, within the counties of Seneca, Tompkins, and Cayuga, to be known as "Cayuga Lake." This proposal is the result of a petition submitted by Douglas and Susanna Knapp (Knapp Farms, Inc.) and Robert Plane (Plane's Cayuga Vineyard, Inc.), whose wineries are located within the proposed area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they purchase.

DATE: Written comments must be received on or before October 16, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attn: Notice No. 641.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as an appellation of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area in New York State, surrounding and adjacent to Cayuga Lake, within the counties of Seneca, Tompkins, and Cayuga, to be known as "Cayuga Lake." The proposed area, located north of the city of Ithaca, between Seneca Lake and Owasco Lake, includes eight bonded wineries and 18 vineyards, with approximately 460 acres of grapes. Further, the proposed area is situated within the approved Finger Lakes viticultural area.

According to the petitioners, historical and current evidence regarding the name as well as the boundaries of the proposed area include the following:

(a) The body of water called Cayuga Lake received its name from the Cayuga Indians, who originally inhabited the region bordering the lake.

(b) The name figures prominently in identifying the area in the diaries of General Sullivan during his campaign to open land in upstate New York to settlers in the 1700's.

(c) Cayuga Lake is the name used by the first permanent settlers in Seneca County in 1789, and has remained the same to the present time.

(d) The large state park located in the northern section of the proposed viticultural area is named Cayuga Lake State Park.

(e) State Route 89, which runs the length of the proposed viticultural area, is also known as Cayuga Lake Boulevard.

Geographical features of the proposed Cayuga Lake viticultural area include the following:

(a) Bedrock of different kinds is the main source of soil material in New York State. Within the proposed Cayuga Lake viticultural area, the bedrock is predominantly shale. To the north of the proposed area, it is alternating limestone and slate formations, and to the south, it is interbedded sandstone and shale.

(b) The maximum elevation within the proposed area is no more than 800 feet above the surface of Cayuga Lake. The elevation of the areas to the east, west,

and south of the proposed area, however, is 1,000–2,000 feet.

(c) The Cayuga Lake basin is one of two major land formations in the Finger Lakes that resulted from glacial activity in the Pleistocene epoch. As consistently stated in O.D. von Engeln's *The Finger Lakes Region: Its Origin and Nature*, The Cayuga Lake basin is separated from the second major basin, Seneca Lake (west of Cayuga Lake), by both topography and soil type.

(d) The micro-climate of the proposed viticultural area is created by both Cayuga Lake and its adjacent hills. This is discussed in an article that appeared in the July 1986 issue of *Geographical Review*, entitled "Vines, Wines, and Regional Identity in the Finger Lakes Region." As mentioned in the article, due to the cold air drainage down the valley slopes in summer, and the release of heat stored in Cayuga Lake, the risk of an early frost is reduced. This results in an extended growing season on the slopes, from an average of 145 days for much of the Finger Lakes region, to between 165 and 170 days for the proposed viticultural area.

(e) The moderating effects of Cayuga Lake and its adjacent hills have resulted in the proposed viticultural area having an extended heat summation period, from 2,200–2,300 degree days for much of the Finger Lakes area, to 2,400–2,500 degree days for the proposed viticultrual area.

Boundaries of the Area

The boundaries of the proposed Cayuga Lake viticultural area may be found on one United States Geological Survey (U.S.G.S.) map (Elmira, New York; Pennsylvania). The boundaries, as referred to in the petition, are described in § 9.123.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; nor (2) to impose, nor otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burden on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provision of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons concerning this proposed viticultural area. This document proposes possible boundaries for the Cayuga Lake viticultural area. However, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, and Wine.

Authority and Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.123 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.123 Cayuga Lake.

Par. 3. Subpart C of 27 CFR Part 9 is amended by adding § 9.123 to read as follows:

§ 9.123 Cayuga Lake.

(a) *Name.* The name of the viticultural area described in this section is "Cayuga Lake."

(b) *Approved map.* The appropriate map for determining the boundaries of the Cayuga Lake viticultural area is one U.S.G.S. map scaled 1:250,000, titled "Elmira, New York; Pennsylvania," 1962 (revised 1978).

(c) *Boundaries.* The proposed Cayuga Lake viticultural area is located within the counties of Seneca, Tompkins, and Cayuga, in the State of New York, within the Finger Lakes viticultural area. The exact boundaries of the proposed area, based on landmarks and points of reference on the approved map, are as follows:

(1) Commencing at the intersection of State Route 90 with State Route 5 in Cayuga County, north of Cayuga Lake.

(2) Then south along State Route 90 to a point approximately one mile past the intersection of State Route 90 with State Route 326.

(3) Then south along the primary, all-weather, hard surface road, approximately ¾ mile, until it becomes State Route 90 again at Union Springs.

(4) Then south/southeast along State Route 90 until it intersects the light-duty, all-weather, hard or improved surface

road, approximately 1.5 miles west of King Ferry.

(5) Then south along another light-duty, all-weather, hard or improved surface road, approximately 4 miles, until it intersects State Route 34B, just south of Lake Ridge.

(6) Then follow State Route 34B in a generally southeast direction until it intersects State Route 34, at South Lansing.

(7) Then south along State Route 34, until it meets State Route 13 in Ithaca.

(8) Then southwest along State Routes 34/13, approximately 1.5 miles, until it intersects with State Route 79, in Ithaca.

(9) Then west along State Route 79, approximately ½ mile, until it intersects State Route 96.

(10) Then along State Route 96, in a generally northwest direction, until it intersects State Routes 414 and 96A in Ovid.

(11) Then north along State Routes 96/414, until they divide, approximately 2.5 miles north of Ovid.

(12) Then along State Route 414, in a generally northeast direction, until it meets U.S. Route 20 in the town of Seneca Falls.

(13) Then along U.S. Route 20, in a northeast direction, until it intersects State Routes 318, 89, and 5.

(14) Then along U.S. Route 20/State Route 5, in a northeast direction, to the beginning point, at the intersection with State Route 90.

Approved: September 8, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-21277 Filed 9-15-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Abandoned Mine Land Reclamation Program Amendment; Alabama

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: On June 15, 1987, the State of Alabama to OSMRE a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Alabama Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment pertains to minor adjustments in the Alabama policies and procedures regarding land acquisition, management, and disposal; reclamation on private land (liens and appraisals); and right-of-entry.

This notice sets forth the times and locations that the Alabama Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedure that will be followed regarding a public hearing.

DATES: OSMRE will accept written comments on the proposed rule until 4:00 p.m. on October 16, 1987. If requested, a public hearing on the proposed amendment is scheduled for 7:00 p.m. on October 13, 1987. Requests to present oral or written testimony at the hearing must be received before the close of business on October 1, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed to: Robert A. Penn, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, Birmingham, Alabama 35209.

Copies of the Alabama Plan, the proposed changes to the plan, and the administrative record of the Alabama Plan are available for public review and copying at the OSMRE Offices and the State Abandoned Mine Lands Office listed below, during normal business hours Monday through Friday excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Birmingham Field Office.

Alabama Department of Industrial Relations, Abandoned Mine Lands Program, 649 Monroe Street, Montgomery, Alabama 36130; Telephone: (205) 731-0953

OSMRE's field office processing the amendment: Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, Room 302, Birmingham, Alabama 35209; Telephone (205) 731-0953 Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, 1100 L Street NW., Room 5131, Washington, DC 20240.

If a public hearing is held, its location will be at the Birmingham Field Office listed above, on the date listed under "DATES."

FOR FURTHER INFORMATION CONTACT: Jean W. O'Dell, Acting AML Supervisor, Birmingham Field Office, (205) 731-0953.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Title IV of the SMCRA of 1977, Pub. L. 95-87, 30 U.S.C. 1202 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1987, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Alabama Plan on May 20, 1982. Information pertinent to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the May 20, 1982 **Federal Register** (47 FR 22062).

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.13 in approving or disapproving an amendment or revision.

II. Discussion of the Proposed Amendment

By letter dated June 15, 1987, Alabama submitted a reclamation plan amendment to OSMRE (Administrative Record No. AL-423). The proposed amendment consists of revised narratives to replace three sections of the approved Alabama Plan as provided for by 30 CFR 884.13. Minor editorial changes were made in the three sections to bring the Alabama Plan into line with OSMRE organizational changes. Specifically, the following areas of the plan are being revised.

1. *Land Acquisition, Management, and Disposal (30 CFR Part 879):* Alabama has submitted revised procedures and forms for conducting appraisals on lands to be acquired by the State under the AMLR Program. Other revised areas include tax encumbrances and final processing during release of mortgages, deeds, and judgments.

2. *Reclamation on private lands (30 CFR Part 882):* Alabama has submitted revised procedures and forms for

conducting appraisals on eligible abandoned mine lands (AML) and for considering lien potential, satisfaction, and release for properties being reclaimed under the AMLR program.

3. *Rights of entry (30 CFR Part 877).* Alabama is is proposing to make minor changes to the procedures and forms utilized to obtain voluntary and nonconsensual rights of entry on AML lands.

OSMRE is seeking comments on the adquacy of the proposed Alabama amendment as set forth in 30 CFR 884.15. If approved, the amendment would become part of the Alabama Plan.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by the State of Alabama satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Alabama Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact Robert A. Penn at the Birmingham Field Office listed under "**ADDRESSES**" by the close of business on October 1, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representative to discuss the proposed amendment may request a meeting at the Brimingham Field Office by contacting Robert A. Penn at the address listed under "**ADDRESSES.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* Approval of State AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 2, p. B–1.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On October 4, 1985, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior had determined that this rule would 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.*). No burden would be imposed upon entities operating in compliance with the Act.

3. *Federal Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Ronald C. Recker,

Acting Assistant Director Eastern Field Operations.

Date: September 1, 1987.

[FR Doc. 87–21293 Filed 9–15–87; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 916

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of amendments submitted by the State of Kansas to amend its permanent regulatory program (hereinafter referred to as the Kansas Program) under the Surface Mining Control and Relamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kansas regulatory program concerning the applicability of SMCRA to the extraction of coal incidental to the extraction of other minerals and the establishment of a schedule for contemporaneous reclamation.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and information pertinent to the public hearing.

DATES: Comments not received on or before 4:00 p.m. October 16, 1987, will not necessarily be considered. If requested, a public hearing on the proposed modifications will be held on October 13, 1987, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES**"

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106.

If a public hearing is held, its location will be at: The Holiday Inn, 422 Monroe, Pittsburg, Kansas 65701.

See "**SUPPLEMENTARY INFORMATION**" for addresses where copies of the Kansas program amendment and administrative record on the Kansas program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Kansas City Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas

City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Kansas program amendment, the Kansas program, and the administrative record on the Kansas program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240; Telephone (202) 343-5447.

Kansas Mined Land Conservation and Reclamation Board, 107 W. 11th Street, P.O. Box 1418, Pittsburgh, Kansas 66762; Telephone: (316) 231-8540.

Written Comments

Written comments should be specific, pertain only to those issues proposed in this rulemaking, and include explanations in support of the comment recommedations. Comments received after the time indicated under "DATES" or at locations other than Kansas City, Missouri, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business October 1, 1987. If no one requests to comment at at public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of a hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "**ADDRESSES**" by contracting the person listed under "**FOR FURTHER INFORMATION CONTACT**".

All such meetings are open to the public, and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On February 26, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Kansas. On January 21, 1981, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Kansas program (46 FR 5892).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, and the disposition of comments, and explanations of the condition of approval of the Kansas program can be found in the January 21, 1981, **Federal Register**. Subsequent actions concerning the Kansas program are identified in 30 CFR 916.15 and 916.16.

Proposed Amendment

On August 5, 1987, the State of Kansas submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consists of proposed modifications to Kansas' regulations concerning the applicability of SMCRA to the extraction of coal incidental to the extraction of other minerals and the establishment of a schedule for contemporaneous reclamation.

The proposed changes are summarized briefly below.

Incidental Extraction of Coal

1. Kansas proposes to revise its statute at Kansas Statutes Annotated (K.S.A.) 49-431 to include the activity of incidential extraction of coal as not being applicable to the Kansas Mined-Land Conservation and Reclamation Act. Specifically it defines this activity as "the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purpose of commercial use or sale".

Schedule of Contemporaneous Reclamation

2. Kansas proposes to amend its regulations at Kansas Administrative Regulations (K.A.R.) 47-9-1, incorporating by reference 30 CFR 816.100 to include the language "The regulatory authority may establish schedules that define contemporaneous reclamation". This language parallels the Federal regulations and had been inadvertently omitted from a previous regulatory revision.

3. Kansas proposes to amend its regulations at K.A.R. 47-9-1, incorporating by reference 30 CFR 816.102 to include a definition of backfilling and grading. This action places into the regulations the definitions that had been the formal policy of the Kansas Mined-Land Conservation and Reclamation Board (MLCRB). The definition reads "Absent a regulatory authority approved schedule, backfilling and grading will be completed within 180 days following coal removal and shall not be more than four (4) spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge".

4. Kansas proposes to amend its regulations at K.A.R. 47-9-1, incorporating by reference, 30 CFR 816.22 to include a definition of topsoil redistribution. This action places into the regulations the definition that had been the formal policy of the MLCRB. The definition reads "Absent a regulatory authority approved schedule for soil material distribution, topsoil materials removed under paragraph (1) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that—".

Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 28, 1987.

Raymond L. Lowrie,

Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-21291 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE has received a proposed amendment and is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of new and revised regulations designed to implement Kentucky Revised Statute (KRS) 350.075, the remining statutes enacted by the 1986 Kentucky General Assembly as Senate Bill No. 374.

This notice sets forth the times and location that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments relating to Kentucky's proposed amendment not received on or before 4:00 p.m. on October 16, 1987, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendment will be held upon request at 10:00 a.m. on October 13, 1987, at the location shown below under **"ADDRESSES."** Any person interested in making an oral or written presentation at the public hearing should contact Mr. W. Hord Tipton at the Lexington Field Office by the close of business October 1, 1987.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the proposed amendment, the Kentucky program, the Administrative Record of the Kentucky program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE Lexington Field Office and the office of the Department for Surface Mining Reclamation and Enforcement listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street, NW., Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828

Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982, **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed program submission, as well as he Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, **Federal Register** notice. Subsequent action concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Submission of Amendment

On August 4, 1987, (Administrative Record No. KY-751), Kentucky resubmitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. The revisions are intended to implement Kentucky Senate Bill No. 374 that was approved by the Director, OSMRE, on July 13, 1986 (51 FR 26002). The proposed rules are intended to address the requirement at 30 CFR 917.16 (c)(2) which states tht Kentucky is required, prior to implementation of Senate Bill No. 374, to submit to the Director proposed regulations to implement the bill and to receive the Director's approval of the regulations. On July 29, 1986, Kentucky submitted regulations to implement Senate Bill No. 374 (Administrative Record No. 717) and on November 26, 1986, OSMRE announced that the regulations to implement Senate Bill No. 374 were withdrawn by Kentucky (51 FR 42267).

The revisions modify sections of the Kentucky Administrative Regulations (KAR) at 405 KAR 8:060, 405 Kar 20:090, 405 KAR 8:010, 405 KAR 12:020, and 405 KAR 16:020, and are summarized briefly below.

1. Kentucky proposes to add a new regulation 405 KAR 8:060, to set forth permit application requirements for special reclamation of abandoned mine lands. The rule would include sections for applicability (all applications for permits to conduct special reclamation of abandoned mine lands); definitions;

general provisions; legal financial and compliance information; environmental resources information; maps, drawings and cross-sections; mining and reclamation plan; and performance bond. A special reclamation of abandoned mine lands permit is for remining of previously mined lands and secondary coal recovery operations.

2. Kentucky proposes to add a new regulation, 405 KAR 20:090, to establish performance standards to apply to a special reclamation of abandoned mine lands permit. The applicability section of the rule proposes that requirements of 405 KAR Chapters 16, 18 and 20 (the approved program performance standards for surface mines, underground mines and special categories) would not apply to such lands except as specifically stated in the rule. The rule would establish separate hydrologic protection requirements, requirements for backfilling and grading, and revegetation standards for a special reclamation of abandoned mine lands permit.

3. Kentucky proposes to modify 405 KAR 8:010, section 4, to: (1) require an inspector from the Division of Abandoned Lands and an inspector from the Division of Field Services to make a written determination that the proposed site meets special remining permit conditions, and, (2) assure that preliminary applications will contain sufficient information to qualify the lands. Kentucky modified 405 KAR 8:010, section 5(1)(c) to include reference to 405 KAR 8:060 special reclamation of abandoned mine lands permit.

4. Kentucky proposes to add 405 KAR 12:020, section 3(4)(d), to require enforcement of order for cessation and immediate compliance on a special reclamation of abandoned mine lands permit to effect only that permit.

5. Kentucky proposes to modify 405 KAR 16:020, section 2(7) to permit the Cabinet to waive the time criteria for backfilling and grading of secondary coal recovery operations.

The Director is seeking public comment on the adequacy of the proposed program amendment. Comments should specifically address the issues of whether the proposed amendment is in accordance with SMCRA and no less effective than its implementing regulations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the admendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office, Lexington, Kentucky, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on October 1, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public, and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary had determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE in exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: August 28, 1987.

[FR Doc. 87-21292 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD8-87-09]

Inland Waterways Navigation Regulations—Lower Mississippi River Between Miles 310.0 AHP and Mile 340.0 AHP

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is considering amending its regulations, Title 33 Part 162.80(a) by extending the lower limit of the regulated area from mile 314.5, AHP to mile 310.0, AHP. The Old River Control Structure and the New Auxiliary Old River Control Structure control the distribution of water between the Mississippi River, Red River, and the Atchafalaya River.

Recent completion of the New Auxiliary Control Structure necessitates extending the area where vessel mooring is prohibited. The extension of the lower limit will assist in protecting the structures, thus preventing interruption of flow control with serious downstream ramifications for flood control, navigation and municipal/industrial water supplies.

DATE: Comments must be received on or before November 2, 1987.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Captain of the Port, 4640 Urquhart Street, New Orleans, LA 70117–4698. The comments and other materials referenced in this notice will be available for inspection and copying at Captain of the Port Office, Room A–305. Normal office hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG Patrick J. Galvin, Waterway Safety Officer, C/O U.S. Coast Guard Captain of the Port, 4640 Urquhart Street, New Orleans, LA 70117–4698, Telephone: (504) 589–7127.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD8–87–09, the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Patrick J. Galvin, Project Officer for the Captain of the Port, and LCDR James J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The Old River Control Structure located at Mile 314.5 RDB, AHP, LMR, completed in October 1983 was built to control the distribution of water between the Mississippi River and the Atchafalaya River. The New Auxiliary Old River Control Structure located at Mile 311.2 RDB, AHP, LMR, completed March 1987, was built to reduce the flow through the Old River Structure thereby reducing the undermining of the Old River Control Structure. Completion of the New Auxiliary Control Structure necessitates extending the area where vessel mooring is prohibited. The regulation will assist in protecting the structures, thus preventing interruption of flow control with serious downstream ramifications for flood control, navigation and municipal/industrial water supplies.

Economic Assessment and Certification:

These proposed regulations are considered to be non major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The only affect of the proposed regulation is to restrict vessels from mooring in an area upriver from The Old River Control Structure and the New Old River Auxiliary Control Structure. This will not impede normal navigation.

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

List of Subjects in 33 CFR Part 162

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

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 162 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 USC 1225 and 1231; 50 USC 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 162.80(a) is revised to read as follows:

§ 162.80 Mississippi River below mouth of Ohio River, including South and Southwest Passes.

(a) *Mooring on Mississippi River between miles 310.0 AHP and 340.0 AHP.* (1) No vessel or craft shall moor along either bank of the Mississippi River between mile 310.0 AHP and Mile 340.0 AHP except in case of an emergency, pursuant to an approved navigation permit, or as authorized by the District Commander. Vessels may be moored any place outside the navigation channel in this reach in case of an emergency and then for only the minimum time required to terminate the emergency. When so moored, all vessels shall be securely tied with bow and stern lines of sufficient strength and fastenings to withstand currents, winds, wave action, suction from passing vessels or any other forces which might cause the vessels to break their moorings. When vessels are so moored, a guard shall be on board at all times to insure that proper signals are displayed and that the vessels are securely and adequately moored.

(2) Vessels may be moored any time at facilities constructed in accordance with an approved navigation permit or as authorized by the District Commander. When so moored, each vessel shall have sufficient fastenings to prevent the vessels from breaking loose by wind, current, wave action, suction from passing vessels or any other forces which might cause the vessels to break their mooring. Number of vessels in one fleet and the width of the fleet of vessels tied abreast shall not extend into the fairway or be greater than allowed under the permit.

(3) Mariners should report immediately by radio or fastest available means to the lockmaster at Old River Lock or to any Government patrol or survey boat in the vicinity any emergency mooring or vessels drifting uncontrolled within the area described in paragraph (a)(1) of this section. It is the responsibility and duty of the master of a towing vessel releasing or mooring a vessel in this reach of the Mississippi River to report such action immediately.

* * * * *

Dated: July 28, 1987.

J.P. Wysocki,

Commander, U.S. Coast Guard, Alternate Captain of the Port, New Orleans, LA.

[FR Doc. 87–21100 Filed 9–15–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: This document presents a proposed rule partially implementing section 103(m) of Pub. L. 99–662, which directs the Secretary of the Army to reduce the non-Federal cost-share of flood control and agricultural water supply projects under an "ability to pay" determination. This proposed rule applies only to flood control projects. Agricultural water supply projects will be covered by other guidelines which will be published in the future.

The ability to pay calculation is a two step procedure. In step one, an alternative level of cost-sharing is determined by comparing project flood control benefits to project flood control costs. It is assumed that even the poorest communities and states should have the ability to afford a cost-share equal to one fourth of the benefit/cost ratio, when expressed as a percentage. If this calculation yields an alternative non-Federal cost-share that exceeds the normal share (as defined in section 103), the Non-Federal interest will be required to provide the normal share.

If the benefits-based share alternative is less than the normal share, the project sponsor may be eligible to contribute the amount required by the lower share, or to provide a share that is between the two values. Eligibility will be determined by a formula that uses per capita personal income of the state(s) and county(ies) in which the project is located. If the state and county per capita income values are low enough, the project will be eligible for the full reduction. Intermediate values of state and county per capita income yield a partial reduction from the normal cost-share to the benefits-based alternative. High values of state and county income result in no reduction from the normal share.

The proposed rule also covers other subjects which are relevant to the ability to pay test. These details are discussed in the supplementary information that follows.

DATE: Before adopting the proposed rule as a final rule, the Corps of Engineers will give consideration to any written comments timely submitted. Written comments must be received by December 15, 1987.

ADDRESS: Send comments to HQUSACE, Director of Civil Works, ATTN: CECW–RP, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Dr. Robert N. Stearns, (202) 272–0120.

SUPPLEMENTARY INFORMATION:

Background

The language of section 103(m) is broad: "Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary." There is no definite Congressional direction on how the Secretary is to proceed.

The Report of the Senate Committee on Environment and Public Works (Senate Report 99–126, Aug. 1, 1985) briefly discusses section 103(m). The first reference (p. 6) gives examples of the kinds of factors which should be included in the ability to pay criteria; income in relation to need, unemployment, and the sponsor's ability to borrow funds. The second reference (p. 69) stresses that beneficial projects should not be rejected simply because non-Federal interests lack the necessary resources, but points out that since the normal cost-sharing provisions under section 103 should not prove burdensome, ability to pay determinations reducing the non-Federal share are quite unlikely.

The debate over section 103(m) provides some insight as to Congressional intent. Senator Moynihan, on March 4, 1986 stated that floods could hit and devastate communities "which are small and could not possibly themselves take care of the cost sharing that is provided under the basic schedule." (pp. S2838–S2839) Senator Pryor on March 26, 1986, expressed his concern that "in the rural areas, there are fewer benefited parties to make up the local sponsor group, and the amount they would have to tax themselves to pay 25 to 35 percent of construction costs are onerous." (p. S3401) The debate also shows that there is no clear consensus on precisley how the section is to operate. Congressman Roe, in describing the conference agreement on Oct. 17, 1986, expressed his view that the Secretary should be encouraged "to use this descretionary authority to continue to provide new flood control protection at reduced or no non-Federal cost-sharing in areas where need exists but ability to pay does not." (p. H11546) On the other hand Senator Stafford, Chairman of the Senate Committee on Environment and Public Works argued that, "It is anticipated that the Secretary will only rarely invoke this authority. And this provision can never be used to eliminate the non-Federal share." (p. S16983) Senator Stafford also argued, "This bill now says local communities, must, in general pay 25 cents to get at least $1 in benefits, sometimes much more than $1 in benefits. Even the poorest communities should be able to find a quarter to invest in order to get $1 or more in return." (p. S16983)

The Role of the Local Sponsor

In developing the ability to pay guidelines, we have had to address the issue that different states have different policies with respect to the degree of state involvement in sponsoring flood control projects and providing financial support. We believe that the guidelines should be "policy neutral" in relation to the selection of the local sponsor. Thus, states where sponsors are agencies of state governments will not be treated differently than states where sponsors may be much smaller governmental units such as cities or towns.

While our goal is to be policy neutral with respect to the selection of the local sponsor, we will not be neutral with respect to the possibility of state assistance when local sponsors have limited financial capability. We believe that states have a responsibility in cases where a local sponsor seems incapable of providing the non-Federal share. This has led to two conclusions which have been incorporated into our proposed guidelines.

Our first conclusion is that state resources as well as project area resources should be a factor in determining any adjustments to the normal cost-share. This will be evident in the formulas described below.

Our second conclusion is that project size should not be a separate consideration. Larger projects must generate larger benefits, and therefore, affect a larger segment of the population, if they have met the economic feasibility test for Federal funding. More importantly, when compared to state budgets, every project becomes a small percentage of total capital expenditures.

The Use of Project Benefits in Developing a Cost-Share Alternative

Local sponsors and their states have two sources of economic resources that can be used to pay for the non-Federal share of the project. First, existing resources as reflected in traditional measures of income and/or wealth, may be sufficient. Second, the project itself will generate benefits. Many of the benefits to flood control projects are either due to flood damage reduction or to income enchancement to households and businesses located in the project area. These benefits represent an important source of income and wealth that will be available for project funding no matter how poor the project area is before implementation.

We believe that project benefits should determine the alternative level of cost-sharing under the ability to pay test. This alternative level establishes a benefits based floor (BBF) below which the non-Federal cost-share will not be reduced. Therefore, when projects are fully eligible, the reduction in the non-Federal share would be such as to set the share equal to one fourth of the project's benefit/cost ratio, when this ratio is expressed as a percentage. For example, if a project has a benefit/cost ratio of 1.2, share reductions cannot bring the share below one fourth of this, or 30 percent of project first costs. In this example, if the "normal" level of cost-sharing, i.e. the amount required by section 103(a) or 103(b), is less than 30 percent, there will be no reduction under the ability to pay provision.

The selection of the factor of one fourth, or 25 percent, is based on the minimum level of non-Federal cost-sharing for flood control projects specified in sections 103(a) and 103(b). The position is equivalent to that expressed by Senator Stafford "[e]ven the poorest communities should be able to find a quarter to invest in order to get $1 or more in return." (see Background section above). It is expected that the reductions in cost-sharing will occur most often when normal non-Federal costs are closer to the 50 percent maximum than to the 25 percent minimum. Congress may occasionally authorize projects which have a benefit cost ratio below one. The determination of alternative levels of cost-sharing under the ability to pay test should apply in these cases, despite the low ratio. These projects will not generate the same level of economic resources (compared to project costs) as economically justified projects, and project beneficiaries will not have the same ability to pay from this source. Under no circumstances, however, do we believe that the non-Federal share should be less than the five percent minimum payment of section 103(a)(1)(A), Pub. L. 99–662.

Operations and maintenance (O&M) expenses of flood control projects have traditionally been the responsibility of a non-Federal interest. We do not propose to change this; any reductions in non-Federal shares under the ability to pay provision will apply to first costs only. For administrative simplicity, we have proposed to use one fourth of the benefit cost ratio as an alternative share, even though the costs in this calculation include O&M costs. This ratio will be calculated based on the discount rate which the Corps is using to evaluate projects at the time the local cooperation agreement (LCA) is signed. For LCA's signed in 1987 for example, an 8.875 percent discount rate would be used.

The Use of Per Capita Personal Income To Determine Project Eligibility

Project eligibility for reductions in the non-Federal share will be determined by the per capita personal income of the project area (using county income as the surrogate for project area income) and the state in which the project is located. Although alternative concepts of a "fiscal capacity" or "ability to pay" index have been developed and promoted, many government programs continue to use per capita income (including Medicaid and Aid to Families with Dependent Children). The data are readily available from the Bureau of Economic Analysis on a yearly basis.

Per capita income reflects two of the three factors set out in the aforementioned report of the Senate Committee on Environment and Public Works: (1) Income in relation to need; and (2) unemployment. "Income in relation to need" is a phrase which suggests consideration not only of income, but of the relative cost of living in a particular geographic area. Unfortunately, information on regional cost of living differentials is not available from the Federal government. Data from private sources, including the *Rand McNally Places Rated Guide, 1985* are useful indicators of price differentials among urban areas, but fail to document the cost of living for rural areas within the United States, making it impossible to calculate state and county price indices accurately from these sources. Moreover, the cost of living measures reported by these sources place a heavy emphasis on the current market value of housing, a factor that may not be relevant for people who have lived in an area for a long time. This leaves us with no comprehensive information to use as a basis for precisely adjusting income figures to account for differences in the cost of living. On the other hand such a precise calculation may not be necessary. When current housing value is given a smaller weight and urban price indices are combined for all regions in a single state, the cost of living differentials set out in the private sources decrease dramatically. Per capita income thus already takes into account, to a great degree, "income in relation to need". This fact, in addition to the unavailability of comprehensive cost of living data reaffirms the choice of per capita income as our basic statistical measure.

We should note two exceptions: Alaska and Hawaii. Even when current housing value is given less weight in calculations for these two states, their relative costs of living are far higher than the rest of the country. This finding is consistent with that of the Office of Personal Management, which conducts surveys to determine the salary levels of Federal employees in Alaska and Hawaii which would compensate the employees for the higher prices they must pay. Cost of living adjustments will therefore be made for Alaska and Hawaii, based on the Federal Government's salary differentials in those two states for Federal employees living in non-Federal housing without Federal Commissary provisions. Pay differentials may be different for various regions in Alaska and Hawaii. For administrative simplicity, the differentials for the two most populated regions will be used: Anchorage AK (a 25 percent pay differential in 1986), and Oahu HI (a 22.5 percent differential in 1986). Information on the salary differentials for the period 1982–86 is available in FPM Bulletins 591–30, 591–32, and 591–33.

Unemployment, the second factor mentioned in the Committee report, tends to be lower in areas where per capita personal income is higher. For example, using state information for 1985, the correlation coefficient between these variables was .47, a value which is significantly different from zero statistically. Moreover, since ability to pay is more a function of the *level* of income than the *distribution* of income, PCI is preferred over a measure of unemployment.

The third factor set out in the Committee Report is the sponsor's borrowing capability. We have carefully considered how best to incorporate this factor in our calculations. We conclude that such an incorporation is inappropriate. Borrowing capability as measured for example by an entity's credit rating, will reflect a number of factors including but not limited to the underlying economic resource base. Local governments may have committed themselves to providing public services which are either discretionary or are provided by the private sector in other locations. In some cases, a community may be unable to raise additional capital because its citizens are simply unwilling to vote for the tax increases that might be required. We conclude therefore, that the borrowing capability of the local sponsor should not be a factor in the ability to pay determination.

The interim final rule will use a three year average of PCI. Although this will create lags in recognizing when an area has had a deterioration or improvement in its economic circumstances, it also reduces the likelihood that findings will be based on temporary circumstances. Other Federal programs are based on a three year average.

All U.S. Territories will be eligible for the full amount of cost-share reduction. Unpublished data from the Bureau of Economic Analysis indicates that in 1985, per capital personal income in the territories ranged from 66 percent of the U.S. average (GUAM) to 25 percent of the U.S. average (American Samoa).

The Eligibility Formula

The eligibility factor (EF) will be determined by:

$$EF = a - b_1 \times (\text{State PCI Index}) - b_2 \times (\text{County PCI Index})$$

where a, b_1, and b_2 are positive constants. The county and state PCI indices are a measure of the local PCI relative to the national average. If per capita income in a state equals the national average, the state's index number would be 100. If a project includes beneficiaries in more than one county, the county PCI index will be a combined PCI index, where each county PCI index is weighted by the share of project benefits which can be located geographically. If EF is less than zero, the project is not eligible for cost-share reductions under the ability to pay test. If EF is greater than or equal to one, the project is eligible for full application of the benefits based cost-share alternative described above. For EF less than one but greater than zero, the value represents the degree of application for which the project is eligible. For example if the normal cost-share is 50 percent and the minimum cost-share under the ability to pay formula is 30 percent and EF=.6, the project will receive 60 percent of the difference between 50 percent and 30 percent. The cost-share in this example would be 38 percent (50−.60(50–30)=38).

The formula reflects our view that state participation in the cost-sharing of flood control projects should be encouraged. The choice of county data to represent a project area's per capita income is based on considerations of practicality and policy. County data is available from the Bureau of Economic Analysis, Department of Commerce, on a year basis. If smaller governmental units were used, there would be an increased likelihood of inaccurate statistics. Equally important, by defining in advance the governmental region to represent the project area, the non-Federal interests are free to identify the local sponsor without regard to the effect this might have on the ability to pay determination.

In selecting the parameters a, b_1, and b_2 we have had two objectives. First, in order to encourage state participation where necessary, we have given equal weights to state and county PCI, that is b_1 and b_2 have been set equal to each other (they are kept separate in the formula, so that the weights may be changed, if appropriate, after comments are considered). Second, we have been guided by our sense of the intent of Congress that the ability to pay provision should only apply in exceptional circumstances. The formula has therefore been constructed so that two-thirds of the counties would not be eligible; 20 percent of the counties would be eligible for the full application; and the remaining 13⅓ percent would be eligible for a partial application.

Available county PCI data lag behind available state PCI data. Currently, county information is available through 1984, state information through 1986. The interim guidelines require the use of the three latest years even if these years are different for counties and states. We believe that this represents the most up to date economic profile of a project area which can be applied uniformly to all projects.

Other Factors

We have retained the five percent minimum cash requirement of section 103(a)(1)(A) even for projects where the ability to pay test leads to a reduction in the non-Federal cost-share. This requirement is intended to demonstrate that the non-Federal interest has a serious commitment to the project. Congress did not want to cash requirement changed when the normal cost-share level was at the maximum of 50 percent (see section 103(a)(3)) nor did it want the requirement waived when the non-Federal interest chooses to make a deferred payment (see section 103(a)(4)). By keeping the 5 percent cash requirement under the ability to pay provision, it may be necessary to negotiate cash repayments to the local sponsor at the end of the project, or to make Federal payments for Lands, Easements, Rights of Way, Relocations, and Dredge Material Disposal Areas (LERRD) that are normally the responsibility of the non-Federal interest.

The interim final rule also contains a provision allowing the non-Federal interest to waive application of the ability to pay test. This might be most advantageous when project benefits have not been fully enumerated before authorization or when additional research is necessary to separate flood control benefits and costs from total costs of a multi-purpose project. In these cases, local sponsors may want to accept the normal cost-share so that implementation of the project will not be delayed.

E.O. 12291 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because it imposes few, if any, administrative burdens of any sort on small entities.

Furthermore, the number of entities affected by this rule is small and the relief granted in individual cases, though significant to the parties involved, is not significant within the meaning of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 241

Community facilities, Flood control, Intergovernmental relations, Water resources.

Dated: September 1, 1987.

Peter J. Cahill,

Colonel, GS, Executive, OASA (CW).

The Corps of Engineers proposes to establish a new Part 241 in Title 33, Chapter II as follows:

PART 241—FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION—SECTION 103(m) OF PUB. L. 99-662 [ER 1165-2-121]

Sec.
241.1 Purpose
241.2 Applicability
241.3 References
241.4 General Policy
241.5 Procedures for Estimating the Alternative Cost-share
241.6 Application of Test

Appendix A–State Per Capita Personal Income Index Numbers

Appendix B–County Per Capita Personal Income Index Numbers

Authority: Sec. 103(m), Water Resources Development Act of 1986 Pub. L. 99–662, 100 Stat. 4082, 33 U.S.C. 2201 et seq.

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Pub. L. 99–662 as it applies to flood control projects.

§ 241.2 Applicability.

This regulation applies to all HQUSACE elements and field operating agencies of the Corps of Engineers having Civil Works responsibilties.

§ 241.3 References.

(a) Section 103, Water Resources Development Act, 1986, Pub. L. 99–662, 100 Stat. 4082, 33 U.S.C. 2201 et seq.

(b) U.S. Water Resources Council, *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, March 10, 1983.

(c) Office of Personnel Management, *FPM Bulletin* 591–30.

(d) Office of Personnel Management, *FPM Bulletin* 591–32.

(e) Office of Personnel Management, *FPM Bulletin* 591–33.

(f) U.S. Dept. of Commerce, Bureau of Economic Analysis, *Local Area Personal Income, 1979–84*, Volumes 1–9.

§ 241.4 General policy.

(a) Procedures described herein will be used to establish an "ability to pay" test which will be applied to all flood control projects. As a result of the application of the test, some projects will be cost-shared by the Non-Federal interest at a lower level than the non-Federal share would be normally under the provisions of section 103 of Pub. L. 99–662.

(b) The ability to pay test shall be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(c) Since the normal non-Federal cost-share is substantially less than full costs in every case, the ability to pay test should be structured so that reductions in the level of cost-sharing will be granted in only a limited number of cases of severe economic hardship.

(d) Any reductions in the level of non-Federal cost-sharing as a result of the application of this test will be applied to construction costs only. The non-Federal interests will continue to be responsible for the cost of operations, maintenance and rehabilitation.

(e) Section 103(m) requires that all cost-sharing agreements for flood control be subject to the ability to pay test. This includes any projects specifically authorized by Congress as well as the "continuing authority" projects constructed under section 14 of the 1946 Flood Control Act (33 U.S.C. 701r) and section 205 of the 1948 Flood Control Act (33 U.S.C. 701s).

(f) The test should be based not only on the economic circumstances within a project area, but also on the conditions of the state(s) in which the project is located. Although states' policies with respect to supporting local interests on flood control projects are not uniform, the state represents a potential source of financial assistance which should be considered in the analysis.

(g) The alternative level of cost-sharing determined under the ability to pay principle should be govered in part by project benefits. If, as a result of the project, local beneficiaries receive more income, or are required to use fewer resources on flood damage repair or replacement, or on flood insurance, a portion of these resources should be available to pay for the non-Federal share, even in those cases where an analysis of current economic conditions indicates that there are relatively limited resources in the project area and its state.

(h) The Non-Federal interest may, at its discretion, waive the application of the ability to pay test. In this case, the Non-Federal interest shall be considered to have the ability to pay the normal cost-share and no further research will be required.

§ 241.5 Procedures for estimating the alternative cost-share.

(a) *Step one.* Determine the maximum reduction in the level of non-Federal cost-sharing for qualifying projects.

(1) Calculate the ratio of flood control benefits (developed using the Water Resources Council's *Principles and Guidelines*-ref. b) to flood control costs for the authorized project based on the discount rate which the Corps is currently using to evaluate projects. Costs include operations and maintenance as well as first costs. Divide the result by four.

(2) If the ratio determined in § 241.5(a)(1), when expressed as a percentage, is less than the level of cost-sharing that would normally be required by section 103(a) or 103(b), Pub. L. 99–662, projects may be eligible for a reduction in the non-Federal share to this "benefits based floor" (BBF), or for a partial reduction to a share between the normal level and the BBF. In no case however, will the non-Federal cost-share be less than five percent.

(3) If the ratio detemined in § 241.5(a)(1), when expressed as a percentage, is greater than the level of cost-sharing that would normally be required by section 103(a) or 103(b), Pub. L. 99–662, the normal level of cost-sharing will apply.

(b) *Step two.* Determine project eligibility. Projects may qualify for the full amount of the reduction in cost-sharing calculated in Step one, or for some fraction of the reduction in cost-sharing, depending on a measure of the economic resources of the project area and of the state or states in which the project is located.

(1) For each of the three latest calendar years for which information is available, detemine the level of per capita personal income in the state or states in which the project sponsors are located, and compare this to the national average of per capita personal income. Source: Dept of Commerce, Bureau of Economic Analysis as presented in the *Survey of Current Business*. For Alaska and Hawaii only, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage AK and Oahu, HI (see References §§ 241.3(c) and 241.3(d). Index each state's per capita personal income to the national average (U.S.=100), and calculate the three year average of the state's index number.

(2) For each of the three latest calendar years for whch information is available, determine the level of per capita personal icome in the county or counties where project benefits accure (the "project area", and compare this to the national average of per capita personal income. Source: Reference § 241.3(c). For Alaska and Hawaii only, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage AK and Oahu HI. Index each county's per capita personal income to the national average (U.S.=100), and calculate the three year average of the county's index number.

(3) To assure consistency, the calculations in (1) and (2) will be performed by HQUSACE and distributed to all field elements. This information is included in Appendices A

and B to this document. In subsequent years the information will be included in the Corps' Reference Handbook, Ref. § 241.3(g) which is updated annually.

(4) When the project area includes more than one county, calculate a composite project area index by talking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county.

(5) Calculate an "eligibility factor" for the project according to the following formula:

$EF = a - b_1 \times (\text{state factor}) - b_2 \times (\text{area factor})$.

If EF is one or more, the project is eligible for the full reduction in cost-share to the benefits based floor. If EF is zero or less, the project is not eligible for a reduction. If EF is between zero and one, the non-Federal cost-share will be reduced proportionately to an amount which is greater than the BBF but less than the normal non-Federal cost-share. See § 241.5(c) below. The values of a, b_1, and b_2 will be determined by HQUSACE. The parameter values will be based on the latest available data and set so that 20 percent of counties have an EF of 1.0 or more, while 66.7 percent have an EF of O or less. These values will be adjusted periodically as new information becomes available. Changes will be published in the Corps' Reference Handbook. the values as of July 1, 1987 are:

$a = 14.45646$

$b_1 = 0.08858$

$b_2 = 0.08858$

Note that currently, b_1 and b_2 are equal, giving the same weight to state and local income levels.

(6) For Puerto Rico, Guam and other U.S. territories the eligibility factor is administratively established to be equal to 1.

(c) *Application of the Ability to Pay Formula to the Basic Cost-sharing Provisions of Section 103.* If a flood control project has a BBF which is less than the normal cost-share and an EF which is greater than zero, the non-Federal cost-share will be reduced. The actual reduction is determined by applying the ability to pay formula to the basic flood control cost-sharing provisions of section 103 Pub. L. 99-662 as follows:

(1) when EF=1:

cost-share=BBF

(2) when EF < 1, for structural projects covered by section 103(a):

(a) if LERRD equals or exceeds 45 percent:

cost-share=50−EF × (50−BBF)

(b) if LERRD exceeds 20 percent but is less than 45 percent:

cost-shared=(LERRD+5)−EF × [LERRD+5)−BBF]

(c) if LERRD is less than 20 percent: cost-share=25-EF (25-BBF)

(3) When EF < 1, for non-structural projects covered by Section 103(b):

Cost-share=25-EF (25-BBF)

(4) In no case can the non-Federal share be less than five percent.

Note. LERRD equals the costs of lands, easements, rights-of-way, relocations, and dredged material disposal areas.

§ 241.6 Application of test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost-share is lower than the share that would normally apply, the revised estimated cost-share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Local Cooperation Agreement (LCA) between the Corps of Engineers and the Non-Federal interest is signed. For structural flood control projects, the normal level of cost-sharing will not be known until the end of the project (since the normal level as specified in section 103(a) includes LERRD). In this case, if the Eligibility Factor is greater than zero but less than one, the ability to pay non-Federal share will be determined using estimated costs. For all projects, the LCA will include a clause indicating the results of the ability to pay test. If a project is eligible for a lower non-Federal share, the revised share will be specified (there will be no recalculation of this share once the LCA is signed). If at the time of project completion, the normal non-Federal share based on actual costs, is less than the ability to pay share specified in the LCA, the normal share will apply. For all projects, an exhibit attached to the LCA will include: The benefits based floor (BBF) determined in Step one above; the eligibility factor (EF) determined in Step two above; if the Eligibility Factor is greater than zero and less than one, the estimated normal non-Federal share; and the formula used in determining the ability to pay share as described in §§ 241.5(c)(1) and 241.5(c)(4).

(c) For structural projects, the project sponsor will be required to provide a cash payment equal to a minimum of five per cent of estimated total project costs during the period of construction, regardless of the outcome of the ability to pay test. If formula § 241.5(c)(2) is used to estimate the non-Federal share, the resultant non-Federal cash requirement could continue to exceed five per cent. For example, if LERRD is 10 percent of costs, the normal costshare requirement is 25 percent, including a 15 percent cash payment; if the revised Non-Federal share under ability to pay is 20 percent, there remains a 10 percent cash requirement. In these cases, the Non-Federal interest shall pay its share of cash during construction at a rate proportionate to its projected final cash share. If the non-Federal share, adjusted for ability to pay considerations, exceeds 30 percent, section 103(a)(4), permitting deferred payment of the amount exceeding 30 percent, will still apply.

(d) If the normal LERRD plus five percent cash requirement exceeds the ability to pay cost share requirement, the Federal Government will make any necessary adjustments to the Non-Federal interest through Federal payments for LERRD or reimbursement. The adjustment mechanism will be negotiated and the Local Cooperation Agreement will include a description of the mechanism.

Appendix A.—State Per Capita Personal Income Index Numbers State Income as a Percent of U.S. Average, 1984–86

State	State Index No.
Alabama	76.90
Alaska	104.14
Arizona	91.71
Arkansas	75.33
California	115.84
Colorado	106.36
Connecticut	130.59
Delaware	103.32
District of Columbia	130.75
Florida	99.09
Georgia	90.61
Hawaii	85.79
Idaho	79.85
Illinois	106.50
Indiana	89.93
Iowa	91.48
Kansas	99.44
Kentucky	78.00
Louisiana	80.96
Maine	86.33
Maryland	114.04
Massachusetts	118.43
Michigan	98.13
Minnesota	101.86
Mississippi	66.59
Missouri	94.94
Montana	81.38
Nebraska	95.23
Nevada	104.48
New Hampshire	107.90
New Jersey	124.38
New Mexico	78.10
New York	116.32
North Carolina	84.05
North Dakota	86.83
Ohio	95.27
Oklahoma	87.91
Oregon	91.35

State	State Index No.
Pennsylvania	96.70
Rhode Island	100.76
South Carolina	76.88
South Dakota	81.55
Tennessee	81.21
Texas	96.07
Utah	75.45
Vermont	87.41
Virginia	104.95
Washington	100.59
West Virginia	73.67
Wisconsin	95.42
Wyoming	94.02

Source: Survey of Current Business, April, 1987.

Note.—Alaska income figures divided by 1.25 Hawaii income figures divided by 1.15, 1984, 85; By 1.225, 1986.

Appendix B.—County Per Capita Personal Index Numbers County Income as a Percent of U.S. Average 1982–84

County	County PCI Index
Alabama	
Autauga	77.01
Baldwin	81.85
Barbour	66.37
Bibb	61.76
Blount	64.26
Bullock	60.46
Butler	64.14
Calhoun	71.88
Chambers	67.49
Cherokee	60.04
Chilton	69.44
Choctaw	67.32
Clarke	64.10
Clay	66.14
Cleburne	63.34
Coffee	76.72
Colbert	79.24
Conecuh	61.17
Coosa	55.87
Covington	72.99
Crenshaw	72.75
Cullman	70.04
Dale	71.11
Dallas	65.71
De Kalb	65.43
Elmore	77.71
Escambia	72.56
Etowah	76.04
Fayette	71.32
Franklin	74.10
Geneva	74.29
Greene	49.02
Hale	53.04
Henry	63.45
Houston	77.47
Jackson	67.38
Jefferson	93.78
Lamar	73.87
Lauderdale	82.78
Lawrence	61.35
Lee	70.49
Limestone	73.71
Lowndes	58.54
Macon	55.37
Madison	96.41
Marengo	61.83
Marion	64.37
Marshall	73.89
Mobile	77.58
Monroe	69.84
Montgomery	92.44
Morgan	84.75
Perry	45.55
Pickens	62.25
Pike	67.41
Randolph	62.70
Russell	68.14
St. Clair	70.38
Shelby	90.04
Sumter	53.39
Talladega	66.03
Tallapoosa	69.52
Tuscalossa	76.39
Walker	79.51
Washington	62.61
Wilcox	58.75
Winston	70.550
Alaska	
Aleutian Islands	104.84
Anchorage Borough	128.00
Bethel	63.82
Bristol Bay Bor.	130.67
Dillingham	70.55
Fairbanks N. Star	135.39
Haines Borough	104.57
Juneau Borough	139.70
Kenai Peninsula	92.26
Ketchikan Gateway	122.19
Kobuk	76.29
Kodiak Island	91.27
Matanuska-Susitna	100.47
Nome	88.00
North Slope Bor.	161.41
Pr. of Wales-Outer Ketchikan	93.64
Sitka Borough	106.76
Skagway-Yakutat-Angoon	98.48
Se Fairbanks	81.78
Valdez-Cordova	114.35
Wade Hampton	46.63
Wrangell-Petersburg	113.45
Yukon-Koyukuk	61.52
Arizona	
Apache	47.93
Cochise	71.38
Coconino	71.73
Gila	75.15
Graham	57.80
Greenlee	72.27
La Paz (2 Years)	65.79
Maricopa	101.85
Mohave	74.32
Navajo	60.95
Pima	90.66
Pinal	65.20
Santa Cruz	70.75
Yavapai	85.82
Yuma (2 Years)	69.78
Arkansas	
Arkansas	81.85
Ashley	68.71
Baxter	84.26
Benton	86.92
Boone	75.12
Bradley	66.43
Calhoun	58.13
Carroll	73.90
Chicot	52.26
Clark	68.69
Clay	64.72
Cleburne	69.87
Cleveland	62.93
Columbia	77.91
Conway	70.88
Craighead	75.89
Crawford	63.72
Crittenden	65.65
Cross	60.60
Dallas	65.81
Desha	61.74
Drew	59.15
Faulkner	78.63
Franklin	66.70
Fulton	48.18
Garland	85.70
Grant	73.20
Greene	67.23
Hempstead	68.13
Hot Spring	72.67
Howard	86.73
Independence	72.78
Izard	67.54
Jackson	64.02
Jefferson	75.39
Johnson	66.94
Lafayette	63.87
Lawrence	68.28
Lee	47.92
Lincoln	52.68
Little River	67.42
Logan	63.60
Lonoke	72.87
Madison	61.61
Marion	62.92
Miller	72.77
Mississippi	69.78
Monroe	56.80
Montgomery	62.71
Nevada	64.22
Newton	48.18
Ouachita	72.99
Perry	58.63
Phillips	54.96
Pike	65.56
Poinsett	62.85
Polk	59.95
Pope	70.75
Prairie	65.67
Pulaski	99.01
Randolph	57.61
St. Francis	61.57
Saline	78.57
Scott	64.02
Searcy	47.87
Sebastian	87.77
Sevier	70.14
Sharp	63.52
Stone	50.11

County	County PCI Index
Union	94.15
Van Buren	57.50
Washington	76.58
White	67.20
Woodruff	66.25
Yell	66.05
California	
Alameda	119.92
Alpine	80.21
Amador	91.68
Butte	81.65
Calaveras	70.62
Colusa	102.24
Contra Costa	138.51
Del Norte	75.08
El Dorado	95.10
Fresno	91.84
Glenn	94.57
Humboldt	85.73
Imperial	80.69
Inyo	92.72
Kern	92.07
Kings	80.10
Lake	87.00
Lassen	76.95
Los Angeles	114.07
Madera	81.74
Marin	174.75
Mariposa	86.64
Mendocino	86.31
Merced	81.79
Modoc	82.27
Mono	88.41
Monterey	111.39
Napa	120.87
Nevada	83.23
Orange	131.86
Placer	105.09
Plumas	81.08
Riverside	103.37
Sacramento	101.66
San Benito	82.85
San Bernardino	92.71
San Diego	105.74
San Francisco	141.22
San Joaquin	92.22
San Luis Obispo	98.23
San Mateo	156.13
Santa Barbara	120.16
Santa Clara	136.29
Santa Cruz	105.45
Shasta	84.74
Sierra	82.98
Siskiyou	80.64
Solano	100.81
Sonoma	115.58
Stanislaus	91.09
Sutter	89.28
Tehama	77.77
Trinity	73.08
Tulare	80.40
Tuolumne	80.96
Ventura	112.17
Yolo	94.42
Yuba	73.80
Colorado	
Adams	101.60
Alamosa	80.37
Arapahoe	137.74
Archuleta	68.19
Baca	92.30
Bent	77.46
Boulder	120.55
Chaffee	91.18
Cheyenne	87.80
Clear Creek	90.10
Conejos	45.02
Costilla	62.38
Crowley	94.53
Custer	71.09
Delta	75.73
Denver	122.45
Dolores	82.13
Douglas	138.70
Eagle	112.86
Elbert	104.78
El Paso	95.94
Fremont	80.76
Garfield	109.31
Gilpin	87.62
Grand	97.15
Gunnison	68.08
Hinsdale	66.37
Huerfano	71.43
Jackson	91.55
Jefferson	129.31
Kiowa	118.18
Kit Carson	93.63
Lake	70.46
La Plata	80.49
Larimer	91.20
Las Animas	69.57
Lincoln	105.46
Logan	92.08
Mesa	87.03
Mineral	97.81
Moffat	82.82
Montezuma	86.98
Montrose	74.67
Morgan	95.48
Otero	81.03
Ouray	88.40
Park	90.38
Phillips	97.34
Pitkin	155.60
Prowers	85.54
Pueblo	81.95
Rio Blanco	105.34
Rio Grande	79.26
Routt	114.30
Saguache	65.12
San Juan	74.79
San Miguel	63.10
Sedgwick	101.54
Summit	113.37
Teller	90.15
Washington	103.42
Weld	90.58
Yuma	100.37
Connecticut	
Fairfield	158.08
Hartford	125.36
Litchfield	117.96
Middlesex	121.03
New Haven	113.15
New London	112.35
Tolland	110.22
Windham	96.00
Delaware	
Kent	83.64
New Castle	115.60
Sussex	96.45
Florida	
Alachua	76.49
Baker	64.08
Bay	81.39
Bradford	57.07
Brevard	96.27
Broward	123.96
Calhoun	55.59
Charlotte	92.91
Citrus	71.41
Clay	94.72
Collier	116.31
Columbia	68.17
Dade	102.87
De Soto	68.74
Dixie	52.46
Duval	95.65
Escambia	80.42
Flagler	75.91
Franklin	52.79
Gadsden	53.78
Gilchrist	69.85
Glades	48.91
Gulf	67.35
Hamilton	63.45
Hardee	65.47
Hendry	79.35
Hernando	75.38
Highlands	80.66
Hillsborough	89.57
Holmes	52.70
Indian River	106.55
Jackson	64.30
Jefferson	60.26
Lafayette	71.63
Lake	92.48
Lee	101.53
Leon	84.80
Levy	60.37
Liberty	58.01
Madison	66.52
Manatee	103.56
Marion	76.85
Martin	113.73
Monroe	88.58
Nassau	84.72
Okaloosa	82.23
Okeechobee	60.04
Orange	99.90
Osceola	85.03
Palm Beach	130.73
Pasco	80.71
Pinellas	113.11
Polk	82.71
Putnam	71.99
St. Johns	94.78
St. Lucie	79.41
Santa Rosa	82.18
Sarasota	126.95
Seminole	96.82
Sumter	66.95

County	County PCI Index
Suwannee	65.44
Taylor	71.64
Union	47.77
Volusia	90.66
Wakulla	63.72
Walton	56.01
Washington	61.79
Georgia	
Appling	73.56
Atkinson	67.93
Bacon	61.69
Baker	64.30
Baldwin	72.23
Banks	71.18
Barrow	78.67
Bartow	77.19
Ben Hill	67.59
Berrien	70.14
Bibb	86.46
Bleckley	73.29
Brantley	59.62
Brooks	56.32
Bryan	66.70
Bulloch	67.11
Burke	64.88
Butts	69.10
Calhoun	72.25
Camden	82.40
Candler	60.20
Carroll	78.62
Catoosa	71.16
Charlton	60.77
Chatham	90.41
Chattahoochee	60.74
Chattooga	63.19
Cherokee	85.30
Clarke	84.83
Clay	50.31
Clayton	92.14
Clinch	64.28
Cobb	118.73
Coffee	64.36
Colquitt	70.15
Columbia	92.70
Cook	56.92
Coweta	86.71
Crawford	73.16
Crisp	66.38
Dade	61.17
Dawson	84.67
Decatur	70.39
De Kalb	116.85
Dodge	64.81
Dooly	77.98
Dougherty	78.52
Douglas	84.84
Early	65.79
Echols	55.93
Effingham	76.56
Elbert	76.57
Emanuel	60.20
Evans	66.09
Fannin	64.99
Fayette	120.55
Floyd	87.61
Forsyth	93.78
Franklin	79.88
Fulton	109.42
Gilmer	74.02
Glascock	79.59
Glynn	89.67
Gordon	80.06
Grady	68.92
Greene	64.77
Gwinnett	112.83
Habersham	69.40
Hall	91.75
Hancock	56.15
Haralson	81.22
Harris	69.97
Hart	74.43
Heard	76.05
Henry	91.29
Houston	88.92
Irwin	71.08
Jackson	76.89
Jasper	79.66
Jeff Davis	74.13
Jefferson	65.21
Jenkins	57.48
Johnson	63.11
Jones	77.28
Lamar	71.55
Lanier	60.57
Laurens	74.26
Lee	74.64
Liberty	66.60
Lincoln	66.71
Long	57.35
Lowndes	73.25
Lumpkin	68.55
McDuffie	70.75
McIntosh	55.11
Macon	58.15
Madison	73.51
Marion	63.49
Meriwether	62.46
Miller	64.52
Mitchell	62.26
Monroe	74.40
Montgomery	63.99
Morgan	78.78
Murray	70.33
Muscogee	83.48
Newton	80.34
Oconee	86.71
Oglethorpe	72.62
Paulding	73.51
Peach	79.25
Pickens	79.21
Pierce	62.29
Pike	75.37
Polk	74.36
Pulaski	76.25
Putnam	71.13
Quitman	55.00
Rabun	61.81
Randolph	54.86
Richmond	84.44
Rockdale	93.75
Schley	69.39
Screven	65.01
Seminole	69.13
Spalding	78.93
Stephens	72.72
Stewart	57.37
Sumter	74.31
Talbot	56.49
Taliaferro	72.13
Tattnall	62.31
Taylor	65.97
Telfair	71.66
Terrell	59.42
Thomas	78.21
Tift	77.95
Toombs	64.38
Towns	58.51
Treutlen	58.02
Troup	83.08
Turner	71.07
Twiggs	57.76
Union	50.44
Upson	71.35
Walker	74.99
Walton	75.65
Ware	78.71
Warren	63.68
Washington	70.39
Wayne	70.84
Webster	69.91
Wheeler	58.15
White	64.15
Whitfield	88.26
Wilcox	62.60
Wilkes	75.09
Wilkinson	72.56
Worth	67.44
Hawaii	
Hawaii	69.79
Honolulu	95.11
Kauai	73.07
Maui and Kalawao	81.12
Idaho	
Ada	98.15
Adams	83.49
Bannock	81.50
Bear Lake	71.06
Benewah	81.09
Bingham	67.53
Blaine	95.00
Boise	77.47
Bonner	69.44
Bonneville	86.16
Boundary	73.94
Butte	66.28
Camas	113.80
Canyon	74.98
Caribou	75.36
Cassia	78.17
Clark	124.46
Clearwater	67.41
Custer	76.38
Elmore	70.53
Franklin	65.40
Fremont Co & Yellowstone Park	70.02
Gem	76.53
Gooding	72.03
Idaho	69.58
Jefferson	59.90
Jerome	66.26
Kootenai	80.81
Latah	75.72
Lemhi	64.84
Lewis	101.42
Lincoln	77.79
Madison	51.70
Minidoka	62.79
Nez Perce	95.24

County	County PCI Index
Oneida	66.74
Owyhee	53.91
Payette	73.85
Power	85.92
Shoshone	77.87
Teton	65.13
Twin Falls	84.35
Valley	81.51
Washington	79.29
Illinois	
Adams	91.73
Alexander	59.38
Bond	83.06
Boone	96.78
Brown	78.83
Bureau	100.23
Calhoun	79.64
Carroll	84.38
Cass	93.14
Champaign	87.06
Christian	96.45
Clark	84.52
Clay	80.87
Clinton	86.80
Coles	80.08
Cook	111.75
Crawford	94.70
Cumberland	65.43
De Kalb	86.46
De Witt	102.43
Douglas	91.04
Du Page	140.84
Edgar	88.61
Edwards	96.18
Effingham	83.91
Fayette	67.61
Ford	103.98
Franklin	88.47
Fulton	84.60
Gallatin	73.89
Greene	77.19
Grundy	111.95
Hamilton	73.86
Hancock	83.21
Hardin	58.39
Henderson	78.25
Henry	97.42
Iroquois	97.33
Jackson	76.90
Jasper	76.11
Jefferson	87.23
Jersey	84.63
Jo Daviess	88.44
Johnson	53.12
Kane	111.92
Kankakee	91.81
Kendall	101.88
Knox	91.17
Lake	134.13
La Salle	98.49
Lawrence	97.72
Lee	98.45
Livingston	100.48
Logan	100.05
McDonough	72.79
McHenry	115.82
McLean	99.70
Macon	97.87
Macoupin	89.41
Madison	98.92
Marion	86.62
Marshall	92.73
Mason	88.08
Massac	74.03
Menard	95.53
Mercer	84.32
Monroe	104.39
Montgomery	89.81
Morgan	97.30
Moultrie	86.80
Ogle	87.22
Peoria	103.19
Perry	91.99
Piatt	100.93
Pike	75.19
Pope	45.92
Pulaski	57.81
Putnam	95.29
Randolph	85.81
Richland	97.25
Rock Island	100.58
St. Clair	86.18
Saline	86.06
Sangamon	104.49
Schuyler	70.38
Scott	91.21
Shelby	79.73
Stark	106.00
Stephenson	101.51
Tazewell	99.10
Union	75.88
Vermilion	90.62
Wabash	98.27
Warren	88.11
Washington	92.51
Wayne	86.26
White	91.78
Whiteside	89.34
Will	100.92
Williamson	81.52
Winnebago	100.87
Woodford	98.94
Indiana	
Adams	79.72
Allen	95.90
Bartholomew	96.36
Benton	102.69
Blackford	77.71
Boone	104.64
Brown	70.68
Carroll	84.35
Cass	89.24
Clark	85.79
Clay	83.90
Clinton	89.67
Crawford	60.73
Daviess	74.16
Dearborn	84.83
Decatur	84.42
De Kalb	85.53
Delaware	81.97
Dubois	93.54
Elkhart	98.58
Fayette	82.72
Floyd	91.60
Fountain	79.86
Franklin	68.06
Fulton	78.86
Gibson	93.11
Grant	86.70
Greene	73.72
Hamilton	118.55
Hancock	97.95
Harrison	75.89
Hendricks	97.05
Henry	83.10
Howard	98.40
Huntington	89.38
Jackson	84.98
Jasper	84.48
Jay	80.70
Jefferson	81.96
Jennings	66.91
Johnson	98.48
Knox	84.11
Kosciusko	87.00
LaGrange	65.45
Lake	92.23
La Porte	90.06
Lawrence	80.97
Madison	86.50
Marion	101.46
Marshall	85.79
Martin	74.33
Miami	83.66
Monroe	72.23
Montgomery	87.17
Morgan	86.69
Newton	77.39
Noble	79.41
Ohio	75.55
Orange	67.10
Owen	72.61
Parke	75.96
Perry	68.18
Pike	87.68
Porter	100.41
Posey	92.16
Pulaski	85.94
Putnam	77.26
Randolph	82.42
Ripley	79.53
Rush	83.30
St. Joseph	95.45
Scott	70.84
Shelby	88.25
Spencer	80.30
Starke	69.59
Steuben	82.84
Sullivan	79.14
Switzerland	62.34
Tippecanoe	84.30
Tipton	102.55
Union	84.31
Vanderburgh	100.04
Vermillion	77.52
Vigo	82.77
Wabash	85.08
Warren	83.98
Warrick	93.36
Washington	70.53
Wayne	83.19
Wells	89.24
White	90.59
Whitley	83.97
Iowa	
Adair	74.76

County	County PCI Index
Adams	82.74
Allamakee	72.58
Appanoose	73.88
Audubon	82.54
Benton	90.27
Black Hawk	94.72
Boone	90.98
Bremer	91.13
Buchanan	79.27
Buena Vista	93.66
Butler	84.45
Calhoun	96.75
Carroll	94.93
Cass	91.42
Cedar	92.16
Cerro Gordo	98.69
Cherokee	87.61
Chickasaw	83.89
Clarke	75.70
Clay	91.08
Clayton	78.92
Clinton	92.27
Crawford	85.63
Dallas	98.57
Davis	66.31
Decatur	66.16
Delaware	74.16
Des Moines	92.50
Dickinson	93.64
Dubuque	88.27
Emmet	89.84
Fayette	79.03
Floyd	84.75
Franklin	88.37
Fremont	95.84
Greene	97.65
Grundy	93.82
Guthrie	84.97
Hamilton	99.44
Hancock	91.29
Hardin	95.63
Harrison	81.38
Henry	87.11
Howard	77.35
Humboldt	101.20
Ida	87.84
Iowa	95.11
Jackson	77.69
Jasper	92.81
Jefferson	77.82
Johnson	93.88
Jones	77.95
Keokuk	89.14
Kossuth	89.47
Lee	88.20
Linn	103.59
Louisa	80.63
Lucas	88.51
Lyon	78.77
Madison	85.55
Mahaska	81.83
Marion	94.13
Marshall	100.03
Mills	87.86
Mitchell	85.09
Monona	85.71
Monroe	80.63
Montgomery	93.38
Muscatine	103.65
O'Brien	94.14
Osceola	91.47
Page	85.49
Palo Alto	92.96
Plymouth	82.96
Pocahontas	97.75
Polk	112.56
Pottawattamie	91.85
Poweshiek	95.65
Ringgold	73.38
Sac	91.28
Scott	100.92
Shelby	87.16
Sioux	77.79
Story	87.39
Tama	89.19
Taylor	71.74
Union	89.76
Van Buren	73.62
Wapello	86.69
Warren	94.60
Washington	98.44
Wayne	80.86
Webster	94.26
Winnebago	97.97
Winneshiek	73.30
Woodbury	94.08
Worth	84.53
Wright	107.96
Kansas	
Allen	87.22
Anderson	93.31
Atchison	77.41
Barber	111.76
Barton	115.09
Bourbon	93.58
Brown	89.16
Butler	105.91
Chase	93.22
Chautauqua	75.52
Cherokee	76.71
Cheyenne	96.48
Clark	116.91
Clay	86.29
Cloud	95.78
Coffey	96.03
Comanche	115.30
Cowley	90.51
Crawford	85.44
Decatur	115.37
Dickinson	88.04
Doniphan	76.93
Douglas	79.12
Edwards	114.09
Elk	81.90
Ellis	93.74
Ellsworth	101.22
Finney	108.44
Ford	109.79
Franklin	92.32
Geary	83.61
Gove	102.25
Graham	99.78
Grant	131.01
Gray	120.18
Greeley	151.42
Greenwood	95.58
Hamilton	116.79
Harper	110.44
Harvey	93.19
Haskell	117.44
Hodgeman	136.21
Jackson	86.88
Jefferson	87.44
Jewell	99.30
Johnson	148.81
Kearny	102.55
Kingman	91.64
Kiowa	104.68
Labette	79.38
Lane	147.43
Leavenworth	85.17
Lincoln	105.25
Linn	87.85
Logan	98.29
Lyon	88.83
McPherson	100.96
Marion	93.06
Marshall	82.76
Meade	129.96
Miami	87.36
Mitchell	107.54
Montgomery	87.36
Morris	80.36
Morton	114.38
Nemaha	90.13
Neosho	93.46
Ness	115.05
Norton	101.33
Osage	83.27
Osborne	104.36
Ottawa	98.38
Pawnee	101.26
Phillips	112.80
Pottawatomie	76.77
Pratt	122.05
Rawlins	98.34
Reno	97.15
Republic	94.60
Rice	103.62
Riley	83.97
Rooks	99.35
Rush	118.08
Russell	128.85
Saline	101.61
Scott	122.65
Sedgwick	112.75
Seward	119.19
Shawnee	107.55
Sheridan	109.38
Sherman	96.33
Smith	98.60
Stafford	136.11
Stanton	105.80
Stevens	133.41
Sumner	104.94
Thomas	94.95
Trego	107.25
Wabaunsee	89.73
Wallace	96.23
Washington	95.75
Wichita	167.33
Wilson	85.25
Woodson	86.69
Wyandotte	82.99
Kentucky	
Adair	56.41
Allen	67.79
Anderson	83.96
Ballard	80.87

County	County PCI Index
Barren	71.03
Bath	59.27
Bell	64.74
Boone	90.64
Bourbon	116.35
Boyd	90.50
Boyle	80.47
Bracken	73.12
Breathitt	58.41
Breckinridge	58.27
Bullitt	72.12
Butler	52.53
Caldwell	74.28
Calloway	70.58
Campbell	87.73
Carlisle	70.28
Carroll	78.15
Carter	55.45
Casey	46.50
Christian	71.29
Clark	85.34
Clay	57.38
Clinton	42.87
Crittenden	72.93
Cumberland	57.87
Daviess	91.76
Edmonson	47.17
Elliott	43.99
Estill	59.40
Fayette	112.70
Fleming	55.28
Floyd	58.63
Franklin	100.72
Fulton	78.82
Gallatin	66.19
Garrard	69.23
Grant	71.40
Graves	78.96
Grayson	59.02
Green	64.73
Greenup	77.12
Hancock	82.96
Hardin	69.51
Harlan	63.42
Harrison	77.88
Hart	58.42
Henderson	90.68
Henry	74.91
Hickman	64.72
Hopkins	95.49
Jackson	43.32
Jefferson	101.44
Jessamine	77.66
Johnson	65.17
Kenton	91.92
Knott	55.35
Knox	51.93
Larue	67.84
Laurel	61.98
Lawrence	59.31
Lee	49.26
Leslie	48.51
Letcher	58.19
Lewis	48.96
Lincoln	55.08
Livingston	72.45
Logan	70.49
Lyon	65.45
McCracken	95.00
McCreary	40.56
McLean	76.83
Madison	67.58
Magoffin	51.79
Marion	54.65
Marshall	75.37
Martin	67.28
Mason	78.52
Meade	60.87
Menifee	41.61
Mercer	74.83
Metcalfe	51.30
Monroe	54.32
Montgomery	69.10
Morgan	48.35
Muhlenberg	84.32
Nelson	73.31
Nicholas	65.12
Ohio	70.00
Oldham	97.09
Owen	61.10
Owsley	39.65
Pendleton	69.12
Perry	61.97
Pike	68.84
Powell	53.88
Pulaski	64.21
Robertson	61.16
Rockcastle	46.72
Rowan	57.68
Russell	53.11
Scott	85.75
Shelby	84.30
Simpson	78.83
Spencer	68.72
Taylor	68.18
Todd	60.16
Trigg	76.12
Trimble	69.68
Union	83.34
Warren	72.76
Washington	61.34
Wayne	46.58
Webster	86.48
Whitley	66.26
Wolfe	46.05
Woodford	121.04
Louisiana	
Acadia	73.76
Allen	58.25
Ascension	86.69
Assumption	69.49
Avoyelles	54.06
Beauregard	67.56
Bienville	72.42
Bossier	82.95
Caddo	96.64
Calcasieu	89.54
Caldwell	58.20
Cameron	85.69
Catahoula	61.14
Claiborne	74.55
Concordia	73.68
De Soto	72.47
East Baton Rouge	101.08
East Carroll	57.32
East Feliciana	65.32
Evangeline	61.78
Franklin	53.27
Grant	57.45
Iberia	94.40
Iberville	75.95
Jackson	72.81
jefferson	106.52
Jefferson Davis	68.49
Lafayette	116.28
Lafourche	86.04
La Salle	58.53
Lincoln	72.89
Livingston	74.19
Madison	46.38
Morehouse	65.01
Natchitoches	62.20
Orleans	94.84
Ouachita	77.81
Plaquemines	85.62
Pointe Coupee	75.53
Rapides	71.78
Red River	58.81
Richland	64.34
Sabine	48.88
St. Bernard	92.41
St. Charles	100.14
St. Helena	55.83
St. James	89.46
St. John/Baptist	90.04
St. Landry	66.63
St. Martin	70.12
St. Mary	91.85
St. Tammany	103.75
Tangipahoa	63.39
Tensas	64.96
Terrebonne	88.26
Union	68.61
Vermilion	82.94
Vernon	59.91
Washington	66.89
Webster	77.85
West Baton Rouge	83.05
West Carroll	51.55
West Feliciana	54.58
Winn	58.02
Maine	
Androscoggin	83.69
Aroostook	70.01
Cumberland	102.27
Franklin	72.06
Hancock	84.15
Kennebec	87.38
Knox	84.00
Lincoln	88.90
Oxford	76.81
Penobscot	81.41
Piscataquis	72.68
Sagadahoc	91.62
Somerset	74.15
Waldo	64.77
Washington	67.96
York	84.40
Maryland	
Allegany	78.82
Anne Arundel	111.83
Baltimore	119.14
Calvert	102.94
Caroline	79.86
Carroll	106.40
Cecil	89.80
Charles	97.67

County	County PCI Index
Dorchester	83.72
Frederick	100.82
Garrett	64.26
Harford	105.07
Howard	137.13
Kent	88.78
Montgomery	166.64
E. George's	109.92
Queen Anne's	95.68
St. Mary's	85.92
Somerset	72.26
Talbot	119.65
Washington	90.22
Wicomico	86.54
Worcester	94.68
Baltimore Ind City	86.26
Massachusetts	
Barnstable	119.12
Berkshire	100.91
Bristol	93.31
Dukes	101.04
Essex	118.66
Franklin	92.92
Hampden	98.67
Hampshire	91.16
Middlesex	132.22
Nantucket	126.11
Norfolk	138.57
Plymouth	103.19
Suffolk	99.90
Worcester	97.70
Michigan	
Alcona	67.60
Alger	67.91
Allegan	80.89
Alpena	76.14
Antrim	73.41
Arenac	68.38
Baraga	65.99
Barry	80.32
Bay	88.87
Benzie	73.88
Berrien	87.42
Branch	82.43
Calhoun	93.69
Cass	86.54
Charlevoix	77.74
Cheboygan	68.28
Chippewa	65.08
Clare	64.81
Clinton	93.15
Crawford	64.65
Delta	75.19
Dickinson	90.48
Eaton	100.19
Emmet	84.61
Genesee	100.72
Gladwin	65.15
Gogebic	71.61
Grand Traverse	93.20
Gratiot	82.18
Hillsdale	79.20
Houghton	65.52
Huron	84.28
Ingham	96.49
Ionia	77.44
Iosco	71.27
Iron	79.34
Isabella	69.99
Jackson	88.32
Kalamazoo	100.49
Kalkaska	70.45
Kent	96.59
Keweenaw	65.25
Lake	55.95
Lapeer	88.94
Leelanau	89.07
Lenawee	88.82
Livingston	102.16
Luce	81.07
Mackinac	76.01
Macomb	111.03
Manistee	76.60
Marquette	76.25
Mason	70.77
Mecosta	56.36
Menominee	76.64
Midland	103.76
Missaukee	60.10
Monroe	94.61
Montcalm	75.71
Montmorency	68.06
Muskegon	82.25
Newaygo	70.15
Oakland	137.12
Oceana	68.42
Ogemaw	60.93
Ontonagon	60.89
Osceola	62.87
Oscoda	56.71
Otsego	78.06
Ottawa	94.32
Presque Isle	67.87
Roscommon	71.86
Saginaw	89.85
St. Clair	93.76
St. Joseph	83.80
Sanilac	77.81
Schoolcraft	71.58
Shiawassee	89.55
Tuscola	80.13
Van Buren	76.51
Washtenaw	112.88
Wayne	95.72
Wexford	70.11
Minnesota	
Atkin	65.62
Anoka	99.67
Becker	65.08
Beltrami	60.86
Benton	75.32
Big Stone	73.69
Blue Earth	91.74
Brown	90.76
Carlton	75.99
Carver	102.07
Cass	68.30
Chippewa	81.41
Chisago	86.89
Clay	80.40
Clearwater	55.50
Cook	81.02
Cottonwood	92.06
Crow Wing	78.05
Dakota	116.69
Dodge	85.18
Douglas	74.21
Faribault	91.54
Fillmore	83.44
Freeborn	95.70
Goodhue	94.62
Grant	82.48
Hennepin	130.28
Houston	81.08
Hubbard	61.27
Isanti	77.39
Itasca	72.35
Jackson	88.24
Kanabec	71.63
Kandiyohi	81.27
Kittson	92.15
Koochiching	76.92
Lac Qui Parle	79.48
Lake	59.99
Lake of the Woods	74.39
Le Sueur	87.36
Lincoln	68.19
Lyon	86.26
McLeod	98.42
Mahnomen	69.83
Marshall	84.77
Martin	103.81
Meeker	77.51
Mille Lacs	79.31
Morrison	63.45
Mower	97.09
Murray	87.00
Nicollett	85.38
Nobles	91.79
Norman	97.03
Olmsted	117.28
Otter Tail	81.62
Pennington	81.56
Pine	67.61
Pipestone	77.79
Polk	87.02
Pope	71.36
Ramsey	115.10
Red Lake	78.74
Redwood	88.35
Renville	89.13
Rice	82.84
Rock	84.14
Roseau	83.34
St. Louis	86.84
Scott	102.99
Sherburne	78.70
Sibley	79.21
Stearns	78.50
Steele	102.77
Stevens	81.05
Swift	71.33
Todd	60.13
Traverse	80.60
Wabasha	89.33
Wadena	67.85
Waseca	92.97
Washington	109.99
Watonwan	96.44
Wilkin	84.88
Winona	81.82
Wright	83.63
Yellow Medicine	85.23
Mississippi	
Adams	79.17

County	County PCI Index
Alcorn	70.96
Amite	59.74
Attala	55.23
Benton	53.90
Bolivar	54.76
Calhoun	55.37
Carroll	53.10
Chickasaw	62.38
Choctaw	57.20
Claiborne	52.83
Clarke	64.02
Clay	62.74
Coahoma	60.96
Copiah	60.81
Covington	60.85
De Soto	79.04
Forrest	73.90
Franklin	58.73
George	63.26
Greene	48.54
Grenada	69.47
Hancock	68.56
Harrison	73.58
Hinds	92.73
Holmes	45.72
Humphreys	51.58
Issaquena	48.89
Itawamba	63.49
Jackson	75.29
Jasper	61.12
Jefferson	63.15
Jefferson Davis	53.17
Jones	74.89
Kemper	47.71
Lafayette	56.87
Lamar	63.89
Lauderdale	79.96
Lawrence	53.39
Leake	62.69
Lee	80.57
Leflore	62.55
Lincoln	63.78
Lowndes	71.72
Madison	67.88
Marion	58.93
Marshall	51.09
Monroe	67.34
Montgomery	53.71
Neshoba	61.82
Newton	68.61
Noxubee	48.60
Oktibbeha	60.10
Panola	56.06
Pearl River	62.46
Perry	70.07
Pike	61.97
Pontotoc	62.06
Prentiss	58.34
Quitman	53.01
Rankin	78.81
Scott	59.58
Sharkey	56.30
Simpson	61.70
Smith	62.30
Stone	68.07
Sunflower	53.49
Tallahatchie	49.08
Tate	68.25
Tippah	64.99
Tishomingo	61.32
Tunica	51.19
Union	69.31
Walthall	57.32
Warren	84.38
Washington	66.00
Wayne	52.92
Webster	64.58
Wilkinson	53.44
Winston	61.33
Yalobusha	58.83
Yazoo	63.12
Missouri	
Adair	72.34
Andrew	78.11
Atchison	81.87
Audrain	85.23
Barry	73.51
Barton	74.46
Bates	79.23
Benton	65.24
Bollinger	46.76
Boone	85.93
Buchanan	89.99
Butler	66.46
Caldwell	78.06
Callaway	87.80
Camden	74.34
Cape Girardeau	86.36
Carroll	85.13
Carter	45.43
Cass	91.78
Cedar	58.48
Chariton	79.50
Christian	73.80
Clark	64.60
Clay	107.47
Clinton	86.23
Cole	96.83
Cooper	83.78
Crawford	71.15
Dade	69.94
Dallas	60.28
Daviess	63.10
De Kalb	68.22
Dent	60.97
Douglas	49.20
Dunklin	59.87
Franklin	87.43
Gasconade	76.49
Gentry	70.46
Greene	89.37
Grundy	77.59
Harrison	67.38
Henry	87.37
Hickory	56.59
Holt	73.90
Howard	74.91
Howell	61.70
Iron	68.53
Jackson	102.73
Jasper	81.65
Jefferson	82.93
Johnson	72.36
Knox	66.56
Laclede	70.86
Lafayette	88.06
Lawrence	68.41
Lewis	65.81
Lincoln	84.81
Linn	75.49
Livingston	81.53
McDonald	58.11
Macon	71.31
Madison	57.09
Maries	57.13
Marion	78.50
Mercer	62.98
Miller	73.80
Mississippi	63.16
Moniteau	72.61
Monroe	76.76
Montgomery	78.85
Morgan	62.68
New Madrid	60.57
Newton	68.22
Nodaway	69.41
Oregon	52.92
Osage	68.10
Ozark	52.04
Pemiscot	56.92
Perry	73.27
Pettis	83.93
Phelps	72.24
Pike	74.19
Platte	107.39
Polk	65.78
Pulaski	57.97
Putnam	62.57
Ralls	69.46
Randolph	81.99
Ray	85.12
Reynolds	55.47
Ripley	47.13
St. Charles	105.55
St. Clair	69.39
Ste. Genevieve	77.08
St. Francois	75.27
St. Louis	131.70
Saline	87.35
Schuyler	68.69
Scotland	69.66
Scott	68.39
Shannon	49.43
Shelby	74.00
Stoddard	65.78
Stone	71.82
Sullivan	70.08
Taney	79.64
Texas	59.18
Vernon	73.91
Warren	86.42
Washington	55.13
Wayne	44.64
Webster	65.30
Worth	59.89
Wright	60.67
St. Louis Ind City	93.19
Montana	
Beaverhead	79.75
Big Horn	63.71
Blaine	68.46
Broadwater	70.01
Carbon	78.97
Carter	68.49
Cascade	90.24
Chouteau	86.19
Custer	87.96
Daniels	87.04
Dawson	86.59

County	County PCI Index
Deer Lodge	68.81
Fallon	80.33
Fergus	83.16
Flathead	84.28
Gallatin	78.74
Garfield	84.83
Glacier	81.87
Golden Valley	69.10
Granite	76.25
Hill	84.77
Jefferson	74.91
Judith Basin	65.40
Lake	67.19
Lewis and Clark	98.22
Liberty	95.30
Lincoln	70.30
McCone	90.22
Madison	71.61
Meagher	70.13
Mineral	75.29
Missoula	82.84
Musselshell	81.76
Petroleum	54.83
Phillips	77.80
Pondera	91.26
Powder River	83.72
Powell	89.72
Prairie	68.30
Ravalli	69.91
Richland	79.74
Roosevelt	73.78
Rosebud	87.70
Sanders	68.86
Sheridan	93.30
Silver Bow	92.97
Stillwater	81.04
Sweet Grass	86.24
Teton	80.12
Toole	108.12
Treasure	81.56
Valley	82.58
Wheatland	88.05
Wibaux	63.08
Yellowstone	101.19
Park (Incl. Ylwst. Ntl. Pk.)	81.40
Nebraska	
Adams	99.83
Antelope	90.34
Arthur	83.86
Banner	89.94
Blaine	75.47
Boone	81.54
Box Butte	75.88
Boyd	72.52
Brown	91.17
Buffalo	85.49
Burt	94.08
Butler	96.73
Cass	87.42
Cedar	69.34
Chase	95.08
Cherry	83.54
Cheyenne	98.19
Clay	100.11
Colfax	89.75
Cuming	90.55
Custer	85.24
Dakota	81.40
Dawes	79.06
Dawson	92.65
Deuel	110.42
Dixon	73.55
Dodge	100.08
Douglas	109.56
Dundy	100.96
Fillmore	101.71
Franklin	101.84
Frontier	82.46
Furnas	84.42
Gage	91.26
Garden	110.70
Garfield	80.74
Gosper	97.74
Grant	102.39
Greeley	79.21
Hall	94.91
Hamilton	100.13
Harlan	91.07
Hayes	63.88
Hitchcock	90.73
Holt	70.21
Hooker	85.21
Howard	82.62
Jefferson	92.78
Johnson	79.01
Kearney	115.53
Keith	101.62
Keya Paha	60.59
Kimball	112.25
Knox	63.53
Lancaster	99.42
Lincoln	95.18
Logan	85.42
Loup	55.94
McPherson	77.17
Madison	93.56
Merrick	85.25
Morrill	76.98
Nance	86.63
Nemaha	86.12
Nuckolls	81.69
Otoe	89.91
Pawnee	87.90
Perkins	119.43
Phelps	117.60
Pierce	72.22
Platte	100.18
Polk	109.56
Red Willow	97.39
Richardson	85.50
Rock	92.82
Saline	102.05
Sarpy	89.69
Saunders	87.71
Scotts Bluff	88.03
Seward	87.54
Sheridan	77.41
Sherman	73.75
Sioux	73.26
Stanton	75.43
Thayer	88.39
Thomas	78.92
Thurston	65.01
Valley	81.73
Washington	96.19
Wayne	69.11
Webster	84.26
Wheeler	55.61
York	105.78
Nevada	
Churchill	85.08
Clark	101.91
Douglas	128.89
Eklo	101.87
Esmeralda	93.92
Eureka	92.43
Humboldt	77.76
Lander	88.05
Lincoln	88.07
Lyon	87.88
Mineral	95.06
Nye	93.09
Pershing	87.80
Storey	94.80
Washoe	120.85
White Pine	87.68
Carson City	105.71
New Hampshire	
Belknap	95.07
Carroll	94.76
Cheshire	95.39
Coos	85.65
Grafton	93.55
Hillsborough	109.71
Merrimack	101.58
Rockingham	111.40
Strafford	91.30
Sullivan	88.74
New Jersey	
Atlantic	112.12
Bergen	153.40
Burlington	106.13
Camden	103.15
Cape May	107.09
Cumberland	87.77
Essex	111.03
Gloucester	97.44
Hudson	94.70
Hunterdon	140.49
Mercer	117.85
Middlesex	123.85
Monmouth	121.39
Morris	150.24
Ocean	105.62
Passaic	106.65
Salem	92.90
Somerset	153.20
Sussex	107.42
Union	135.50
Warren	108.27
New Mexico	
Bernalillo	96.42
Catron	53.89
Chaves	81.79
Cibola	48.00
Colfax	81.22
Curry	81.63
De Baca	75.00
Dona Ana	67.57
Eddy	85.80
Grant	71.31
Guadalupe	52.98
Harding	77.04
Hidalgo	71.65

County	County PCI Index
Lea	96.89
Lincoln	84.04
Los Alamos	159.36
Luna	69.11
McKinley	50.67
Mora	39.33
Otero	75.82
Quay	77.93
Rio Arriba	54.89
Roosevelt	66.30
Sandoval	78.09
San Juan	76.79
San Miguel	51.46
Santa Fe	91.73
Sierra	76.56
Socorro	54.72
Taos	66.89
Torrance	56.94
Union	72.41
Valencia	73.91
New York	
Albany	111.50
Allegany	65.85
Bronx	82.57
Broome	98.77
Cattaraugus	73.34
Cayuga	81.06
Chautauqua	85.66
Chemung	88.76
Chenango	75.46
Clinton	72.25
Columbia	84.72
Cortland	77.26
Delaware	74.12
Dutchess	109.35
Erie	99.06
Essex	78.84
Franklin	68.08
Fulton	82.15
Genesee	91.24
Greene	83.20
Hamilton	80.25
Herkimer	80.43
Jefferson	80.85
Kings	90.21
Lewis	67.17
Levingston	86.58
Madison	82.82
Monroe	116.59
Montgomery	87.44
Nassau	155.17
New York	157.77
Niagara	95.06
Oneida	89.55
Onandaga	102.56
Ontario	95.17
Orange	95.09
Orleans	88.44
Oswego	82.91
Otsego	77.69
Putnam	121.79
Queens	115.10
Rensselaer	90.61
Richmond	115.26
Rockland	134.28
St. Lawrence	70.67
Saratoga	95.10
Schenectady	110.60
Schoharie	70.53
Schuyler	75.51
Seneca	88.99
Steuben	85.02
Suffolk	115.44
Sullivan	87.15
Tioga	87.58
Tompkins	80.98
Ulster	95.82
Warren	89.95
Washington	76.24
Wayne	93.05
Westchester	163.00
Wyoming	76.24
Yates	82.07
North Carolina	
Alamance	87.54
Alexander	78.85
Alleghany	68.18
Anson	66.06
Ashe	62.63
Avery	61.05
Beaufort	72.03
Bertie	65.95
Bladen	59.17
Brunswick	64.75
Buncombe	86.03
Burke	78.16
Cabarrus	89.11
Caldwell	74.25
Camden	66.79
Carteret	70.84
Caswell	58.59
Catawba	91.01
Chatham	86.29
Cherokee	55.71
Chowan	69.71
Clay	55.67
Cleveland	76.92
Columbus	61.63
Craven	78.75
Cumberland	73.85
Currituck	67.76
Dare	67.43
Davidson	83.20
Davie	84.36
Duplin	67.69
Durham	95.92
Edgecombe	76.32
Forsyth	106.85
Franklin	66.62
Gaston	83.91
Gates	72.80
Graham	60.11
Granville	66.78
Greene	73.38
Guilford	101.91
Halifax	62.20
Harnett	62.96
Haywood	78.90
Henderson	93.09
Hertford	66.89
Hoke	49.69
Hyde	53.46
Iredell	80.85
Jackson	66.00
Johnston	72.08
Jones	62.76
Lee	87.26
Lenoir	75.75
Lincoln	81.57
McDowell	71.59
Macon	70.80
Madison	60.09
Martin	72.14
Mecklenburg	108.90
Mitchell	70.82
Montgomery	68.45
Moore	88.80
Nash	89.86
New Hanover	84.78
Northampton	54.35
Onslow	73.77
Orange	93.68
Pamlico	71.89
Pasquotank	78.42
Pender	63.55
Perquimans	66.56
Person	69.82
Pitt	75.87
Polk	93.00
Randolph	84.89
Richmond	66.64
Robeson	56.94
Rockingham	79.71
Rowan	84.13
Rutherford	73.99
Sampson	68.82
Scotland	68.37
Stanly	81.52
Stokes	76.17
Surry	79.09
Swain	58.37
Transylvania	82.11
Tyrrell	79.38
Union	88.88
Vance	72.00
Wake	109.29
Warren	64.34
Washington	77.41
Watauga	65.14
Wayne	72.25
Wilkes	76.03
Wilson	86.00
Yadkin	80.92
Yancey	57.00
North Dakota	
Adams	92.23
Barnes	96.77
Benson	81.31
Billings	89.97
Bottineau	104.84
Bowman	103.15
Burke	110.95
Burleigh	110.16
Cass	110.78
Cavalier	109.61
Dickey	85.33
Divide	122.41
Dunn	92.91
Eddy	101.01
Emmons	72.60
Foster	93.93
Golden Valley	102.17
Grand Forks	88.02
Grant	69.60
Griggs	95.89
Hettinger	95.41
Kidder	77.84

County	County PCI Index
La Moure	82.01
Logan	83.84
McHenry	93.41
McIntosh	84.16
McKenzie	88.97
McLean	100.47
Mercer	107.64
Morton	86.38
Mountrail	84.68
Nelson	103.18
Oliver	91.21
Pembina	108.00
Pierce	87.22
Ramsey	103.15
Ransom	91.39
Renville	109.95
Richland	87.86
Rolette	62.92
Sargent	96.71
Sheridan	87.72
Sioux	55.34
Slope	84.19
Stark	92.42
Steele	117.67
Stutsman	97.61
Towner	101.26
Traill	110.45
Walsh	92.18
Ward	96.35
Wells	105.92
Williams	115.29
Ohio	
Adams	53.17
Allen	91.94
Ashland	85.76
Ashtabula	81.81
Athens	59.18
Auglaize	89.33
Belmont	83.76
Brown	76.62
Butler	95.20
Carroll	73.33
Champaign	79.33
Clark	87.41
Clermont	83.94
Clinton	84.30
Columbiana	75.15
Coshocton	85.88
Crawford	84.75
Cuyahoga	113.32
Darke	83.19
Defiance	91.84
Delaware	96.39
Erie	95.18
Fairfield	92.51
Fayette	74.94
Franklin	101.27
Fulton	91.03
Gallia	77.04
Geauga	111.74
Greene	96.15
Guernsey	72.87
Hamilton	108.70
Hancock	106.15
Hardin	75.54
Harrison	76.03
Henry	91.95
Highland	71.13
Hocking	73.35
Holmes	57.91
Huron	84.77
Jackson	68.41
Jefferson	86.13
Knox	79.22
Lake	106.96
Lawrence	69.01
Licking	90.28
Logan	88.07
Lorain	91.78
Lucas	99.84
Madison	75.60
Mahoning	89.14
Marion	87.96
Medina	101.27
Meigs	70.13
Mercer	86.26
Miami	93.72
Monroe	73.73
Montgomery	101.66
Morgan	80.92
Morrow	71.83
Muskingum	82.61
Noble	67.84
Ottawa	96.59
Paulding	81.16
Perry	67.80
Pickaway	83.08
Pike	63.53
Portage	87.96
Preble	83.27
Putnam	87.29
Richland	91.08
Ross	76.95
Sandusky	90.98
Scioto	66.04
Seneca	87.32
Shelby	83.89
Stark	93.50
Summit	103.42
Trumbull	95.52
Tuscarawas	82.98
Union	88.76
Van Wert	96.43
Vinton	58.83
Warren	88.43
Washington	84.88
Wayne	88.19
Williams	91.78
Wood	93.53
Wyandot	92.45
Oklahoma	
Adair	55.46
Alfalfa	107.78
Atoka	52.77
Beaver	97.21
Beckham	75.87
Blaine	82.14
Bryan	74.44
Caddo	78.54
Canadian	104.31
Carter	95.02
Cherokee	61.20
Choctaw	59.39
Cimarron	117.84
Cleveland	99.94
Coal	61.58
Comanche	75.55
Cotton	78.21
Craig	89.21
Creek	84.88
Custer	87.15
Delaware	59.70
Dewey	94.79
Ellis	101.54
Garfield	106.44
Garvin	85.09
Grady	82.09
Grant	125.95
Greer	76.96
Harmon	72.10
Harper	111.40
Haskell	64.79
Hughes	66.31
Jackson	77.97
Jefferson	79.69
Johnston	54.13
Kay	118.63
Kingfisher	96.17
Kiowa	79.37
Latimer	59.72
Le Flore	64.27
Lincoln	81.94
Logan	85.30
Love	71.90
McClain	84.25
McCurtain	60.24
McIntosh	66.92
Major	91.96
Marshall	71.17
Mayes	76.28
Murray	74.01
Muskogee	83.18
Noble	87.70
Nowata	79.15
Okfuskee	62.51
Oklahoma	113.60
Okmulgee	76.43
Osage	80.34
Ottawa	81.85
Pawnee	85.24
Payne	74.26
Pittsburg	68.59
Pontotoc	85.00
Pottawatomie	87.93
Pushmataha	49.76
Roger Mills	69.67
Rogers	90.86
Seminole	80.80
Sequoyah	61.51
Stephens	94.86
Texas	126.24
Tillman	71.33
Tulsa	115.69
Wagoner	79.61
Washington	131.11
Washita	65.19
Woods	101.63
Woodward	87.72
Oregon	
Baker	74.93
Benton	84.21
Clackamas	101.85
Clatsop	84.61
Columbia	84.28
Coos	79.38
Crook	80.59
Curry	85.58

County	County PCI Index
Deschutes	80.45
Douglas	80.27
Gilliam	101.04
Grant	75.82
Harney	78.47
Hood River	91.13
Jackson	80.99
Jefferson	79.62
Josephine	69.64
Klamath	78.11
Lake	83.07
Lane	82.40
Lincoln	84.78
Linn	79.11
Malheur	72.14
Marion	87.03
Morrow	108.42
Multnomah	105.13
Polk	78.12
Sherman	109.31
Tillamook	81.30
Umatilla	80.03
Union	79.35
Wallowa	81.79
Wasco	94.78
Washington	110.27
Wheeler	90.95
Yamhill	83.86
Pennsylvania	
Adams	82.11
Allegheny	108.86
Armstrong	84.32
Beaver	88.62
Bedford	64.74
Berks	104.26
Blair	75.83
Bradford	73.82
Bucks	111.77
Butler	88.72
Cambria	80.71
Cameron	79.90
Carbon	86.59
Centre	76.13
Chester	122.08
Clarion	77.11
Clearfield	80.69
Clinton	72.61
Columbia	77.84
Crawford	73.85
Cumberland	107.62
Dauphin	101.27
Delaware	119.71
Elk	89.95
Erie	88.35
Fayette	76.14
Forest	70.87
Franklin	88.95
Fulton	63.44
Greene	71.41
Huntingdon	67.41
Indiana	79.15
Jefferson	80.88
Juniata	79.59
Lackawanna	87.15
Lancaster	96.65
Lawrence	78.39
Lebanon	91.95
Lehigh	107.78
Luzerne	86.42
Lycoming	83.55
McKean	86.45
Mercer	82.43
Mifflin	70.98
Monroe	88.83
Montgomery	142.43
Montour	88.34
Northampton	100.39
Northumberland	79.46
Perry	82.16
Philadelphia	89.22
Pike	86.39
Potter	67.89
Schuylkill	83.86
Synder	74.18
Somerset	76.99
Sullivan	69.40
Susquehanna	74.94
Tioga	67.68
Union	79.30
Venango	86.50
Warren	85.86
Washington	91.44
Wayne	81.49
Westmoreland	93.23
Wyoming	75.12
York	95.10
Rhode Island	
Bristol	112.76
Kent	106.62
Newport	102.46
Providence	96.17
South Carolina	
Abbeville	65.37
Aiken	88.48
Allendale	53.36
Anderson	76.51
Bamberg	56.49
Barnwell	72.83
Beaufort	92.05
Berkeley	68.86
Calhoun	70.49
Charleston	83.92
Cherokee	76.39
Chester	76.67
Chesterfield	68.95
Clarendon	53.95
Colleton	59.76
Darlington	65.97
Dillon	54.41
Dorchester	76.65
Edgefield	60.73
Fairfield	62.00
Florence	74.57
Georgetown	69.23
Greenville	91.73
Greenwood	80.35
Hampton	65.14
Horry	78.37
Jasper	63.09
Kershaw	81.75
Lancaster	70.73
Laurens	75.49
Lee	57.90
Lexington	91.39
McCormick	60.57
Marion	61.76
Marlboro	52.49
Newberry	84.15
Oconee	78.66
Orangeburg	64.00
Pickens	78.60
Richland	88.76
Saluda	64.54
Spartanburg	83.11
Sumter	65.34
Union	66.42
Williamsburg	53.72
York	87.96
South Dakota	
Aurora	64.49
Beadle	90.47
Bennett	63.43
Bon Homme	77.63
Brookings	75.55
Brown	91.49
Brule	81.65
Buffalo	56.23
Butte	77.78
Campbell	76.37
Charles Mix	66.01
Clark	80.22
Clay	73.34
Codington	82.05
Corson	52.37
Custer	76.09
Davison	84.97
Day	78.10
Deuel	75.03
Dewey	64.31
Douglas	65.32
Edmunds	76.31
Fall River	91.23
Faulk	80.54
Grant	80.63
Gregory	74.80
Haakon	88.63
Hamlin	73.95
Hand	87.83
Hanson	64.15
Harding	85.05
Hughes	94.36
Hutchinson	77.76
Hyde	92.75
Jackson	63.01
Jerauld	68.04
Jones	105.23
Kingsbury	86.10
Lake	80.63
Lawrence	82.03
Lincoln	87.47
Lyman	82.93
McCook	74.81
McPherson	81.60
Marshall	74.97
Meade	77.86
Mellette	61.51
Miner	78.10
Minnehaha	98.78
Moody	74.36
Pennington	89.85
Perkins	89.29
Potter	92.54
Roberts	70.25
Sanborn	71.79
Shannon	29.08

County	County PCI Index
Spink	85.72
Stanley	92.23
Sully	127.78
Todd	44.13
Tripp	82.68
Turner	84.70
Union	87.20
Walworth	88.08
Yankton	81.48
Ziebach	66.70
Tennessee	
Anderson	94.18
Bedford	74.97
Benton	71.71
Bledsoe	55.39
Blount	82.82
Bradley	77.73
Campbell	55.53
Cannon	67.82
Carroll	75.67
Carter	60.69
Cheatham	75.51
Chester	59.50
Claiborne	54.65
Clay	53.34
Cocke	55.19
Coffee	81.98
Crockett	64.78
Cumberland	61.24
Davidson	100.55
Decatur	60.25
De Kalb	71.66
Dickson	76.96
Dyer	74.15
Fayette	55.40
Fentress	43.89
Franklin	64.54
Gibson	69.93
Giles	77.76
Grainger	54.82
Greene	70.61
Grundy	50.96
Hamblen	64.03
Hamilton	92.01
Hancock	42.42
Hardeman	58.21
Hargin	61.26
Hawkins	63.22
Haywood	55.53
Henderson	59.96
Henry	77.03
Hickman	64.17
Houston	65.79
Humphreys	71.81
Jackson	49.19
Jefferson	65.47
Johnson	57.08
Knox	87.96
Lake	53.18
Lauderdale	60.37
Lawrence	72.45
Lewis	47.22
Lincoln	66.23
Loudon	82.06
McMinn	71.68
McNairy	61.57
Macon	67.96
Madison	79.52
Marion	64.35
Marshall	79.41
Maury	78.17
Meigs	65.72
Monroe	52.76
Montgomery	74.12
Moore	73.07
Morgan	50.55
Obion	82.99
Overton	52.86
Perry	65.15
Pickett	48.19
Polk	64.47
Putnam	69.46
Rhea	73.65
Roane	73.12
Robertson	75.12
Rutherford	83.64
Scott	50.64
Sequatchie	56.44
Sevier	72.55
Shelby	93.43
Smith	65.53
Stewart	68.19
Sullivan	86.08
Sumner	86.01
Tipton	68.51
Trousdale	77.22
Unicoi	69.67
Union	53.29
Van Buren	53.28
Warren	76.74
Washington	81.49
Wayne	57.25
Weakley	61.89
White	63.16
Williamson	108.33
Wilson	86.52
Texas	
Anderson	77.83
Andrews	106.46
Angelina	84.44
Arkansas	88.86
Archer	104.71
Armstrong	100.85
Atascosa	73.91
Austin	105.69
Bailey	68.52
Bandera	99.71
Bastrop	81.70
Baylor	100.70
Bee	68.84
Bell	83.80
Bexar	89.49
Blanco	96.12
Borden	102.43
Bosque	94.69
Bowie	86.00
Brazoria	106.40
Brazos	74.38
Brewster	91.70
Briscoe	103.53
Brooks	55.28
Brown	82.73
Burleson	72.11
Burnet	100.94
Caldwell	70.37
Calhoun	83.64
Callahan	86.73
Cameron	54.59
Camp	93.57
Carson	110.26
Cass	72.59
Castro	65.21
Chambers	87.49
Cherokee	86.69
Childress	81.86
Clay	98.14
Cochran	86.73
Coke	85.51
Coleman	82.23
Collin	128.05
Collingsworth	80.18
Colorado	89.05
Comal	107.01
Comanche	87.47
Concho	71.66
Cooke	99.24
Coryell	71.22
Cottle	94.81
Crane	108.39
Crockett	106.29
Crosby	72.69
Culberson	63.45
Dallam	97.17
Dallas	123.89
Dawson	84.31
Deaf Smith	85.00
Delta	87.99
Denton	123.72
DeWitt	80.32
Dickens	68.69
Dimmit	50.01
Donley	91.67
Duval	67.16
Eastland	78.25
Ector	99.70
Edwards	90.96
Ellis	97.75
El Paso	68.74
Erath	98.37
Falls	74.14
Fannin	83.76
Fayette	99.09
Fisher	89.46
Floyd	84.93
Foard	93.64
Fort Bend	124.29
Franklin	97.37
Freestone	86.27
Frio	59.24
Gaines	77.40
Galveston	108.65
Garza	88.11
Gillespie	109.56
Glasscock	145.85
Goliad	89.05
Gonzales	90.35
Gray	114.08
Grayson	94.71
Gregg	101.29
Grimes	84.04
Guadalupe	87.23
Hale	78.90
Hall	82.61
Hamilton	74.25
Hansford	102.84
Hardeman	93.57
Hardin	88.73
Harris	118.69
Harrison	80.20

County	County PCI Index
Hartley	82.50
Haskell	86.97
Hays	80.50
Hemphill	92.96
Henderson	73.63
Hidalgo	51.31
Hill	81.59
Hockley	87.79
Hood	109.61
Hopkins	98.21
Houston	92.78
Howard	92.21
Hudspeth	79.80
Hunt	87.34
Hutchinson	116.04
Irion	115.66
Jack	100.88
Jackson	97.42
Jasper	78.31
Jeff Davis	97.76
Jefferson	107.40
Jim Hogg	86.57
Jim Wells	75.56
Johnson	99.54
Jones	87.50
Karnes	82.62
Kaufman	92.99
Kendall	116.60
Kennedy	129.30
Kent	73.68
Kerr	112.39
Kimble	87.89
King	78.81
Kinney	80.08
Kleberg	75.19
Knox	79.47
Lamar	82.22
Lamb	92.83
Lampasas	84.87
La Salle	47.76
Lavaca	92.80
Lee	81.73
Leon	94.54
Liberty	92.02
Limestone	79.51
Lipscomb	100.66
Live Oak	80.11
Llano	103.20
Loving	193.55
Lubbock	92.08
Lynn	73.31
McCulloch	84.95
McLennan	92.07
McMullen	115.55
Madison	77.41
Marion	61.08
Martin	96.99
Mason	74.74
Matagorda	85.17
Maverick	33.97
Medina	77.68
Menard	90.91
Midland	134.04
Milam	88.75
Mills	97.67
Mitchell	86.85
Montague	85.25
Montgomery	121.30
Moore	97.07
Morris	86.13
Motley	57.99
Nacogdoches	79.75
Navarro	88.68
Newton	68.07
Nolan	93.07
Nueces	91.52
Ochiltree	109.60
Oldham	89.16
Orange	84.33
Palo Pinto	90.50
Panola	77.91
Parker	98.89
Parmer	74.43
Pecos	81.34
Polk	74.36
Potter	92.87
Presidio	72.43
Rains	81.48
Randall	111.14
Reagan	98.30
Real	57.39
Red River	67.76
Reeves	71.99
Refugio	97.13
Roberts	107.91
Robertson	69.70
Rockwall	134.04
Runnels	92.36
Rusk	94.39
Sabine	68.27
San Augustine	62.75
San Jacinto	71.68
San Patricio	79.54
San Saba	75.67
Schleicher	96.66
Scurry	96.44
Shackleford	100.28
Shelby	72.82
Sherman	144.04
Smith	105.03
Somervell	104.78
Starr	33.13
Stephens	88.23
Sterling	87.91
Stonewall	92.92
Sutton	88.33
Swisher	74.94
Tarrant	111.95
Taylor	98.84
Terrell	103.69
Terry	82.83
Throckmorton	96.39
Titus	94.96
Tom Green	97.70
Travis	106.95
Trinity	67.85
Tyler	85.75
Upshur	71.93
Upton	90.86
Uvalde	69.30
Val Verde	59.31
Van Zandt	87.42
Victoria	107.04
Walker	69.98
Waller	85.93
Ward	92.78
Washington	106.01
Webb	50.42
Wharton	85.14
Wheeler	88.36
Wichita	103.62
Wilbarger	97.35
Willacy	48.70
Williamson	99.84
Wilson	68.67
Winkler	92.20
Wise	95.58
Wood	92.68
Yoakum	103.92
Young	112.10
Zapata	55.13
Zavala	48.01
Utah	
Beaver	57.74
Box Elder	77.53
Cache	62.84
Carbon	86.20
Daggett	58.97
Davis	76.71
Duchesne	71.94
Emery	68.54
Garfield	63.40
Grand	77.49
Iron	61.76
Juab	58.52
Kane	74.85
Millard	62.48
Morgan	83.95
Piute	55.24
Rich	50.84
Salt Lake	86.87
San Juan	47.40
Sanpete	53.83
Sevier	75.04
Summit	94.96
Tooele	78.22
Uintah	76.15
Utah	57.40
Wasatch	67.14
Washington	63.11
Wayne	54.14
Weber	84.38
Vermont	
Addison	73.10
Bennington	88.49
Caledonia	73.72
Chittenden	95.39
Essex	67.30
Franklin	78.37
Grand Isle	78.07
Lamoille	80.58
Orange	72.19
Orleans	65.79
Rutland	87.41
Washington	90.29
Windham	87.28
Windsor	88.51
Virginia	
Accomack	79.40
Albemarle	97.23
Alleghany	71.18
Amelia	70.78
Amherst	74.24
Appomattox	73.05
Arlington	176.03
Augusta	80.15
Bath	88.85
Bedford	83.92

County	County PCI Index
Bland	56.40
Botetourt	85.31
Brunswick	61.32
Buchanan	70.64
Buckingham	62.47
Campbell	85.91
Caroline	76.73
Carroll	59.91
Charles City	79.25
Charlotte	67.26
Chesterfield	113.55
Clarke	96.47
Craig	80.69
Culpeper	85.91
Cumberland	57.79
Dickenson	66.76
Dinwiddie	72.10
Essex	72.72
Fairfax	153.68
Fauquier	102.74
Floyd	62.30
Fluvanna	72.86
Franklin	65.33
Frederick	87.18
Giles	74.78
Gloucester	90.01
Goochland	100.75
Grayson	62.18
Greene	74.71
Greensville	60.64
Halifax	65.02
Hanover	108.71
Henrico	122.56
Henry	82.31
Highland	84.16
Isle of Wight	92.03
James City	94.17
King and Queen	77.11
King George	93.50
King William	91.24
Lancaster	99.09
Lee	60.77
Loudoun	125.65
Louisa	77.22
Lunenburg	66.43
Madison	67.74
Mathews	82.39
Mecklenburg	71.63
Middlesex	75.10
Montgomery	68.28
Nelson	68.01
New Kent	98.29
Northampton	72.54
Northumberland	87.54
Nottoway	74.06
Orange	85.75
Page	74.39
Patrick	65.28
Pittsylvania	64.38
Powhatan	81.18
Prince Edward	68.47
Prince George	68.58
Prince William	108.14
Pulaski	73.20
Rappahannock	88.26
Richmond	80.53
Roanoke	103.39
Rockbridge	75.59
Rockingham	86.09
Russell	63.80
Scott	64.70
Shenandoah	82.43
Smyth	64.85
Southampton	82.82
Spotsylvania	85.81
Stafford	99.40
Surry	81.58
Sussex	80.34
Tazewell	78.18
Warren	84.98
Washington	70.15
Westmoreland	78.67
Wise	81.42
Wythe	71.24
York	98.17
Alexandria	174.95
Bedford City	95.12
Bristol	84.80
Buena Vista	76.33
Charlottesville	97.75
Chesapeake	92.22
Clifton Forge	101.19
Colonial Heights	122.19
Covington	94.85
Danville	91.77
Emporia	99.55
Fairfax City	165.15
Falls Church	194.25
Franklin	115.59
Fredericksburg	97.62
Galax	90.04
Hampton	94.63
Harrisonburg	79.05
Hopewell	93.54
Lexington	85.03
Lynchburg	97.61
Manassas	122.68
Manassas Park	94.64
Martinsville	94.71
Newport News	97.03
Norfolk	87.84
Norton	99.26
Petersburg	96.65
Poquoson	107.68
Portsmouth	88.95
Radford	78.94
Richmond	115.39
Roanoke	96.68
Salem	100.26
South Boston	88.53
Staunton	96.17
Suffolk	84.29
Virginia Beach	109.42
Waynesboro	98.79
Williamsburg	123.69
Winchester	105.39
Washington	
Adams	107.25
Asotin	90.78
Benton	106.12
Chelan	96.59
Clallam	93.60
Clark	91.10
Columbia	125.60
Cowlitz	95.79
Douglas	90.23
Ferry	61.28
Franklin	90.56
Garfield	139.19
Grant	79.97
Grays Harbor	97.30
Island	91.80
Jefferson	95.82
King	123.99
Kitsap	101.70
Kittitas	81.20
Klickitat	85.19
Lewis	92.48
Lincoln	141.17
Mason	81.32
Okanogan	87.85
Pacific	95.04
Pend Oreille	66.15
Pierce	93.48
San Juan	110.23
Skagit	99.55
Skamania	80.33
Snohomish	99.54
Spokane	89.55
Stevens	69.10
Thurston	98.03
Wahkiakum	90.11
Walla Walla	96.93
Whatcom	85.55
Whitman	93.13
Yakima	82.58
West Virginia	
Barbour	68.76
Berkeley	79.52
Boone	71.79
Braxton	60.39
Brooke	79.27
Cabell	86.48
Calhoun	54.36
Clay	51.85
Doddridge	56.49
Fayette	68.39
Gilmer	61.04
Grant	66.15
Greenbrier	70.18
Hampshire	59.34
Hancock	91.11
Hardy	56.31
Harrison	82.59
Jackson	75.23
Jefferson	77.06
Kanawha	100.68
Lewis	71.83
Lincoln	53.44
Logan	71.57
McDowell	66.37
Marion	86.22
Marshall	78.31
Mason	69.01
Mercer	78.12
Mineral	67.95
Mingo	66.06
Monongalia	80.40
Monroe	58.40
Morgan	74.87
Nicholas	69.95
Ohio	93.65
Pendleton	48.76
Pleasants	78.19
Pocahontas	66.49
Preston	66.92
Putnam	83.61
Raleigh	79.17
Randolph	69.70

County	County PCI Index
Ritchie	62.37
Roane	63.82
Summers	59.57
Taylor	67.88
Tucker	57.90
Tyler	68.97
Upshur	70.20
Wayne	64.18
Webster	49.35
Wetzel	80.82
Wirt	61.50
Wood	88.69
Wyoming	62.19
Wisconsin	
Adams	60.52
Ashland	73.73
Barron	78.83
Bayfield	62.64
Brown	99.55
Buffalo	80.39
Burnett	64.46
Calumet	91.84
Chippewa	77.23
Clark	73.58
Columbia	91.10
Crawford	69.90
Dane	110.04
Dodge	85.47
Door	91.57
Douglas	76.26
Dunn	69.71
Eau Claire	84.93
Florence	63.14
Fond Du Lac	90.93
Forest	56.81
Grant	80.80
Green	102.20
Green Lake	88.02
Iowa	76.25
Iron	67.20
Jackson	74.96
Jefferson	91.60
Juneau	79.67
Kenosha	102.61
Kewaunee	83.82
La Crosse	93.95
Lafayette	85.51
Langlade	71.26
Lincoln	74.38
Manitowoc	89.01
Marathon	84.63
Marinette	79.17
Marquette	70.27
Milwaukee	107.61
Monroe	81.54
Oconto	72.18
Oneida	82.75
Outagamie	96.49
Ozaukee	130.61
Pepin	76.39
Pierce	87.81
Polk	78.50
Portage	85.16
Price	74.38
Racine	104.48
Richland	74.43
Rock	93.22
Rusk	63.81
St. Croix	95.31
Sauk	87.12
Sawyer	64.42
Sheboygan	99.14
Taylor	73.35
Trempealeau	72.32
Vernon	75.92
Vilas	69.78
Walworth	90.83
Washburn	73.55
Washington	101.35
Waukesha	123.42
Waupaca	89.35
Waushara	68.42
Winnebago	100.13
Wood	93.71
Shawano	72.63
Wyoming	
Albany	88.34
Big Horn	74.60
Campbell	105.04
Carbon	95.44
Converse	87.62
Crook	92.42
Fremont	84.42
Goshen	78.90
Hot Springs	97.93
Johnson	97.01
Laramie	109.70
Lincoln	85.46
Natrona	123.69
Niobrara	89.28
Park	100.96
Platte	75.30
Sheridan	107.65
Sublette	98.28
Sweetwater	104.37
Teton	118.02
Uinta	87.12
Washakie	93.80
Weston	106.67

Note.—Alaska Income Figures Divided by 1.25. Hawaii Income Figures Divided by 1.15.

Source: Bureau of Economic Analysis, Local Area Personal Income 1978–84.

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ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

Minimum Guidelines and Requirements for Accessible Design

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Public comment is invited on a proposal that would amend the *Minimum Guidelines and Requirements for Accessible Design* (MGRAD) by deleting § 1190.40 through 1190.230 of Subpart D—Technical Provisions and in their stead incorporating by reference (with some exceptions) sections 4.2 through 4.32 and the Appendix of the 1986 edition of the American National Standards Institute Standard ANSI A117.1, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People." In 1981, MGRAD was issued by the ATBCB pursuant to section 502(b)(7) of the Rehabilitation Act of 1973, to establish minimum guidelines and requirements for standards issued by the four standard-setting agencies under the Architectural Barriers Act of 1968. A revised final rule was issued in 1982. In 1984, the four standard-setting agencies issued the *Uniform Federal Accessibility Standards* (UFAS), which was based on the ANSI format. MGRAD establishes the minimum requirements with which UFAS must comply. The proposal would minimize the differences between MGRAD and UFAS. Further, by replacing the MGRAD technical provisions with the ANSI A117.1 (1986), both MGRAD and UFAS would follow the same format that is most widely used in non-federally funded and constructed facilities. This proposal also would make conforming technical amendments and would add provisions to Subpart E, which was reserved when MGRAD was published.

DATES: Written comments must be submitted on or before November 16, 1987.

ADDRESS: Written comments should be addressed to the General Counsel, Docket 87–04, Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Room 1010, Washington, DC 20202. Comments received will be available for public inspection at the above address from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark Smith, ATBCB, 330 C Street SW., Room 1010, Washington, DC 20202, (202) 245–1801 (v/TDD). This is not a toll-free number. This proposed rule is available on cassette at the above address for persons with visual impairments.

SUPPLEMENTARY INFORMATION:

Background of Proposed Rule

The Architectural and Transportation Barriers Compliance Board (ATBCB) was established by Section 502 of the Rehabilitation Act of 1973, as amended (Pub. L. 93–112, 29 U.S. 792), to insure compliance with standards prescribed pursuant to the Architectural Barriers Act of 1968, as amended (Pub. L. 90–480,

42 U.S.C. 4151–4157) (the Act). The Act is intended to insure that certain buildings financed with Federal funds are designed, constructed, altered, and leased in accordance with standards issued by four Federal agencies to provide ready access and use of such buildings to physically handicapped people. The four agencies authorized to issue standards for all design, construction, alteration, and leasing subject to the Act are the Department of Defense (DOD) for its buildings and facilities; the Department of Housing and Urban Development (HUD) for residential structures; the U.S. Postal Service (USPS) for its buildings and facilities; and the General Services Administration (GSA) for all other buildings and facilities.

A 1978 amendment to section 502 of the Rehabilitation Act, Pub. L. 95–602, authorized the Board to issue minimum guidelines and requirements (MGRAD) for these standards. The MGRAD now in effect was published on August 20, 1982 (47 FR 33862), and is codified at 36 CFR Part 1190.

Throughout the development of and rulemaking proceeding for MGRAD, the ATBCB considered the specifications contained in the American National Standards Institute's "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons" (ANSI A117.1–1980 or ANSI). The American National Standards Institute (ANSI) is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's standards for barrier-free design are developed by a committee made up of 52 organizations representing associations of handicapped people, rehabilitation professionals, design professionals, builders, and manufacturers. ANSI's standards are developed using the consensus process. The original ANSI A117.1, adopted in 1961, formed the technical basis for the first accessibility standards adopted by the Federal Government and most State governments. The 1980 edition of that standard was based on research funded by the U.S. Department of Housing and Urban Development. It was generally accepted by the private sector and was recommended for use in State and local building codes by the Council of American Building Officials.

Recognizing the widespread application of the ANSI standard and the desirability of uniformity, the ATBCB in MGRAD included provisions that were consistent with the technical specifications of ANSI A117.1–1980 wherever it was deemed appropriate.

In reviewing the ANSI technical requirements during MGRAD development, however, the ATBCB found that in some cases, with regard to some subjects, there was no sufficient research and/or field experience to support a Federal requirement at the time. Those provisions were reserved in MGRAD. The reserved provisions include external door opening force limits; requirements for accessible windows; the use of detectable warnings at locations other than doors leading to hazardous areas; all provisions dealing with signage; and opening time requirements for elevator doors.

Certain provisions in MGRAD differed from the 1980 ANSI, and some provisions of MGRAD provided clarification or additional information.

Following the publication of MGRAD as a final rule, the four standard-setting agencies under the Act initiated the development of uniform accessibility standards to be used by all Federal agencies. The objective of the effort was to publish uniform standards which would, wherever possible, be consistent with the ANSI A117.1–1980 standard while complying with MGRAD.

In keeping with the agencies' objective to secure uniformity between Federal requirements and those commonly used in the private sector or by state and local governments, the UFAS followed ANSI A117.1–1980 in format. Departures from the ANSI technical provisions were made only where necessary in order to comply with MGRAD, or where the agencies found differing or additional requirements to be appropriate due to the nature of certain buildings and facilities subject to the Act or which were in the interests of improved safety or access for handicapped people. The resulting document, the *Uniform Federal Accessibility Standards* (UFAS), was published in final form in the **Federal Register** on August 4, 1984 (47 FR 33862), and was implemented individually by the standard-setting agencies. GSA adopted the UFAS in 41 CFR 101.19.6, effective August 7, 1984. HUD adopted the UFAS in 24 CFR Part 40, effective October 4, 1984. USPS adopted the UFAS in Handbook RE–4, "Standards for Facility Accessibility by the Physically Handicapped," effective November 15, 1984. DOD adopted the UFAS by revising Chapter 18 of DOD 4270.1–M, "Construction Criteria," by memorandum dated May 8, 1985.

The 1980 ANSI standard recommended that scoping provisions, *i.e.*, specifications as to the number of accessible features and elements, be developed by administering agencies, but included in the technical specifications a requirement for a "reasonable number" of accessible features or elements. In accordance with this recommendation, the ATBCB developed for MGRAD definite numeric values in order to provide explicit guidance to the Federal standard-setting agencies. When the agencies developed UFAS, these MGRAD scoping guidelines were followed in section 4.1, Minimum Requirements, and, in addition, the "reasonable number" references in the ANSI technical provisions were deleted.

An integral part of the ANSI process is the requirement for each ANSI standard to be reviewed at five-year intervals and then either reaffirmed or revised. When the ANSI A117.1 review began in 1984, differences between UFAS and the 1980 ANSI standard were among the principal recommendations made for changes to be made in the new edition. The provisions that has been reserved in MGRAD were also reviewed to determine whether they should be retained, revised, or deleted in the new ANSI standard. The ANSI Committee found no justification for deleting these requirements, and thus retained all of the provisions that were reserved in MGRAD. However, revisions were made in some of the sections that reflected findings of ATBCB research on MGRAD reserved areas.

Many of the features of UFAS not previously in the ANSI standard were adopted in the 1986 ANSI, which was approved by ANSI on February 5, 1986. In particular, the 1986 ANSI eliminates all references to "minimum number" requirements in its technical provisions; includes some revisions to signage requirements that reflect results of ATBCB-sponsored research; and incorporates other requirements such as certain reach range dimensions, vertical clearances, and provisions relating to alarms.

Proposed Action on Reserved Sections

In the period since completion of MGRAD, the ATBCB has sponsored research in the areas of detectable warnings, signage and other environmental information systems, alarms, and hand anthropometrics, among other topics, and has participated with the standard-setting agencies in their development of UFAS. ATBCB has also assisted the ANSI A117.1 Committee in the development of the 1986 edition of that standard. The ATBCB had the opportunity to review, with those primarily responsible for the UFAS and ANSI standards, comments on the 1980 standard that reflected

practical experience in applying that earlier standard as well as information about new practices and technology.

Neither the review of these comments nor the research sponsored by the ATBCB to date warrants broad or significant changes in the MGRAD technical requirements, or modifications to the provisions of the 1986 standard at this time. In the case of detectable surface treatments, the ATBCB research recommended against federally-mandated requirements for detectable warnings at this time, which is reflected in an exception to the ANSI provisions incorporated in this rulemaking. Research in the area of signage developed recommendations for some changes—primarily the requirements for raised rather than incised tactile signage; for a standard measurement of stroke-to-width ratios, and for upper-case sans serif tactile signage—which have been incorporated in the ANSI standard. Some other recommendations from signage and information systems research would amplify or add to current requirements, and would make slight changes in permissible character proportions, but the ATBCB does not at this time consider that there is sufficient justification to recommend changes to existing requirements that are in wide use. This information, like similar findings from other research projects, will be used as appropriate in providing technical assistance to designers requiring more detailed information and may be reconsidered in future revisions of MGRAD.

Similarly, most findings from Alarms and Hand Anthropometrics studies did not conflict with current requirements but rather suggested additional consideration and refinements. These findings are discussed in further detail in sections which follow.

Finally, MGRAD reserved Subpart E—Special Building or Facility Types or Elements, for future rulemaking. The ANSI technical provisions include specifications for accessible dwelling units, one of the principal categories identified for Subpart E. UFAS incorporates the ANSI dwelling unit specifications and also provides requirements for a number of other special buildings types. These requirements were developed by a UFAS working group led by the standard-setting agencies with participation by the ATBCB and other Federal agencies with responsibility for different building and facility types.

Taking all of these developments into consideration, the ATBCB has determined that it is now possible to complete the reserved sections of MGRAD. The technical requirements proposed to be added to MGRAD are based primarily on the standards now promulgated by ANSI and the four standard-setting agencies, with findings from ATBCB research providing additional information and support.

There are two basic factors supporting this decision. The first consideration is the fact that the UFAS was developed subsequent to the publication of MGRAD and was subject to public comment following its publication in proposed form in the **Federal Register**. Thus, these public comments constitute a more current record in support of the UFAS provisions than existed on these issues when MGRAD was issued. The comments that will be received in response to this Notice of Proposed Rulemaking (NPRM) will provide an even more current record with regard to the proposed action. Since the UFAS has now been applied successfully for more than two and one-half years, and since the ATBCB participated in its development, it is appropriate to propose that requirements found in the UFAS but reserved in MGRAD be accepted now as the ATBCB minimum requirements.

Second, the ANSI A117.1 committee carefully reviewed all of the changes made when the 1980 standard was adapted for UFAS and the ATBCB rationale for reserving the MGRAD sections. Comments, opinions, and recommendations on these and other issues were solicited from the committee's membership of 52 organizations and carefully considered. The 1986 ANSI standard is the result of these extensive deliberations. Many of the UFAS changes have been adopted; in other cases, alternative approaches were developed that the ATBCB considers acceptable.

Another question considered by the ATBCB was the format of the MGRAD technical provisions. At the time MGRAD was developed, the Board drafted the standard in the **Federal Register** format used for regulations issued by the executive agencies. When the standard-setting agencies began development of the UFAS, they chose to use the format of the ANSI standard, thus retaining intact the numbering system and the figures. This decision was made in the interest of promoting uniformity in the accessibility standards used in Federal and non-Federal design and construction. The ATBCB believes that this is a worthwhile goal and therefore proposes that the ANSI technical provisions be adopted as the MGRAD technical provisions. It has chosen to use ANSI rather than UFAS because the 1986 ANSI has made a number of editorial improvements which are not currently in the UFAS. It is anticipated that future revisions of UFAS will incorporate updated versions of ANSI.

This proposed rulemaking would achieve several goals. It would complete MGRAD after five years of study and lessons learned in the development of other standards. It would make comparisons and future revisions of UFAS and MGRAD simpler. Finally, it would move significantly closer to the long-standing goal of uniformity in accessibility requirements for both the public and private sectors. This would have the benefit of simplifying accessibility compliance by removing duplicative layers of technical specifications that are a confusing and complicating factor for designers and builders as well as lay persons concerned with promoting accessibility. The result should be improved efficiency for all concerned parties.

In proposing this action, the ATBCB stresses its commitment to continuing review and revision of MGRAD as knowldge, experience, and new technology develop. While proposing to adopt the ANSI technical provisions as the technical specifications core of MGRAD, the ATBCB intends to maintain MGRAD as an independent document and is not restricting future action on technical issues. As proposed here, wherever the ATBCB finds a different or more stringent requirement appropriate, such a requirement will be adopted. As future ANSI editions are developed, each would be reviewed, as this one was, before making a decision on adopting the new version. Morever, any determination to modify MGRAD will be subject to a public rulemaking proceeding. While maintaining the independence of MGRAD, however, the ATBCB remains committed to continued close cooperation with the ANSI A117.1 committee, and will continue to work to bring potential improvements in that standard that are identified by the ATBCB to the attention of the committee members.

Further, incorporating the technical provisions of the nationally-accepted voluntary standard developed by ANSI is clearly in keeping with the Federal policy articulated in Executive Order 11093 promoting the use of private-developed standards wherever possible in Federal activities.

Provisions of the Proposed Rule

The proposed rule includes a number of amendments to complete reserved sections of MGRAD, to conform MGRAD language and terms to those used in ANSI A117.1, and to substitute

references to ANSI section numbers for the corresponding section numbers in the current MGRAD. A section-by-section description of the proposed amendments follows:

Section 1190.2, Applicability.

This section would be amended by deleting paragraph (e), which describes the reserved status of Subpart E, Special Building and Facility Types, and places certain requirements on the Department of Housing and Urban Development until such time as the subpart is completed. Because this proposed rulemaking would complete the housing requirements and remove the "reserved" status of the subpart, paragraph (e) no longer is necessary or appropriate.

Section 1190.3, Definitions.

This rulemaking would substitute the ANSI definitions of "adaptability," "common use," and "physically handicapped person" for those now appearing in MGRAD. In the case of the first two terms, the ANSI definitions are more clear and are consistent with the intent of MGRAD definitions. The ANSI definition of "physically handicapped person" is the same definition used in UFAS. It was accepted by the ATBCB when UFAS was developed as being appropriate for purposes of standards issued under the Architectural Barriers Act, which relate strictly to accessibility and usability of buildings and facilities. By incorporating this definition, uniformity in defining the term among all three documents will be achieved.

In addition, definitions would be added for several terms that are used in the ANSI A117.1 standard but were not used in MGRAD. These terms are "detectable," "detectable warning," "dwelling unit," "housing," "marked crossing," "multifamily dwelling," "service entrance," and "sleeping accommodations." The definition for "tactile warning," a term that would no longer be used, would be deleted.

Sections 1190.7, 1190.8, and 1190.9 and Subpart B.

A technical correction is proposed to delete section numbers unused in the current MGRAD and redesignate the remaining sections accordingly. Thus § 1190.9, Severability, would be redesignated as § 1190.7, and Subpart C. Scope, would be redesignated as Subpart B. The original sections 1190.7 and 1190.8 covered subject matter later deemed inappropriate for inclusion in MGRAD. Subpart B was originally intended to cover Waivers and Modifications, but proposed provisions were deleted after a 1980 opinion by the Office of Legal Counsel, Department of Justice, found that the ATBCB was not authorized to issue regulations governing waivers and modifications.

Subpart C—Scope.

This subpart would be redesignated as Subpart B and would be amended wherever reference is made to sections of the current Subpart D—Technical Provisions. Those references would be replaced by incorporating the appropriate references to corresponding provisions of the ANSI A117.1–1986 standard.

In addition, some new provisions would be added to incorporate requirements currently found in Subpart D—Technical Provisions that are not included in the ANSI standard. These provisions have been added to this section when the requirements were considered to be a scoping rather than a technical provision. (The ANSI standard contains no scoping provisions, but rather relies on the adopting authority to establish those requirements.)

Amendments to Subpart C would be made in each of its three sections, *§ 1190.31, Accessible buildings and facilities: New construction; § 1190.32, Accessible buildings and facilities: Additions,* and *§ 1190.33, Accessible buildings and facilities: Alterations.* Amendments to § 1190.31 include:

(1) Section 1190.31(a)(2), which would incorporate a provision now found in § 1190.50(h), Egress (and in UFAS 4.3.10) which requires more than one accessible means of egress wherever fire code provisions require more than one means of egress from any space or room.

(2) An addition to § 1190.31(g) which would note that platform lifts should facilitate unassisted entry and exit from the lift. This provision is under § 1190.110 in the current MGRAD.

Further, new provisions would be added to cover areas now reserved in MGRAD. Where UFAS contains scoping requirements in the reserved areas, these amendments would adopt consistent requirements. These additions to § 1190.31 would include:

(1) Paragraph (j), *Windows,* which was reserved in MGRAD pending further study or experience with application of the 1980 ANSI standard. When the ANSI A117.1 committee reviewed the issue for the 1986 revision of the standard, the fact that MGRAD had reserved the provision was considered. The reviewers decided that practical experience with the 1980 requirements on windows had not identified any problems with the specifications and that it was desirable to retain the provisions (found at section 4.12 in the ANSI standard) in order to assure that the need for accessible windows not be overlooked. The ATBCB funded a research project on Hand Anthropometrics which studied capabilities of selected disabled subjects to operate mechanisms and building components. Copies of the report of this project and other ATBCB research described in this proposal are available for inspection at the office referenced above. The findings from this study suggested detailed design criteria for window-opening hardware and indicated appropriate operable forces based on the specific type of hardware (*e.g.*, small bar or plate) that would be usable by 90 percent of the 104 disabled subjects in laboratory studies. The recommended forces ranged from 2 pound feet (lbf) to rotate a crank) to 11 pound feet (lbf) when a hook grip could be used.

The ANSI requirement permits hardware "operable by one hand" and which "does not require tight grasping, pinching or twisting of the wrist." The maximum operable force permitted is 5 lbf.

Although the detailed recommendations from the Hand Anthropometrics studies provide valuable information, for designers of building products in particular, and will be offered by the ATBCB as technical assistance information, the ATBCB does not believe that a mandatory Federal requirement more detailed and stringent than anything now in effect is warranted on the basis of current information.

The research report points out that "the research undertaken in this project was the first comprehensive examination of human performance of hand/arm disabled people. As such, the results can not be considered complete or definitive. . . . Moreover, there are some findings that suggest the need to develop different research methods or, at least, modify those described" in the report. It was noted, for example, that performance on actual devices can exceed performance on abstracted tasks. Bearing such considerations in mind, the ATBCB does not believe there is justification for establishing new and detailed requirements at this time. On the other hand, the research, together with experience with the 1980 ANSI standard, has confirmed the ATBCB's opinion that specifications for windows should be included in MGRAD requirements.

The current ANSI provisions are within the acceptable range of grip types (and forces for certain types) identified by the research project. To incorporate these ANSI requirements by reference would ensure greater accessibility than is now the case with no requirements in force. Since the research team did find standard window-opening devices on the market that met the requirements, there should be no practical impediment

to implementing the provision. The detailed recommendations offered by the research findings could, along with additional information that may become available, serve as the basis for future revisions to MGRAD at a later date.

Therefore, this reserved section would be completed by requiring that operable windows, where provided, comply with 4.12.

(2) Paragraph (o) *Tactile warnings,* was also reserved when MGRAD was published. Subsequently, the ATBCB funded research on detectable tactile surface treatments. As noted in an earlier proposed rulemaking (52 FR 4352, February 11, 1987), the findings from this study did not support mandatory Federal requirements in this area. Therefore the ATBCB proposed not to require detectable warnings, other than knurled surfaces on hardware of doors leading to hazardous areas. However, the ATBCB recognizes that designers and builders may choose to provide detectable warnings and has proposed amendments to MGRAD that would refer users to ANSI 4.27.

While ANSI 4.27 provides useful guidance on the issue of detectable warnings, the ATBCB also wished to provide the following guidance. First, the ANSI standard requires detectable warning surfaces on curb ramps. Concerns have been raised about the difficulties which people with certain mobility impairments (particularly amputees or persons using braces) have in walking on the surface treatments typically used for detectable warnings. These problems are particularly acute when the treatments are applied to sloping surfaces such as curb cuts. An additional point is that the ANSI standard requires only a textural contrast for detectable warnings, while the ATBCB research indicated that other cues such as sound and resiliency are equally or more useful. This issue is discussed in a summary of the ATBCB research report that is available from the office identified in this proposed rule.

In addition, under the proposal, the ATBCB will provide other information on detectable surfaces upon request. This proposed amendment incorporates the language proposed in the earlier NPRM cited above. The comments on detectable surfaces received in response to the earlier proposal will be incorporated into this rulemaking docket and considered along with any additional comments received on detectable warnings as a result of the present NPRM.

(3) Paragraph (p), *Signage,* was reserved in response to comments on early MGRAD rulemaking that included provisions on signage. The ATBCB has funded two research projects in this area since that time, one specifically on signage and the second on signage and other information systems for low-vision persons. UFAS included the signage requirements of the 1980 ANSI standard because it was considered essential to provide standards for signage in Federal buildings while the ATBCB continued its consideration of the issue. The 1986 ANSI standard incorporated the principal undisputed findings from the ATBCB signage research. Specifically, these provisions are (1) establishing the upper-case letter "x" as the standard of measurement for determining character proportions; and (2) prohibiting incised letters. This proposed rulemaking adopts the technical provisions of the 1986 ANSI and provides scoping requirements consistent with the intent of UFAS requirements.

Some additional recommendations from the research reports were not adopted by ANSI and would not be incorporated into MGRAD by this proposal. It was judged that there was not sufficient justification for those recommendations to merit making an MGRAD change that would be inconsistent with both ANSI and UFAS. This is the case with research recommendations for certain ratios governing character proportion on signs. Similarly, research findings suggested detailed requirements for lighting, gloss factors, and color contrast quantification that would represent significant new requirements. Appropriate information from the research will be made available when technical assistance is requested. These findings and practical experience will be evaluated for consideration in future rulemakings.

(4) A new paragraph (u) would be added to provide scoping requirements for housing. No housing provisions were included in MGRAD when it was published in 1982; the rulemaking noted that housing was among the special building and facility types that would be the subject of later rulemakings to complete the reserved Subpart E. UFAS adopted the ANSI requirements for dwelling units, with some amendments, along with scoping provisions for housing. This rulemaking would add, in subsection (u), scoping provisions for housing consistent with those in UFAS and would reference the technical specifications in the 1986 ANSI, which incorporate the UFAS amendments to the 1980 standard.

(5) A new paragraph (v) would be added to provide scoping requirements for health care facilities. This is one of the special building and facility types for which Subpart E was reserved. Consistent with the UFAS requirements, which were approved by the ATBCB at the time of their development, this rulemaking would adopt both scoping and technical provisions for health care facilities. The ATBCB notes that these requirements may be subject to review during future amendments of MGRAD.

As noted above, amendments would also be made to *Section 1190.32, Accessible buildings and facilities: Additions,* and *Section 1190.33, Accessible buildings and facilities: Alterations.* Conforming amendments would be made to § 1190.32 to reference corresponding ANSI provisions where MGRAD section numbers are now cited. Also, the reserved "Signage" paragraph would be deleted. Signage in additions to existing buildings would comply with the same requirements as in new construction. Similar amendments also would be made in § 1190.33, *Accessible buildings and facilities: Alterations.*

Additional amendments would be made to § 1190.33 to provide special technical provisions for certain situations in alteration projects. These amendments are consistent with provisions now in effect in UFAS. Specifically, the rule would permit:

(a) Omitting the requirement for an automatic elevator door reopening device where an existing elevator has a safety door edge. This exception is found at § 1190.100(c)(3)(i) in the current MGRAD.

(b) Reducing the minimum car dimensions to 4' x 4' where it is structurally impracticable to comply with the elevator car size required for new construction projects. This exception currently is found at § 1190.100(d)(1)(i) in MGRAD.

(c) Adding one accessible "unisex" toilet per floor, adjacent to existing toilet facilities, where it is structurally impracticable to make existing toilet facilities for each sex accessible. This exception is found at § 1190.150(a)(1) in MGRAD in effect.

(d) Providing special technical Provisions for stair handrails and door features in alterations projects.

(e) Providing certain exceptions for assembly areas.

Subpart D—Technical Provisons. This subpart would be redesignated as Subpart C and would be amended to incorporate §§ 4.2 through 4.32 and the Appendix of ANSI A117.1–1986 in lieu of the corresponding technical provisions now found in MGRAD §§ 1190.40 through 1190.240.

Incorporation of the ANSI provisions would complete the reserved MGRAD sections. These are: (1) all provisions

related to signage requirements, now found at MGRAD §§ 1190.60(f), 1190.100(e)(2), 1190.100(h)(2)(iii), 1190.100(j)(2), 1190.150(d), and 1190.200; (2) all provisions related to tactile warnings, now found at MGRAD §§ 1190.70(e)(9), 1190.80(f), and 1190.190; (3) MGRAD § 1190.140, Windows; (4) MGRAD § 1190.100(e)(2), elevator door open-time requirement, and (5) MGRAD § 1190.130(h)(2)(i), exterior door opening force requirement.

Most ANSI provisions are identical in effect and intent with the corresponding MGRAD provisions. Some provisions that MGRAD (and UFAS) included in the technical sections were not incorporated in the 1986 ANSI because they were deemed to be more appropriately treated as scoping requirements. Those requirements are proposed to be included in the amended § 1190.31, as noted above. Some were not incorporated in the 1986 ANSI standard because the ANSI committee did not consider those particular requirements to be substantiated by research findings or experience indicating superior benefits in accessibility or usability over the then current ANSI requirements, or because the committee felt that the requirements were not appropriate for a voluntary standard used for private sector construction. Where the ATBCB believes that the more stringent requirement is of sufficient importance that it should be mandated for facilities subject to the Architectural Barriers Act—all of which involve Federal funding for design, construction, alteration or leasing—it is proposing exceptions to the ANSI provisions. These exceptions, which are consistent with UFAS, are:

(1) MGRAD § 1190.100(d)(3)(iv) and (f)(1)(iv) and UFAS 4.10.3 and 4.10.12, require elevator car control and hall call buttons to be either raised or flush. ANSI permits recessed, raised, or flush buttons. The 1986 ANSI Committee considered revising this provision to prohibit recessed buttons but did not do so because, whether recessed, raised or flush, mechanically activated buttons must be depressed in order to be activated. Therefore such a prohibition would not necessarily be helpful. It was also noted that recessed buttons are easier to use for persons with certain disabilities and prevents problems of accidental activation by persons with visual disabilities who are "reading" the panel by touch.

However, further study has led the ATBCB to conclude that problems with recessed buttons are sufficient to outweigh these possible benefits. Persons with upper limb amputations or any disability that would require use of a fist or elbow to activate the button cannot use a recessed button. Further, the Hand Anthropometrics project found that persons with reaching limitations frequently use a slapping motion to operate higher buttons, a motion that would not activate a recessed button. Since raised or flush buttons are readily available, as are new control panels with inclined buttons that would obviate the problem of depressing flush buttons, the ATBCB believes it is appropriate to maintain MGRAD requirement as currently in effect.

(2) Paragraphs 4.7.7 Warning Textures and 4.7.12 Uncurbed Intersections of ANSI 4.7 Curb Ramps require detectable warning surfaces at curb ramps and uncurbed intersections. As discussed earlier, the ATBCB does not propose to require detectable warnings at any location and therefore is making an exception to these provisions.

(3) MGRAD § 1190.150(f)(5)(i) and UFAS 4.21.6 permit the installation of a fixed shower head in lieu of a hand held shower head in unmonitored facilities where vandalism is a consideration. ANSI provides advisory language to this effect in its Appendix. Although the ATBCB proposed to adopt the ANSI Appendix as well as the technical provisions, in order to avoid any potential questions about the validity of the fixed-shower-head exception in UFAS, this provision is specifically listed in this rulemaking as a proposed exception to the ANSI technical provisions.

(4) MGRAD § 1190.150(f)(7) and UFAS 4.21.7 permit a maximum height of ½ inch (13 mm) for curbs in shower stalls that are 36 inches by 36 inches (915 mm by 915 mm). ANSI permits a 4-inch curb height, the standard height for curbs in prefabricated shower stalls. Although the ATBCB recognizes the advantages of permitting use of standard building products, and although it is believed that a large proportion of disabled individuals who independently transfer to shower seats are able to maneuver over the 4-inch curb, the requirement for the lower curb would be continued because it increases accessibility for people with paralysis of the legs who cannot lift their legs over a 4-inch curb when transferring.

(5) UFAS 4.30.6 specifies mounting heights and locations for interior signage. (There is no corresponding provision in MGRAD because all signage requirements are reserved.) This requirement is not included in ANSI provisions on signage that are being incorporated by this rulemaking. The ATBCB believes the UFAS requirement to be appropriate and useful in assuring that tactile signage can be located by people with impaired vision. In addition to the ANSI technical provisions, this proposal would specify that such signage be mounted between 54 inches and 66 inches above the floor on the latch side of the door.

(6) UFAS 4.33.3 contains an exception to the ANSI requirements on placement of wheelchair locations in assembly areas. This proposal would provide an exception to the ANSI provisions to incorporate the UFAS provision. MGRAD, UFAS, and ANSI all require dispersal of wheelchair locations throughout the seating area. The exception permits clustered wheelchair seating in bleachers and other areas with sight lines requiring slopes greater than 5 percent, or to permit equivalent positions on levels with accessible egress.

The remaining differences between the ANSI and MGRAD specifications, and the ATBCB determination on each, are as follows:

(1) MGRAD § 1190.50(i)(3)(iv) permits carpet tile to have a maximum combined thickness of pile, cushion and backing of ½ inch. The section recommends that carpet meet this requirement but permits carpet to have a pile height up to ½ inch, exclusive of the thickness of pad or backing. The restriction on carpet tile thickness was incorporated in UFAS due to the MGRAD requirement. The 1980 ANSI, in paragraph 4.5.3, permits a maximum pile height of ½ inch and does not distinguish between carpet and carpet tile. In developing the 1986 standard, the ANSI committee considered the disparity between the standards but did not revise the existing ANSI provision because committee members did not consider it appropriate to place a different requirement on carpet tile than on carpet. The ATBCB has reviewed this issue and concluded that the difference in the MGRAD requirement and the ANSI requirement is not significant, and further agrees that there is no evidence to support continuing the different requirement for carpet tile than for carpet. Therefore the ATBCB proposes to incorporate 4.5.3 as it appears in ANSI.

(2) MGRAD § 1190.60, *Parking and passenger loading zones,* differs from the corresponding ANSI provisions, 4.6 Parking Spaces and Passenger Loading Zones, in the areas noted below. This proposal would incorporate all of the ANSI provisions without change. (a) MGRAD 1190.60(c)(2)(i) provides advisory specifications for accessible van parking spaces, although such

spaces are not required. UFAS 4.6.3 incorporates the same specifications as advisory standards. ANSI refers the user of the A117.1 standard to the appendix for dimensions for accessible van spaces. Since this proposal incorporates the ANSI appendix by reference, the ATBCB does not consider it necessary to restate the advisory specifications elsewhere in MGRAD.

(b) MGRAD § 1190.60(c)(5) requires that accessible parking spaces and access aisles have surface slopes not exceeding 1:48 in all directions. The same requirement is applied to passenger loading zones under § 1190.60(d)(3). UFAS 4.6.3 and 4.6.5 incorporate a similar requirement. The 1986 ANSI standard reviewers considered this specification, but did not incorporate it in section 4.6. ANSI 4.3.7 Slope (under 4.3 Accessible Route) requires that the cross slope of an accessible route can never exceed 1:50, which is essentially the same as the 1:48 MGRAD requirement. Since ANSI 4.6.3 states that the access aisle of a parking space or passenger loading zone is part of the accessible route from the space or zone, the cross slope requirement clearly applies. It is therefore not necessary to repeat the requirement in this section.

(c) MGRAD § 1190.60(d)(1) and UFAS 4.6.5 require that the access aisle at accessible passenger loading zones be 5 feet wide, the same width as the access aisle at accessible parking spaces. ANSI 4.6.3 requires a 4-foot-wide access aisle. Like other MGRAD and UFAS differnces with the 1980 ANSI standard, this was considered by the ANSI committee.

Discussions with the research contractor who developed the original ANSI requirement indicate that the difference in access aisle width was based on analysis of the use of the space. The access aisle at a parking space is likely to be adjacent to another parking space in which a car could be parked close to the boundary. At a passenger loading zone, on the other hand, a car can be positioned to assure full use of the access aisle and there will be no adjacent vehicle to maneuver around. Another consideration arguing for the wider access aisle for parking spaces is the possibility of a door from the adjacent parked car swinging into the access aisle. After weighing these considerations, the ATBCB has determined that a five foot wide access aisle is adequate for loading zones and there is no overriding reason for maintaining a Federal requirement that is different from the ANSI provision.

(d) MGRAD § 1190.60(e) and UFAS 4.6.6 require vertical clearances of 114 inches at accessible passenger loading zones and along vehicle access routes to such areas from site entrances. ANSI 4.6.3 requires a vertical clearnace of 108 inches. In considering this requirement, the ANSI Committee concurred that a vertical clearance specification was appropriate but ascertained that 108 inches (9 feet) was sufficient to provide clearance for standard accessible vans and would be consistent with standard building practices on height of entrance canopies. The ATBCB does not find the 6-inch difference between UFAS and MGRAD, on the one hand, and ANSI on the other hand, to be significant in view of the finding that standard personal vans can be accommodated with such a specification and therefore does not propose to include an exception on this provision. However, the Board notes that in order for facilities to be accessible to certain paratransit vehicles currently available from major manufacturers, vertical clearances must allow for vehicles as high as 125 inches (10 ft. 5 inches) in height. Facilities where access by paratransit "minibus" vehicles is a concern should consider the need to provide the higher clearance.

(3) MGRAD § 1190.70, *Ramps and curbs*, provides at paragraph (e), Curb ramps, that flared sides are required if any part of a path crosses any part of a curb ramp not protected by guardrails. UFAS includes this requirement at 4.7.5. ANSI 4.7.5 requires that curb ramps located where pedestrians must walk across them shall have flared sides. Since handrails or guardrails are not, in fact, generally used nor desirable for curb ramps (where they could impede pedestrian movement), the ANSI approach of requiring flared sides is believed to be a more satisfactory solution and is therefore proposed to be incorporated into MGRAD through this amendment.

(4) MGRAD § 1190.90, *Handrails*, differs from the corresponding ANSI provisions 4.8.5, 4.9.4 and 4.26 in the areas noted below. This proposal would incorporate all of the ANSI provisions without change.

(a) MGRAD § 1190.90, *Handrails*, requires, as did the 1980 ANSI standard, that handrails be no more than 1½ inch in outside diameter. Subsequently, ANSI received comments from industry spokesmen noting that pipes used for handrails are generally designated by inside diameter sizes, and that the typical pipe size specified is the 1½ inch pipe which has an outside diameter of 1.9 inches. Based upon laboratory research conducted with 104 disabled subjects, the ATBCB's Hand Anthropometrics project has indicated that an outside diameter of 1.7 inches is optimum for handrails and recommends for handrails a range from 1.3 to 1.7 inches in outside diameter. After consideration of these comments and preliminary information on the ATBCB research findings which indicated 1½" was too restrictive, the ANSI committee approved a revision to ANSI 4.8.5 and ANSI 4.9.4 specifying that standard pipe sizes designated by the industry as 1¼ inch to 1½ inch are acceptable as handrails.

The ATBCB research report has suggested 1.7 inches as the optimum diameter for permitting a power grip. In a power grip, the hand closes completely around an object, with thumb and fingers touching. However, the study was not conducted using handrails and, therefore, could not report on whether the power grip is actually used. Field testing performed with other devices found that subjects sometimes performed quite differently than they did in abstract laboratory tests. Therefore, this proposal would incorporate the ANSI provision into MGRAD. A larger diameter is clearly called for and the research underlying the 1.7 inch recommendation is not sufficiently definitive to form the basis for a new requirement which would differ from any now in effect. The Board intends to review new information on this issue as it becomes available for consideration in future revisions of MGRAD.

(b) MGRAD § 1190.90, *Handrails*, includes in paragraph (e) requirements on load-bearing capacity of handrails and specifies that handrails shall not rotate within their fittings. UFAS incorporated in 4.8.5 (for ramps) and 4.9.4 (for stairs), the requirement that the fixture not rotate within its fittings; it did not include load-bearing capacity. The 1986 ANSI did not incorporate these requirements because these were deemed to be safety issues that are covered appropriately by sections of building codes dealing with handrail safety requirements, rather than in the context of accessibility. The ATBCB concurs in this determination.

(c) MGRAD § 1190.90, *Handrails*, also requires in paragraph (f) that ends of handrails be returned smoothly to wall, floor or post. UFAS incorporated this requirement at 4.8.5 (for rails at ramps) and 4.9.4 (for rails at stairs). ANSI 4.9.4 includes a requirement that stairway handrail extensions must comply with 4.4, Protruding Objects, which would provide the same protection afforded by the MGRAD requirement. In view of this, and since UFAS includes the requirement in both sections, the ATBCB proposes to incorporate ANSI 4.8.5 unchanged. It is anticipated that UFAS will continue to provide the more

explicit requirement in both sections and that ANSI will consider adopting consistent language at its next revision.

(5) MGRAD § 1190.100, Elevators, contains five specifications that differ somewhat from the ANSI provisions in 4.10, Elevators. MGRAD also reserves the provision on elevator door timing for which ANSI provides a requirement at 4.10.8. The ATBCB proposal regarding one of these provisions for elevator car controls and hall call buttons, was noted above. In addition, this proposed rulemaking would adopt the ANSI 4.10.8 requirement for a three-second open time for elevator doors. Although the ATBCB had originally adopted a five-second open time requirement, it was withdrawn because of serious concerns about its effect on elevator operations in high-rise buildings (46 FR 39764). UFAS later adopted, with ATBCB concurrence, the three-second time frame. The ATBCB proposes to incorporate into MGRAD the three-second time as proven by experience to be sufficient, given the requirements for door and signal timing that are part of the comprehensive elevator specifications. The other differences are as follows:

(a) MGRAD provisions explicitly require that objects mounted beneath lobby call buttons shall not project into the elevator lobby more than 4 inches. The ANSI Committee considered adding this requirement to 4.10 but determined that the provisions of 4.25, Operating Controls and Mechanisms, and 4.4, Protruding Objects, precluded such placement and therefore an explicit statement in 4.10 was redundant. The ATBCB accepts this reasoning, and proposes to adopt the ANSI provision.

(b) MGRAD § 1190.100(d)(3)(ii) requires that car control buttons be mounted no higher than 48 inches above the floor, unless that height causes a substantial increase in cost, in which case the highest button may be 54 inches above the floor. The ANSI committee considered this approach but found the cost consideration inappropriate for a technical specification and further determined that where the number of floors or other factors mandated higher buttons (up to the 54-inch maximum), then the elevator car should be required to permit side approach. The ATBCB agrees that this is an appropriate way to assure accessibility of elevator controls and therefore proposes to incorporate this provision into MGRAD. The same consideration applies to mounting height of emergency communication equipment [ANSI 4.10.14, MGRAD 1190.100(j)(1)].

(c) MGRAD 1190.100(f)(1)(i) requires that hall call buttons be mounted with centerlines 48 inches above the floor. ANSI 4.10.3 specifies a mounting height of 42 inches. This difference is not considered significant. In addition, the lower height specified by ANSI should increase ease of access. Therefore, the ATBCB proposes to accept the ANSI specifications.

(6) MGRAD § 1190.130(a)(3) states that revolving doors and turnstiles are not accessible and therefore shall not be the only means of access at any accessible entrance or on any accessible route, and further requires that an accessible door be provided adjacent to the revolving door or turnstile and be designed to facilitate the same use pattern. The ANSI Committee reviewed the turnstile/revolving door issue and found that accessible turnstiles and revolving doors are now available on the market. For that reason, ANSI 4.13.2 was revised in 1986 to permit revolving doors or turnstiles that meet all the requirements for accessible doors, but to prohibit inaccessible turnstiles or revolving doors as the only means of passage at an accessible entrance or along an accessible route. The ATBCB believes this to be appropriate and proposes to incorporate this approach into MGRAD. Further, the additional language in MGRAD 1190.130(a)(3) regarding adjacent location and equivalent use patterns is not considered necessary to be included here since the ANSI provision clearly requires an accessible door at any accessible entrance. The further requirement that the adjacent door be subject to the same use patterns as the inaccessible revolving door or turnstile is required by MGRAD in the definition of "accessible" at 1190.3, which states that, "accessible elements and spaces of a building or facility including doors provided adjacent to a turnstile or a revolving door, shall be subject to the same use patterns as other elements and spaces of the building or facility."

(7) MGRAD § 1190.130(f) requires that no door hardware be mounted higher than 48 inches above the floor. ANSI 4.13.9 provides that all door operating hardware be mounted within the reach ranges specified in 4.2. The ANSI provision recognizes that there may be door operating hardware other than door opening devices (*e.g.*, special safety locks) that may be mounted at other than standard doorknob heights, and would assure that no such devices are mounted outside acceptable ranges for lower as well as higher reaches. The ATBCB concurs that these are valid consideration and that the ANSI requirement is consistent with the intent of the MGRAD provision. MGRAD is proposed to be amended accordingly.

(8) MGRAD § 1190.150(e)(2)(ii) and UFAS 4.17 require that toilet stalls in new construction be 60" wide. Both provisions include an exception which permits alternate stall sizes with widths of 48" or 36" in alteration projects if it is structurally impracticable to provide the 60" stall. ANSI 4.17 permits stalls of all three sizes in new construction, although the 60" stall is specified as the "standard" stall and the more narrow stalls are designated "alternate stalls." After careful review of the issue, the ATBCB is proposing to adopt ANSI and permit the use of the more narrow stalls. In the public comment on earlier MGRAD rulemakaings proposing the requirement for a 60" stall, comments were received from Federal and state agencies arguing against requiring the 60" stall. In addition a School of Medicine recommended that optional sizes be allowed. The 36" wide stall is the most usable for people with some disabilities (for example, for crutch or cane users) who need support on both sides when moving to or rising from a seated position. It is also the only stall design that offers support on either side for persons with the use of only one arm. The 36" wide stall requires a frontal transfer by wheelchair users. It provides sufficient depth to permit the stall door to close behind the wheelchair, although it will not accommodate some powered wheelchairs and three-wheeled powered mobility aids.

The 48" stall allows diagonal transfer from a wheelchair. In the research for the 1980 ANSI standard, it was found to be usable by all subjects who could transfer.

The 60" stall is the only stall which permits side transfer from a wheelchair. While the ATBCB continues to believe the 60" wide stall is preferable, it also recognizes that there are other factors that may make more narrow stalls preferable in some situations, and therefore believes that it is appropriate to permit alternate stall widths. The ATBCB also notes that stall sizes between 36" and 48" may adequately meet accessibility needs, and believes that alternate widths (such as the 42" width permitted by the Michigan State Code) would be permissible under this provision. The standard stall is preferred where it is feasible to provide the additional space. Because of the significance of this issue, and because there appear to be possible conflicting needs of people with different disabilities, the ATBCB particularly invites comment on this point. For example, does the 42" stall provide a workable compromise for wheelchair users and people with other disabilities? Does the movable grab bar, such as those frequently used in Europe, provide

a better solution? The ATBCB will review these and other approaches suggested by comments in making the final determination on this issue.

(9) MGRAD § 1190.180(c) permits visual alarms with a flash frequency "less than 5 [Hertz] Hz." The ANSI standard, at 4.26.3, requires a flashing frequency of approximately 1 Hertz. This revision was recommended to and adopted by ANSI in order to avoid the possibility of triggering seizures for individuals sensitive to rapidly flashing lights. The recommendation was based on experience with visual alarms in facilities serving hearing-impaired persons, which found that flashing frequencies of approximately 1 Hertz were adequate to awaken or alert those persons. The ATBCB's Alarms Documentation study also found evidence confirming this conclusion. The ATBCB believes that this is an appropriate requirement, and proposes to incorporate the ANSI requirement into MGRAD.

(10) MGRAD § 1190.210 specifies requirements for telephones. Equivalent requirements are provided in ANSI section 4.29. The ANSI provisions include a requirement not found in MGRAD for signage indicating the location of telecommunications devices for deaf persons where such equipment is provided. The ATBCB considers this to be an appropriate requirement that will benefit hearing-impaired people without imposing a significant burden on the provider, and therefore proposes to incorporate it into MGRAD.

Subpart E—Special Building or Facility Types or Elements.

The final provision of this proposed rulemaking would complete the reserved MGRAD subpart on special building or facility types—Subpart E in the current MGRAD, proposed to be redesignated Subpart D. In MGRAD as currently in effect, § 1190.2(e) explains that Subpart E is reserved for future development of minimum guidelines and requirements for special building and facility types, specifically including housing. However, in proposing to incorporate ANSI by reference, MGRAD like UFAS will be incorporating dwelling unit specifically in the basic technical provisions. Therefore the ATBCB proposes to complete the reserved subpart by incorporating sections 5 through 9 of the UFAS. These sections provide specifications for restaurants, cafeterias, health care facilities, mercantile facilities, libraries and postal facilities. The ATBCB participated with the standard-setting agencies in developing these specifications and approved them before their publication as final standards.

As need arises for specifications on other special building or facility types, the ATBCB may issue additional guidelines under this subpart. For example, the ATBCB organized a working group in access to recreational facilities and funed the development of a paper, recently completed, which proposes recommended MGRAD provisions for scoping and technical specifications for a variety of recreational facility types. These recommendations will be considered for future rulemaking.

Other Information

This proposed rule has been submitted to the Office of Management and Budget and reviewed under procedures established in Executive Order 12291. This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulations. This rulemaking would not establish significant new Federal requirements, but rather is adopting language used in existing standards which has the same effect and intent as the provisions being replaced. Where new provisions are adopted to complete reserved sections, Federal requirements in those areas already exist in the *Uniform Federal Accessibility Standards*, with only minor exeptions which would have minimal cost impact.

The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the proposal will not have any significant impact on the environment.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 36 CFR Part 1190

Buildings, Handicapped, Leasing, Transportation.

Accordingly, 36 CFR Part 1190 is proposed to be amended as set forth below.

By vote of the Board on May 13, 1987.

Thomas E. Harvey,

Chairperson, Architectural and Transportation Barriers Compliance Board.

It is proposed that 36 CFR Part 1190 be amended as follows:

PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

1. The authority citation for 36 CFR Part 1190 is revised to read as follows:

Authority: Section 502(b) of the Rehabilitation Act of 1973 [29 U.S.C. 792(b)(7)], as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 602, 92 Stat. 2982, and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1801).

§ 1190.2 [Amended]

2. Section 1190.2 is amended by removing paragraph (e).

§ 1190.3 [Amended]

3. Section 1190.3 is amended by:

(a) Revising the definition of "Adaptability" to read:

* * * * *

"Adaptability" means the capability of certain building spaces and elements, such as kitchen counters, sinks and grab bars, to be altered to added so as to accommodate the needs of persons with and without disabilities, or to accommodate the needs of persons with different types of degrees of disability.

* * * * *

(b) revising the definition of "Common use areas" to read:

* * * * *

"Common use" means those interior and exterior rooms, spaces or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants).

* * * * *

(c) Revising the definition of "Physically handicapped person" to read:

* * * * *

"Physically handicapped person" means an individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, which results in a functional limitation in access to and use of a building or facility.

* * * * *

(d) Adding the following definitions:

(1) After the definition of "Curb ramp" and before the definition of "Egress," insert—

* * * * *

"Detectable" means perceptible by one or more of the senses.

"Detectable warning" means a standardized surface texture applied to or built into walking surfaces or other

elements to warn visually impaired people of hazards in the path of travel.

"Dwelling unit" means a single unit of residence that provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. A single-family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

* * * * *

(2) After the definition of "Guidelines and requirements" and before the definition of "Operable part", insert—

* * * * *

"Housing" means a building, facility, or portion thereof, excluding inpatient health care facilities, that contains one or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one-family and two-family dwellings, multifamily dwellings, group homes, hotels, motels, dormitories, and mobile homes.

"Marked crossing" means a crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

"Multifamily dwelling" means any building containing more than two dwelling units.

* * * * *

(3) After the definition of "Section 502 of the Rehabilitation Act" and before the definition of "Shall," insert,

* * * * *

"Service entrance" means an entrance intended primarily for delivery or service.

* * * * *

(4) After the definition of "Site improvements" and before the definition of "Space," insert,

* * * * *

"Sleeping accommodations" means rooms in which people sleep (for example, dormitory and hotel or motel guest rooms).

* * * * *

(e) removing the definition "Tactile warning."

§§ 1190.7 and 1190.8 [Removed];

§ 1190.9 [Redesignated as § 1190.7]

4. Remove §§ 1190.7 and 1190.8 and redesignate § 1190.9 as § 1190.7.

Subpart C [Redesignated as Subpart B]

5. Redesignate Subpart C as Subpart B.

§ 1190.31 [Amended]

6. Amend § 1190.31 Accessible buildings and facilities: New contruction, as follows:

(a) The introductory text is revised to read:

Except as otherwise provided in this part, all new construction of buildings and facilities shall comply with the minimum requirements set forth below, and the technical provisions (designated as Sections 4.2 through 4.32) of the American National Standards Institute (ANSI) A117.1 (1986) standard incorporated by reference in Subpart C, Technical Provisions. The citations in the provisions which follow refer to the sections of the referenced standard.

* * * * *

(b) Section 1190.31(a) is revised to read:

* * * * *

(a) *Accessible route.* At least one accessible route shall comply with ANSI 4.3, Accessible Routes.

(1) Required accessible route(s) shall connect an accessible building entrance with:

(i) Transportation facilities located within the property line of a given site, including passenger loading zones, public transportation facilities, taxi stands, and parking;

(ii) Public streets and sidewalks;

(iii) Other accessible buildings, facilities, elements, and spaces that are on the same site; and

(iv) All accessible spaces, rooms, and elements within the building or facility.

(2) Where fire code provisions require more than one means of egress from any space or room, then more than one accessible means of egress complying with ANSI 4.3.10 shall be provided for handicapped people and shall be arranged so as to be readily accessible from all accessible rooms and spaces.

* * * * *

(c) Section 1190.31(b) is amended by: (1) removing "§ 1190.60, Parking and passenger loading zones," wherever it appears and inserting in lieu thereof, "ANSI 4.6 Parking Spaces and Passenger Loading Zones"; and (2) removing the reference to § 1190.60(c)(2)(a) in the last sentence of § 1190.31(b)(1)(ii).

(d) Section 1190.31(c) is amended by: (1) removing "§ 1190.70, Ramps and curb ramps"; and (2) inserting in lieu thereof "ANSI 4.7 Curb Ramps or ANSI 4.8 Ramps, as appropriate."

(e) Section 1190.31(d) is amended by removing "§ 1190.80" and inserting in lieu thereof "ANSI 4.9."

(f) Section 1190.31(e) is amended by removing the text which follows "as required in" and inserting in lieu thereof, "ANSI 4.8 Ramps and ANSI 4.9 Stairs, respectively."

(g) Section 1190.31(f) is amended by: (1) removing "§ 1190.100" wherever it appears and inserting in lieu thereof "ANSI 4.10"; and (2) removing "§ 1190.70 Ramps and curb ramps, and § 1190.110, Platform lifts" in paragraph (f)(2) and inserting in lieu thereof, "ANSI 4.8 Ramps and ANSI 4.11 Platform Lifts."

(h) Section 1190.31(g) is amended by removing "§ 1190.100, Platform lifts" and inserting in lieu thereof "ANSI 4.11 Platform Lifts, and should facilitate unassisted entry and exit from the lift."

(i) Section 1190.31(h) is amended by removing "§ 1190.120" whereever it appears and inserting in lieu thereof "ANSI 4.14."

(j) Section 1190.31(i) is amended by: (1) removing "§ 1190.130" wherever it appears and inserting in lieu thereof "ANSI 4.13"; and (2) removing "§ 1190.50(h)" in paragraph (i)(3) and inserting in lieu there of "ANSI 4.3.10."

(k) Section 1190.31(j) is amended by removing "[Reserved]" and adding, "If operable windows are provided, they shall comply with ANSI 4.12 Windows."

(l) Section 1190.31(k) is revised to read as follows:

* * * * *

(k) *Toilet and bathing facilities.* If toilet and bathing facilities are provided, then each public and and common use toilet room shall comply with ANSI 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms. Other toilet rooms shall be adaptable. If bathing facilities are provided, then each public and common use bathing facility shall comply with ANSI 4.22. In each such facility where any of the fixtures and accessories specified in ANSI 4.16, Water Closets; 4.17, Toilet Stalls; 4.18, Urinals; 4.19, Lavatories, Sinks and Mirrors; 4.20, Bathtubs; and 4.21, Shower Stalls, are provided, at least one accessible fixture and accessory of each type provided shall comply with the provisions in the subsection applicable to that fixture or accessory. Bathrooms in dwelling units shall comply with ANSI 4.32.4, Bathrooms. For special use situations, refer to Subpart E of this Part 1190, Special Building or Facility Types or Elements.

(m) Section 1190.31(l) is amended by removing "§ 1190.160, Drinking fountains and water coolers," and "§ 1190.160" the other two times it appears, and inserting in lieu thereof "ANSI 4.15, Drinking Fountains and Water Coolers," and "ANSI 4.15," respectively.

(n) Section 1190.31(m) is amended by removing "§ 1190.170, Controls and operating mechanisms," and inserting in lieu thereof, "ANSI 4.25, Controls and Operating Mechanisms."

(o) Section 1190.31(n) is amended by: (1) removing "§ 1190.180" and inserting in lieu thereof, "ANSI 4.26", and (2)

adding at the end of the paragraph the following:

* * * * *

* * * In facilities with sleeping accommodations, the sleeping accommodations shall have an alarm system complying with ANSI 4.26.4, Auxiliary Alarms. Emergency warning systems in health care facilities may be modified to suit standard health care alarm design practice.

(p) Section 1190.31(o) is revised to read:

* * * * *

(o) *Detectable warnings.* Detectable warnings complying with ANSI 4.27.3, Tactile Warnings on Doors to Hazardous Areas, shall be provided on the hardware of all doors leading to hazardous areas. Such warnings shall not be used at emergency exit doors. Detectable warnings are not required at locations other than doors to hazardous areas by this part. If detectable warnings are provided, the specifications at ANSI 4.27 may be used as guidance.

Note.—The ATBCB has funded research in the area of detectable tactile surface treatments. The research findings were inconclusive and, therefore, recommended no mandatory requirements at this time. Technical assistance materials are available from ATBCB, 330 C Street, SW, Room 1010–2101, Washington, DC 20202 (202) 472–2700 (voice or TDD).

* * * * *

(q) Section 1190.31(p) is revised to read as follows:

* * * * *

(p) *Signage.* Signage shall comply with ANSI 4.28, Signage. Permanent signage that identifies rooms and spaces shall also comply with ANSI 4.28.4.

Exception: The provisions of ANSI 4.28.4 are not mandatory for temporary information on room and space signage, such as current occupant's name, provided the permanent room or space identification complies with ANSI 4.30.4.

* * * * *

(r) Section 1190.31(q) is amended by removing "§ 1190.210" wherever it appears and inserting in lieu thereof "ANSI 4.29."*

(s) Section 1190.31(r) is amended by removing "§ 1190.220, Seating, tables and work surfaces," and inserting in lieu thereof "ANSI 4.30, Seating, Tables and Work Surfaces."

(t) Section 1190.31(s) is amended by: (1) removing "§ 1190.230, Assembly areas" and "§ 1190.230" and inserting in lieu thereof "ANSI 4.31, Auditorium and Assembly Areas" and "ANSI 4.31," respectively; and (2) removing "§ 1190.50, Walks, floors and accessible routes" and inserting in lieu thereof "ANSI 4.3, Accessible Routes."

(u) Section 1190.31(t) is amended by removing "§ 1190.240" wherever it appears and inserting in lieu thereof "ANSI 4.23."

(v) new § 1190.31(u) is added to read as follows:

* * * * *

(u) *Housing.* Accessible housing shall: (1) Comply with the requirements of this § 1190.31 as it applies to public use and common use areas and areas where handicapped persons may be employed, except as follows:

(1) *Elevators:* Where provided, elevators shall comply with ANSI 4.10. Elevators or other accessible means of vertical movement are not required in residential facilities when:

(A) No accessible dwelling units are located above or below the accessible grade level; and

(B) At least one of each type of common area and amenity provided for use of residents and visitors is available at the accesible grade level.

(ii) *Entrances:* Entrances complying with ANSI 4.14 shall be provided as necessary to achieve access to and egress from buildings and facilities.

Exception: In projects consisting of one-to-four family dwellings where accessible entrances would be extraordinarily costly due to site conditions or local code restrictions, accessible entrances are required only to those buildings containing accessible dwelling units.

(iii) *Common Areas:* At least one of each type of common area and amenity in each project shall be accessible and shall be lcoated on an accessible route to any accessible dwelling unit.

(2) Provide dwelling units complying with ANSI 4.32, Dwelling Units, in accordance with the following table:

Facilities	Application
Hotels, Motels, Boarding houses.	5 percent of the total units, or at least one, whichever is greater.
Multifamily housing (Apartment houses):	
Federally assisted.	5 percent of the total, or at least one unit, whichever is greater, in projects of 15 or more dwelling units, or as determined by the appropriate Federal agency following a local needs assessment conducted by local government bodies or states under applicable regulations.
Federally owned...	5 percent of the total, or at least one unit, whichever is greater.
Dormitories.....	5 percent of the total, or at least one unit, whichever is greater.
One and two family dwelling:	
Federally assisted, rental.	5 percent of the total, or at least one unit, whichever is greater, in projects of 15 or more dwelling units, or as determined by the appropriate Federal agency following a local needs assessment conducted by local government bodies or states under applicable regulations.
Federally assisted, homeownership.	To be determined by home buyer.
Federally owned...	5 percent of the total, or at least one unit, whichever is greater.

(w) A new § 1190.31(v) is added to read as follows:

* * * * *

(v) *Health care facilities.* Accessible health care facilities shall:

(1) Comply with the requirements of this § 1190.31 as it applies to public use and common use areas and areas where handicapped persons may be employed; and

(2) Provide patient rooms and patient toilet rooms complying with Part 6 of the Uniform Federal Accessibility Standards (UFAS) in accordance with the following table:

Facilities	Application
Long Term Care Facilities: (including Skilled Nursing Facilities, Intermediate Care FAcilities, Bed & Care, and Nursing Homes).	At least 50 percent of patient toilets and bedrooms.
Outpatient Facilities.	All patient toilets and bedrooms.
Hospital:	
General Purpose Hospital.	At least 10 percent of patient toilets and bedrooms.
Special Purpose Hospital: (Hospitals that treat conditions that affect mobility).	All patient toilets and bedrooms.

§ 1190.32 [Amended]

7. Section 1190.32, *Accessible buildings and facilities: Additions,* is amended as follows:

(a) In paragraph (a), by removing "§ 1190.120" and inserting in lieu thereof "ANSI 4.14."

(b) In paragraph (b), by removing "§ 1190.50, Walks, floors and accessible routes," and inserting in lieu thereof, "ANSI 4.3, Accessible Route."

(c) In paragraph (c), by removing "§ 1190.150, Toilet and bathing facilities" and inserting in lieu thereof "ANSI 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms."

(d) By removing paragraph (f).

§ 1190.33 [Amended]

8. Section 1190.33, *Accessible buildings and facilities: Alterations,* is amended as follows:

(a) In paragraph (a)(1), by changing the period at the end thereof to a comma, and adding, "except as noted in paragraph (a)(2) of this section."

(b) By removing paragraph (a)(4) and redesignating (a) (2) and (3) as (a) (3) and (4) and adding a new paragraph (a)(2) as follows: (2) Exceptions to the

requirements of paragraph (a)(1) of this section for existing buildings or facilities are:

(i) Stairs. Full extension of stair handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(ii) Elevators.

(A) If a safety door edge is provided in existing automatic elevators, then the automatic door reopening devices may be omitted (see ANSI 4.10.6).

(B) Where existing shaft or structural elements prohibit strict compliance with ANSI 4.10.9, then the minimum floor area dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 48 in. by 48 in. (1220 mm by 1220 mm).

(iii) Doors.

(A) Where existing elements prohibit strict compliance with the clearance requirements of ANSI 4.13.5, a projection of 5/8 in. (16 mm) maximum will be permitted for the latch side door stop.

(B) if existing thresholds measure 3/4 in. (19 mm) high or less, and are beveled or modified to provide a beveled edge on each side, then they may be retained.

(iv) Toilet rooms. Where alterations to existing facilities make strict compliance with ANSI 4.22 and 4.23 structurally impracticable, the addition of one "unisex" toilet per floor containing one water closet complying with ANSI 4.16 and one lavatory complying with ANSI 4.19, located adjacent to existing toilet facilities, will be acceptable in lieu of making existing toilet facilities for each sex accessible.

(v) Assembly areas.

(A) In alterations where it is structurally impracticable to disperse seating throughout the assembly area, seating may be located in collected areas as structurally feasible. Seating shall adjoin an accessible route that also serves as a means of emergency egress.

(B) In alterations where it is structurally impracticable to alter all performing areas to be on an accessible route, then at least one of each type shall be made accessible.

(c) In newly redesignated paragraph (a)(3), by removing "§ 1190.70, Ramps and curb ramps; § 1190.100, Elevators; or § 1190.110, Platform lifts," and inserting in lieu thereof, "ANSI 4.8, Ramps; 4.10, Elevators; or 4.11, Platform Lifts."

(d) In paragraph (c)(1), by removing "§ 1190.50, Walks, floors and accessible routes" and inserting in lieu thereof, "ANSI 4.3, Accessible Routes."

(e) In paragraph (c)(2), by removing "§ 1190.120" and inserting in lieu thereof, "ANSI 4.14."

(f) In paragraph (c)(3), by removing "§ 1190.150, Toilet and bathing facilities" wherever it appears and inserting in lieu thereof, "ANSI 4.22, Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms."

(g) By revising paragraphs (c)(6) (i) and (vii) as follows:

(i) ANSI 4.6, Parking Spaces and Passenger Loading Zones;

(ii) ANSI 4.15, Drinking Fountains and Water Coolers;

(iii) ANSI 4.23, Storage;

(iv) ANSI 4.26, Alarms;

(v) ANSI 4.29, Telephones;

(vi) ANSI 4.30, Seating, Tables and Work Surfaces;

(vii) ANSI 4.31, Auditorium and Assembly Areas.

Subpart D [Redesignated as Subpart C]

9. Subpart D—*Technical Provisions* is amended by redesignating it as Subpart C and by revising it to read:

Subpart C—Technical Provisions

Sec.
1190.40 Technical specifications.
1190.50 Exceptions.

Subpart C—Technical Provisions

§ 1190.40 Technical specifications.

Features, elements and spaces required to be accessible by §§ 1190.31, 1190.32, or 1190.33 shall meet the technical requirements specified in the provisions of sections 4.2 through 4.32 of ANSI A117.1–1986, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People," which is incorporated herein by reference, except as amended in the section which follows. This standard is published by the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Copies may be ordered from the Institute at that address.

§ 1190.50 Exceptions.

(a) Under ANSI 4.10, Elevators, the following:

(1) Hall call buttons provided under ANSI 4.10.3 shall be raised or flush.

(2) Buttons on elevator control panels provided under ANSI 4.10.12(1) Buttons, shall be raised or flush.

(b) Under ANSI 4.7, Curb Ramps, paragraph 4.7.7, Warning Textures, and 4.7.12, Uncurbed Intersections, shall not apply.

(c) Under ANSI 4.21, Shower Stalls, the following:

(1) Under ANSI 4.1.6, Shower Unit, installation of a fixed shower head may be permitted in lieu of an adjustable-height or hand-held shower head in unmonitored facilities where vandalism is a concern; and

(2) Curbs provided under ANSI 4.21.7, Curbs, in shower stalls that are 36 in by 36 in (915 mm by 915 mm) shall have a maximum height of ½ in (13 mm).

(d) ANSI 4.28, Signage, is amended to require that interior tactile signage identifying rooms and spaces be located alongside the door on the latch side and be mounted at a height between 54 in and 66 in (1370 mm and 1675 mm) above the finished floor.

(e) Under ANSI 4.31, Auditorium and Assembly Areas, paragraph 4.31.3, Placement of Wheelchair Locations, is amended to allow accessible viewing positions to be clustered in bleachers, balconies and other areas that have sight lines requiring slopes greater than 5 percent, or to permit equivalent accessible viewing positions to be located on levels having accessible egress.

Subpart E [Redesignated as Subpart D]

10. Subpart E—*Special Building or Facility Types or Elements* is redesignated as Subpart D and § 1190.60 is added to read as follows:

§ 1190.60 Special building or facility types.

The requirements specified in the *Uniform Federal Accessibility Standards* (UFAS) in Section 5, Restaurants and Cafeterias; 6, Health Care; 7, Mercantile; 8, Libraries; and 9, Postal Facilities, are deemed to satisfy minimum guidelines and requirements of the ATBCB for accessibility standards for those building and facility types.

[FR Doc. 87–21222 Filed 9–15–87; 8:45 am]
BILLING CODE 6820-BP-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Quercus hinckleyi (Hinckley Oak)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine that a plant, *Quercus hinckleyi* (Hinckley oak), is a threatened species. Hinckley oak is known from three documented localities in Presidio County, western Texas. Each population contains fewer than 60 individuals. These small populations are threatened

by road improvements, taking, and introduction of exotic game into the habitat. A final determination that *Quercus hinckleyi* is threatened will implement the full protection provided by the Endangered Species Act of 1973 (Act), as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 16, 1987. Public hearing requests must be received by November 2, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Endangered Species Office, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, Endangered Species Botanist, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Quercus hinckleyi, a very localized member of the oak family (Fagaceae), is a unique component of the middle elevation Chihuahuan Desert vegetation. This small oak occurs at three localities in Presidio County, western Texas. Hinckley oak is readily identified at a distance because the grey-green leaves lend a smokey appearance to the intricately branched plants. Hinckley oaks reach a maximum height of 4 feet (1.2 meters). Plants can occur as single stems or as clonal groups that form dense thickets. The small, glabrous, holly-like (spinescent) leaves persist for more than one season. Acorns are produced annually, occur singly or paired on the branches, and mature in the fall.

Hinckley oak is restricted to dry limestone slopes between 3,500 and 4,500 feet (1100-1400 meters) in elevation. The surrounding desertscrub community is dominated by *Agave lecheguilla* (lecheguilla), *Acacia constricta* (whitethorn acacia), and *Parthenium incanum* (mariola). The area received about 8-12 inches (20-30 cm) of rain per year, and has a frost-free season of 260 days.

The type specimen of Hinckley oak was collected by Dr. C.H. Muller and Dr. L.C. Hinckley near Solitario Peak in 1950. Dr. Muller (1951) subsequently named the species in honor of his colleague, Dr. Hinckley. In 1958, Dr. M.C. Johnson collected a specimen at the type locality (number 3460, deposited at University of Texas at Austin) and noted that 150 plants occurred there. The same site presently contains about 60 plants (Miller and Powell 1982). The second population was discovered in 1984 by Mr. Jeff Clark, a former graduate student at Sul Ross University. This population is located directly west of Solitario Peak on the last ridge above Fresno Creek. The third locality, discovered on the west side of Shafter by Dr. M. Powell in 1975, contains 30-40 plants (Miller and Powell 1982). Two other sites in the Shafter area, one 0.5 mile (0.8 km) east and the other 3 miles (4.8 km) south of Shafter, have not been relocated, although the area has been searched intensively by Dr. A.M. Powell of Sul Ross University. The three known populations occur on privately owned land. Searches have been conducted but no populations of *Quercus hinckleyi* have been found in the neighboring Mexican State of Coahuila (Muller 1951).

Mr. Mike Fleming of Big Bend National Park has speculated that Hinckley oak may occur within the Park in the Dead Horse Mountains (pers. comm., 1986). Although no occurrences of Hinckley oak in the Dead Horse Mountains have been documented, Fleming's belief is supported by the presence of suitable habitat and evidence that Hinckley oak was more widely distributed in southwestern Texas prior to the area's desertification about 8,000 years ago (Van Devender *et. al.* 1978). The warming and drying trend probably precipitated the decline of Hinckley oak, and may explain the species' present limited distribution. However, the natural decline of Hinckley oak is being artifically accelerated by man-caused threats.

Federal action involving this species began with section 12 of the Endangered Species Act (Act) of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant species was assembed on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document 94-51 and the July 1, 1975, **Federal Register** (40 FR 27823). *Quercus hinckleyi* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A one-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with 4 other proposals that had expired. On December 15, 1980 (45 FR 82480), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Quercus hinckleyi* was included in these notices as a category 1 species. Category 1 comprises taxa for which the Service has sufficient biological information to support proposing them as endangered or threatened.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. Because the 1980 notice of review was accepted as a petition, all of the taxa contained in the notice, including *Quercus hinckleyi*, were treated as being newly petitioned on October 12, 1982. On October 13, 1983, and on or about that date every year thereafter (the latest was October 10, 1986), the Service made one-year findings that the petition to list *Quercus hinckleyi* was warranted but precluded by other listing actions of higher priority. Biological data, supplied by Miller and Powell (1982), fully support a listing of *Quercus hinckleyi* as threatened. The present proposal is based primarily on Miller and Powell's biological data, and constitutes the final finding requirement of section 4(b)(3)(B) of the Act for the petition on this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act 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 *Quercus hinckleyi* Muller (Hinckley oak) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In 1986, Texas highway 67 was expanded and the road is now close to the Hinckley oak population at Shafter (Poole, Texas Natural Heritage Program Biologist, pers. comm., 1986). Further expansion or a realignment of the highway may eliminate all or part of the population.

A potential threat to the two populations near Solitario Peak is the planned development of the area as an exotic game ranch. Introduced mammals may degrade the habitat by trampling soil and plants, and both introduced birds and mammals may eat the acorns, stems, or leaves of Hinckley oaks.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The attractive Hinckley oak is currently being propagated and developed as a cultivar by the Texas A&M University Agricultural Extension Service (Miller and Powell 1982). Hinckley oak is easily propagated from acorns or from young shoots. The demand for acorns by people wishing to cultivate the plant may reduce the potential number of recruits to the native populations. However, the actual impact of acorn collecting is unknown.

C. *Disease or predation.* Native deer, small mammals, and birds eat the acrons of Hinckley oak. This form of predation has an unknown impact on Hinckley oak populations. As mentioned in Factor A, the introduction of non-native mammal and bird predators remains a potential threat. Hinckley oaks have no apparent disease problems.

D. *The inadequacy of existing regulatory mechanisms.* Hinckley oak is not currently protected by any Federal or State law.

E. *Other natural or manmade factors affecting its continued existence.* The scarcity (fewer than 200 plants) of Hinckley oak, its limited distribution, and its widely separated populations make this species vulnerable to both natural and man-caused threats. Any further reduction in plant numbers could reduct the reproductive capabilities and genetic potential of the species.

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 *Quercus hinckleyi* as threatened. This action seems appropriate because, although this species has a small population size and limited distribution, it has good recovery potential and, at the present rate of decline, the danger of extinction does not appear to be in the forseeable future. For the reasons given below, no critical habitat has been proposed for this species.

Critical Habitat

Section 4(a)(3) of the Act, as aamended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endagered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species, "*Quercus hinckleyi* is threatened by taking, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and landowners will be notified of the location and importance of protecting Hinckley oak habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. No net benefit for the conservation of this species would accrue from designating critical habitat. Therefore, it would not be prudent to determine critical habitat for *Quercus hinckleyi* at this time.

Potential Recovery Actions

Potential recovery actions include collection of acorns to produce plants for reintroduction into suitable habitat, property protection, coordination with the Texas Highway Department and coordination with private organizations and both private landowners to develop appropriate conservation and management measures.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Some actions may be undertaken prior to listing. See Potential Recovery Actions above. The protection required for 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. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only anticipated Federal project involving *Quercus hinckleyi* is the possible funding by the Federal Highway Administration of any maintenance and widening activities for Texas highway 67 in this part of Presidio County.

The Act and its implementing regulations found at 50 CFR 17.17 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commerical 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.

Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conseration agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because *Q. hinckelyi* 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, 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 government agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Hinckley oak;

(2) The location of any additional populations of Hinckley oak 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 Hinckley oak; and

(4) Current or planned activities in the subject area and their possible impacts on Hinckley oak.

Final promulgation of the regulation an Hinckley oak 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 Regional Director (see ADDRESSES section).

National Environmental Policy Act

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

References Cited

Miller, D.J., and A.M. Powell. 1982. Status Report on *Quercus hinckleyi*. U.S. Fish and Wildlife Service, Endangered Species Office, Albuquerque, NM. 6 pp

Muller, C.H. 1951. The oaks of Texas. Contributions from the Texas Research Foundation 1:40-41.

Van Devender, T.R., C.E. Freeman, and R.D. Worthington. 1978. Full-glacial and recent vegetation of Livingston, Hills, Presidio County, Texas. Southwestern Naturalist 23:289-302.

Author

The primary author of this proposed rule is Sue Rutman, Endangered Species Botanist, U.S Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

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:

PART 17—[AMENDED]

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.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Fagaceae, to the List of Endangered and Threatened Plants;

§ 71.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Fagaceae—Oak family:						
Quercus hinckleyi	Hinckley oak	U.S.A. (TX)	T		NA	NA
*	*	*	*	*	*	*

Dated: August 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-21287 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 179
Wednesday, September 16, 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.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 11, 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 P.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 20593, Attn: Desk Office 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 Office of your intent as early as possible.

Revision

- National Agricultural Statistics Service

Farm Costs and Returns Survey
Annually
Farms; 44,550 responses; 21,200 hours; not applicable under 3504(h)
Larry Gambell (202) 447-7737

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 87-21376 Filed 9-15-87; 8:45 am]
BILLING CODE 3410-01-M

Office of the Secretary

Illinois Forestry Development Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that payments made to landowners under the Illinois Forestry Development Program are made primarily for the purpose of improving forests. This determination, which is made in accordance with section 126 of the Internal Revenue Code of 1954, as amended, and the provisions of 7 CFR Part 14, permits recipients of these payments to exclude some or all of them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: Frederick A. Dorrell, Director, Cooperative Forestry, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (703) 235-2212.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as added by the Revenue Act of 1978 and amended by the Technical Corrections Act of 1979, provides that certain payments made under State programs may be eligible for exclusion from gross income if certain determinations are made. The Secretary of Agriculture must determine whether payments made under a State program, as described in section 126(a)(10), are "made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." In making this determination, the Secretary of Agriculture must evaluate each program according to criteria set forth in 7 CFR Part 14.

One such program carried out by the state of Illinois (i.e., the Illinois Forestry Development Program) is authorized by the Illinois Forestry Development Act (Ill. Ann. Stat. ch. 96 1/2, pars. 9101 through 9107) (Smith-Hurd 1983). This program is designed to provide technical and financial assistance to private landowners to increase the supply of timber from private forest lands. The program is administered by the state of Illinois Department of Conservation through its Division of Forest Resources and Natural Heritage. An eligible entity is any private timber grower who owns or operates at least five contiguous acres of land in the State on which timber is produced.

Cost-share payments are made under the program for the satisfactory installation of forestry practices developed to accomplish one or more of the following:

(a) Reforestation of land suitable for growing timber, including protection from fire and domestic livestock.

(b) Timber stand improvement.

Eligible practices for which cost-share assistance is made available under the program are: site preparation for planting or natural regeneration, tree planting, vegetation control, timber stand improvement (including pruning), fire breaks, and protection from domestic livestock which includes fencing.

Cost share payments under the program can be made in an amount that does not exceed: (1) 40 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for fiscal year 1986; (2) 60 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for fiscal year 1987; and (3) 80 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for subsequent fiscal years. Cost share funds shall be paid from monies appropriated to the Department by the General Assembly for that purpose from the Illinois Forestry Development Fund or any other fund in

the State Treasury. The maximum payment per participant per year is $1,000. A practice cannot be repeated on the same land within a 10 year period and a practice must be effective for a minimum of 10 years. Property upon which cost-share practices are installed must be protected from destructive fires and animal grazing.

The authorizing legislation, regulations, and operating procedures for the Forestry Development Program of the state of Illinois have been carefully examined using the criteria set forth in 7 CFR Part 14. The Department has concluded that payments made under this forestry cost-sharing program are made to provide financial assistance to agricultural landowners in carrying out forest improvement practices. A "Record of Decision, Illinois Forestry Development Program: Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from Cooperative Forestry, Forest Service, USDA. Requests may be sent to the address listed above.

Determination

It is hereby determined in accordance with section 126(b)(1) of the Internal Revenue Code of 1954, as amended, and 7 CFR Part 14, that all cost-share payments made for forest improvement practices under the Illinois Forestry Development Act of the state of Illinois (Ill. Ann. Stat. ch. 96 1/2, pars. 9101 through 9107) (Smith-Hurd 1983) are made primarily for the purpose of improving forests.

Signed at Washington, DC, on August 24, 1987.

Richard E. Lyng,

Secretary of Agriculture.

Record of Decision—Illinois Forestry Development Program Primary Purpose Determination for Federal Tax Purposes

Introduction: The Secretary of Agriculture is authorized by section 126 of the Internal Revenue Code of 1954, as amended, to determine the primary purpose for which payments are made under certain Federal and State programs. The determination will identify payments that recipients may exclude from their gross income for Federal tax purposes to the extent allowed by the Secretary of the Treasury.

Basis for Determination: U.S. Department of Agriculture (USDA) determinations are made in accordance with 7 CFR Part 14 by reviewing authorizing legislation, regulations, and operating policy to identify the purposes for which cost-share payments are made. Final determinations are made on the basis of program, category of practices, or practice, and are published in the **Federal Register.**

Statement of Findings: The Forestry Development Program of the State of Illinois is authorized by the Illinois Forestry Development Act (Ill. Ann. Stat., ch. 96 1/2, pars. 9101 through 9107) (Smith-Hurd 1983). The purpose of this program is to promote the development of an active forestry industry in the State of Illinois.

A Forestry Development Fund was established by the Illinois Forestry Development Act (the "Act") to fund the program from amounts derived from an assessment of a four percent harvest fee on timber severed in Illinois.

The Director of the Department of Conservation administers the program through the Division of Forest Resources and Natural Heritage. Program guidelines are in Title 17, Chapter I, Subchapter d, Part 1536 of the Illinois Administrative Code. The program provides technical and cost-share assistance to eligible landowners and timber growers to increase the productivity of their privately owned forests through the application of approved forest management practices.

The Illinois Forestry Development Program encourages private landowners to apply silvicultural practices for the purpose of commercially growing timber through the establishment of forest stands, or by encouraging the proper regeneration of forest stands to commercial production levels. The Illinois Division of Forest Resources and Natural Heritage provides the required technical assistance to install the approved practices in the field.

The approved practices are: (1) Site preparation—the preparation of a site for planting seedlings or for natural regeneration of a commercial forest tree species; (2) tree planting—the planting of a sufficient number of seedlings to establish a forest stand; (3) vegetation control—treatment of competing vegetation to allow seedlings to become established; (4) timber stand improvement—releasing established reproduction of desired tree species for the purpose of ensuring adequate regeneration of a commercial stand, or pruning selected trees to improve quality; (5) protection from fire—construction of fire lanes; and (6) protection from domestic livestock—fencing to protect the woodland area approved for forest management practices from overgrazing. A forest management plan is developed or approved by the forester representing the Division of Forestry Resources and Natural Heritage. These plans are evaluated annually for reapproval.

The maximum cost-share assistance for each practice or separate component is a percentage of the actual cost of performing the treatment(s) considered necessary to obtain the needed practice. Provisions are made so that the participant will make a significant contribution to the cost of performing the practice. Cost share payments under the program can be made in an amount that doest not exceed: (1) 40 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for fiscal year 1986; (2) 60 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for fiscal year 1987; and (3) 80 percent of the total cost of the forestry management practices for such practices approved to be funded from monies appropriated for this purpose for subsequent fiscal years. Cost share funds shall be paid from monies appropriated to the Department by the General Assembly for that purpose from the Illinois Forestry Development Fund or any other fund in the State Treasury. The maximum payment per participant per year is $1,000. A practice cannot be repeated on the same land within a 10 year period and a practice must be effective for a minimum of 10 years. Property upon which cost-share practices are installed must be protected from destructive fires and animal grazing.

An eligible entity is a private timber grower who owns or operates at least five continguous acres of land in the State on which timber is produced, and has an Illinois Department of Conservation approved forest management plan as described in 17 Illinois Administrative Code 1537. A timber grower is defined in section 2(i) of the Act as:

> The owner, tenant or operator of land in this State who has an interest in, or is entitled to receive any part of the proceeds from, the sale of timber grown in this State and includes persons exercising authority to sell timber.

Summary: The purpose of the Illinois Forestry Development Act is to increase the productivity of the privately owned forests in Illinois, and to ensure that forest operations performed under the Forestry Development Act are conducted in a manner designed to protect the soil, air, and water resources. Participation is voluntary. The approved practices are site preparation, tree planting, vegetation

control, timber stand improvement, and protection from fire and domestic livestock.

Determination: It is determined that all cost-share payments made for approved practices under the Illinois Forestry Development Act are for the purpose of improving forests.

[FR Doc. 87-21377 Filed 9-15-87; 8:45 am]

BILLING CODE 3410-01-M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the Arctic Research Commission will meet in Executive Session on 24 September 1987, in Anchorage, Alaska. The meeting will start at 5:00 p.m. at the Commission Offices located at 707 A Street, Anchorage, Alaska.

Matters to be discussed in Executive Session include: (1) Future Plans of the Commission (2) Discussion of Possible New Candidates for Membership and (3) Commission Financial Affairs.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743-0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 87-21352 Filed 9-15-87; 8:45 am]

BILLING CODE 7555-01-M

COMMISSION ON CIVIL RIGHTS

Iowa Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn of 4:00 p.m., on September 28, 1987, at Ramada Inn, 214 Washington Street, Waterloo, Iowa. The purpose of the meeting is to hear presentations on the status of civil rights in the State of Iowa.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Ralph S. Scott, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 3, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-21278 Filed 9-15-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF COMMERCE

Bureau of Census

Intercity, Rural, and Charter Bus Transportation Survey; Notice of Consideration; Correction

This document corrects the agency contact telephone number contained in the notice published on September 8, 1987 (52 FR 33855).

The telephone number for additional information about this proposed survey is (301) 763-7452.

Dated: September 10, 1987.

Edward J. McGuire,

Federal Register Liaison Officer, Bureau of the Census.

[FR Doc. 87-21299 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-428-061]

Preliminary Results of Antidumping Duty Administrative Review; Precipitated Barium Carbonate From the Federal Republic of Germany

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period July 1, 1985 through June 30, 1986. The review indicates the existence of no dumping margins for the firm during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. Bruno or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 20438) the final results of its last administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32884, June 25, 1981). After the promulgation of our new regulations, the petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on July 17, 1986 (51 FR 25923). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCO_3$), currently classifiable under TSUSA item 472.0600 and under HS item 2836.60.00.

The review covers one manufacturer/exporter of West German precipitated barium carbonate to the United States,

Kali-Chemie AG, and the period from July 1, 1985 through June 30, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the delivered, packed price to unrelated purchasers in the United States.

All sales to the United States were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation. The Department determined that purchase price was the appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

We made adjustments, where applicable, for foreign inland freight, ocean freight, marine insurance, U.S. duty, forwarding fees, U.S. clearance and brokerage charges, U.S. inland freight, and transloading. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on either the delivered or ex-factory, packed price with adjustments, where applicable, for inland freight, rebates, prompt payment discounts, technical services, and differences in packing costs. We denied a claimed adjustment for "other expenses" because it was not properly quantified. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margins exist for Kali-Chemie AG for the period July 1, 1985 through June 30, 1986.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Commerce Regulations, since there was no margin the Department shall not require a cash deposit of estimated antidumping duties for Kali-Chemie AG. For any shipments from the one remaining known manufacturer/exporter not covered by this review, the cash deposit will continue to be the rate published in the final results of the last administrative review for that firm (50 FR 16330, April 25, 1985). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1986 and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this 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).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

Date: September 8, 1987.

[FR Doc. 87-21346 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-702]

Preliminary Determination of Sales at Less Than Fair Value; Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that stainless steel butt-weld pipe and tube fittings (SSBW pipe fittings) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by November 24, 1987.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Judith Nehring (202/377-0160) or Mary S. Clapp (202/377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that SSBW pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). Fuji Acetylene Industries Co., Ltd., is excluded from this determination because the margin found is *de minimis*. We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, November 1, 1986, through April 30, 1987. The margins of sales at less than fair value are shown in the "suspension of Liquidation" section of this notice.

Case History

On April 2, 1987, we received a petition in proper form filed by Flowline Corporation on behalf of the U.S. industry producing SSBW pipe fittings. 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 Japan are

being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated such an investigation on April 21, 1987 (52 FR 13734, April 24, 1987) and notified the ITC of our action.

On May 27, 1987, questionnaires were presented to Nippon Benkan Kogyo, K.K. (Benkan), and Mie Horo. It was determined that these companies accounted for more than 85% of all exports to the United States of SSBW pipe fittings from Japan. We received a response from Benkan on July 27, 1987, and supplemental responses on August 10 and August 25, 1987. Mie Horo has indicated that it would not respond to our questionnaire. We also received voluntary responses from Fuji Acetylene Industries Co., Ltd. (Fuji), and Nippon Bulge Industries, Ltd. (NBI). Since the Department determined that the response submitted by NBI contained major deficiencies, we have not analyzed that response for purposes of this investigation. We have, however, determined that Fuji's response was substantially complete and have analyzed it for purposes of this determination.

Scope of Investigation

The products covered by this investigation are SSBW pipe and tube fittings whether finished or unfinished, including as-formed tubular blanks, under 14 inches in inside diameter, currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) under item number 610.8948 and currently classifiable under HS item number 7307.23.00.

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System by January 1, 1988. In view of this, we will be providing both the appropriate TSUSA item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUAS item numbers in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230.

Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value. We investigated all sales of SSBW pipe fittings for the period November 1, 1986, through April 30, 1987. Mie Horo did not respond to our questionnaire; therefore, we based our fair value comparisons for it on the best information available in accordance with section 776(b) of the Act.

United States Price

We based United States price for all U.S. sales on purchase price in accordance with section 772(b) of the Act. Some of these sales were made directly to unrelated customers in the United States prior to importation. Under these circumstances, section 772(b) clearly requires that purchase price be used for determining the U.S. sales price. All of the other sales to the United States were through a related U.S. selling agent; however, the U.S. customer took shipment directly from the manufacturer. We used purchase price, as opposed to exporter's sales price, for these sales for the following reasons:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related U.S. selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

We regard the diversion of merchandise into the related U.S. selling agent's inventory as an important factor in distinguishing between ESP and purchase price because it is associated with a materially different type of selling activity than that which occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, it commonly incurs substantial storage and financial carrying costs and has added flexibility in its marketing. With direct shipments, the activity which takes place in the U.S. is the mere facilitation of a transaction.

We also use the inventory test because it can be readily understood and applied by respondents who must reply to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price based on the f.o.b. c.i.f., duty unpaid or c.i.f. duty paid, packed prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, Japan brokerage, U.S. brokerage, U.S. duty, marine insurance, and U.S. inland freight, as appropriate. For Mie Horo, we calculated the purchase price of SSBW pipe fittings on the basis of the best information available as contained in the petition, which is the prices that two U.S. distributors paid for imports of the subject merchandise. Petitioner deducted from those prices the 7% duty on SSBW pipe fittings and an additional 10% to account for Japanese inland freight, ocean freight, marine insurance and brokerage.

Foreign Market Value

In accordance with section 773 (a) of the Act, we calculated foreign market value based on f.o.b. packed home market prices to related and unrelated purchasers. We reviewed Benkan's pricing practices and preliminarily determined that its prices to related purchasers represent arms-length transactions. We made deductions, where appropriate, for inland freight, rebates and discounts. We made adjustments for differences in circumstances of sale for credit expenses pursuant to 19 CFR 353.15. We denied claims for technical services and advertising because the basis of calculating these expenses was not fully described. We deducted home market packing and added U.S. packing.

We established separate categories of "such or similar" merchandise, pursuant to section 771(16) of the Act, on the basis of type of fitting (elbows, tees, reducers, stub-ends, caps), nominal size (dimensions of the pipe fittings), degree of processing (finished or unfinished), wall thickness, material grade and raw material (seamless or welded). Where we found identical products sold in the home market we used those sales for comparison to U.S. sales. Where there were no identical products sold in the home market for comparison to products sold to the United States, we made adjustments to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of material, direct labor and directly related factory overhead.

For Mie Horo, we calculated the foreign market value on the basis of best information available, which is the constructed value data contained in the petition, applying the statutory minimum of 10% for general expenses and the 8% minimum for profit.

Currency Conversion

In accordance with § 353.56(a)(1) of our regulations, all currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On April 2, 1987, the petitioners alleged that critical circumstances exist within the meaning of section 733(e) of the Act with respect to SSBW pipe fittings from Japan. In determining whether critical circumstances exist, we must examine whether:

(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 class or kind of 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 over a short period of time: (1) The volume and value of imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Apparent domestic consumption statistics, which would enable the Department to measure import penetration, are not available for the subject merchandise.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM-146 trade statistics on imports of SSBW pipe fitting for equal periods immediately preceding and following the filing of the petition, comparing imports of March-April to May-June. To account for the lag time of the reported statistics, we included April in the pre-filing period.

The statistics reveal that there was a 100.76 percent increase in the post-filing period, May-June 1987, over the pre-filing period, March-April, 1987. This substantial increase, by itself, would indicate that imports have surged dramatically since the petition was filed. However, we also compared the import activity during the months in question with activity during the same months for several previous years to determine whether this surge results from a seasonal trend. For the same March-April and May-June periods in 1984, 1985, and 1986, statistics indicate that there was a 168.79 percent increase in 1984, a 26.87 percent decrease in 1985, and a 51.70 percent decrease in 1986. Since these figures do not indicate that the post-filing surge here is part of an established pattern or a seasonal trend, we determine that a massive surge in imports of SSBW pipe fittings exists since the time the petition was filed.

Having concluded that there have been massive imports of the subject merchandise, the Department must determine whether 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 whether 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. The Department found that an affirmative antidumping duty order in Canada on the subject merchandise against Japan was issued on July 21, 1982. This constitutes a history of dumping.

Based on the above information, that there is a history of dumping of the subject merchandise and that there have been massive imports, we preliminarily conclude that critical circumstances do exist with respect to imports from Japan.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(e) of the Act, we are directing the U.S. Customs Service to retroactively suspend liquidation of all entries of SSBW pipe fittings from Japan (except those produced and sold by Fuji) that are entered, or withdrawn from warehouse, for consumption, 90 days before the date of publication of this notice in the **Federal Register**. This retroactive suspension of liquidation is ordered because of the preliminary affirmative critical circumstances determination.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This retroactive suspension of liquidation will remain in effect until further notice.

Manufacturer/Exporter	Weighted-average margin (percent)
Nippon Benkan Kogyo, K.K.	28.86
Fuji Acetylene Industries Co., Ltd	0.18 (*de minimis*)
Mie Horo	64.85
All others	28.86

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under and administrative protective order, without the written 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 before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on October 23, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to

participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 17, 1987. Oral presentations will be limited to issues raised in the briefs. All written views, along with 10 copies, should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-21347 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 70881-7181]

Foreign Availability Assessment; Controllable Pitch Propellers

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Notice of finding of foreign availability assessment.

SUMMARY: The Office of Foreign Availability (OFA) of Export Administration is required by sections 5 (f) and (h) of the Export Administration Act of 1979, as amended, to initiate and review claims of foreign availability on items controlled for national security purposes.

OFA has completed an assessment on controllable pitch propellers controlled under paragraph (e)(2) of the "List of Equipment Controlled by ECCN 1416A" in ECCN 1416A on the Commodity Control List (Supplement No. 1 to § 399.1). The equipment that is controlled by ECCN 1416A is defined as "controllable pitch propellers and hub assemblies rated at greater than 20,000 hp." Based on this assessment and following consultation with the Department of Defense, the Department of Commerce has found foreign availability for this commodity at 40,000 hp and below.

FOR FURTHER INFORMATION CONTACT: Donald Brychczynski, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3564.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) has completed an assessment, pursuant to Part 391 of the Export Administration Regulations (15 CFR Part 391), on the foreign availability of *controllable pitch propellers* and has recommended a finding of foreign availability as defined by law. The purpose of the assessment was to determine whether national security export controls should be continued. Based on such assessment, the Director of OFA has determined that foreign availability exists for such equipment within the meaning of section 5(f) of the Export Administration Act of 1979, as amended.

Based on this determination, Export Administration will publish regulations amending the national security export controls on these controllable pitch propellers. Specifically, individual validated licenses to destinations other than controlled countries will no longer be required for controllable pitch propellers with horsepower ratings of 40,000 and below. Export Administration also has begun the process whereby the United States Government will work with COCOM member governments to reach agreement on an orderly reduction in the multilateral controls placed on such controllable pitch propellers when exported to controlled countries.

If OFA receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to Office of Foreign Availability at the above address.

Dated: September 11, 1987.

Irwin M. Pikus,

Director, Office of Foreign Availability.

[FR Doc. 87-21335 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 70880-7180]

Foreign Availability Assessment: Wire Bonders

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Notice of finding of foreign availability assessment.

SUMMARY: The Office of Foreign Availability (OFA) of Export Administration is required by sections 5(f) and (h) of the Export Administration Act of 1979, as amended, to initiate and review claims of foreign availability on items controlled for national security purposes.

OFA has completed an assessment on stored program controlled wire bonders controlled under paragraph (b)(5)(ii) of the "List of Equipment Controlled by ECCN 1355A" in ECCN 1355A on the Commodity Control List (Supplement No. 1 to 15 CFR 399.1). The equipment that is controlled by ECCN 1355A is defined as "stored program controlled" wire bonders. (The term "stored program controlled" is defined in Technical Note 4 in ECCN 1355A.) Based on this assessment, the Department of Commerce has found foreign availability for this commodity.

FOR FURTHER INFORMATION CONTACT: John Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION:

Background

The President has decided not to override the finding of foreign availability for this commodity.

Therefore, Export Administration will publish regulations amending the national security export controls on "stored program controlled" wire bonders. Specifically, individual validated licenses to destinations other than controlled countries will no longer be required for "stored program controlled" wire bonders with parameters below certain levels specified in the amended regulations. Export Administration also will begin the process whereby the United States Government will work with COCOM member governments to reach agreement on an orderly change in the multilateral controls placed on "stored program controlled" wire bonders when exported to controlled countries.

If OFA receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the OFA at the above address.

Dated: September 11, 1987.

Irwin M. Pikus,

Director, Office of Foreign Availability.

[FR Doc. 87-21332 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DT-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee

will be held on Wednesday, October 7, 1987, at 10:30 a.m., Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Alfreda Burton (202) 377-5761.

Dated: September 11, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-2134 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-labor Textile Advisory Committee will be held on Tuesday, October 6, 1987, at 1:30 p.m., Herbert C. Hoover Building, Room H4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of the Department of problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discusison of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspeciton and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies the minutes contact Alfreda Burton (202) 377-5761.

Dated: September 11, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-21333 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Reserves

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Hawaii Coastal Management Program. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. The state evaluated was found to be adhering both to the programmatic terms of its financial assistance award and/or to the approved coastal management program; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)-(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for this program may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673-5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: September 9, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87-21319 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-08-M

Intent to Evaluate Performance of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Alaska Coastal Management Program (CMP): Mississippi CMP; Wisconsin CMP; Alabama CMP; Virginia CMP; and Hawaii's Waimanu National Estuarine Research Reserve through December 31, 1987. The reviews of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. The reviews of National Estuarine Research Reserves are conducted pursuant to section 315(f) of the CZMA, as amended by Pub. L. 99-272, which requires the Secretary of Commerce to evaluate periodically the operation and management of each Reserve, including education and interpretive activities, and the research being conducted within the reserve. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held

as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance reports, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of those programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202-673-5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: September 9, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87-21318 Filed 9-15-87; 8:45 am]

BILLING CODE 3510-08-M

COMMISSION ON EDUCATION OF THE DEAF

Meeting of the Commission and its Committees

AGENCY: Commission on Education of the Deaf.

ACTION: Notice of meetings.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of forthcoming meetings of the Commission on Education of the Deaf and its Committees. The purpose of the Commission and Committee meetings is to approve publication of the second of two sets of notices of draft recommendations in the **Federal Register**. These meetings will be open to the public.

DATES: September 28, 1987, 8:00 a.m. to 5:00 p.m.; September 29, 1987, 8:00 a.m. to 5:00 p.m.; September 30, 1987, 8:00 a.m. to 5:00 p.m.

ADDRESS: All meetings will be held in the Holiday Inn-Capitol, 550 C Street SW., Washington, DC 20024. Monday, the Joint Committee will meet in the Lewis Room. The remainder of the day, the Precollege Committee will meet in the Gemini Room; the Postsecondary Committee in the Lewis Room. Tuesday and Wednesday, all meetings will be in the Lewis Room.

FOR FURTHER INFORMATION CONTACT: Monica Hawkins, Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC 20407. [202] 453-4353 (TDD) or [202] 453-4684 (Voice). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Joint Committee will meet Monday, September 28, from 8:00 a.m. to 10:00 a.m. to receive input from the engage in discussion with a panel of representatives from the model Secondary School for the deal (MSSD), and the Kendall Demonstration Elementary School (KDES) on research and dissemination activities. The precollege Committee will meet from 10:30 a.m. to 12:00 noon to receive input from and engage in discussion with a panel of representatives from the MSSD and the KDES on precollege activities. The Postsecondary Committee will meet at the same time to discuss employment of deaf persons at Gallaudet University and NTID. That afternoon, form 1:00 p.m. to 5:00 p.m., the Precollege Committee will meet to discuss the proposed findings on demographics, language acquisition, reading, and early intervention. The Postsecondary Committee will also meet from 1:00 p.m. to 5:00 p.m. to discuss vocational rehabilitation services, vocational education, and transition programs for low-achieving persons and adult education.

On September 29, the Joint Committee will meet from 8:00 a.m. to 12:00 noon to discuss minority education, the Department of Education's liaison officer to Gallaudet University and the NTID, the Captioned Films program, technology, and educational interpreting. In the afternoon, the Joint Committee will meet from 1:00 p.m. to 5:00 p.m. to discuss culture in the classroom, education of deaf/blind persons, teacher training/certification, the feasibility of establishing a clearinghouse, and rural education.

On September 30, the Executive Committee will meet from 8:00 a.m. to 10:00 a.m. for reports. The full Commission will meet from 1:00 p.m. to 5:00 p.m. to approve the publication of its second set of draft recommendations and to suggest items to put on the agenda from the October 28-29 meeting.

The proposed agenda for the Commission meeting on September 30, includes the following:

I. Approval of minutes

II. Reports.

- Chairperson's Report.
- Vice Chairperson's Report.
- Executive Committee Chairperson's Report.
- Staff Director's Report.

III. New business.

Second set of draft recommendations for publication in the **Federal Register**.

IV. October agenda

V. Adjournment

These meetings will be open to the public. Interpreters will be provided. If you need audio-loop systems or other special accommodations, please contact Monica Hawkins at [202] 453-4353 (TDD) or [202] 453-4684 (Voice) no later than September 23, 1987, 5:00 p.m. E.S.T. These are not toll free numbers.

Records will be kept of the proceedings and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC.

Pat Johanson,

Staff Director.

[FR Doc. 87-21323 Filed 9-15-87; 8:45 am]

BILLING CODE 5820-SD-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Nikkei Stock Average. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before October 1, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Nikkei Stock Average futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading

Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: On May 19, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the Nikkei Stock Average futures contract (52 FR 20136). In a September 4, 1987, letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "to afford commentators an additional opportunity to comment on these terms." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by October 1, 1987.

Issued in Washington, DC, on September 11, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-21336 Filed 9-15-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semi-annually.

DATE: October 25-29, 1987 (Detailed agenda follows.

ADDRESS: Sheraton Plaza Hotel, 1721 Central Texas Expressway, Killeen, Texas, unless otherwise noted in detailed agenda.

Agenda: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions.

Sunday, October 25, 1987

11:00 a.m.-4:00 p.m., Registration
11:00 a.m.-12:00 noon, Executive Committee Meeting
12:00 noon-1:00 p.m., Get Acquainted Luncheon (Current DACOWITS Members Only)
12:00 a.m.-1:00 p.m., Get Acquainted Luncheon (MilRep and Liaison Officers Only)
1:15 p.m.-2:00 p.m., Chairman's Procedural Session
2:00 p.m.-3:00 p.m., Briefing: Title IV: Joint Officer Personnel Policy DoD Reorganization Act of 1986
3:00 p.m.-6:00 p.m., Subcommittee Sessions (Evaluation and Disposition of Service Responses); Briefing: Army Medical Study (Subcommittee #2)
7:00 p.m.-8:30 p.m., No-Host Social Buffet

Monday, October 26, 1987

8:00 a.m.-8:30 a.m., OSD Official Coffee
8:30 a.m.-9:00 a.m., Official Opening Ceremony. Presiding: Dr. Jacquelyn Davis, DACOWITS Chairman
9:30 a.m.-10:30 a.m., Briefing: Study of Women at the Naval Academy
10:45 a.m.-11:45 a.m., Briefing: General Unrestricted Line; Training and Administration of Reserves; Command of Naval Reserve Centers
12:00 noon-1:30 p.m., OSD Luncheon (*by invitation only*)
1:30 p.m.-2:30 p.m., Briefing: Command and Executive Officer Billets Available for Personnel in the General Unrestricted Line
2:30 p.m.-5:30 p.m., Subcommittee Sessions (Evaluation of Briefings and Sunday Resolutions)
7:00 p.m.-8:00 p.m., OSD Reception (*By Invitation Only*)
8:00 p.m.-10:30 p.m., OSD Dinner (*By Invitation Only*)

Tuesday, October 27, 1987

Field trip hosted by the U.S. Army to Fort Hood, Texas. (Limited to DACOWITS Members, Former Members, Official Military Representatives, DACOWITS Liaison Officers, and special guests.)

Wednesday, October 28, 1987

9:00 a.m.-9:30 a.m., Presentations by Members of the Public
9:30 a.m.-11:45 a.m., Subcommittee Sessions
12:00 noon-2:00 p.m., Installation Visit Luncheon
2:00 p.m.-5:00 p.m., Executive Committee Mark-up

Thursday, October 29, 1987

7:30 a.m.-8:00 a.m., Individual Review of Resolutions
8:00 a.m.-11:00 a.m., General Business Session
11:00 a.m.-12:00 noon, Adjourn; Executive Committee Meeting

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the official Department of Defense luncheon or dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 5, 1987.

(5) Length and number of oral presentations to be made will depend on

the number of requests received from the members of the public.

(6) Oral presentations by members of the public will be permitted only from 9:00 a.m. to 9:30 a.m. on Wednesday, October 28, 1987, before the Full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation or 60 copies of the statement by October 9, 1987.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chairman or Director, DACOWITS and Military Women Matters, to consider.

(1) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chairman and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee Meetings, or the Business Session on Thursday, October 29, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 11, 1987.

[FR Doc. 87-21297 Filed 9-15-87; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Subcommittee (Ground Based Free Electron Laser Technology Integration Experiment Technical Advisory Group) will meet in closed session in Washington, DC, on September 21-22, 1987.

The mission of the Subcommittee is to provide the SDI Advisory Committee an independent analysis and assessment of the plans and approaches for the ground based free electron laser technology integration experiment. At the meeting on September 21-22, 1987 the subcommittee will discusss status of laser research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Subcommittee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 11, 1987.

[FR Doc. 87-21298 Filed 9-15-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: Department of Education, National Advisory and Coordinating Council on Bilingual Education.

ACTION: Notice of meeting.

The public is being given less than 15 days notice of this meeting inasmuch as the Designated Federal Official was unable to obtain a quorum.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 21 and 22, 1987, 9:15 a.m. until 5:00 p.m. The meeting will be conducted at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202 (202) 732-5063.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

I. Roll Call
II. Adoption of Minutes of Previous Meeting
III. Introduction of Visitors
IV. Presentation of Information by OBEMLA Director or Designee
V. Presentation of information by Members of general Public or Organizations on Agenda Items (Limited to 5 minutes per person from any one group)
VI. Committee Reports
VII. Old Business
VIII. New Business
IX. Presentation of Information by Members of general Public or Organizations on Items for Possible Future Action by Council (Limited to 5 minutes per person from any one group)
X. Meetings of Individual Committees
XI. Reconvening of Council
XII. Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.-5:30 p.m.

Dated: September 11, 1987.

Alicia Coro,

Director, Office of Bilingual Education and Minority Affairs.

[FR Doc. 87-21321 Filed 9-15-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

Action: Amendment to the SES Performance Review Board Appointments.

Summary: This notice lists the additional members to serve on the Performance Review Board standing register for the Department of Energy. This amends the listing forwarded for publication on August 13, 1987.

The additional names for the SES Performance Review Board are as follows:

Lawrence Pettis
Samuel Rousso
Joel Snow
Robert Tiller

Issued in Washington, DC, on August 27, 1987.

Harry L. Peebles,

Executive Secretary, Executive Personnel Board.

[FR Doc. 87-21385 Filed 9-15-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-610-000 et al.]

Electric Rate and Corporate Regulation Filings; Wisconsin Electric Power Co. et al.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER87-610-000]

September 4, 1987.

Take notice that on August 31, 1987, Wisconsin Electric Power Company tendered for filing transmission service agreements between Wisconsin Electric Power Company and Commonwealth Edison Company and between Wisconsin Electric Power Company and Wisconsin Public Service Corporation. The transmission service agreements provide for the transmission of economy energy between Commonwealth Edison Company and Wisconsin Public Service Corporation as contemplated in a Letter Agreement filed June 8, 1987, in Docket No. ER87-475-000.

Copies of the filing were served upon Wisconsin Public Service Corporation, Green Bay, Wisconsin, Commonwealth Edison Company, Chicago, Illinois, and the Public Service Commission of Wisconsin, Madison, Wisconsin.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket Nos. ER81-749-000, ER82-325-000, ER83-110-000, ER84-55-000, ER87-471-000]

September 4, 1987.

Take notice that on August 28, 1987, Montaup Electric Company (Montaup) tendered for filing a compliance report showing the refunds that were credited to the Customer's bills dated August 14, 1987 for electric service rendered during the month of July 1987.

Montaup states that the refund include credits to the affiliates in Docket Nos. ER83-110-000 and ER84-55-000 due to stipulations contained in their settlement. Montaup also states that credit was applied to the non-affiliates' bills from settlement in Docket No. ER84-55-000; but no credit was owed to them from Docket Nos. ER81-749-000, ER82-325-000 or ER83-110-000 due to prior settlement with them.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk

[Docket No. EL86-22-000]

September 4, 1987.

Take notice that on August 31, 1987, Niagara Mohawk tendered for filing pursuant to the Commission's letter order dated June 18, 1987, its Compliance Refund Report. The refund of $45,000, without interest, was tendered to the Power Authority of the State of New York pursuant to Article II.A. of the Settlement Agreement in this docket is for ultimate distribution to Airco, Inc., SKW Alloy, In., Occidental Chemical Corporation and Olin Corporation and represents a full and complete settlement of this proceeding.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ES87-38-000]

September 8, 1987.

Take notice that on August 25, 1987, Interstate Power Company (Applicant) filed an application with the Commission seeking an order pursuant to section 204 of the Federal Power Act for $50 million short-term promissory notes commercial paper to be issued on or before December 31, 1988, and to mature no later than December 31, 1989.

Comment date: September 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER87-503-000]

September 9, 1987.

Take notice that on September 3, 1987, Carolina Power & LIght Company (CP&L) tendered for filing changes to CP&L's Backstand Power and Transmission rates which are a part of the Service Agreement dated October 27, 1972. The Service Agreement, as amended, is on file with the Commission as Carolina Power & Light Company Rate Schedule FPC No. 102.

This filing amends the original filing dated June 18, 1987, to reflect the 34% statutory federal income tax rate which became effective on July 1, 1987. CP&L's Backstand Power and Transmission rates filed herewith decreased from the 1985 rates and are for the time period July 1, 1987, through June 30, 1988. It is respectfully requested that the Commission waive its 60-day notice requirement and allow the supplements filed herewith to become effective on July 1, 1987.

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Electric Company

[Docket No. ER87-616-000]

September 9, 1987.

Take notice that on September 3, 1987, Commonwealth Electric Company (Commonwealth) tendered for filing, pursuant to § 35.12 of the Commission's regulations, a proposed tariff for the provision of non-firm transmission services at wholesale. Commonwealth states that its proposed tariff is intended to be generally-available to investor-owned utilities, municipalities operating an electric distribution system and "Qualifying Facilities". The tariff proposes a cost of service formula rate to be implemented on an annual basis. If implemented based upon date applicable to calendar 1986, such rate would be $1.31 per kilowatt per month. Commonwealth proposes that its tariff become effective upon November 9, 1987, an even date slightly in excess of sixty days following the instant filing.

Commonwealth states that copies of the tendered filing have been served upon the Massachusetts Department of Public Utilities.

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER86-272-002]

September 9, 1987.

Take notice that on September 4, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing a compliance report containing the calculation of revenue at the proposed and present rates for the Western Area Power Administration (WAPA).

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER87-617-000]

September 9, 1987.

Take notice that on September 3, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing a change in rates for Service Schedule B and Service Schedule E of the Interchange Contract dated December 15, 1980 between City of Tallahassee, Florida and Southern Companies. The proposed change would reduce the return on common equity component of the formula rate described in the Allocation Methodology and Periodic Rate Computation Procedure Manual and the Addendum to Service Schedule E, Allocation Methodology and

Periodic Rate Computation Procedure Manual of Southern Companies from 15.0% to 14.0%.

Comment date: September 23, 1987, in accordance with Standard Paragraph E at the end of this document.

9. Southern Company Services, Inc.

[Docket No. ER87-618-000]

September 9, 1987.

Take notice that on September 3, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing a change in rates for Service Schedule B of the Interchange Contract dated August 7, 1981 between South Carolina Public Service Authority and Southern Companies. The proposed change would reduce the return on common equity component of the formula rate described in the Allocation Methodology and Periodic Rate Computation Procedure Manual from 16.0% to 14.0%.

Comment date: September 23, 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. 87-21344 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8893-002 et al.]

Applications Filed With the Commission; Hydroelectric Applications (Hydro Power Development et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Minor License.

b. Project No.: 8893-002.

c. Date Filed: December 12, 1986.

d. Applicant: Hydro Power Development.

e. Name of Project: Snake River.

f. Location: On the Snake River and Peru Creek in Summit County, Colorado (Section 6, Township 5S, Range 76W, New Mexico Principal Meridian).

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Herbert C. Young, 123 S. Paradise Road, Golden, CO 80401, (303) 526-9296.

i. FERC Contact: Hector M. Perez, (202) 376-1669.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) A new intake structure in the north bank of the Snake River at elevation 9,980 feet msl; (2) a new 48-inch-diameter, 4,000-foot-long buried penstock; (3) a new intake structure in the south bank of the Peru Creek at elevation 9,980 feet msl; (4) a new 48-inch-diameter, 4,000-foot-long buried penstock; (5) a new powerhouse with 2 turbine-generator units with an installed capacity of 150 and 600 kW, each; (6) a new 600-foot-long, 11-kV underground cable; and (7) other appurtanances. The project would be located within the Arapahoe National Forest. The applicant estimates an average annual generation of 2,250,000 kWh for the project.

l. Purpose of Project: Project energy would be sold to the Public Service Company of Colorado.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9298-000.

c. Date Filed: June 27, 1985.

d. Applicant: Henniker Hydroenergy Corp.

e. Name of Project: Henniker Dam.

f. Location: On Contoocook River, near town of Henniker, in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r)

h. Applicant Contact: Mr. Victor A. Engel, 145 Abbott Road, Concord, NH 03301, (603) 225-3088.

i. FERC Contact: Sat Goel (202) 376-9816

j. Comment Date: October 9, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 315-foot-long dam to be reconstructed, owned by the Army Corps of Engineers; (2) an existing reservoir with 90-acre feet storage capacity and a surface area of 15 acres at an elevation of 410.85 feet m.s.l; (3) a new 11-foot-diameter, 200-foot-long penstock; (4) a new powerhouse containing two generating units with a total installed capacity of 1,500 kW; and (5) a proposed 200-foot-long transmission line connecting to an existing Public Service Company of New Hampshire.

l. Purpose of Project: The project power would be sold to Public Service Company of New Hampshire. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $40,000.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. Type of Application: Minor License.

b. Project No.: 9635-001.

c. Date Filed: November 12, 1986.

d. Applicant: Clarance A. and Lottie E. Hawkins and Hawkins Hydro Co.

e. Name of Project: Hawkins.

f. Location: On the Dirty George Creek and Camp Creek in Delta County, Colorado (Sections 9, 15, and 16, Township 13S, Range 95W New Mexico Principal Meridian).

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Clarance A. Hawkins, Rural Route 1, P.O. Box 373, Eckert, CO 81418, (303) 856-3845.

i. FERC Contact: Hector M. Perez, (202) 376-1669.

j. Comment Date: October 9, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) An existing 3-foot-high, 15-foot-long concrete diversion dam across Dirty Creek at elevation 7,180 feet msl; (2) an existing 125-foot-long rectangular irrigation ditch, (3) a new sump-type intake structure at the irrigation ditch; (4) a new 16-inch-diameter, 9,200-foot-long steel penstock; (5) a new powerhouse with a 650-kW turbine-generator unit; (6) a new 50-foot-long tailrace channel returning water into Camp Creek at elevation 6,200 msl; (7) a new 2,000-foot-long underground transmission line; and other appurtances. The upper part of the project is partially on lands administered by the Bureau of Land Management. The applicant estimates an average annual generation of 3,677,631 kWh. Project energy would be sold to the Colorado-Ute Electric Association. This application was filed within the applicant's preliminary permit term for this project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4 a. Type of Application: Constructed Minor License.

b. Project No.: 10102-000.

c. Date Filed: September 29, 1986.

d. Applicant: Franklin Springer.

e. Name of Project: Springer No. 1.

f. Location: On the McFadden, Morrison, and Pine Creeks in Chaffee County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Karl F. Kumli III, 1911 Eleventh Street, Suite 201, P.O. Box 2279, Boulder, CO 80306, (303) 440-0075.

i. FERC Contact: Hector Perez, (202) 376-1669.

j. Comment Date: October 13, 1987.

k. Description of Project: The existing project consists of: (1) A concrete diversion weir at Morrison Creek; (2) an 866-foot-long, 10-inch-diameter penstock; (3) Waupaca Reservoir No. 2 with a surface area of 2.4 acres at elevation 8,672 feet msl formed by the Waupaca Dam No. 2 (a 28-foot-high and 408-foot-long earthfill structure), the North Saddle Dam (a 10-foot-high and 90-foot-long earthfill structure), and the South Saddle Dam (a 12-foot-high and 148-foot-long earthfill structure); (4) a 10-inch-diameter and 387-foot-long penstock from the Waupaca Dam No. 2 to join the downstream end of the penstock in item 2 above: (5) a 10-inch-diameter, 1,553-foot-long penstock; (6) a powerhouse with a 45-kW turbine-generator unit; (7) a 450-foot-long, 7.2-kV transmission line; and (8) other appurtenances. The Waupaca Reservoir No. 2 is an off channel reservoir fed by the Morrison Creek, McFadden Creek, and the Pine Creek. All project features and lands are owned by the applicant. The project generates an average of 103,680 kWh per year. The power is being sold to the Colorado Ute Electric Association.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: Major License.

b. Project No.: 10199-000.

c. Date Filed: November 28, 1986.

d. Applicant: City of Klamath Falls, OR.

e. Name of Project: Salt Caves.

f. Location: On the Klamath River in Klamath County, Oregon, on Bureau of Land Management lands: T40S, R6E; T41S, R6E, and T41S, R5E, Williamette Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. William G. Miller, Resource Management International, Inc., 1010 Hurley Way, Suite 500, Sacramento, CA 95825, (916) 924-1534.

i. FERC Contact: James Hunter (202) 376-9814.

j. Comment Date: October 9, 1987.

k. Description of Project: The project would consist of: (1) A 75-foot-high, 580-foot-long earthen dam with a crest elevation of 3,265.0 feet, diverting flow to a 500-foot-long power canal and spillway approach channel; (2) a 250-foot-long ungated concrete ogee-crest spillway located adjacent to the power canal intake with a crest elevation of 3,250.0 feet, and appurtenant hydraulic jump stilling basin; (3) a 25-foot-high by 20-foot-wide concrete low level outlet conduit with slide gate control facilities, and discharging to the spillway stilling basin; (4) an impoundment with a surface area of 70 acres and a gross storage capacity of 1,500 acre-feet at a normal maximum pool elevation of 3,250.0 feet; (5) power canal intake facilities consisting of a 115-foot-long by 65-foot-wide fish screenhouse, a 65-foot-long concrete-lined transition, and a 27-foot-wide radial gate; (6) a 7.3-mile-long power diversion conduit consisting of a 27-foot-wide concrete flume and a 7,900-foot-long concrete-lined channel; (7) a 2,000-foot-long forebay with a normal pool elevation of 3,224.5 feet; (8) a wasteway to the river consisting of an overflow crest discharging into a side channel chute and stilling basin for a total length of 1,850 feet; (9) a concrete penstock intake structure with two 17-foot-high by 12-foot-wide chambers; (10) two 1,320-foot-long, 10-foot-diameter steel penstocks; (11) a 70-foot-long, 65-foot-wide, 55-foot-high buried reinforced concrete powerhouse containing two turbine-generating units each rated at 40 MW at an average net head of 440 feet and a hydraulic capacity of 1,220 cfs; (12) a concrete-lined tailrace with a bottom width of 50 feet discharging into the Klamath River at a normal tailwater elevation of 2,781.0 feet; (13) two parallel, 1.5-mile-long, 230-kV transmission lines from the substation adjacent to the powerhouse to an existing PP&L 230-kV line; and (14) appurtenant facilities. Recreation improvements include parking areas, fishing and hiking access, campgrounds, and a fish spawning channel and fish ladder at the dam. The applicant estimates the average annual generation for the project to be 364.3 GWh. The cost of the project is estimated to be $163,863,000.

l. Purpose of Project: Power output would be sold to one or more utilities in the region.

m. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

6 a. Type of Application: Preliminary Permit.

b. Project No: 10365-000.

c. Date Filed: March 26, 1987.

d. Applicant: J. Thomas Gibbons and Roberty M. Harding.

e. Name of Project: Oriskany Falls Generating Station.

f. Location: On Oriskany Creek, near town of Augusta, in Oneida County, NY.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Person: Mr. J. Thomas Gibbons, R.D. 1, Box 173, Gridley Page Road, Deansboro, NY 3328, (315) 841-8191.

i. FERC Contact: Sat Goel, (202) 376-9816.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed project would consist of: (1) The existing 8-foot-high, 60-foot-long, Oriskany Falls Dam at crest elevation 976 feet m.s.l., owned by Robert M. Harding; (2) an existing 30-inch-diameter, 25-foot-long steel penstock; (3) an existing powerhouse containing a new single generating unit with a rated capacity of 60 kW at a head of 19 feet, and (4) a 60-foot-long, 4.8-kV transmission line connecting to the existing New York State Electric & Gas Corporation line.

The estimated average annual energy production is 350,000 kWh. The project power would be sold to New York State Electric and Gas Corporation. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No: 10421-000.

c. Date Filed: May 28, 1987.

d. Applicant: Skagit River Hydro.

e. Name of Project: Howard Creek.

f. Location: On Howard Creek in T36N, R6E, near Burlington in Skagit County, WA.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12122-196th Avenue NE., Redmond, WA 98052, (206) 885-3986.

i. FERC Contact: Julie Bernt, (202) 376-9812.

j. Comment Date: October 17, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete intake structure buried in the streambed at elevation 2,000 feet; (2) a 9,000-foot-

long, 60-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 4,230 kW; and (4) an 11-mile-long transmission line. Applicant estimates the average annual energy production to be 18.53 GWh and the cost of the work performed under the preliminary permit to be $40,000.

l. Purpose of Project: The power produced is to be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

8 a. Type of Application; Preliminary Permit.

b. Project No.: 10432-000.

c. Date Filed: June 15, 1987.

d. Applicant: Energy Alternatives.

e. Name of Project: Lookout — Fossil Creek.

f. Location: In Snoqualmie — Mt. Baker National Forest, on Lookout and Fossil Creeks, in Whatcom County, Washington. Township 40N and Range 7E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Alan K. VanHook, 6286 North Fork Road, Deming, WA 98244, (206) 592-5148.

i. FERC Contact: Thomas Dean, (202) 376-9275.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed project would consist of: (1) Two diversion weirs each approximately 8 feet high and 30 feet wide with inlet elevations of 3,000 feet msl; (2) an 18-inch-diameter bifurcated penstock totalling 8,800 feet in length leading to; (3) a powerhouse at elevation 1,300 feet msl containing two generating units with a total capacity of 1,500 kW operating at 1,700 feet of hydraulic head; (4) a tailrace; and (5) a 0.25-mile-long, 110 kV transmission line. The applicant estimates the average annual energy production to be 5.1 GWh. The approximate cost of the studies under the permit would be $50,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility to Puget Sound Power and Light of Washington.

m. This Notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10431-000.

c. Date Filed: June 16, 1987.

d. Applicant: Town of Telluride.

e. Name of Project: San Miguel.

f. Location: On the San Miguel River in San Miguel County, Colorado (Section 32, Township 43 N, Range 9W, and Section 31, Township 43 N, Range 9W, New Mexico Principal Meridian).

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Michael P. Demos, HDI, Suite 108, 10394 West Chatfield Avenue, Littleton, CO 80127, (303) 973-0951.

i. FERC Contact: Hector M. Perez, (202) 376-1669.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) A 9-foot-high weir; (2) a small reservoir with a surface area of 2 acres at elevation 8,617 feet msl; (3) an intake structure at the left abutement of the weir; (4) a 54-inch-diameter, 6,500-foot-long penstock; (5) a powerhouse with a 4.6-MW generating unit; (6) a 60-foot-long, 12.5-kV underground cable; and (7) other appurtenances. The applicant estimates an average annual generation or 16,700,000 kWh. The project would be located on private lands except for about 2,000 feet of the penstock that would be located within the Uncompahgre National Forest.

l. Purpose of Project: Project energy would be sold to the Colorado Ute Electric Association.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10437-000.

c. Date Filed: June 29, 1987.

d. Applicant: Franklin Hydro, Inc.

e. Name of Project: LaSell Dam Hydroelectric Project.

f. Location: On the Great Chazy River, in Clinton County, NY.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. Frank O. Christie, Ballard Mill, S. William Street, Malone, NY 12953, (518) 483-1945.

i. FERC Contact: Thomas O. Murphy (202) 376-9829.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing 40-foot-high, 310-foot-long, reinforced concrete dam; (2) a proposed 7-acre reservoir after three-foot-high flashboards raise the normal maximum surface elevation to 685 feet USGS; (3) a proposed 100-foot-long, 5-foot-diameter, steel penstock; (4) a proposed powerhouse containing an estimated installed generating capacity of 540-kW; (5) a proposed 2,600-foot-long, 4.8-kV transmission line; (6) a proposed 175-foot-long, gravel access road; and (7) appurtenant facilities. The average annual energy generation is estimated to be 1.65 GWh. The applicant estimated that the cost of the studies under permit would be $20,000.

l. Purpose of Project: All project power generated would be sold to New York State Electric and Gas Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10438-000.

c. Date Filed: June 29, 1987.

d. Applicant: Mohawk Hydro Associates.

e. Name of Project: Lock 16.

f. Location: New York State Barge Canal, Montgomery and Herkimer Counties, NY.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Ms. Christine T. Gordon, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268-8820.

i. FERC Contract: Steven H. Rossi (202) 376-9819.

j. Comment Date: October 13, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing 4.0-foot-high, 361-foot-long concrete masonry dam; (2) a reservoir with a surface area of 490 acres, a storage capacity of 2,500 acre-feet, and a normal water surface elevation of 322.5 feet m.s.l.; (3) a new 100-foot-wide, 500-foot-long excavated earth powr canal; (4) a new 16-foot by 16-foot steel intake structure; (5) a new 14-foot-diameter, 20-foot-long steel penstock; (6) a new powerhouse containing one generating unit with a capacity of 3,000 kW; (7) a new 40-foot-wide, 400-foot-long excavated earth tailrace; (8) a new transmission line, 2,000 feet long; and (9) appurtenant facilities. The applicant estimates the average annual generation would be 16,000,000 kWh. The existing dam is owned by the New York State Department of Transportation. The applicant estimates that the cost of the studies under permit would be $50,000.

l. Purpose of Project: Project power would be sold to Niagara Nohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No: 10444-000.

c. Dated Filed: July 15, 1987.

d. Applicant: Chappel Hyrdo Co.

e. Name of Project: Chappel Dam.

f. Location: Cedar River, Gladwin County, MI.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. Gary F. Croskey, Chappel Hydro Company, 336 University Dr., East Lansing, MI 48823, (517) 332-7019.

i. FERC Contact: Dean Wight, (202) 376-9820.

j. Comment Date: October 16, 1987.

k. Description of Project: The proposed project would consist of: (1) An existing earth embankment and concrete spillway dam 1,050 feet long and 33 feet high; (2) an existing impoundment 453 acres in surface area and of 4,300 acre-feet volume at a normal maximum surface elevation of 815 feet mean sea level; (3) an existing powerhouse 26 feet wide and 31 feet long; (4) two existing turbines, one of which would be refurbished to drive a proposed 250 kW generator; and (5) appurtenant facilities.

The hydraulic head is 28 feet. The estimated annual energy production is 0.9 GWh. The existing facilities are owned by the County of Gladwin, MI. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $32,000.

l. The notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of Application: Amendment of License.

b. Project No.: 4285-008.

c. Dated Filed: July 7, 1987.

d. Applicant: City of Logan, UT.

e. Name of Project: Logan No. 2 Hydro Project.

f. Location: On Logan River in Cache County, Utah: Sections 27, 28, 29, 31, 32, T12N, R2E; SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Honorable Newel G. Daines, Jr., Mayor, City of Logan, P.O. Box 527, 61 West First North, Logan, UT 84321.

i. FERC Contact: Jesse W. Short, (202) 376-9818.

j. Comment Date: October 16, 1987.

k. Description of Project: The proposed amendment of license involves lands in the Cache National Forest and would incorporate two developments: An old existing one, including the dam, and a new small one for required bypass flows from the same dam; the old development consists of: (1) Logan Third Dam, 31.5 feet high and 108 feet long; (2) a reservoir of about 40 acre-feet; (3) a radial-gated intake structure; (4) a precast concrete pipeline; 78 inches in diameter and 6,800 feet long, connecting to a surge tank and a steel penstock, 72 inches in diameter and 375 feet long; (5) a powerhouse with an installed capacity of 1,300 kW under a 95-foot head; (6) a tailrace and bypass facility returning flow to the Logan River; (7) a tramission line and substation; and (8) appurtenant facilities; the new development consists of: (9) a slide-gated intake structure; (10) a steel penstock 24 inches in diameter and 100 feet long; (11) a propeller turbine-generator unit rated at 50 kW under a 24-foot head; (12) an outlet to the river; (13) a transmission line connection and (14) appurtenant facilities. The applicant estimates that the average annual energy output would be 6,300,000 kWh and 386,000 kWh, respectively.

l. Purpose of Project: Project energy would be utilized by the Applicant.

m. This notice also consists of the following standard paragraphs: B and C.

14 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 5466-004.

c. Dated Filed: October 15, 1986.

d. Applicant: The City of New York.

e. Name of Project: Croton Reservoir System.

f. Location: On the East Branch Croton River, Middle Branch Croton River, Cross River, Croton River, Muscoot River, and Titicus River in Cortland, North Salem, Somers and Bedford Townships, Westchester County, and Southeast and Carmel Townships, Putnam County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Applicant Contact: Mr. Harvey W. Schultz, Commissioner, Dept. of Environmental Protection, Municipal Building, Room 2358, New York, NY 10007, (212) 669-8264.

i. FERC Contact: Thomas O. Murphy, (202) 376-9829.

j. Comment Date: October 16, 1987.

k. Description of Project: The proposed project will consist of five developments.

The new Croton Development will consist of: (1) The 2,168-foot-long, 297-foot-high New Croton Dam; (2) the new Croton Reservoir having a surface area of 2,200 acres at the spillway crest elevation of 195.5 feet m.s.l.; (3) the intake structure, gatehouse ι2, and related conduits through the dam; (4) a new powerhouse containing three generating units having a total rated generating capacity of 3 MW; (5) a release conduit to the Croton River; (6) a proposed 2.8-mile long, 13.2-kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy generation will be 11.1 GWh.

The Titicus Dam Development will consist of: (1) The 1,583-foot-long, 124-foot-high Titicus Dam; (2) the existing reservoir having a surface area of 670 acres at the spillway crest elevation of 324.5 feet m.s.l.; (3) the intake structure, a 36-inch-diameter buried penstock, and the gatehouse; (4) a new powerhouse containing three generating units having a total rated generating capacity of 200 kW; (5) a release channel to the Titicus River; (6) a 2,400-foot-long, 13.2-kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy generation will be 1,276 MWh.

The Croton Falls Development will consist of: (1) The 1,070-foot-long, 175-foot-high Croton Falls dam, and a 700-foot-long spillway; (2) the existing Croton Falls Reservoir having a surface area of 1,166 acres at the spillway crest elevation of 309.5 feet m.s.l.; (3) the intake chamber, related conduits through the dam, and a 36-inch-diameter penstock; (4) a new powerhouse containing one 400 kW generating unit; (5) a proposed 1,300-foot-long, 4.8-kV transmission line; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation will be 2,156 MWh.

The Croton Falls Diverting Development will consist of: (1) The 2,200-foot-long, 54-foot-high Croton Falls Diverting Dam; (2) the existing Croton Falls Diverting Reservoir having a surface area of 147 acres at the spillway crest elevation of 309.5 feet m.s.l.; (3) a rehabilitated vault to serve as a powerhouse containing one 112 kW generating unit; (4) a proposed 60-foot-long, 42-inch-diameter penstock; (5) a proposed 700-foot-long, 4.8-kV transmission line; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation will be 783 MWh.

The Sodom Dam Development will consist of: (1) The 1,100 foot-long, 98-foot-high Sodom dam and a separate 500-foot-long spillway; (2) the existing, 537-acre reservoir at the spillway crest elevation of 416.5 feet m.s.l.; (3) the gatehouse and release conduit through the Sodom dam; (4) a proposed powerhouse which will contain one 300-kW generating unit; (5) a 400-foot-long tailrace; (6) a 1,000-foot-long, 4.8-kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy generation will be 2,077 MWh.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

15 a. Type of Application: Minor License.

b. Project No.: 8445-002.

c. Date Filed: November 17, 1986.

d. Applicant: Jerry B. Buckley.

e. Name of Project: Blue Hill.

f. Location: On the West Fork Clear Creek and Blue Creek in Clear Creek

County, Colorado, Sections 25, 26, and 23, Township 3S, Range 75W, New Mexico Principal Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Jerry B. Buckley, Box 609, Georgetown, CO 80444, (303) 569-2582.

i. FERC Contact: Hector M. Perez, (202) 376-1669.

j. Comment Date: November 6, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) 2 sump-type intake structures, one on the West Fork of Clear Creek and the other on Blue Creek, both at elevation 9,390 feet msl; (2) a main 36-inch-diameter, 5,400-foot-long steel penstock from the West Fork of Clear Creek; (3) a 10-inch-diameter, 400-foot-long steel penstock from the Blue Creek joining the main penstock; (4) a powerhouse with a 1,400-kW turbine-generator unit; (5) a 50-foot-long open channel tailrace returning the water to the West Fork of the Clear Creek; (6) a 25-kV, 300-foot-long transmission line; and other appurtenances.

The applicant estimates an average annual generation of 3,573,378 kWh to be sold to the Public Service Company of Colorado. The project would affect lands of the Arapaho National Forest. This application was filed within the applicant's preliminary permit term for this project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

16 a. Type of Application: Preliminary Permit.

b. Project No: 10436-000.

c. Date Filed: June 26, 1987.

d. Applicant: Oglethorpe Power Corp.

e. Name of Project: Pickens County Pumped Storage Hydro Project.

f. Location: On the Scarecorn Creek near Jasper, Pickens County, GA.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Mr. Donald Martin, Oglethorpe Power Corporation, 2100 East Exchange Place, P.O. Box 1349, Tucker, GA 30085, (404) 496-7600.

i. FERC Contact: Ed Lee, (202) 376-9828.

j. Comment Date: November 6, 1987.

k. Description of Project: The proposed pumped storage hydro project would consist of: (1) A 185-acre upper reservoir and 11,000-foot-long and 235-foot-high dam; (2) a 475-acre lower reservoir and 2,900-foot-long and 146-foot-high dam; (3) an upper reservoir intake/outlet; (4) a high-head tunnel and shaft and a low-head tunnel totaling 8,400 feet in length; (5) a lower reservoir intake/outlet; (6) an underground powerstation located between the upper and lower reservoirs with a total installed capacity of 900 MW; (7) a switchyard and transmission line, approximately 19 miles in length; (8) access roads and tunnels; and (9) appurtenant facilities. Applicant estimates that the average annual generation would be 10,800 MWh, and the cost of the work to be performed under the preliminary permit would be $10 to $15 million.

l. Purpose of Project: The power of produced is to be utilized by the applicant within its own distribution system.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 10446-000.

c. Date Filed: July 27, 1987.

d. Applicant: The Passamaquoddy Tribal Council at the Pleasant Point Reservation.

e. Name of Project: Half-Moon Cove Project.

f. Location: On Half Moon Cove in Washington County, ME.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contracts:

Mr. Melvin Francis, Passamaquoddy Tribal Council, Pleasant Point Reservation, Perry, ME 04667, (207) 853-2551

Mr. Normand Laberge, 9922 Dickens Avenue, Bethesda, MD 20814, (202) 635-5327.

i. FERC Contact: Steven H. Rossi (202) 376-9819.

j. Comment Date: October 22, 1987.

k. Competing Application: Project No. 10380-000, Date Filed: April 14, 1987.

l. Description of Project: The proposed project would consist of: (1) A new 75-foot-high, 1,050-foot-long earth and rock gravity dam; (2) a reservoir with a surface area of 795 acres, a storage capacity of 10,700 acre-feet, and normal water surface elevation of 13.2 feet m.s.l.; (3) a new intake gate; (4) a new concrete powerhouse containing two generating units with a capacity of 6,000 kW each for a total installed capacity of 12,000 kW; (5) a new transmission line, 700 feet long; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 37,300,000 kWh. The applicant estimates that the cost of the studies under permit would be $235,000.

m. Purpose of Project: Project power would be sold to the Bangor Hydroelectric Company and Eastern Maine Electric Cooperative.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 10447-000.

c. Date Filed: July 29, 1987.

d. Applicant: JDJ Energy Co.

e. Name of Project: Spring Mountain Pumped Storage.

f. Location: Arkansas River (Lake Dardanelle) in Logan and Yell Counties, AR.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Doyle W. Jones, P.E., 902 Highway 270 North, Suite 102, Malvern, AR 72104 (501) 337-4904.

i. FERC Contact: Dean Wight, (202) 376-9820.

j. Comment Date: November 13, 1987.

k. Description of Project: The proposed project would use the existing Lake Dardanelle, a part of the McClellan-Kerr Arkansas River Navigation System owned and operated by the U.S. Army Corps of Engineers, Little Rock District, P.O. Box 867, Little Rock, AR 72203, as a lower reservoir, and would consist of (1) a proposed rockfill embankment 50 feet high and 20 feet wide forming a circular impoundment approximately 3000 feet in diameter; (2) a proposed reservoir of 210 acres surface area and 8940 acre-feet volume at a normal maximum surface elevation of 1870 feet NGVD; (3) a proposed reinforced concrete intake structure 95 feet high, 75 feet wide, and 130 feet long; (4) four proposed 12-foot-diameter steel penstocks about 4.5 miles long; (5) a proposed reinforced concrete powerhouse 150 feet high, 325 feet long, and 100 feet wide housing four proposed reversible turbine-pump-generators of 250 MW each; (6) a proposed 500 kV transmission line 9000 feet long; (7) appurtenant facilities. The estimated annual energy production (based on an annual energy input of 4745 GWh) is 3650 GWh. Project power would be sold. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 10448-000.

c. Date Filed: August 3, 1987.

d. Applicant: Natural Energy Resources Co.

e. Name of Project: Union Park.

f. Location: On Taylor River and Lottis Creek, Gunnison and Chaffee Counties, CO.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Allan D. Miller, President, Natural Energy Resources Co., 3855 Highway 105 West, P.O. Box 561, Palmer Lake, CO 80133, (303) 481-2003.

i. FERC Contact: Hector M. Perex, (202) 376-1669.

j. Comment Date: October 22, 1987.

k. Competing Application: Project No. 10449-000, Date Filed: August 3, 1987. Both notices of application expire the same day.

l. Description of Project: The proposed pumped-storage project would utilize the existing U.S. Bureau of Reclamation's Taylor Park Reservoir, on the Taylor River, as the lower reservoir, which has a normal water surface elevation of 9,330 feet msl, and would consist of: (1) A new 440-foot-high, 1,800-foot-long zoned-earth or rock-fill dam with a crest elevation of 10,066 feet msl at the entrance of Union Canyon in Union Park; (2) a reservoir with a surface area of 4,200 acres at normal maximum surface elevation of 10,052 feet msl; (3) an 11-foot-diameter, 8,000-foot-long concrete-lined pressure conduit; (4) an underground powerhouse with a total installed generating capacity of 70 MW; (5) an 11-foot-diameter 2,000-foot-long tailrace conduit to the south shore of Taylor Park Reservoir; and (6) other appurtenances. Applicant estimates an average annual generation of 123,000 MWh to be marketed for distribution in Colorado, Utah, New Mexico, Texas, Nevada, Arizona, or California.

m. This notice also consists of the following standard paragraph: A5, A7, A9, A10, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 10449-000.

c. Date Filed: August 3, 1987.

d. Applicant: City of Gunnison, Town of Parker, and the County of Arapahoe.

e. Name of Project: Union Park.

f. Location: On Taylor River and Lottis Creek, in Gunnison and Chafee Counties, CO.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Applicant Contact: Karl F. Kumli III, 1911 11th Street, Sutie 201, P.O. Box 2279, Boulder, CO 80306, (303) 440-0075.

i. FERC Contact: Hector M. Perez, (202) 376-1669.

j. Comment Date: October 22, 1987.

k. Competing Application: Project No. 10448-000, Date Filed: Aug. 3, 1987. Both notices of application expire the same day.

l. Description of Project: The proposed pumped-storage project would utilze the existing U.S. Bureau of Reclamation's Taylor Park Reservoir, on the Taylor River, which has a normal maximum water surface elevation of 9,330 feet msl, and would consist of: (1) A new 370-foot-high zoned-earth or rock-fill dam with a crest elevation of 9,995 feet msl at the entrance of Union Canyon in Union Park; (2) a reservoir with a surface area of 3,550 acres at normal maximum surface elevation of 9,975 feet msl; (3) an 11-foot-diameter, 8,000-foot-long concrete-lined pressure conduit; (4) a powerhouse with a total installed generating capacity of 60 MW; (5) an 11-foot-diameter, 2,000-foot-long tailrace conduit to the south shore of Taylor Park Reservoir; (6) a 25-mile-long transmission line; and (7) other appurtenances. Applicant estimates an average generation of 83,000 MWh to be used partly by the City of Gunnison and sold to utilities in the southwestern part of the United States.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Application for preliminary permit will not be accepted in response to this notice.

A4. Development Application

Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the intial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself; or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the intial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of

the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construction and operate the project.

B. Comments, Protests, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "*Comments*", "*Notice of Intent To File Competing Application*", "*Competing Application*", "*Protest*" or "*Motion To Intervene*", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l* (b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statues listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specified terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 10, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–21300 Filed 9–15–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-503-000 et al.]

Natural Gas Certificate Filings; Pacific Gas Transmission Co. et al.

Take notice that the following filings have been made with the Commission

1. Pacific Gas Transmission Co.

September 4, 1987.

[Docket No. CP87-503-000]

Take notice that on August 19, 1987,[1] Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP87-503-000, a petition for waiver of the termination date specified in § 284.105 of the Regulations under the Natural Gas Act (18 CFR 284.105), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

PGT states that on August 18, 1981, PGT Pacific Interstate Transmission Company (PITCO) entered into a contract (Contract) for the transportation of up to 300,000 Mcf of natural gas per day, on a best efforts basis, from south of Stanfield, Oregon and delivered for PITCO's account at a point of interconnection with the facilities of Pacific Gas and Electric Company near Malin, Oregon. PGT further states that the transportation of natural gas commenced April 13, 1982, and originated as a self-implementing transaction pursuant to Part 284, Subpart G of the Regulations and was continued as a "grandfathered" transportation service under the transitional provisions of Order No. 436 (18 CFR 284.105).

PGT states that the Contract originally remained in full force and effect for an initial two-year period, until September 30, 1983. PGT further states the Contract was subsequently amended to extend the term for additional two-year periods, through September 30, 1985 and September 30, 1987.

PGT states that under Order No. 436, existing Section 311 transportation was automatically allowed to continue on a "grandfathered" basis for a certain period to allow a suitable transition period for transportation arrangements under previous section 311 programs. Pursuant to § 284.105 of the Commission's Regulations (18 CFR 284.105), such transportation service was allowed to continue as "grandfathered" transportation until the earlier of the expiration of the then existing contract or October 9, 1987. Thus, PGT states that the section 311 transportation on behalf of PITCO was and is automatically allowed to continue as "grandfathered" transportation only until September 30, 1987.

In order to avoid termination of the transportation service for PITCO on September 30, 1987, PGT requests that such termination date be waived until 30 days after PGT accepts a blanket certificate in Docket No. CP87-159-000. PGT further requests that the Commission treat the petition as a request for any other waivers which may be necessary to enable PGT to continue the transportation on a "grandfathered" basis beyond September 30, 1987, and until 30 days after PGT accepts a blanket certificate in Docket No. CP87-159-000.

Comment date: September 18, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Corp.

September 8, 1987.

[Docket No. CP87-505-000]

Take notice that on August 20, 1985, Columbia Gulf Transmission Corporation (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP87-505-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain of its natural gas pipeline facilities and appurtenances constructed to take gas from Huffco Petroleum Corporation (Huffco) from offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that certain natural gas pipeline facilities, approximately 0.72 miles of 10-inch pipeline from the "A" platform in West Cameron Block 531, offshore Louisiana, to a subsea tie-in in West Cameron Block 510, offshore Louisiana, a dual 8-inch measurement station and associated piping on the "A" platform, will be transferred to Huffco Petroleum Corporation at a price to be determined by the date of transfer in an effort to resolve certain disputes with respect to Columbia Gulf's transportation rates involving the facilities to be transferred. Therefore, Columbia Gulf seeks permission and approval to abandon.

Comment date: October 23, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. North Penn Gas Co.

September 8, 1987.

[Docket No. CP87-507-000]

Take notice that on August 21, 1987, North Penn Gas Company (North Penn), 76-80 Mill Street, Port Allegany, Pennsylvania 16743, filed in Docket No. CP87-507-000 a petition for a declaratory order, pursuant to § 385.207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), requesting an order declaring that the construction of certain facilities by Consolidated Gas Transmission Corporation (Consolidated) requires certification by the Federal Energy Regulatory Commission, as set forth in the petition on file with the Commission and open to public inspection.

North Penn indicates that Consolidated has stated its intention to construct, own, and operate interconnection facilities and transport gas to Corning Natural Gas Corporation (Corning) and/or New York State Electric & Gas Company pursuant to section 311 of the Natural Gas Policy Act (NGPA). It is further stated that in Docket No. CP87-195-000 Consolidated seeks certification under section 7(c) of the Natural Gas Act (NGA) for the construction of such facilities and sales service to Corning.

North Penn States that the question at issue in its petition is whether Consolidated is authorized pursuant to NGPA section 311 to construct facilities for which Consolidated already has applied for certification in Docket No. CP87-195-000, and which Consolidated anticipates using for NGPA section 311 transportation service only until the Commission certificates their use in Docket No. CP87-195-000 for jurisdictional sales service.

Comment date: September 22, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. El Paso Natural Gas Co.

September 8, 1987.

[Docket No. CP87-499-000]

Take notice that on August 18, 1987, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP87-499-000 pursuant to Rules 209 and 212 of the Commission's Rules of Practice and Procedure and sections 4, 7, and 16 of the Natural Gas Act a petition for declaratory relief and request for issuance of a show cause order.

El Paso's petition concerns the parties' rights and obligation with respect to certain sales of natural gas made by Valero Interstate Transmission Company (VITCO) to El Paso pursuant to a tariff and rate schedule on file with the Commission. El Paso states that it is presently subject to an "Order on Temporary Injunction" issued by the state District Court, Hidalgo County, Texas. El Paso contends that this state

[1] The application was tendered for filing on August 17, 1987; however, the fee required by § 381.207 of the Commission's Rules was not paid until August 19, 1987. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

court order compels El Paso to (i) take and pay for specific volumes of gas in direct contravention of Commission Order Nos. 380 and 380–C; (ii) accept from VITCO of gas sold and transported in interstate commerce which sale and transportation have not been authorized under section 7 of the Natural Gas Act or Section 311 of the Natural Gas Policy Act of 1978 and (iii) accept, contrary to its will, deliveries of gas at levels and rates dictated by a state court having no authority to order such sales.

In support of its motion, El Paso notes that both VITCO and El Paso are natural gas companies subject to the Commission's Natural Gas Act jurisdiction. El Paso states that pursuant to a contract dated January 28, 1981, as amended, VITCO agreed to sell up to 31,250 Mcf of gas per day to El Paso for resale. The sales contract became part of VITCO's FERC Gas Tariff, Rate Scehdule No. S–3.

According to El Paso, Article V, Section 1 of Rate Schedule S–3 contains a minimum commodity bill such that El Paso pays for a stipulated daily contract quantity multiplied by the applicable contract price, whether or not such quantity was actually taken by El Paso.

El Paso claims that Commission Order No. 380, issued on June 1, 1984, and the regulations thereunder (18 CFR 157 *et seq.*) required the elimination from all natural gas pipeline tariffs of provisions that operated to permit recovery of variable gas cost for gas not taken by the buyer. Commission Order No. 380–C ordered inoperative all minimum take provision effective November 1, 1984. Order No. 380 *et al.* was affirmed in all significant respects by the United States Court of Appeals for the District of Columbia Circuit. *Wisconsin Gas Co. v. FERC,* 770 F.2d (D.C. Cir. 1985), *cert. denied,* 106 S.Ct. 1968 (1986).[1]

El Paso states that on December 18, 1985, El Paso notified VITCO that in accordance with Order No. 380, *et al.,* it would not pay VITCO for any gas not actually taken by El Paso, but would continue to pay all other charges, including demand charges and other fixed costs, as permitted under Order No. 380.

El Paso claims that certain producer/suppliers of VITCO (clanton, *et al.*) have brought suit in the state District Court, Hildalgo County, Texas charging VITCO with breach of the gas supply contract,[2] and that VITCO filed a petition naming El Paso as a third party defendant in the action. El Paso asserts that VITCO named El Paso as a third party defendant based on VITCO's assertion that any failure by VITCO to comply with the Clanton, *et al.* contracts was due to El Paso's refusal, as sanctified by Order No. 380, to honor the minimum bill provision of VITCO's Rate Schedule S–3. On August 12, 1987, the state court granted a temporary injunction against El Paso, which held that the obligations of VITCO *vis-a-vis* Clanton, *et al.,* had, as a matter of law, been assumed by El Paso and that Order No. 380, *et seq.* was not a bar to issuance of a court order enjoining El Paso from failing to take and pay for minimum quantities of gas, under the Clanton, *et al.* /VITCO contracts, even though said contracts do not themselves require the purchaser to take and pay for any minimum volume of gas. El Paso states that the state court order provides that El Paso "* * * is ordered and directed to receive and take from the wells of Clanton *et al.* * * * and Clanton *et al.* * * * are directed to produce and deliver to VITCO for the account of El Paso * * *." specified daily takes of gas.

As a result of the court's order, El Paso claims, it will be forced to pay Clanton, *el al.* approximately $33,000 per day more than the present market value of the subject gas. El Paso alleges that the net effect of the court's mandatory minimum take requirement will be to force El Paso to cut back purchases of less costly production, including oil related production and hardship wells.

El Paso claims that VITCO has attempted to enjoin El Paso in a manner proscribed by Commission regulations; and that VITCO's suit seeks to amend the filed tariffs and rate schedules of VITCO by inserting certain new terms and conditions, such as the minimum take requirement, in direct contravention of valid and effective Commission orders. El Paso claims that VITCO has impermissibly evaded the Commission's exclusive jurisdiction to regulate, under sections 4, 5 and 7 of the Natural Gas Act, the terms contained in El Paso's FERC gas tariff, and the transportation and sale for resale of natural gas in interstate commerce. Therefore, El Paso claims that it cannot be forced to honor minimum commodity bill or minimum take obligations which have been outlawed by Order No. 380.

El Paso requests that the Commission declare that any payments made by El Paso under compulsion of the state court order are contrary to the requirements of Rate Schedule S–3, are unjust, unreasonable, unduly discriminatory and in violation of the Natural Gas Act and the regulations thereunder. El Paso also requests permission to collect from VITCO payments sufficient to offset payments which El Paso makes under compulsion of the court order. El Paso requests that the Commission find such action not to be in violation of section 4 of the Natural Gas Act or section 601 of the Natural Gas Policy Act of 1978. Furhter, El Paso requests that the Commission find and declare that VITCO is in violation of section 7(b) and 7(c) of the Natural Gas Act for failing to obtain authorization to abondon certificated sales and for engaging in jurisdictional activities without prior Commission certification. Finally, El Paso requests that the Commission confirm that in the event any gas is purchased by El Paso under compulsion of the state court's injunction order, no new service obligation will attach to El Paso or its facilities requiring abandonment authorization under section 7(b) of the Natural Gas Act.

In addition to the relief set forth above, El Paso requests that the Commission direct Vitco to demonstrate why any transportation of gas purchased by El Paso under compulsion of court orders does not thereby render Vitco in violation of sections 4 and 7 of the Natural Gas Act

El Paso also requests that the Commission bring an action in Federal District Court under section 20 of the Natural Gas Act and request that the Court tmporarily restrain Clanton, *et. al.,* the state court of Texas, Hildago County, and Vitco from violations of Order Nos. 380, *et al.,* the regulations thereunder, sections 4,5, and 7 of the Natural Gas Act and section 311 of the Natural Gas Policy Act of 1978.

Comment date: September 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP87–506–000]

September 9, 1987.

Take notice that on August 21, 1987, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87–506–000 an application pursuant to section 7 of the Natural Gas

[1] By its express terms, Order No. 380 applied to sales tariffs of interstate pipelines (and the terms and conditions of service rendered by such interstate pipelines with respect to jurisdictional sales for resale) and rendered inoperative any tariff provision which provided for the recovery of purchased gas costs for gas not taken by the buyers.

[2] The complaining producers are John L. Clanton, Mission Oil & Gas Program 1980–2, Omni Drilling Partnership 1980–1, Miramar Petroleum, Inc., Petrotech Energy '80–2, Petrotech Energy '81–4, Sterling Petroleum—1980–B, Petro Pet. Ltd., Resources Investment Corporation, Clarion Oil & Gas, Inc., Bright & Company Kidco, Ltd., hereinafter referred to as "Clanton, *et al.*

Act for permission and approval to abandon the transportation of natural gas by AER for direct sale to 26 industrial customers and a certificate of public convenience and necessity authorizing the transporation of natural gas for the 26 industrial customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that its application is filed in accordance with a Stipulation and Agreement dated December 11, 1986, and approved by the Arkansas Public Service Commission on February 13, 1987, regarding the nature and scope of the retail sales services to be offered to those customers by AER. AER asserts that the Stipulation and Agreement provides for a range of retail service options, including 100 percent sales service, combination sales and transportation service, and 100 percent transportation service. AER asserts that for those customers electing the 100 percent transportation service option, the Stipulation and Agreement sets out certain circumstances under which they again could become sales customers of AER and provides for the limited term abandonment of any sales transportation obligations AER would otherwise have for the period such customers elect 100 percent transportation service as provided in the Stipulation and Agreement. Twenty-six (See Appendix) of AER's industrial customers have exercised the option to become 100 percent transportation customers, it is stated. AER requests permission and approval for limited term abandonment of its sales transportation obligations to such customers, contingent on the Commission's issuance of complementary authorizations for the transportation of third-party gas to the former sales customers under a certificate of public convenience and necessity which would be in effect until the customer resumes purchasing gas from AER. If the customer does not resume purchases of gas from AER by January 1, 1994, ther authorization for such transportation service would expire, it is indicated. Further, it is indicated that in the event a customer electing the 100 percent transportation option does not return to AER's sales serving by January 1, 1994, AER has the right to seek authorization for permanent abandonment of any direct sales transportation by AER to that customer.

Comment date: September 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

LIST OF CUSTOMERS AND DOCKETS AFFECTED

Customers	Docket numbers	Proposed transportation services	
		Firm CD-MMBtu	Interruptible MCQ-MMBtu [2]
A. P. Green Fire Brick Co	G-10887		1,200
Acme Brick Co	G-745	1,300	1,400
Aluminum Co. of America	G-10887	13,500	4,500
American Cyanamid Corp	G-10887		1,000
Arkansas Chemicals, Inc	CP61-193	1,200	500
Arkansas Glass Container Corp	G-10887	2,000	1,000
Arkansas Kraft Corp	CP68-334	2,335	8,500
Berry Petroleum Corp	G-10887		2,000
Cooper Tire & Rubber Co	(1)	2,563	500
Cross Oil & Refining Co	G-10887	1,700	800
Dow Chemical, USA	CP67-89	1,870	500
El Dorado Chemical Co	G-10887	625	1,875
Ethyl Corp	CP69-209	1,850	650
Great Lakes Chemical Corp	CP65-256 and CP83-20	9,700	4,190
International Paper Co.—Pine Bluff, AR	G-10887	12,000	36,000
International Paper Co.—Camden, AR	G-10887	4,000	12,000
Lion Oil Co	G-10887	13,000	9,000
Macmillian Petroleum, Inc	G-10887	2,000	1,000
Manville Forest Products	CP70-3	1,000	500
Mid-America Packaging, Inc	G-10887	2,000	2,000
Nekoosa Papers, Inc	CP67-347	8,000	17,000
Quincy Soybean Co	CP62-219	500	3,000
Riceland Foods, Inc	CP62-219	6,200	1,400
Standard Rendering Co	G-10887	800	1,000
Weyerhaeuser Co	CP70-26	4,000	1,500
Wabash Alloys, a division of Connell Limited Partnership (formerly Vulcan Materials Co.)	G-10887	700	1,200

[1] Unable to locate specific docket authorization at this time.
[2] Each of the agreements shown also has an overrun provision providing for additional overrun services on an interruptible basis with the exception of A. P. Green Fire Brick Co., American Cyanamid Corp. and Berry Petroleum, who elected interruptible transportation service only.

6. Colorado Interstate Gas Co.

[Docket No. CP87-510-000]

September 9, 1987.

Take notice that on August 25, 1987, Colorado Interstate Gas Company (CIG) P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87-510-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to add an additional point of delivery of natural gas to Greeley Gas Company (Greeley) and to revise the maximum daily volume obligation (MDVO) at an existing delivery point to Northern Gas Division of KN Energy, Inc. (Northern) under the certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the

Commission and open to public inspection.

CIG proposes to construct and operate a new tap on its Canon City Line in Fremont County, Colorado in order to provide a new point of delivery to Greeley. CIG asserts that the new delivery point would be utilized by Greeley to serve several farmers in the immediate vicinity. The MDVO for the new delivery point, to be designated the Penrose South sales delivery point, would be 75 Mcf of natural gas per day, it is alleged.

CIG also proposes in Docket No. CP87-510-000 to increase the MDVO at Northern Gas' existing Husky Travel Shoppe delivery point in Albany County, Wyoming from 20 Mcf to 70 Mcf of natural gas per day. CIG alleges that the increased volumes to be delivered at this location would be utilized by Northern Gas to serve certain field operations of Chevron U.S.A., Inc. CIG asserts that no additional facilities would be required at the Husky Travel Shoppe delivery point to serve the additional volumes.

CIG does not propose any change to either Greeley's or Northern Gas' total daily entitlement or annual entitlement. CIG further asserts that the proposed delivery point and the MDVO proposed revisions would not adversely impact on its ability to deliver the peak-day or annual entitlements of its other existing customers.

Comment date: October 26, 1987, in accordance with Standard Paragraph G at the end of this notice.

7. Sunshine Natural Gas System

[Docket No. CP87-513-000]

September 9, 1987.

Take notice that on August 27, 1987, Sunshine Natural Gas System (Sunshine), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP87-513-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to construct and operate a natural gas pipeline and related facilities necessary to transport natural gas for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sunshine requests authorization to construct and operate a total of 608 miles of pipeline, 37,500 horsepower of compression and related facilities. It is stated that these facilities have an estimated cost of $470 million and have been designed to transport up to 450 MMcf of natural gas per day (MMcfd) on a firm basis from Mobile County, Alabama, to central Florida, of which 250 MMcfd could be delivered to Martin County, Florida. Sunshine states that upon placing these facilities in service November 1, 1991, it would be able to connect, directly and indirectly, with the facilities of other interstate natural gas pipeline facilities in order to provide Florida customers access not only to the substantial reserves in the Mobile Bay Area, but would also provide access to every supply area in the United States and Canada.

Sunshine states that at the present time it has not entered into transportation agreements with any potential shippers. Sunshine further states that should it enter into contracts prior to Commission certification, it would file executed copies of such agreements with the Commission.

It is explained that this application is filed on the basis that Sunshine is and would be owned solely by a partnership between ANR Southern Pipeline Company, a subsidiary of ANR Pipeline Company (ANR), and ANR Gulf Pipeline Company, a subsidiary of American Natural Resources Company (American Natural) and would on that basis, construct and operate the proposed facilities. However, it is stated, ANR and American Natural are willing to open the ownership of Sunshine to others pursuant to acceptable contractual arrangements.

Comment date: September 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Co.

[Docket No. CP87-514-000]

September 9, 1987.

Take notice that on August 28, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-514-000 an application pursuant to section 7(b) of the Natural Gas Act for Permission and approval to abandon a direct industrial sale service to Chevron U.S.A. Inc. (Chevron) of up to 4,000 Mcf of natural gas per day, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that Chevron has notified United by letter dated March 13, 1987, that its present firm sales contract has terminated. United further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that, if such new arrangements are not made, it will file to abandon such facilities.

Comment date: September 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but wil not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to

be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21296 Filed 9-15-87; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CS87-93-000 et al.]

Applications for Small Producer Certificates; [1] Southwest Royalties, Inc.

September 10, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to said applications should on or before September 24, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS87-93-000	8-17-87	Southwest Royalties, Inc., P.O. Drawer 10885, Midland, TX 79702.
CS87-94-000	8-17-87	Pardee Production Co., 7706 East 85th Street, Tulsa, OK 74133.
CS87-95-000	8-31-87	Cordova Resources, Inc., 1607 Tulane Drive, Richardson, TX 75081.
CS87-97-000	8-24-87	Eakin Brothers, a partnership, P.O. Box 189, Amarillo, TX 79105.
CS87-98-000	8-31-87	Ken Perkins Oil and Gas, Inc., P.O. Drawer 1237, Kingsville, TX 78363.
CS87-100-000	8-31-87	Dalton Kincheloe & Gladys J. Kincheloe, 859 Petroleum Building, Roswell, NM 88201.
CS87-101-000	8-31-87	Neil West, 10623 Sagebluff, Houston, TX 77089.

[FR Doc. 87-21303 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-735-001 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; BAF Energy a California Limited Partnership, et al.

Comment date: October 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

September 9, 1987.

Take notice that the following filings have been made with the Commission.

1. BAF Energy a California Limited Partnership

[Docket No. QF85-735-001]

On August 25, 1987, BAF Energy a California Limited Partnership (Applicant), c/o BAF Energy, Inc., General Partner, of 550 Kearny Street, Suite 1000, San Francisco, California 94108 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in King City, California. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator, and an extraction steam turbine generating unit. Thermal energy recovered from the facility will be used in the food processing plant. The primary energy source will be natural gas. The net electrical power production capacity of the facility will be 121 MW.

By order issued February 28, 1986, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility (34 FERC ¶ 62,411).

The recertification is requested due to change of ownership of the facility from Basic American Foods, Inc. to its affiliate BAF Energy. BAF Energy is a California Limited Partnership whose sole general partner is BAF Energy, Inc., a California corporation which is a wholly-owned subsidiary of Basic American Foods, Inc. All other facility's characteristics remain unchanged.

2. Encogen One Partners Ltd.

[Docket No. QF87-615-000]

On August 21, 1987, Encogen One Partners Ltd. (Applicant), of 10375 Richmond Avenue, Houston, Texas 77042 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Sweetwater, Texas. The facility will consist of three combustion turbine generating units, three heat recovery steam generators and an extraction/condensing steam turbine generating unit. Heat recovered from the facility will be sold to the United States Gypsum Company for use in an industrial process for drying gypsum slurry in gypsum board drying kilns and for space heating. The net electric power production capacity of the facility will be 257 MW. The primary energy source will be natural gas.

3. Inter-Power of Pennsylvania, Inc.

[Docket No. QF87-632-000]

On August 27, 1987, Inter-Power of Pennsylvania, Inc. (Applicant), of 3 West Penn Center, Pittsburgh, Pennsylvania 15230 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near the Village of Colver in Cambria County, Pennsylvania. The facility will consist of a fluidized bed combustion boiler and a condensing steam turbine generator. Applicant states that the primary energy

source of the facility will be "waste" in the form of bituminous coal refuse. The maximum net electric power production capacity of the facility will be 79.5 megawatts.

4. Keystone Shipping Co.

[Docket No. QF87-617-000]

On August 24, 1987, Keystone Shipping Company (Applicant), of 313 Chestnut Street, Philadelphia, Pennsylvania 19106 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Monsanto Plant in Logan Township, Bridgeport, New Jersey. The facility will consist of four fluid bed combustors and two extraction/condensing steam turbine generators. The steam recovered from the facility will be used for process heating in the Monsanto Plant. The net electrical power production capacity of the facility will be 200 MW. The primary source of energy will be coal. Installation of the facility is expected to commence in late 1988.

5. Oxford Energy of New York, Inc.

[Docket No. QF87-622-000]

On August 25, 1987, Oxford Energy of New York, Inc. (Applicant), of c/o Oxford Energy, Inc., 675 Third Avenue, New York, New York 10017 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ulster County, New York. The facility will consist of a water wall steam generator and a steam turbine generator. The net electric power production capacity will be approximately 24 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Approximately less than one percent (1%) of the total energy input will be natural gas or oil which will be used for start-up and auxiliary burners.

6. Oxford Energy of New York, Inc.

[Docket No. QF87-623-000]

On August 25, 1987, Oxford Energy of New York, Inc. (Applicant), c/o Oxford Energy, Inc., 675 Third Avenue, New York, New York 10017 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Town of Ulster, Ulster County, New York. The facility will consist of two refractory lined waterwall steam generators, and a steam turbine-generator. The primary energy source will be non-recappable scrap rubber tires. The maximum net electric power production capacity will be approximately 29,000 KW. Oil or natural gas will be used for start-up only, however such fossil fuel use will not exceed 1% of the total energy input to the facility during any calendar year period.

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. 87-21345 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP72-110-044 et al.]

Filing of Pipeline Refund Reports; Algonquin Gas Transmission Co. et al.

September 10, 1987.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, on or before September 24, 1987. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.
5/15/87	Algonquin Gas Transmission Company.	RP72-110-044
5/22/87	Natural Gas Pipeline Company of America.	RP78-78-018
5/22/87	Arkla Resources Inc.	TA87-2-31-002
7/6/87	Transcontinental Gas Pipe Line Corporation.	TA85-1-29-014
7/16/87	Transcontinental Gas Pipe Line Corporation.	TA85-1-29-015
8/7/87	ANR Pipeline Company	RP85-88-004
8/24/87	Columbia Gas Transmission Corporation.	TA81-1-21-027
8/28/87	Northern Natural Gas Company.	RP82-71-020

[FR Doc. 87-21308 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-119-000 & TA88-1-34-000]

Proposed Changes in FERC Gas Tariff; Florida Gas Transmission Co.

September 10, 1987.

Take notice that on August 31, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, TX 77251-1188 tendered for filing the following tariff sheets to its FERC and Gas Tariff.

FERC Gas Tariff, First Revised Volume No. 1

19th Revised Sheet No. 8
7th Revised Sheet No. 9
Original Sheet No. 57B

FERC Gas Tariff, Original Volume No. 2

42nd Revised Sheet No. 128

FERC Gas Tariff, Original Volume No. 3

9th Revised Sheet No. 126
8th Revised Sheet No. 181
8th Revised Sheet No. 265
8th Revised Sheet No. 283
8th Revised Sheet No. 305
8th Revised Sheet No. 365
8th Revised Sheet No. 395
8th Revised Sheet No. 423
7th Revised Sheet No. 453
5th Revised Sheet No. 486
5th Revised Sheet No. 518
5th Revised Sheet No. 549
5th Revised Sheet No. 584
4th Revised Sheet No. 640
5th Revised Sheet No. 658
1st Revised Sheet No. 675
1st Revised Sheet No. 709
1st Revised Sheet No. 744

Reason for Filing

19th Revised Sheet No. 8 and 42nd Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3, respectively, to: (1) Adjust the Primary Adjustment to reflect an increase in FGT's average cost of gas purchased for sale and company use, net of amounts to be recovered through Incremental Pricing Surcharges; (2) adjust the Balancing Adjustment to amortize over the six-month adjustment period (October 1, 1987 through March 31, 1988), the balance in the current period Unrecovered Purchased Gas Cost Account as of June 30, 1987; (3) eliminate the Order 94 Surcharge established to amortize retroactive Order 94 production-related costs over the twelve-month period ending September 30, 1987; and (4) establish an Annual Charge Adjustment (ACA) charge.

7th Revised Sheet No. 9 contains the estimated Incremental Pricing Surcharges for the period October 1, 1987 through December 31, 1987.

Original Sheet No. 57B establishes a new Section 22 of the General Terms and Conditions of its FERC Gas Tariff which implements an ACA clause which provides for an ACA unit charge to be applicable to each of FGT's sales and transportation rate schedules. The Original Volume No. 3 tariff sheets incorporates reference to and applicability of the ACA unit charge to the transportation rate schedules.

The proposed effective date of the above referenced tariff sheets is October 1, 1987.

The above mentioned changes to the Primary and Balancing Adjustments are being made pursuant to section 15 (Purchased Gas Adjustment and Incremental Pricing Provision) of the General Terms and Conditions of FGT's FERC Gas Tariff, First Revised Volume No. 1 and § 154.38 *et seq.*, of the Commission's Regulations (18 CFR 154.38, *et seq.*).

The net effort of the adjustments being filed for Rate Schedules G and I and for Rate Schedule T-3 are summarized below:

	Rate Schedules		
	Sch. G ($/therm)	Sch. I ($/therm)	T-3 ($/Mcf)
Currently Effective Rates[1]	28.191	25.433	39.40
Primary Adjustment	.667	.667	.21
Balancing Adjustment	.536	.536	(.05)
Order 94 Surcharge	(.570)	(.570)	(.32)
ACA Unit Charge	.021	.021	.21
October 1, 1987 Rates	28.845$	26.087$	39.45$

[1] Reflects rates effective July 1, 1987 pursuant to Docket No. RP86-137-006.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, Original Volume No. 3, and interested states commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 17, 1987. 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. 87-21301 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-110-000]

Change in Sales Rates and Adoption of ACA Clause; Northwest Pipeline Corp.

September 8, 1987.

Take notice that on August 31, 1987, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, and Original Volume No. 2, the following tariff sheets:

First Revised Volume No. 1

Thirty-Seventh Revised Sheet No. 10
Twentieth Revised Sheet No. 10-A
First Revised Sheet No. 100
Original Sheet No. 133-A

Original Volume No. 1-A

Eleventh Revised Sheet No. 201
First Revised Sheet No. 302
First Revised Sheet No. 312
First Revised Sheet No. 323
First Revised Sheet No. 333
Third Revised Sheet No. 339
Second Revised Sheet No. 344
Second Revised Sheet No. 345
First Revised Sheet No. 400
First Revised Sheet No. 419

Original Volume No. 2

Second Revised Sheet No. 2.4
Thirteenth Revised Sheet No. 2-B
First Revised Sheet No. 2-B.1

Northwest states the purpose of this filing is to establish an Annual Charge Adjustment Clause ("ACA" Clause) in Northwest's tariff as appropriate and to set forth the applicable surcharge in its sales, transportation, and gathering rate schedules as required by Order No. 472.

Northwest requests an effective date of October 1 1987.

Northwest states that a copy of this filing has been served on Northwest's jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or 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 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 15, 1987. 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 Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21307 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-103-000]

Proposed Changes; Panhandle Eastern Pipe Line Co.

September 9, 1987.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 31, 1987, tendered for filing certain revised tariff sheets, to its FERC Gas Tariff, Original Volume Nos. 1 and 2 to be effective as proposed. These revised sheets reflect an increase in

rates and are being filed in compliance with the Commission's Opinion Nos. 265 and 265–A, issued February 20, 1987 and August 19, 1987, respectively, in Docket Nos. RP82–58 and RP82–105.

Opinion Nos. 265 and 265–A required Panhandle to file a revised cost of service and revised tariff sheets, and to adjust its billing determinants, particularly D_2. Panhandle noted that although it had not planned to effect a general rate adjustment at this time, the far-reaching changes mandated by the Commission in Opinion Nos. 265 and 265–A, including those that affect cost allocations, as well as currently projected reductions in sales, as well as projected throughputs, result in rate increases thus making it necessary to invoke a general rate change. Thus, this filing is also made pursuant to Section 4 of the Natural Gas Act and the Federal Energy Regulatory Commission's Regulations. In this connection, Panhandle also called attention to the provisions of Paragraph 3 of Article II of the July 1, 1987 Stipulation and Agreement, as supplemented, filed in Docket No. RP86–116, *et al.* and certified by the Administrative Law Judge to the Commission on July 22, 1987, which requires the filing of a general Section 4 rate case for both sales and transportation rates, and contemplates that such filing would be made by September 1, 1987. Panhandle stated that this filing also complies with that commitment.

Panhandle noted that these revised rates reflect a substantial shift in cost reponsibilities among Panhandle's customers, as contrasted to the cost responsibilities underlying Panhandle's currently effective rate.

Panhandle noted that it is cognizant of the need to restructure its rate schedules to reflect changed current competitive environment in the industry and the Commission's recent orders and decisions responding to that changed environment, including the Commission's orders in Opinion Nos. 265 and 265–A. Panhandle stated it has been negotiating with its customers to achieve exactly that goal. Panhandle noted, however, that additional time is required to complete these very difficult, complex negotiations.

Panhandle stated that it expects the Commission to suspend these revised tariff sheets beyond the proposed October 1, 1987 effective date, and requested that these sheets, as they may be revised pursuant to discussion with parties hereto, become effective after motion by Panhandle within the statutory suspension period upon a showing of good cause.

Panhandle stated that in compliance with Opinion No. 265–A it included the revisions to its LS, SS and CS Rate Schedules reflecting the required treatment of the minimum commodity bill to be effective August 19, 1987.

Panhandle stated that this filing is being made without prejudice to its rights to obtain judicial review or seek a stay of Opinion Nos. 265 and 265–A.

Panhandle noted that it has reduced its non-gas cost of service by $64 million since the filing in Docket No. RP85–194, and that those reductions, including the reduction in the applicable federal corporate income tax rate, are included herein. Panhandle stated that the need for a rate increase arises as a direct and immediate consequence of reductions in projected throughput on its system attributable to Commission orders which seek to change the entire structure of Panhandle's tariff, the consequential reductions in gas purchases by customers, some of whom have summarily ceased purchases from the Company entirely, and the anticipated nomination of D_2 volumes mandated by Opinion No. 265–A.

Panhandle also stated that these revised tariff sheets reflect volumes predicated on the assumption that Panhandle will be permitted to continue as an interim open access transporter until more permanent arrangements can be made, and that the rates for both sales and transportation services that are based on fully allocated costs and projected units of throughput.

In addition, Panhandle is proposing changes to the terms and conditions of its transportation Rate Schedules in view of recent Commission pronouncements regarding the terms and conditions of transportation provided under Part 284 of the Commission's Regulations.

Panhandle has reclassified to the transmission function certain certificated items of plant which, in fact, perform transmission functions but which were previously classified to the gathering function. Panhandle requests that it be granted such waivers of the Regulations or such authority as may be necessary to make conforming accounting entries to reflect such changes.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

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 September 16, 1987. 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. 87–21306 Filed 9–15–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–105–000]

Change in Tariff; Stingray Pipeline Co.

September 10, 1987.

Take notice that on August 31, 1987, Stingray Pipeline Company (Stingray) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourteenth Revised Sheet No. 4

Original Sheet No. 70–C

The proposed effective date of these revised sheets is October 1, 1987.

On May 29, 1987 the Commission issued Order No. 472 in Docket No. RM87–3–000. Order No. 472 provides that a natural gas company, such as Stingray Pipeline Company (Stingray), may file an Annual Charge Adjustment (ACA) clauses to its FERC Gas Tariff. This adjustment will permit the collection of 2.1 mills per Mcf to recover from its customers annual charges assessed it by the Commission under Part 382 of the Commission's Regulations.

Stingray states that pursuant to Order No. 472 in Docket No. PM87–3–000 and § 154.38(d)(6)(i) of the Commission's Regulations, Stingray proposes a new Annual Charge Adjustment Provisioin to Stingray's FERC Gas Tariff, Original Volume No. 1.

To the extent required, if any, Stingray requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheets submitted herewith, to become effective October 1, 1987, as previously described.

Copies of this letter and enclosures are being served on all jurisdictional customers.

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 September 17, 1987. 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 m otion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-21304 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-107-000]

Proposed Changes in FERC Gas Tariff; Texas Gas Transmission Corp.

September 10, 1987.

Take notice that on August 31, 1987 Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, FPC Gas Tariff, Original Volume No. 2, and FERC Gas Tariff, Original Volume No. 3:

FERC Gas Tariff, Original Volume No. 1

Third Revised Sheet No. 1
Ninth Revised Sheet No. 10
Ninth Revised Sheet No. 10A
Fifth Revised Sheet No. 11
Fifth Revised Sheet No. 12
Third Revised Sheet No. 12A
Second Revised Sheet No. 76
First Revised Sheet No. 117
First Revised Sheet No. 118
First Revised Sheet No. 119
First Revised Sheet No. 144
First Revised Sheet No. 159
First Revised Sheet No. 175D

FPC Gas Tariff, Original Volume No. 2

Seventh Revised Sheet No. 82
Twenty-third Revised Sheet No. 333
Eighteenth Revised Sheet No. 362
Nineteenth Revised Sheet No. 363
First Revised Sheet No. 440
First Revised Sheet No. 484
Eighth Revised Sheet No. 547
Eighth Revised Sheet No. 919
Tenth Revised Sheet No. 982
Eighth Revised Sheet No. 1005
Second Revised Sheet No. 1085
First Revised Sheet No. 1105

FERC Gas Tariff, Original Volume No. 3

First Revised Sheet No. 21
First Revised Sheet No. 22

The revised tariff sheets are being filed to incorporate into Texas Gas's Tariffs a FERC Annual Charge Adjustment (ACA) Unit Charge, as authorized by § 154.38(d) of the Commission's Regulations, which was added pursuant to Order No. 472 issued May 29, 1987, (39 FERC, Para. 61,206), and Order No. 472-A issued June 17, 1987, (39 FERC Para. 61,316). Order No. 472 arose out of section 3401(a)(1) of the Omnibus Budget Reconciliation Act of 1986, which requires the Federal Energy Regulatory Commission (Commission) to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." On or about July 16, 1987, Texas Gas received an Annual Charges Billing from the Commission for fiscal year 1987. Texas Gas was required to remit, by August 31, 1987, to the Commission, Texas Gas's portion of the Commission deficit. For the purpose of recovering this payment, Texas Gas has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA unit charge of $.0020 per MMBtu, as set by the Commission on Texas Gas's Annual Charges Billing.

Copies of this filing were served on Texas Gas's jurisdictional customers and interested State commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1987. 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 proceedings. 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. 87-21302 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-40-003, 005, and 006]

Compliance Filing; Western Transmission Co.

September 9, 1987.

Take notice that on August 17, 1987 Western Gas Transmission Company (Western) tendered for filing substitute Original Sheet No. 17A.1 to its Federal Energy Regulatory Commission Gas Tariff, Original Volume No. 1.

The instant tariff sheet is tendered pursuant to the Commission's order at July 17, 1987, in the above-referenced docket. Western amended this filing on August 27, 1987 in Docket No. RP87-40-005 and on August 30, 1987 in Docket No. RP87-40-006.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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, 385.214). All such motions or protests should be filed on or before September 16, 1987. 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. 87-21305 Filed 9-15-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS—51596A; FRL 3261-2]

Certain Chemical Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90-days for premanufacture notice (PMN) P-86-92, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on November 29, 1987.

FOR FURTHER INFORMATION CONTACT: Jim Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Room E-611E, 401 M Street, SW., Washington, DC 20460, (202-382-3374).

SUPPLEMENTARY INFORMATION: On October 25, 1985, EPA received PMN 86-92 for a modified acrylate polymer. The submitter claimed its identity, specific chemical identity, production volume, and process information to be confidential business information. Notice of receipt was published in the

Federal Register of November 8, 1985 (50 FR 46508). The original 90-day review period for PMN P-86-92, including voluntary suspensions, was scheduled to expire on August 31, 1987.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to November 29, 1987.

PMNs are available for public inspection in Room NE-G004, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: August 31, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-21340 Filed 9-15-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 87-952]

Application for Consideration Under Capital Forbearance

Date: September 10, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Application for Consideration under Capital Forbearance" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is necessary to review the application and determine whether the applicant meets eligibility requirements. Each institution requesting inclusion under the Capital Forbearance Policy must submit an application. The Board estimates that each application will require forty hours to complete.

DATE: Comments on the information collection request are welcome and should be received on or before October 1, 1987.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Michael D. Solomon, Office of General Counsel, 377-6432, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-21329 Filed 9-15-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 212-010746-001]

Columbus/PACE/SCNZ/BSL/PAD; Space Charter and Sailing Agreement; Erratum

The **Federal Register** Notice of August 20, 1987 (Vol. 52, No. 161, page 31446) in summarizing the above agreement should have also stated that the agreement's geographic scope is being enlarged to include the Pacific Coasts of North America and Hawaii.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 11, 1987.

[FR Doc. 87-21311 Filed 9-15-87; 8:45 am]

BILLING CODE 6730-01-M

[Fact Finding Investigation No. 15]

Practices of Various Entities Operating as Intermediaries for the Transportation of Goods in the United States Waterborne Foreign Commerce; Order

The Commission initiated this investigation on September 17, 1986, to examine the practices of various entities that act as intermediaries for the transportation of goods in our waterborne foreign commerce. The Commission directed the Investigative Officer to provide a final report of findings and recommendations no later than one year after publication of the Order in the **Federal Register** (51 FR 33662, September 22, 1986). The Investigative Officer has now advised that additional time will be needed to fully and adequately complete the investigation and issue a comprehensive report.

Therefore, it is ordered, That the Investigative Officer shall issue to the Commission a final report of findings and recommendations on or before March 31, 1988. By the Commission September 8, 1987.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87-21310 Filed 9-15-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200032.

Title: Virgin Islands Port Authority Crane Lease Agreement.

Parties:

Virgin Islands Port Authority (Port Authority)

Tropical Shipping and Construction Co., Ltd. (Tropical)

Synopsis: Under the terms of the proposed agreement the Port Authority exclusively leases to Tropical one 30 foot long run capacity Paceco gantry Crane and related parts, inventory and equipment, located at the Third Port on St. Croix, Virgin Island. The term of this lease is for three years commencing July 1, 1985, with two options to renew for two additional five-year period.

Agreement No: 224-200034.

Title: Port of San Diego Terminal Agreement.

Parties:

San Diego Unified Port District (Port

District)
10th Avenue Cold Storage Company (Lessee)

Synopsis: The proposed agreement provides for the use of 51,111 square feet of Transit Shed No. 1 at the 10th Avenue Marine Terminal, San Diego, California. The term of the agreement shall be for a period of seven years, with one option to extend for one additional five-year period.

Agreement No: 224-011088-001.
Title: City of Los Angeles Terminal Agreement.
Parties:
City of Los Angeles
Matson Terminals

Synopsis: The proposed agreement amendment clarifies the responsibilities of the parties with respect to the collection of tariff charges, revenue sharing and payment procedures.

Agreement No: 224-200030.
Title: Virgin Island Terminal Agreement.
Parties:
Virgin Islands Port Authority
Tropical Shipping and Construction, Ltd., (Tropical)

Synopsis: The proposed agreement contains the terms and conditions under which Tropical will occupy certain parcels of land and section's of a warehouse in Crown Bay, St. Thomas, Virgin Islands for use in containerized cargo operations.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,
Assistant Secretary.

Dated: September 11, 1987.

[FR Doc. 87-21355 Filed 9-15-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Board Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the agency's Alcohol, Drug Abuse, and Mental Health Advisory Board in the month of October 1987. Board members will discuss issues in the areas of treatment, research, prevention, and education viz-a-viz the legislative mandate. Attendance by the public at these sessions will be limited to space available.

Committee Name: Alcohol, Drug Abuse, and Mental Health Advisory Board, ADAMHA.

Date and Time: October 13-14: 9:00 a.m.

Place: National Institute of Health, Building 1, Wilson Hall, 3rd Floor, 9000 Rockville Pike, Bethesda, Maryland 20892.

Status of Meeting: Open.

Contact: Barbara Wagner, Room 12C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1910.

Purpose: The Alcohol, Drug Abuse, and Mental Health Advisory Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B and C of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

Substantive information, summaries of the meetings, and roster of committee members may be obtained from the contact person listed above.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: September 10, 1987.

[FR Doc. 87-21283 Filed 9-15-87; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

Notice of Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92-463, 86 St. 770-776], and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99-158, section 402(b)(6)], the Director, NIH, announces the reestablishment, effective October 1, 1987, of the following committees:

Cardiovascular and Renal Study Section
Experimental Virology Study Section
Immunological Sciences Study Section
Molecular Cytology Study Section
Pharmacology Study Section
Reproductive Endocrinology Study Section
Virology Study Section
Visual Sciences A Study Section
Visual Sciences B Study Section

Duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: September 11, 1987.

James B. Wyngaarden,
Director, NIH.

[FR Doc. 87-21526 Filed 9-15-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-920-07-4113-12]

Proposed Additions to the Rye Patch Known Geothermal Resources Area, Nevada

September 1, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Departmental Manual 1.1k, Bureau of Land Management, the following lands are hereby added to the Rye Patch Known Geothermal Resources Area, effective February 1, 1987.

Rye Patch Known Geothermal Resources Area, Mt. Diablo Meridian, Nevada

T. 31 N., R. 33 E.,
Sec. 1, lots 1-4, S½N½, N½SE¼;
Sec. 2, lots 17 thru 33;
Sec. 4, lots 1 and 2 of the NW¼, lot 1 of the NE¼, W½ of lot 2 of NE¼, S½;
Sec. 8, E½, E½NW¼;
Sec. 10, all;
Sec. 12, lots 9 thru 26;
Sec. 14, all;
Sec. 16, all;
Sec. 20, all;
Sec. 22, all,
Sec. 28, all;
Sec. 32, all;
Sec. 34, W½, NE¼;
Sec. 37, lots 1, 2, 3, 4;
Sec. 38, lots 1, 2, 3, 4;
Sec. 39, lots 1, 2, 3, 4.
T. 32 N., R. 33 E.,
Sec. 28, N½NE¼, S½NW¼, N½SW¼, SE¼SW¼;
Sec. 32, all;
Sec. 34, E½E½SW¼, NE¼NW¼.

The above area aggregates 8,649.58 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Richard Hoops, BLM Nevada State

Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-784-5134.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-21316 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-HC-M

[WO-150-07-4830-11]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet October 15, and 17, 1987, at the Hyatt Regency Hotel, 1750 Welton Street, Denver, Colorado. The meeting hours will be 8:00 a.m. to 11:30 a.m., on Thursday, the 15th, and 8:00 a.m. to 12:00 p.m. on Saturday, the 17th. On Friday, October 16, Council members will visit the Bureau of Land Management's Denver Service Center for an orientation session highlighting land information system technology. The proposed agenda for the meeting is:

Thursday, October 15: The State view of public land management in Colorado; Council old and new business, to include Department responses to previous Council resolutions; Public statement period.

Saturday, October 17: Discussion of agendas for future Council sessions; Meetings of Council subcommittees (Energy and Minerals, Lands, and Renewable Resources); Reports from subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 10:00 a.m. on Thursday, October 15. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written comments by October 8 to the Bureau of Land Management's Denver Service Center at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: October 15 and 17—Council Meeting. October 15—Public Statements.

ADDRESS: Copies of public statements should be mailed by October 8 to: Director, Denver Service Center (D-100), Bureau of Land Management, P.O. Box 25047, Denver, Colorado 80225-0047.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, DC Office, BLM, telephone (202) 343-2054; or Cathryn Davis, Denver Service Center, BLM, telephone (303) 236-6552.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

David C. O'Neal,

Deputy Director.

September 11, 1987.

[FR Doc. 87-21391 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-84-M

[NM-920-07-4121-10]

New Mexico; San Juan River Regional Coal Team Meeting and Request for Public Comments on the Long-Range Market Analysis for the Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional coal team meeting.

SUMMARY: The San Juan River Regional Coal Team (RCT) will meet to consider future development plans for Federal coal in the Region. The public is invited to attend.

The primary purposes of the meeting are to (1) recommend approval of the RCT Charter, (2) review the long-range market analysis, and (3) develop a recommendation on whether to resume or defer coal activity planning in the Region.

DATE: The RCT will meet at 9:00 a.m. on Tuesday, November 3, 1987.

ADDRESS: The meeting will be held at the Continental Inn, 4048 Cerrillos Road, Santa Fe, New Mexico 87501. Telephone (505) 473-4646.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen or John Kenny, Bureau of Land Management, Division of Mineral Resources, P.O. Box 1449, Santa Fe, New Mexico 87501. Mr. Jentgen may be reached by telephone at (505) 988-6109 or FTS 476-6109 and Mr. Kenny at (505) 988-6024 or FTS 476-6024.

SUPPLEMENTARY INFORMATION: At this meeting, the RCT will review the long-range market analysis for the San Juan River Region and public comments thereon. Copies of the long-range market analysis may be obtained from the Public Room of the Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Joseph M. Montoya Federal Building and U.S. Post Office, South Federal Place, Santa Fe, New Mexico 87501. Telephone (505) 988-6100 or FTS 476-6100.

The public is requested to submit comments on this long-range market analysis to Russell Jentgen or Keith Bennett at the above address by October 27, 1987. Comments received after the October 27, 1987, deadline, but before the RCT meeting, would be made available to the members of the RCT for consideration as time permits.

The RCT will consider information obtained from the public at this meeting to develop recommendations to guide future coal leasing decisions for the region.

Anyone who wishes to speak at the meeting is requested to provide written copies of their remarks. Written material will also be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introductions
2. Approval of Minutes
3. Regional Coal Activity Status
   a. Preference Right Lease Applications (PRLA's)
   b. Summarization of Coal Decisions in the following Resource Management Plans (RMP's)
      (1) Farmington RMP
      (2) Rio Puerco RMP
      (3) Socorro RMP
      (4) Durango/San Miguel RMP
   c. Record of Decision on the San Juan Regional Coal Environmental Impact Statement (EIS)
4. Impacts from the Navajo/Hopi Resettlement Act Selections
5. Scheduled Company Presentations
6. Long-Range Market Analysis and Summary of Public Comments
7. RCT Activity Planning Discussions
   a. Resume Activity Planning
   b. Defer Activity Planning Decision until after Tier I PRLA's are fully adjudicated
   c. Deactivate the Region (in whole or in part) and Lease by Application
8. RCT Charter Decision
9. Public Comment
10. Scheduling of Next Meeting
11. Adjourn

Monte G. Jordan,

Alternate Chairperson, San Juan River Regional Coal Team.

Dated: September 10, 1987.

[FR Doc. 87-21284 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-050-06-4830-02]

Arizona; Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Yuma (Arizona) District Advisory Council meeting.

SUMMARY: A meeting of the Yuma District Advisory Council will be held on Friday, October 16, beginning at 10 a.m. in the Lake Havasu City Council Chambers located at 1795 Civic Center Boulevard.

DATE: Friday, October 16, 1987.

FOR FURTHER INFORMATION CONTACT: Douglas B. Stockdale, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-3600.

SUPPLEMENTARY INFORMATION: Discussions will center on District program updates, Wild Horses and Burros, cooperative efforts to clean up dumps on public land, Bill Williams River cooperative management agreement, Havasu City Airport application, Long-Term Visitor Area use program, Highway 95 reconstruction on Parker Strip, and other Council-initiated topics. The public is invited to attend the meeting.

Written statements from the public may be filed for the Council's consideration. Statements must arrive at the District Office by October 13. Oral statements will also be accepted but, depending on the number of persons wishing to address the Council, a per-person time limit may be imposed.

Summary minutes of the District Advisory Council meeting will be maintained in the Yuma District Office and will be available for inspection and reproduction during regular business hours (7:45 a.m. through 4:30 p.m.) within 30 days of the meeting.

J. Darwin Snell,

District Manager.

September 9, 1987.

[FR Doc. 87-21434 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-32-M

[AZ-050-07-4212-11, A-22501]

Realty Action; Lease/Conveyance of Public Lands in La Paz County, Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Lease/Conveyance of Public Lands for Recreation and Public Purposes (R&PP).

SUMMARY: The following described public lands located in the community of Quartzsite, Arizona, in La Paz County, have been examined and found suitable for lease/conveyance to the Quartzsite School District for public school purposes and are so classified under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 21, M&B within S½S½NW¼.

The area described contains 24.5 acres, more or less.

Lease or conveyance is consistent with BLM land use planning, would not affect any BLM programs, and would be in the public interest.

The lease/conveyance would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and all regulations of the Secretary of the Interior.
2. A right-of-way thereon for ditches or canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this Notice in the **Federal Register**, these lands will be segregated from all forms of appropriation under any other public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Bureau of Land Management, District Manager, Yuma District Office, P.O. Box 5680, Yuma, Arizona 85364. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Yuma Resource Area, Yuma District at (602) 726-6300.

J. Darwin Snell,

District Manager.

Date: September 8, 1987.

[FR Doc. 87-21272 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-07-5410-10; CA 20670]

Realty Action; Conveyance of Mineral Interest in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—conveyance of the reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, BLM California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate nonmineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Mount Diablo Meridian

T. 4 N., R. 14 E.,
Sec. 27, E½ lot 28, lot 30.

The area described contains 7.32 acres in Calaveras County. Currently 100 percent of the mineral interest in these lands is owned by the United States.

The application was filed on August 13, 1987. Upon publication of this Notice of Realty Action in the **Federal Register** as provided in 43 CFR 2091.3-1(c) and 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; or upon issuance of a patent or other document of conveyance to such mineral interests, or two years from the date of filing of the application, whichever occurs first (43 CFR 2091.3-2(a)).

Dated: September 8, 1987.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 87-21273 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-40-M

[NM-010-4121-12; NM 57802]

Issuance of Mineral Exchange Conveyance Document; Order Providing for Opening of Reconveyed Minerals; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to Cerrillos Land Company, on March 6, 1987, for the coal estate only in the following described land in McKinley County, New Mexico pursuant to section 206 of the Act of October 21, 1967 (43 U.S.C. 1716) and section 504(a) of the Act of December 19, 1980 (16 U.S.C. 410 ii-3):

New Mexico Principal Meridian, New Mexico

T. 15 N., R 7 W.,
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22, lots 1, 5, NE¼, and E½NW¼;
Sec. 28, NE¼NE¼, W½NE¼, NW¼, and N½SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½.
T. 15 N., R 8 W.,
Sec. 22, SE¼NE¼ and S½;
Sec. 24;
Sec. 26;
Sec. 28, E½NE¼, SE¼SW¼, and SE¼;
Sec. 34, N½ and NE¼SE¼.
Aggregating 4,890.26 acres, more or less.

In exchange for the coal estate in the above described land, the coal estate in 6,263.45 acres, more or less, in McKinley County, New Mexico and all Cerrillos Land Company's mineral estate interest in the Chaco Culture National Historic Park lands and Archeological Protection Site lands in San Juan and McKinley Counties, New Mexico aggregating 4,889.69 acres, more or less, were reconveyed to the United States. The reconveyed lands were described in the Notice of Realty Action published in 51 FR 41025 on November 12, 1986.

At 9 a.m. on October 19, 1987, the coal estate reconveyed to the United States will be open to the coal leasing laws. The mineral estate reconveyed under the Historic Park and Protection Sites will be managed with the limitations identified in section 506 of the Act of December 19, 1980 (16 U.S.C. 410 ii-3). All activity will be subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

Larry L. Woodard,
State Director.

Dated: September 2, 1987.

[FR Doc. 87-21320 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-5B-M

[OR 37982 (WA); OR-130-07-4212-13:GP7-252]

Extension of Notice of Realty Action; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public Lands in Benton, Douglas, Franklin and Grant Counties, Washington.

SUMMARY: This notice extends the Notice of Realty Action published in Vol. 49, page 49385 of the **Federal Register** on December 19, 1984, for a period of two additional years. Extension of the notice is necessary to complete the processing of this land exchange.

Date of Issue: September 8, 1987.

Joseph K. Buesing,
District Manager.

[FR Doc. 87-21280 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-33-M

[WY-940-07-4520-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., September 4, 1987.

Sixth Principal Meridian

T. 40 N., R. 116 W.

The plat representing the survey of riparian lands by photogrammetric methods, T. 40 N., R. 116 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 41 N., R. 116 W.

The plat representing the survey of riparian lands by photogrammetric methods, T. 41 N., R. 116 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 42 N., R. 116 W.

The plat, in two sheets, representing the survey of riparian lands by photogrammetric methods, T. 42 N., R. 116 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 40 N., R. 117 W.

The plat representing the survey of riparian lands by photogrammetric methods, T. 40 N., R. 117 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 41 N., R. 117 W.

The plat representing the survey of riparian lands by photogrammetric methods, T. 41 N., R. 117 W., Sixth Principal Meridian, Wyoming, was accepted August 21, 1987.

T. 40 N., R. 117 W.

The plat representing the corrective dependent resurvey of the section line between sections 11 and 12, T. 40 N., R. 117 W., Sixth Principal Meridian, Wyoming, Group No. 275, was accepted August 21, 1987.

These surveys were executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 4, 1987.

Dennis D. Bland,
Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87-21274 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0442, Block 128A, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 8, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section,

Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 9, 1987.

J. Roger Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-21317 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-MK-M

National Park Service

Acadia National Park Advisory Commission, Bar Harbor, ME; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1, section 10), that a meeting of the Acadia National Park Advisory Commission will be held on Tuesday, October 13, 1987.

The Commission was established pursuant to Pub. L. 99-420, section 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Kebo Valley Golf Club House, Eagle Lake Road, Bar Harbor, Maine, at 1:30 p.m. for the following reasons:

1. Swearing-in of the sixteen members.
2. Review of responsibilities of the Commission as outlined in the Charter.
3. Review Pub. L. 99-420, including status of proposed acquisitions, and exchanges, as well as guidelines for developing private property within the Park and for accepting scenic easements outside the Park boundary.
4. Establish the following committees:

A. Nominatings
B. Bylaws
C. Guidelines

The meeting is open to the public. It is expected that fifty persons will be able to attend the session in addition to the Commissions members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, Bar Harbor, Maine 04609.

Herbert S. Cables, Jr.,

Regional Director.

Date: September 9, 1987.

[FR Doc. 87-21374 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Scenic and Recreational River; Citizens Advisory Council Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 25, 1987, 7:00 PM.[1]

INCLEMENT WEATHER RESCHEDULE DATE: October 11, 1987.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 USC § 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround discussion of the background and implementation of definition of flood plains, and applicability of the flood insurance programs concerning the Upper Delaware valley.

The meeting will be open to the public.

Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 87-21375 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-70-M

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Investigation; Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Same and Processes for Making Such Memories

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 5, 1987, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Intel Corporation, 3065 Bowers Avenue, Santa Clara, California 95051. The complaint was amended on August 31, 1987. The complaint, as amended, alleges unfair methods of competition and unfair acts in the importation of certain erasable programmable read only memories, components thereof, and products containing same into the United States, or in their sale, actual or threatened, by reason of alleged direct and induced infringement of (1) claims 14-17 of U.S. Letters Patent 3,938,108; (2) claims 1-3 of U.S. Letters Patent 4,048,518; (3) claims 1-3 of U.S. Letters Patent 4,103,189; (4) claims 1 and 2 of U.S. Letters Patent 4,223,394; (5) claims 1-4 of U.S. Letters Patent 4,519,050; or (6) claims 1-10 of U.S. Letters Patent 4,685,084, or in their manufacture abroad by a process which, if practiced in the United States, would

infringe (1) claims 1–5, 7 and 8 of U.S. Letters Patent 4,114,255 or (2) claims 1–3 of U.S. Letters Patent 4,519,849. The complaint further alleges that the tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a general exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1273.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on September 3, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain erasable programmable read only memories, components thereof, and products containing same into the United States, or in their sale, actual or threatened, by reason of alleged direct and induced infringement of (1) claims 14–17 of U.S. Letters Patent 3,938,108; (2) claims 1–3 of U.S. Letters Patent 4,048,518; (3) claims 1–3 of U.S. Letters Patent 4,103,189; (4) claims 1 and 2 of U.S. Letters Patent 4,223,394; (5) claims 1–4 of U.S. Letters Patent 4,519,050; or (6) claims 1–10 of U.S. Letters Patent 4,685,084, or in their manufacture abroad by a process which, if practiced in the United States, would infringe (1) claims 1–5, 7 and 8 of U.S. Letters Patent 4,114,255 or (2) claims 1–3 of U.S. Letters Patent 4,519,849, the tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Intel Corporation, 3065 Bowers Avenue, Santa Clara, California 95051

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hyundai Electronics Industries Co., Ltd., San 136–1, Ami–Ri, Bubal–Myun, Ichon–Ku, Kyungki–Do, Republic of Korea

Hyundai Electronics America, Inc., 4401 Great America Parkway, 3rd Floor, Santa Clara, California 95054

Atmel Corporation, 2095 Ringwood Avenue, San Jose, California 95131

International CMOS Technology, Inc., 2031 Concourse Drive, San Jose, California 95131

Cypress Electronics, Inc., 2175 Martin Avenue, Santa Clara, California 95050

All-American Semiconductor, Inc., 16251 NW. 54th Avenue, Hialeah, Florida 33014

Pacesetter Electronics, Inc., 5417 E. La Palma Avenue, Anaheim, California 92817

(c) Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential business information contained therein, is 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., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 8, 1987.

[FR Doc. 87–21380 Filed 9–15–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigations No. 731–TA–351 and 353 (Final)]

Certain Forged Steel Crankshafts From the Federal Republic of Germany and the United Kingdom

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from the Federal Republic of Germany and the United Kingdom of certain forged steel crankshafts,[3] provided for in items 660.67 and 660.71 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective May 13, 1987, following preliminary determinations by the Department of Commerce that imports of certain forged steel crankshafts from the Federal Republic of Germany and the United Kingdom 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 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 June 3, 1987, (52 FR 20790). The hearing was held in Washington, DC, on August 4, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler dissenting.

[3] The crankshafts subject to these investigations are forged carbon or alloy steel crankshafts with a shipping weight of between 40 and 750 pounds, whether machined or unmachined.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 9, 1987. The views of the Commission are contained in USITC Publication 2014 (September, 1987), entitled "Certain forged steel crankshafts from the Federal Republic of Germany and the United Kingdom: Determinations of the Commission in Investigations No. 731-TA-351 and 353 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 9, 1987.

[FR Doc. 87-21383 Filed 9-15-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-267]

Commission Decision To Review an Initial Determination Terminating the Investigation as to One Respondent; Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment

AGENCY: U.S. International Trade Commission.

ACTION: Review of an initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to review the initial determination (ID) (Order No. 8) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-3395.

SUPPLEMENTARY INFORMATION: On August 6, 1987, the ALJ issued an ID (Order No. 8) which terminated the investigation with respect to respondent "Hair-Gro." Complainant, The Upjohn Co., filed a petition for review of the ID. No comments were received from government agencies.

This action is taken under authority of section 337 of the Tariff Act of 1930 and §§ 210.53-210.56 of the Commission's Rules of Practice and Procedure (19 U.S.C. 1337; 19 CFR 210.53-210.56).

Copies of all 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.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 9, 1987.

[FR Doc. 87-21382 Filed 9-15-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-270]

Import Investigations; Certain Noncontact Tonometers

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on September 28, 1987, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue NW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Janet D. Saxon,

Administrative Law Judge.

Issued: September 8, 1987.

[FR Doc. 87-21381 Filed 9-15-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-355 (Final)]

Certain Silica Filament Fabric From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously 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 by reason of imports from Japan of woven fabrics, of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, provided for in items 338.25 and 338.27 of the Tariff Schedules of the United States, that have found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission also unanimously determines, pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673(b)(4)(A)), that the material injury is not by reason of massive imports of silica filament fabric from Japan over a relatively short period to an extent that it is necessary that the duty provided for in section 731 of the act be imposed retroactively on those imports in order to prevent such injury from recurring.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Background

The Commission instituted this investigation effective May 13, 1987, following a preliminary determination by the Department of Commerce that imports of amorphous silica filament fabric from Japan were being sold at LTVF 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 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 June 11, 1987 (52 FR 22398). The hearing was held in Washington, DC, on August 5, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 9, 1987. The views of the Commission are contained in USITC Publication 2015 (September 1987), entitled "Certain Silica Filament Fabric from Japan: Determination of the Commission in Investigation No. 731-TA-355 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 9, 1987.

[FR Doc. 87-21384 Filed 9-15-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31102]

Wisconsin Central Ltd.; Exemption Acquisition and Operation; Certain Lines of Soo Line Railroad Co.

Wisconsin Central Ltd. (WCL) has filed a notice of exemption to acquire and operate certain properties of the Soo Line Railroad Company (Soo). The properties include the following lines and trackage rights:

Withrow, MN, milepost 432.02 to Forest Park, IL, milepost 10.9 (including Duplainville, WI connecting track between the Soo's Withrow, MN to Forest Park, IL and the Soo's Milwaukee

to Lacrosse, WI line; Waukesha branch line from milepost 100.63 of Soo's Withrow to Forest Park line to milepost 18.23 in or near Waukesha, but excluding any portion of the line lying north of milepost 16.56 on Soo's Brookfield line; Burlington to Sturtevant, WI branch line from milepost 25.928 westerly to the end of Soo ownership, but excluding the line east of milepost 25.98; IHB connecting track, Franklin Park, IL between Soo's Withrow to Forest Park line and Indiana Harbor Belt Railroad mainline track); Withrow, MN, milepost 23.75 to Sault St. Marie, MI, milepost 494.1; Ladysmith, milepost 355.487 to Owen, WI, milepost 308.66; New Lisbon, milepost 0.32 to Tomahawk, WI, milepost 133.38; Argonne, milepost 242.7 to Neenah, WI, milepost 361.1; Ashland, milepost 435.495 to Spencer, WI, milepost 289.8; Green Bay, milepost 200.008 to North Milwaukee, WI, milepost 95.18; Cameron, milepost 96.1 to Rice Lake, WI, milepost 102.8; Chippewa Falls, milepost 350.92 to Eau Claire. WI, milepost 360.09; Marengo, WI, milepost 333.2 to White Pine, MI, milepost 14.41; Baraga, milepost 23.0 to Trout Lake, MI, milepost 27.12; Neenah, milepost 186.4 to Manitowoc, WI, milepost 230.6; Negaunee, milepost 163.6 to Palmer, MI terminus; Vesper, milepost 16.2 to Nekoosa, WI, milepost 32.7; and trackage rights between Withrow, milepost 23.75 and points in the terminal of St. Paul/Mineapolis, MN; Duplainville, and points within the Milwaukee, WI terminal; Ladysmith, milepost 355.48 and Superior, WI, milepost 460.6; and assignment of incidental Soo trackage rights over other carriers including rights over Green Bay & Western between Black Creek, milepost 23.73 to Green Bay, WI, milepost 1.39 and over the Marinette, Tomahawk and Western between Bradley, milepost 5.4 and Tomahawk, WI, milepost 0.0. The aforesaid includes approximately 1,800 route miles and 173 route miles of trackage rights over the Soo.[1]

In connection with the transaction covered by this notice of exemption, WCL, which will be a Class II carrier, will issue securities. The issuance of these securities is exempt under 49 CFR 1175.1.

[1] Locations include: between Withrow, MN and Shoreham, MN; between Central Ave., MN and Crystal, MN; between Cardigan Jct., MN and Soo Line Jct., MN; between St. Paul, MN and Merriam Park, MN; between Duplainville, WI and Milwaukee, WI; between North Milwaukee, WI and Grand Ave., WI; between Cutoff, WI and Muskego Yard, WI; and between Ladysmith, WI and Superior, WI.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption will be void *ab initio*.

The effective date of this notice has been stayed until October 26, 1987. Comments have been invited and must be filed with the Commission by September 25, 1987, and served on Robert H. Wheeler, Isham, Lincoln & Beale, Suite 5200, Chicago, IL 60602, (312) 558-7553. Replies by applicant are due by October 2, 1987. A petition to vacate the commission's stay decision has been filed by WCL.

Decided: September 11, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 87-21450 Filed 9-11-87; 11:22 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Withdrawal

On August 7, 1987, the Drug Enforcement Administration (DEA) published a Notice of Application in the **Federal Register** (Vol. 52, No. 152, pg. 29450) stating that Ayerst-Wyeth Pharmaceutical Inc., State Road 3 Kilometer 142.1, P.O. Box 2880, Guayama, Puerto Rico 00654, had submitted an application for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydrocodeine (9120)	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II

On August 20, 1987, the DEA was advised that Ayerst-Wyeth Pharmaceutical Inc., State Road, 3 Kilometer 142.1, P.O. Box 2880, Guayama, Puerto Rico 00654, wishes to withdraw its application for registration as a bulk manufacturer of dihydrocodeine (9120) and bulk dextropropoxyphene (non-dosage forms) (9273).

The application having been withdrawn, any proceedings relating to the application have been terminated and the publication withdrawn.

Gene R. Haislip,

Deputy Assistant Administrator. Office of Diversion Control, Drug Enforcement Administration.

Dated: September 10, 1987.

[FR Doc. 87-21223 Filed 9-15-87; 8:45 am]

BILLING CODE 4410-09-M

Quotas for Controlled Substances in Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1987 Aggregate Production Quota for Ibogaine.

SUMMARY: This notice establishes the 1987 aggregate production quota for ibogaine, a Schedule I controlled substance.

DATE: This order is effective September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537. Telephone (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code, section 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On June 30, 1987, a notice proposing to revise the 1987 aggregate production quota for ibogaine was published in the **Federal Register** (52 FR 24350). All interested persons were invited to comment on or object to the proposal on or before July 30, 1987. No comment or objections were received.

Pursuant to section 3(c)(3) and 3(E)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act (5 U.S. Code section 601. et seq.). The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quota impact

predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, section 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1987 revised aggregate production quota for ibogaine, expressed in grams of anhydrous base, be established as follows:

Basic class	1987 aggregate production quota
Ibogaine	545

John C. Lawn,

Administrator, Drug Enforcement Administration.

Date: September 3, 1987.

[FR Doc. 87-21224 Filed 9-15-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services; General Operating Support Program

AGENCY: Institute of Museum Services, National Foundation on the Arts and the Humanities.

ACTION: Grant Application Availability Notice for Fiscal Year 1988.

This grant application announcement applies only to the General Operating Support Program awards under 45 CFR Part 1180 for Fiscal Year 1988.

Nature of program: IMS makes awards under the GOS program to museums to maintain, increase, or improve museum services. The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions. Section 206 of the Museum Services Act, Title II of Pub. L. 94-462, as amended, contains authority for this program. (20 U.S.C. 965)

Deadline date for transmittal of applications: An application for a new grant must be mailed or hand-delivered by Friday, November 13, 1987.

Applications delivered by mail: An application sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue NW., Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S. Postal Service.

Applications delivered by hand: An application that is hand-delivered must be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue NW., Room 609, Washington, DC 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program information: Program information is contained in the following: final regulations published June 17, 1983 in **Federal Register** Vol. 48, No. 118, pages 27727-27734; amendments published on April 10, 1984 **Federal Register** Vol. 49, No. 70, pages 14108-14111 and on June 15, 1984 **Federal Register** Vol. 49, No. 117, pages 24731-24733; notice of proposed rulemaking published on October 5, 1984 **Federal Register** Vol. 49, No. 195, pages 39346-39349; final guidelines and standards published July 5, 1985 in **Federal Register** Vol. 50, No. 129, pages 27584-27589; the Application forms and accompanying instructions in the Application Packet. See paragraph on Application form.

Available funds: Approximately $17,000,000 pending Congressional appropriation. The maximum grant was $75,000 in FY 87. Upon appropriation of funds for the program, a maximum grant level will be determined by the National Museum Services Board. Most museums which are funded will receive a smaller amount (45 CFR 1180.9). In addition, IMS normally does not make grants for more than 10 percent of a museum's most recently completed fiscal year's actual non-federal operating income. (See 45 CFR 1180.16(b)).

Application forms: IMS is mailing application forms and program information in a GOS Application Packet to museums and other institutions on its mailing list. Applicants may obtain Application Packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue NW., Room 609, Washington, DC 20506, (202/786-0539).

Applicable regulations: Final regulations for the General Operating Support grant program were published in the **Federal Register** on June 17, 1983 FR Vol. 48, No. 118, pages 27727-27734. Amendments to these regulations were published in the **Federal Register** on April 10, 1984 FR Vol. 49, No. 70, pages 14108-14111 and on October 5, 1984, FR Vol. 49, No. 195 pages 39346-39349, on June 15, 1985 FR Vol. 49, No. 117 pages 24731-24733; and for a document relating to Final Regulations published on this program, see rule published elsewhere in this issue.

The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the General Operating Support Program and remove unneeded provisions. As revised the regulations published on June 17, 1983 will apply to the award of grants for Fiscal Year 1987.

Further information: For further information contact Theresa Michel, Public Affairs Officer, Institute of Museum Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506. Telephone: (202) 786-0536.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: September 10, 1987.

Lois Burke Shepard,

Director, Institute of Museum Services.

[FR Doc. 87-21322 Filed 9-15-87; 8:45 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-285; License No. DPR-40 EA 86-176]

Order Imposing Civil Monetary Penalty; Omaha Public Power District (Fort Calhoun Station)

I

Omaha Public District (licensee) is the holder of operating License No. DPR-40 issued by the Nuclear Regulatory Commission (NRC/Commission) on August 19, 1973. The license authorizes the licensee to operate the Fort Calhoun Station in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted during September 16–20, 30, October 1–8, November 6–8, 18–22, and December 9–17, 1985. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated January 26, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for Violation I. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated April 10, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and request for reduction of severity level and remission of the civil penalty contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that Violation I occurred as stated and that the penalty proposed for Violation I designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN; Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, and a copy to the NRC Resident Inspector, Fort Calhoun Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation I of the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 10th day of September 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director For Regional Operations

Appendix—Evaluations and Conclusions

On January 26, 1987 a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Omaha Public Power District responded to the Notice on April 10, 1987. The licensee admitted that Violation I occurred as stated in the Notice; however, the licensee requested reduction of the severity level and remission of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

Restatement of Violation I

10 CFR 50.59(a) allows the holder of a license to make changes in the facility as described in the safety analysis report (SAR) without prior Commission approval unless it involves a change in the technical specifications or involves an unreviewed safety question. An unreviewed safety question is created if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the SAR may be increased, if a possibility for an accident or malfunction of a different type than any evaluated previously in the SAR may be created, or if the margin of safety as defined in the basis for any technical specification is reduced.

10 CFR 50.59(b) requires, in part, that the licensee maintain records of changes in the facility to the extent that such changes constitute changes in the facility as described in the SAR. These records shall include a written safety evaluation which provides the basis for the determination that the change does not involve an unreviewed safety question.

Section 14.14 of Fort Calhoun Updated Safety Analysis Report (USAR) states that during a steam generator tube rupture incident, gaseous fission products would be released to atmosphere from the secondary system at the condenser vacuum pump discharge. Those fission products not discharged in this way would be retained by the main steam, feedwater and condensate systems.

Contrary to the above:

1. From March 1980 to January 1985, the licensee failed to meet the requirements of 10 CFR 50.59 in that a change was made to the facility as described in the USAR without conducting and documenting a review to determine that the change did not involve an unreviewed safety question. The change to the facility involved the modification of the auxiliary feedwater pump turbine common steam admit valve (YCV–1045) from the "fail close" to the "fail open" design mode, completed in March 1980, without the addition of a safety-related air accumulator system for the individual "fail open" steam supply valves (YCV–1045 A and B). The inability to close the "fail open" steam supply valves upon the loss of non-safety-related instrument air would result in an additional fission product release path, not analyzed in the USAR, for a steam generator tube rupture incident. Consequently, the change involved an unreviewed safety question because the consequences of an accident previously evaluated in the USAR may have been increased.

2. On January 15, 1985, the licensee improperly analyzed the change to its facility as described above and concluded that an unreviewed safety question did not exist when, in fact, an unreviewed safety question did exist.

This is a Severity Level III violation (Supplement I).

Civil Penalty—$50,000.

Summary of Licensee's Response

The licensee admits that Violation I occurred but requests remission of the civil penalty based on reevaluation of the violation's severity level. The licensee reviewed the modification to YCV–1045 and admits that previous evaluations of the modification were not sufficiently comprehensive. However, it was concluded that the modification constituted a system enhancement and that an unreviewed safety question did not exist.

In evaluating whether the consequences of an accident, previously evaluated in the USAR may have been increased, the licensee identified three specific events as potentially impacted by the new "fail open" mode of YCV-1045. Of the analyses of the three events, only the analysis for the steam generator tube rupture (SGTR) event demonstrated an increased impact, revealing a small increase in the radiological consequences. Because the SGTR analysis of Section 14.14.5 of the USAR remained the bounding analysis, the licensee argues that neither the probability of occurrence or consequences of an equipment malfunction or accident previously identified were increased. To further support this conclusion the licensee discusses the probable existence of the release path directly to the atmosphere upon loss of instrument air when YCV-1045 was a "fail close" valve. The licensee argues that even as a "fail close" valve, YCV-1045 would have opened on residual system air pressure, so that the release path would have previously existed and was not created by the modification.

The licensee's response also addresses the other criteria for an unreviewed safety question delineated in 10 CFR 50.59 and concludes neither was applicable. In the licensee's review of whether the margin of safety as defined in the basis for any Technical Specification is reduced, the discussion focuses on containment integrity. The licensee concludes that, because YCV-1045 is required to be open during certain accident conditions, containment integrity is unaffected by the valve's "fail open" design.

NRC Evaluation of Licensee's Response

The NRC staff has carefully reviewed the licensee's response and has concluded that an unreviewed safety question did exist. The staff agrees with the licensee that with the modification of YCV-1045 to a "fail open" valve, system reliability was improved. However, the improvement of reliability without the addition of safety-related accumulators for valves YCV-1045 A/B introduced an unanalyzed release path through YCV-1045. A sufficiently comprehensive safety analysis/safety evaluation performed in 1979, 1983, or 1985 should have identified that the modification resulted in the introduction of a steam release path to the environment which was not previously considered in USAR Section 14.14.2 and which, as demonstrated by the licensee, increased the radiological consequences of the SGTR event. Contrary to the licensee's argument, the consequences of a configuration change to a system described in the safety analysis report do not have to exceed those of the bounding analysis to constitute an unreviewed safety question. The consequences of a change in a system configuration need only result in an increase in the consequences of an accident when compared to those for that accident as previously anlayzed. If the specific accident conditions were not previously analyzed then an unreviewed safety question exists until the analysis is performed.

With regard to the licensee's argument that the release path existed prior to the modification because sufficient instrument air pressure would have remained in the system to open YCV-1045, the NRC staff concludes that this is only a supposition. The licensee has not provided any factual basis in the form of an analysis to support this hypothesis.

Since Violation I only addressed the existence of an unreviewed safety question because the consequences of an accident previously evaluated in the USAR May have been increased (10 CFR 50.59(2)(i)), the staff did not review in detail the licensee's response addressing the other criteria for an unreviewed safety question. However, the staff does not agree with the licensee's contention regarding containment isolation in that, the licensee did not adequately address the containment isolation function of valve YCV-1045, since the valve, along with valves HC-1041 and 1042, provides isolation capability for a system closed to the containment atmosphere. The modified "fail open" mode of valve YCV-1045 no longer provided the isolation function as designed. As such, during a loss-of-collant accident, concurrent with steam generator leakage, a continuing release of radioactive steam to the environment via YCV-1045 would occur until the valve was isolated manually-locally.

Consequently, because between March 1980 and January 1985 an unreviewed safety question did exist when valve YCV-1045 was modified, the violation is appropriately categorized as a Severity Level III violation and therefore, the licensee's request for remission of the civil penalty based on the reduction in severity level of the violation is not deemed to be appropriate.

NRC Conclusion

After careful consideration of the licensee's response, the NRC staff concludes that the violation is significant in that an unreviewed safety question as defined in 10 CFR 50.59 existed and the violation is appropriately classified as a Severity Level III violation. Further, the licensee has not provided a sufficient basis for remission of the civil penalty. Consequently, the proposed civil penalty in the amount of Fifty Thousand Dollars ($50,000) should be imposed.

[FR Doc. 87-21351 Filed 9-15-87; 8:45 am]
BILLING CODE 7590-01

Meeting; Advisory Committee on Reactor Safeguards; Subcommittee on Generic Items

The ACRS Subcommittee on Generic Items will hold a meeting on September 30, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 30, 1987—8:30 A.M. until the conclusion of business

The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr.

Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: September 10, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-21350 Filed 9-15-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of SF 172 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S. Code, Chapter 35), this notice announces a proposed extension to an unchanged form which collects information from the public. Standard Form 172, Amendment to Application for Federal Employment SF 171, is completed by individuals applying for Federal jobs who wish to update their applications without preparing a complete new SF 171. OPM and agency examining offices as well as agency appointing officials use the information provided to determine the individual's qualifications for Federal employment. Approximately 175,909 respondents annually expend 87,955 burden hours to complete the SF 172. For copies of this proposal, call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before September 28, 1987.

ADDRESSES: Send or deliver comments to:

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington DC 20503

FOR FURTHER INFORMATION CONTACT: Laurence T. Lorenz, (202) 653-8076.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-21281 Filed 9-15-87; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Hydro Assessment Study report
- Other
- Public comment

DATE: September 21, 1987. 10:00 a.m.

ADDRESS: The meeting will be held in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 87-21290 Filed 9-15-87; 8:45 am]

BILLING CODE 0000-00-M

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/California State Employment Development Department

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/California State Employment Development Department.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate as a source agency in a match by computer of certain records in its Payroll System File (050.020, Finance Records-Payroll System) with the California State Employment Development Department wage and unemployment insurance claims files. The purpose of the match is to identify current or former employees of the Oakland Division postal facility who are receiving unemployment compensation and/or workers' compensation benefits to which they are not entitled.

DATE: The match is expected to begin in September 1987.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, D.C. 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Postal Inspection Service is initiating a matching project to identify postal employees of the Oakland, California Division who are receiving unreported wages from non-postal sources while receiving workers' compensation and/or partial unemployment compensation benefits. The match will further identify current and former postal employees who may be receiving unemployment compensation benefits and/or benefits under the Federal Employees' Compensation Act (FECA) to which they are not entitled. Set forth below is the information required by paragraph 5.f. (1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. POSTAL SERVICE (USPS) AND CALIFORNIA STATE EMPLOYMENT DEVELOPMENT DEPARTMENT (CSEDD)

a. *Authority*: 39 U.S.C. 401, 404.

b. *Program Description*: Under the planned program, the USPS Inspection Service (IS) will submit to the CSEDD a computer tape containing approximately 4000 social security account numbers (SSANs) of employees of the Oakland Division postal facility. The CSEDD will match that tape of SSANs against its base wage file containing records of the wages reported by employers in the State and against its file of unemployment insurance claimants. For matched SSANs (i.e., "hits"), the CSEDD will provide the IS with the following information from its files: Individual name, SSAN, employer name and address, the most current five-quarter

wage information, and the most current unemployment benefit information. The IS will follow up on hits through review of USPS payroll and Office of Workers' Compensation Program records, and checks with employers reporting payment of wages to those individuals identified as hits. A reduction, suspension, or termination of benefit payments, collection of monies overpaid, and/or disciplinary measures against the employee may ensue when the circumstances warrant but only after due process has been afforded to the individual. When there are reasonable grounds to believe there has been a violation of criminal law, the matter may be referred for Federal or State prosecution. A joint investigation will be conducted by the Inspection Service and the Department of Labor, Office of the Inspector General, on those hits verified as suspect cases and case files may be established by the IS within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use Nos. 26 and 28 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match*: The matching program will be on a one-time basis and is expected to begin in September 1987 and end no later than March 1989.

d. *Security*: The CSEDD personnel who perform the match will: (a) Have the only access to the USPS computer tape; (b) use it only to accomplish the official stated purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, information disclosed to the IS by CSEDD on hits will be used by authorized personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching project will be maintained in locked file areas when not in use.

e. *Disposition of Records*: The CSEDD will not retain or copy the tape provided by the IS and will return it to the IS within six months from the date of its receipt or upon completion of the actual computer run (comparison), whichever is sooner. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments*: No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the CSEDD in connection with this program.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 87-21331 Filed 9-15-87; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; Matching Program—Postal Service/State of Washington Department of Social and Health Services

AGENCY: Postal Service.

ACTION: Notice of Matching Program—U.S. Postal Service/State of Washington Department of Social and Health Services.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate in a computer matching program with the State of Washington Department of Social and Health Services to identify postal employees who are delinquent in repayment of public assistance related debts owed to that State.

DATE: The match is expected to begin in September 1987.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC. 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Office of Financial Recovery of the State of Washington Department of Social and Health Services is responsible for the collection of public assistance related liabilities owed to the State of Washington. That office has asked the Postal Service to participate in a computer matching program to identify postal employees who are in arrears in payments to the State of Washington for debts owed as a result of public assistance overpayments and/or unpaid assessed mental health care. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget.

Report of a Matching Program: U.S. POSTAL SERVICE (USPS) AND STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES (W-DSHS)

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the W-DSHS will submit to the USPS a computer tape of the names and social security account numbers (SSANs) of persons delinquently owing monies to the State of Washington as a result of overpaid welfare and food stamp benefits, unpaid mental health hospital care, and other public assistance related debts. The USPS will match that tape against its payroll system files (USPS 050.020, Finance Records—Payroll System) and will disclose to W-DSHS the following information about individuals common to both files (i.e., "hits"): Name, SSAN, date of birth, home address, facility where employed, last date of postal employment (as available), and wage information.

The information will be disclosed to the Office of Financial Recovery of the W-DSHS for comparison with its client files and a thorough review to verify the identify of matched individuals and their status as debtors consistent with the objectives of the matching program. Subsequent actions may include issuance of collection letters, liens against real propery, and/or garnishment of wages. These or other collection actions taken by the W-DSHS will comport with all applicable due process standards. Further, the USPS Inspection Service may participate in the investigation of "hits" as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in September 1987 and end no later than March 1989.

d. *Security:* The USPS personnel who perform the match will: (a) Have the only USPS access to the W-DSHS computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to the W-DSHS will be used by authorized W-DSHS personnel only for the purpose of the

match and for no other purpose and will be safeguarded from unauthorized access.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by W-DSHS and will return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no irregularity has occurred.

f. *Other Comments:* No bestowed rights, privileges or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-21330 Filed 9-15-87; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24898; File No. SR-Amex-87-12]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

On June 1, 1987, the American Stock Exchange, Inc. ("Amex"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to increase position and exercise limits for Treasury note options.

In 1982, when the Amex introduced 10-year Treasury note options, the average amount of each Treasury note series auctioned was less than half the amount offered at recent auctions. Position and exercise limits were established at a fixed 2,000 contracts (each Treasury note option contract represents $100,000 in underlying Treasury notes), which represented approximately 5 to 10% of the then publicly offered principal amount.

In recent years, however, the size of Treasury financings has increased substantially (*e.g.*, the two currently trading Treasury notes each has public offerings of $9 billion and one issue subsequently reoffered an additional $9 billion). In response to the increased size of these public financings, the proposed rule change provides for position and exercise limits based on 10% of the amount of the specific publicly auctioned Treasury note, with a maximum limit of 12,000 contracts. In addition, if any of the underlying Treasury notes are subsequently reported as STRIPS (separate trading of registered interest and principal of securities as reported in the Monthly Statement of the Public Debt of the U.S. Government), the initial position limits must be reduced if those limits represent more than 12% of the non-stripped Treasury note. The Chicago Board Options Exchange, Inc. ("CBOE") sought the same change for its treasury note options and its 30-year Treasury bond options and, in June 1986, enacted position limits based on the public offering size of the 30-year Treasury bonds.[3]

The Commission previously has identified the principal purposes of position and exercise limits as: (1) To minimize the potential for mini-manipulations and corners or squeezes of the underlying market; (2) to impose a ceiling on the position an investor with inside corporate or market information can establish through the use of options; and (3) to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. The Amex position and exercise limit of 10% of a Treasury note series does not pose a risk of manipulation of the market in the underlying Treasury notes because of the large and liquid supply of the notes deliverable against such option contracts. The Amex extension of existing position exercise and limits in Treasury note options reflects the increased dollar value of recently auctioned Treasury notes. Growth in institutional investor demand for Treasury notes creates a corresponding need for institutions to establish offsetting positions in derivative products (*i.e.*, options or futures) to lessen their risk. In this regard, the Commission believes the Amex proposal to increase position and exercise limits to 10% of the value of the Treasury notes being offered publicly will enhance the utility of Treasury note options for large insitutional investors and thereby increase the depth and liquidity of the market in the Treasury note options.

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 requiements of section 6, [4] and the rules and regulations thereunder. There have been no discernible regulatory problems associated with current Treasury note option limits and the Amex proposal fundamentally represents a continuation of the current approach to such limits, with the increase proposed being essentially gradual ones relative to the size of recent issues of the underlying securities. Indeed, the Amex proposal enhances upon its current rule by accounting for stripping. The Amex proposal also appears to respond to market participants needs for greater limits in this area, and strikes an appropriate overall balance between the needs of market participants and the regulatory purposes position and exercise limits are designed to serve.[5]

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 identical to a proposed rule change previously filed by the CBOE and approved by the Commission.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: September 10, 1987.

[FR Doc. 87-21362 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24899; File No. SR-AMEX-87-21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Expansion of AUTO-EX System Order Size

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 C.F.R. 240.19b-4 (1985).

[3] *See* Securities Exchange Act Release No. 23298 (June 4, 1986), 51 FR 21264 (June 11, 1986).

[4] 15 U.S.C. 78f, (1982).

[5] The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. The Commission thus, has reviewed the proposed exercise limits separately and, as indicated, has concluded that these limits should not raise manipulation problems or increased concern over market disruption in the underlying securities.

[6] *See*, Securities Exchange Act Release No. 23298, (June 4, 1986).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1985).

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1986).

the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted, on July 16, 1987, copies of a proposed rule change that would expand the Amex automated execution system for options ("AUTO-EX") by increasing the size of eligible market [3] and marketable limit orders [4] from 10 to 20 contracts.

Notice of the proposed rule change, together with its terms of substance, was published in Securities Exchange Act Release No. 24752, July 28, 1987, 52 FR 28883, August 4, 1987. No comments were received regarding the proposal.

AUTO-EX is an automated execution system that enables member firms to route public customer market and marketable limit orders up to 10 contracts through the system for automatic execution at the best prevailing price at the time the order is entered. AUTO-EX reports such executions back to the entering firm as well as to the last sale tape. The AUTO-EX system maintains the priority of public limit orders on the specialist's book. The system differentiates between the bids and offers of limit orders on the book and all other bids and offers, and diverts an incoming AUTO-EX order to the specialist's post for manual execution against the limit order book if the best bid or offer in the marketplace is represented by a book order.

AUTO-EX is presently used in selected series of Major Market Index options,[5] in emergency situations involving high volume in particular equity options,[6] and for certain orders in competitively traded options.[7] The Amex states that the AUTO-EX system has received the strong support of Exchange member firms. The system results in "locked in" trades since the Exchange submits both sides to comparison, thereby eliminating operational burdens for users.

The Commission recently approved a proposed rule change to expand the Exchange's Amex Options Switching System ("AMOS") by increasing the size of contracts to be entered through AMOS from 10 to 20.[8] The AMOS system provides Amex member firms with the means to route electronically options orders, up to the specified volume limits, to the post where the option is traded. Following the execution of an electronically routed order, the member receives an execution report back through the system. In approving the proposal, the Commission concluded that the increased order routing parameters requested by the Amex were justified due to a substantial increase in order flow.

AUTO-EX is an automatic order execution system that interlocks with the AMOS order routing system. In order for these interlocking systems to operate efficiently, the Exchange contends that it must have the authority to set the same 20-contract limit for both systems.

The Commission believes that increasing the size of eligible orders in the Amex's AUTO-EX system from 10 to 20 contracts can benefit the investing public by facilitating the execution of orders that have been routed through the Amex's AMOS system. The Commission also believes that increasing the number of contracts that can be executed through AUTO-EX from 10 to 20 will enhance further the Exchange's ability to process transactions expeditiously and effectively. The Commission also believes that the Amex's incorporation of the specialists' book into the routing and execution of orders will ensure that limit orders on the book will be protected. Moreover, as order routing and execution systems are integrally related, the Commission believes it logical to provide for automatic execution of the same number of contracts that are routed automatically to the appropriate post. Finally, the increase in size from 10 to 20 contracts does not alter significantly the nature of the orders eligible for AUTO-EX. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [9] and section 11A(a)(1)(B) [10] and the rules and regulations thereunder, in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will result in more efficient and effective market operations.

It is therefore ordered, pursuant to Section 19(b) of the Act,[11] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

Dated: September 10, 1987.

[FR Doc. 87-21363 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[3] A market order is an order to buy or sell a stated number of option contracts at the most advantageous price obtainable after the order is represented in the Trading Crowd. Amex Rule 131.

[4] Marketable limit orders are limit orders (*i.e.*, orders to buy or sell at a specified price or better) that are immediately executable because the market is at or better than the limit price.

[5] *See* Securities Exchange Act Release No. 23544 (August 20, 1986), 51 FR 30601.

[6] *See* Securities Exchange Act Release No. 24228 (March 18, 1987), 52 FR 9601.

[7] *See* Securities Exchange Act Release No. 24714 (July 17, 1987), 52 FR 28396.

[8] *See* Securities Exchange Act Release No. 24668 (July 1, 1987), 52 FR 25677.

[9] 15 U.S.C. 78f(b)(5) (1982).

[10] 15 U.S.C. 78k-1(a)(B) (1982).

[11] 15 U.S.C. 78s(b) (1982).

[12] 17 CFR 200.303(a)(12) (1986).

[Release No. 34-24894; File No. SR-CBOE-87-15]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on April 27, 1987, submitted to the Securities and Exchange Commission a proposed rule change relating to government security options permits ("GSOPs" or "permits"). The proposal was published for comment in Securities Exchange Act Release No. 24440 (May 11, 1987), 52 FR 18632. As discussed below, several comment letters were received.

The proposed rule change would enable the CBOE to issue up to 20 three-year permits to trade government security options settled by physical delivery. These permits would be the successors to non-equity options permits issued in 1981,[3] of which two remain in effect. Proposed Rule 3.22A would create 20 new permits with the same terms as the permits issued in 1981,[4] except that the new permits would not carry a right to purchase a regular membership, no Exchange member would be allowed to hold more than two permits, and a sole proprietor member would be able to employ a nominee to use a permit.

In addition, the proposal would replace the term "non-equity options" with the term "government security options settled by physical delivery" in the Exchange rules relating to both the old and new permits. Finally, the definition of the phrase "non-equity options permit holder" contained in CBOE Rule 1.1(h) (h) would be omitted

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] *See* Securities Exchange Act Release No. 18077 (September 3, 1981), 46 FR 45232.

[4] *See* CBOE Rule 3.20.

as duplicative, because a definition is provided in Chapter Three of the CBOE rules.

I. Comments

In a comment letter, J.S. Fossett & Co., Inc. ("Fossett"), a CBOE member, objected to the manner in which the issuance of GSOPs was authorized.[5] In a March 30, 1987 notice of a special meeting and in an April 1, 1987 letter to CBOE members from Gary P. Lahey, Vice Chairman of the Exchange, the CBOE staff informed the membership that at an April 14, 1987 special meeting the issuance of GSOPs would be considered. The notice and letter informed the membership that issuance of the permits would be deemed authorized if a majority of the members voted affirmatively or if a quorum was not obtained at the end of a maximum of three days' balloting. By the end of the third day, April 16, 1987, a quorum had not been reached, so the GSOPs were deemed approved.

Fossett argues that an affirmative vote of a majority of the Exchange membership was required to authorize the issuance of GSOPs. Specifically, Fossett contends that because Section 2.1(a) of the CBOE Consititution requires that the issuance of Exchange memberships be approved by a majority vote of the CBOE members, the permits, which in Fossett's view "are nothing more than limited memberships" because they "give their holders the most important privilege of membership—the right to go on the Exchange floor and enter into transactions as a market maker,"[6] must be approved by an affirmative membership vote. In addition, Fossett noted that the special memberships approved by the CBOE in 1979,[7] the non-equity options permits issued by the CBOE in 1981, and the foreign currency options permits issued by the CBOE in 1985 [8] as well as limited trading permits issued by the American Stock Exchange, all were authorized by a majority voted for the relevant exchange's membership.[9]

The CBOE responded in a letter, dated June 23, 1987, in which it argues that GSOPs are not memberships.[10] In particular, the CBOE pointed out that the permits would exist for only three years and that permit holders would be entitled to trade only government security options, would have no right to petition or vote at Exchange meetings, would not pay Exchange dues, and would have no interest in Exchange assets. Finally, the CBOE asserted that it was not required to hold a vote on permit issuance and did so only "to give the membership an opportunity to indicate whether there was strong disagreement with the permit proposal."[11]

In a letter, dated July 28, 1987, the CBOE reiterated its belief that GSOPs do not constitute memberships.[12] The CBOE acknowledged that the definition of the term "member" in section 3(a)(3)(A) of the Act would include a GSOP holder,[13] but argued that the CBOE Constitution's definition of "member" would *not* include a permit holder and that the two definitions have different purposes and are not required to be in agreement.[14] In addition, the Exchange drew a distinction between permits and memberships by arguing that a permit would rise to the level of a membership if, for example, it were of unlimited duration, allowed trading in several established products, and included an interest in Exchange assets and the right to petition for and vote at CBOE meetings.[15]

Fossett responded to the CBOE's contentions in an August 6, 1987 letter, in which it cited the Act's definition of the term "member" and reiterated its point that GSOPs provide the essence of an exchange membership—the right to transact business on the exchange floor. Fossett also cited section 6(b)(3) of the Act, which requires an exchange's rules to "assure a fair representation of its members in the administration of its affairs." [16] As Fossett pointed out, the CBOE relied on section 6 (b)(3) of the Act in a previous rule filing seeking Commission approval of an amendment to section 2.1 of the CBOE Constitution to require membership approval of the issuance of additional memberships.[17]

The CBOE then submitted a third letter, dated August 7, 1987.[18] The CBOE stated that it does not believe it is possible to draw a hypothetical line between "permits" and "memberships," but that the significant limitations on GSOPs dictate a finding that GSOPs are not memberships for purposes of the CBOE Constitution. The Exchange also argued that there are different purposes behing the definitions of the term "member" in the Act and in the CBOE Constitution. In particular, the Act's definition is designed to bring within the purview of the Act all those who effect transactions on an exchange floor, while the CBOE Constitution's definition is meant to "preclude dilution of member rights, particularly access to the Exchange's trading floor in relation to established products." [19] The CBOE, while acknowledging that it would have been preferable to have included in section 2.1 of the CBOE Constitution an explicit provision allowing the Exchange to issue trading permits that provide inexpensive access to new products, argued that there is no administrative history suggeting that section 2.1 "was designed to limit the Exchange's ability to provide access to its floor in relation to the establishment of new products." [20]

Finally, the CBOE submitted an August 26, 1987 letter discussing in detail the legislative history of the amendment of Article II, section 2.1(a)

[5] *See* letter from H. Stephen Fossett, President, J.S. Fossett & Co., Inc., to Secretary, SEC, dated June 5, 1987 ("Fossett Letter I").

[6] *Id.* at 2.

[7] CBOE special memberships, which will expire after 10 years, were issued in 1980 to former options members of the Midwest Stock Exchange. Special members are entitled to a 1/6 vote at Exchange meetings and have no interest in Exchange assets. *See* CBOE Constitution, sections 2.1(d) and 2.6(b)-(d).

[8] Foreign currency options permits entitled holders to effect transactions only in currency options and are subject to many of the same limitations applicable to government security options permits. *See* CBOE Rule 22.13.

[9] Fossett Letter I, *supra* note 5, at 2. Fossett also noted that a Philadelphia Stock Exchange proposal to create so-called equity specialist participations was defeated due to a lack of a quorum at a membership meeting. *Id.* at 3.

[10] *See* letter from Anne Taylor, Associate General Counsel, CBOE, to Joseph M. Furey, Branch Chief, Branch of Options Regulation, Division of Market Regulation.

[11] *Id.*

[12] *See* letter from Anne Taylor, Associate General Counsel CBOE, to David Underhill, Attorney, Division of Market Regulation ("Taylor Letter II").

[13] 15 U.S.C. 78c(a)(3)(A) (1982).

[14] Taylor Letter II, *supra* note 12, at 1. Section 3(a)(3)(A) of the Act defines the term "member of a national securities exchange" as a "person permitted to effect transactions on the floor of the exchange." 15 U.S.C. 78c(a)(3)(A) (1982).

[15] *Id.* at 2. The CBOE also agreed to include in Exchange Rule 1.1(h)(h) a definition of the term GSOP holder. This rule, which previously defined "non-equity options permit holder," would spell out the fact that permit holders are subject to all the provisions of the CBOE Constitution and rules other than those from which GSOPs expressly are exempted (*e.g.*, those relating to voting rights and rights to Exchange assets). In this regard, the Commission agrees that, irrespective of whether the permit holders are "members" for purposes of the voting requirements regarding their issuances under the CBOE Constitution, the permit holders are "members" of the Exchange under the Act and subject to the rules of the Exchange that apply to members.

[16] 15 U.S.C. 78f(b)(3) (1982).

[17] *See* Securities Exchange Act Release No. 14235 (December 8, 1977), 42 FR 63498.

[18] *See* letter from Anne Taylor, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation.

[19] *Id.* at 1.

[20] *Id.* at 2.

and (c) of the CBOE Constitution.[21] The CBOE noted that the specific proposal requiring that future membership offerings be approved by a majority of CBOE members resulted from dissatisfaction among certain members reacting to an April 1977 CBOE Board of Directors decision to offer 50 original, unsold full Exchange memberships.[22] These dissatisfied members circulated a petition requesting an amendment to section 2.1 of the Constitution to require membership votes for future offerings of memberships and to terminate the membership offering then extant. A special meeting of the membership was scheduled for August 29, 1977 and, with a quorum present,[23] a vote was taken. The proposition was approved by a vote of 705 in favor, 148 against. The CBOE then submitted a proposed rule change to the Commission amending its Constitution in accordance with the membership petition. The Commission approved the proposed rule change in Securities Exchange Act Release No. 14235.

II. Discussion

After careful review, the Commission has determined that, although it is a close question, the CBOE was not required to obtain membership approval prior to issuing the GSOPs. In reaching this conclusion, the Commission has evaluated the special considerations raised when a Board of Directors interprets its own authority pursuant ot its own charger and within the context of a membership organization.[24] Here, for example, the Board of Directors not only concluded that the GSOPs issuance was consistent with the spirit of section 2.1(a) of the CBOE Constitution, but provided the membership with an opportunity to voice its objections at a special meeting. Thus, although an explicit provision in the CBOE Constitution allowing the Exchange to issue limited trading permits without membership approval would be preferable, for the reasons described below, we believe the GSOPs issuance was within the authority of the CBOE Board of Directors.

The first step in this analysis is an examination of the actual language of the CBOE rules. In this regard, the language of the relevant CBOE provisions is somewhat circular, and thus is of limited utility. Section 2.1 of the CBOE Constitution requires approval of membership offerings and Section 1.1(b) of the CBOE Constitution defines regular members as persons who acquire memberships made available by the Exchange in accordance with its rules.[25] These sections, however, are not dispositive of whether something less than a full membership is a "membership made available by the Exchange."

The Commission finds persuasive, however, the CBOE's position that section 2.1 is intended to prevent the issuance of additional memberships, which could dilute the value of existing memberships, without certain procedural steps being followed. Authorizing additional memberships, or granting additional memberships cheaply, could lessen the value of existing memberships. Section 2.1 ensures that such actions will not be taken unless certain procedures are followed (*i.e.*, membership approval). These procedures would not be necessary, however, if the access to the trading floor that was granted was so limited in nature as not to affect the value of a full membership. Indeed, the amendment to the CBOE Constitution requiring member approval of additional Exchange memberships arose in the context of an attempt to issue 50 original, unsold full Exchange memberships, not limited trading permits. Accordingly, the CBOE should be able to issue permits granting access to its floor without membership approval if those permits are not significantly dilutive of the value of existing memberships.

While the GSOPs provide their holders with many of the same rights and obligations as do regular memberships, the CBOE Board of Directors reasonably has decided that the dilutive concerns underlying section 2.1 do not arise in connection with their issuance. The GSOPs are extremely limited in nature. They grant their holders only the right to trade a specific, low-volume or new product for a period of three years, they carry no voting rights, and they were created for the purpose of promoting trading in new options products.

The Commission believes that the offering of GSOPs does not raise the same dilutive concerns as an offering of full memberships. The Commission, therefore, finds that the GSOPs need not be authorized by membership approval. This finding, however, is limited to GSOPs in particular, and does not necessarily extend to any type of trading permits the CBOE might create in the future. A permit that has more extensive rights and obligations than GSOPs may have such value as to be dilutive of existing memberships, and therefore constitute a "membership" for purposes of section 2.1 of the CBOE Constitution.[26]

The GSOPs should afford market makers and floor brokers inexpensive access to government security options trading. This should facilitate transactions in such options, thereby enhancing market liquidity and providing a direct benefit to investors. At the same time, the permits do not contain incentives that could induce inappropriate trading by the permit holders. The Commission therefore 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[27] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Acr,[28] that the proposed rule change, as amended,[29] is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21364 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24900; File No. SR-CBOE-87-33]

Self-Regulatory Organization; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2]

[21] *See* Letter from Nancy R. Crossman, Associate General Counsel, CBOE, to Brandon Becker, Associate Director, Division of Market Regulation.

[22] *Id.* at 1. The CBOE also noted that the offering price for these full memberships was not "out of line with subsequent independent sales." *Id.* at note 3.

[23] Of a possible 1,294 votes, 853 ballots were cast. *Id.* at 2. As more than 50% of those eligible to vote cast ballots, CBOE's quorum requirements were satisfied. *See* CBOE Constitution, Article I, section 3.6.

[24] *But see* Securities Exchange Act Release No. 24429 (May 6, 1987), 35 SEC DOCKET 432.

[25] GSOPs would not be special memberships. *See* note 7, *supra*.

[26] The Commission notes that GSOP holders will be subject to the same trading rules and disciplinary procedures as regular members. This should ensure that a permit holder's activities are consistent with the obligations of a member of a national securities exchange as defined in the Act. *See* note 15, *supra*.

[27] 15 U.S.C. 78f (1982).

[28] 15 U.S.C. 78s(b)(2) (1982).

[29] As discussed above at note 15, the CBOE has agreed to include a definition of GSOP holder in CBOE Rule 1.1(h)(h).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1982).

the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on July 14, 1987, filed with the Securities and Exchange Commission ("Commission") a proposed rule amendment relating to its Retail Automatic Execution System ("RAES"). The proposal was published for comment in Securities Exchange Act Release No. 24751 (July 28, 1987), 52 FR 28884. No comments were received.

The proposed rule change would allow the CBOE to increase the number of options on the Standard & Poor's 100 Index ("OEX") eligible for execution through RAES from 10 to 20 per order. RAES currently permits the automatic execution of certain public customer orders for up to 10 contracts in a limited number of OEX series.[3] In support of its proposal, the CBOE noted in its rule filing that RAES in OEX allows customers to enjoy firm quotes to 10 contracts in eligible series; increases the efficiency of order entry and handling, trade matching and reporting; enhances the Exchange's audit trail; and adds to the confidence of public customers. As an illustration of the effectiveness of RAES, the CBOE cited the fact that on an average trading day in June 1987, RAES handled 26.1% of the OEX customer orders routed over the Exchange's Order Routing System ("ORS") and 8.2% of OEX ORS customer contracts.[4]

The Exchange believes that increasing the size of OEX orders eligible for execution through RAES to 20 contracts will increase the average percentage of OEX customer orders executed through RAES by approximately 2.5%, while increasing the average percentage of OEX customer contracts executed through RAES by about 2.4%. Thus, the Exchange has stated that expansion to 20 contracts will provide timely execution and enhance audit trails, fill reporting, price reporting and trade matching for a greater number of OEX orders. This should increase customer confidence and reduce the number of transactions required to be executed manually on the trading floor.[5]

The Commission agrees that expansion of the number of OEX orders eligible for execution through RAES should enhance the efficient functioning of OEX trading on the Exchange. This enhanced efficiency will provide a direct benefit to public customers and remove impediments to and help to perfect the mechanism of a free and open market. Moreover, the increase in size from 10 to 20 contracts does not alter significantly the nature of the orders eligible for RAES. The Commission accordingly 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[6] and the rules and regulations thereunder.[7]

It is therefore ordered, pursuant to section 19 (b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21365 Filed 9-15-87; 8:45 am]

[BILLING CODE 8010-01]

[3] RAES also handles public customers orders in options on the Standard & Poor's 500 Index and on equity securities of six corporations. A more comprehensive description of RAES is contained in the Commission's initial order approving the CBOE's implementation of RAES on a pilot basis. See Securities Exchange Act Release No. 21695 (January 28, 1985), 50 FR 4823.

[4] 52 FR at 28884.

[5] *Id.*

[6] 15 U.S.C. 78f (1982).

[7] Any further expansion of the number of OEX contracts eligible for execution through RAES would, of course, be subject to Commission approval.

[8] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-24893; File No. SR-DTC-87-12]

Self-Regulatory Organizations; Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 10, 1987, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission a proposed rule change as described below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would codify as part of DTC's Participant Operating Procedures DTC's existing procedures relating to: (1) Credit of dividend, principal, and interest proceeds to participants' cash accounts; (2) reversal of those credits in certain circumstances (*e.g.*, issuer default); and (3) refund of DTC's overnight investment income to participants who also act as paying agents on DTC-eligible issues. The proposal also would codify DTC's current practice of passing through to participants charges by DTC's interest collection agent for interest costs incurred from late bearer municipal bond interest payments. These procedures previously were approved in Securities Exchange Act Release No. 23686.[1] The proposed rule change would clarify DTC's procedures for credits, charge-backs and rebates as they relate to redemption proceeds. These procedures, as they relate to redemption proceeds, have not been approved prior to this filing and are being published for comment for the first time.

Currently, DTC credits certain payments to participant cash accounts on payable date, prior to having received such payments from paying agents. These payments include cash dividends on equity securities, principal on debt securities, and interest on debt securities. Although these payments are typically credited on payable date, DTC's rules authorize DTC to withhold such credits in appropriate circumstances.[2]

In certain cases, DTC also credits participants for payments of principal on redemptions of municipal securities in advance of DTC receiving those payments.[3] If DTC has not received the proceeds of a municipal security redemption by the eighth calendar day after the redemption date, DTC will credit the principal proceeds to the participants to whom they are due. However, DTC may elect not to credit participants with such proceeds if: (1) DTC management determines that there are not funds available to DTC sufficient to offset such credits, or (2) DTC management believes that the securities position in connection with which such credit would be given is an erroneous position, or that provision of such credit would be in error for some other, similar reason.

Under the proposed rule change, DTC is authorized to charge back previously credited payments upon written request

[1] 51 FR 37102 (October 17, 1986).

[2] For payments of $1,000,000 or more, DTC can withhold crediting if: (a) DTC has not received by 12:00 noon Eastern time on the payable date advice that it has received such payment, and (b) DTC's prior experience with the payor indicates that such payment will not be received after 12:00 noon Eastern time on payable date. For payments of $1,000,000 or less, DTC can withhold crediting if: (1) DTC has not received payment by 12:00 noon Eastern time on payable date, and (2) DTC management determines that insufficient funds are available from alternative sources to cover any excess of such credits over payments received or reasonably expected to be received.

In addition to these two cases, DTC can withhold from crediting any payment if DTC management knows that such payment will not be received on the payable date.

[3] DTC credits participants for payments of principal and interest on redemptions of non-municipal securities on the date such payments are received by DTC. DTC credits participants for payments of interest on redemptions of municipal securities also on the date such payments are received by DTC.

from a paying agent within ten (10) business days of the payable date for: (1) An error by the paying agent; (2) a failure by the issuer to provide the paying agent with sufficient funds to cover the payments, or (3) the bankruptcy of the issuer on or prior to the payable date. DTC also charges back for any errors made by DTC as a result of erroneous announcements or calculations of payments credited to participants in anticipation of payments which have not been received by DTC 10 business days after payable date.[4] For charge-backs resulting from a paying agent's written request, DTC notifies the participant one business day prior to the date DTC enters the charge-back in the participant's daily money settlement account.[5] Although DTC usually verifies the facts stated in the notice from the paying agent, DTC does not have any obligation to do so. If the paying agent notifies DTC more than 10 business days after payment date, DTC is not required to charge back a participant's account but will cooperate with the paying agent and the participant to resolve the matter. For DTC initiated charge-backs, DTC gives participants a one business day notice if the charge-back occurs within 10 business days after payable date. Otherwise, DTC notifies participants five (5) business days prior to entry to the charge-back.

Under its current procedures, DTC also invests, overnight, funds received from paying agents and remits to participants income derived from those investments. DTC encourages paying agents to make dividend, principal, interest and redemption payments in same-day funds. DTC's settlement system, however, credits these payments to participants in next-day funds. As a means to come as close as practicable to passing these payments on to participants in same-day funds, DTC invests the funds overnight and refunds the investment income to participants on a monthly basis. The following is a description of DTC's investment procedures.

Generally, income from the investment of dividend, principal, interest, and redemption payments is refunded to participants on a monthly basis. The amount of the refund, however, may be reduced in the following four instances. First, a refund will be decreased if all or part of that refund must be used to fund credits to participants for payments due to be received (but not received) on the preceding business day. Second, the amount of a refund to a participant who is (or is affiliated with) a payor may be reduced as follows: (a) No refund will be paid if less than 90% of payments due over the three preceding months from the participant (or the participant's affiliate) are received by DTC in same-day funds on payable date; (b) any refund paid to participant who pays (or whose affiliate pays) 90% or more of its payments on payable date in same-day funds will be reduced by (i) the percentage of the prior month's payments not received on payable date, plus (ii) the percentage of the prior month's payments not received in same-day funds.[6] Third, the amount of a refund to payor of municipal securities payments who remits the payments in same-day funds may be reduced by an amount equal to any interest expense incurred by DTC to fund credits to participants for payments due from this payor which were not received on payable date. Finally, no refund shall be paid to a payor of municipal securities payments who does not provide CUSIP number identification on payments of redemption proceeds.

DTC also passes through to participants the interest collection agent's costs from late bearer municipal bond interest payments (called a "funds usage charge"). DTC channels all coupons for bearer municipal bonds to a central interest collection agent ("Agent"). On payable date, the Agent pays DTC the total interest payments from those bonds regardless of whether the Agent has collected such interest from the various paying agents. For interest payments received late by the Agent from paying agents, the Agent charges DTC a funds usage charge. DTC passes this charge on a *pro rata* basis to participants that received those particular payments.

DTC's proposed rule change would codify as part of DTC's Participant Operating Procedures the procedures described herein. In a previous order,[7] the Commission approved DTC's crediting, chargeback, and investment procedures as they apply to dividend payments on equity securities and interest and principal payments on debt securities. The Commission stated that these procedures are designed to improve the timeliness of payments to DTC participants and enhance the safeguarding of funds in DTC's custody or control. In that Order, the Commission also approved DTC's procedure with regard to funds usage charges.

DTC believes that the proposed rule change is consistent with section 17A of the Act because it is designed to enhance the timeliness of dividend, principal, interest, and redemption payments to DTC participants and improve processing and recordkeeping by DTC and its participants. DTC also believes that the procedures to be codified are designed to enhance the safeguarding of funds in DTC's custody or control.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. § 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-87-12.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21366 Filed 9-15-87;8:45 am]

BILLING CODE 8010-01-M

[4] If DTC credits participants on payable date for payments to be received on payable date, such payments are not received by DTC on payable date, and DTC does not have funds sufficient to cover credits made on that day, DTC may enter into the daily settlement accounts of participants receiving such credits charges equal in total to the amount of such excess. Each participant will be charged an amount equal to its *pro rata* share of the total to be charged. DTC may require each such participant to remit to it on the business day following the payable date a payment in same-day funds equal to the amount of such charge.

[5] DTC notifies the participants through the Participant Terminal System ("PTS") and by placing the notice in the participant's box at DTC.

[6] For example, if a paying agent makes 95% of its payments on payable date (a 5% shortfall) and 96% of its payments in same-day funds (a 4% shortfall), its refund for that month will be reduced by 9%.

[7] *See* note 1, *supra*.

[Release No. 34-24892; File No. SR-MSE-87-9]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to a Proposed Rule Change by Midwest Stock Exchange, Inc.; Extension of the Suspension of Application of the Mandatory Posting Rule

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 July 23, 1987 the Midwest Stock Exchange, Incorporated ("MSE" 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

In its filing SR-MSE-87-1,[1] the MSE suspended the application of Article XXX, Rule 1.01 (I)(6)(c) (Mandatory Posting Rule) for the two six-month periods ending June 30, 1986 and December 31, 1986. The Exchange has determined to extend the suspension of the application of the Mandatory Posting Rule for an additional six month period ending June 30, 1987.

Although the progress of revising the evaluation criteria for mandatory posting has been significant, it has been slower than initially anticipated.[2] In the event that revised evaluation criteria are not approved and implemented prior to the end of the year, postings pursuant to the current Mandatory Posting Rule will resume for the six month period ending December 31, 1987.

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 organizations included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Mandatory Posting Rule requires the Exchange to semiannually post for applications any security for which the Exchange's market share (determined as a percentage of number of trades reported to the tape) is less than the third largest among all exchanges and is also less than the Exchange's average market share for all specialist-assigned issues for the previous six month period. If a co-specialist's stock is posted pursuant to this Rule and he chooses to reapply for it, he is entitled to a hearing before the Committee on Specialist Assignment and Evaluation ("CSAE") pursuant to Article XVII, Rule 3 on the evaluation of his performance in the posted issue.

The first posting pursuant to the Rule was made in January 1986 for the six month period ending December 31, 1985. Since that time, CSAE representatives have met with Floor member representatives to review current evaluation criteria and consider revisions to such criteria. Because substantial progress had been made by this group to revise the evaluation criteria, the CSAE decided to suspend the application of the Mandatory Posting Rule for the two six-month periods ending June 30, 1986 and December 31, 1986. The CSAE and the Exchange's Board of Governors ("Board"), have determined to extend the suspension of the Mandatory Posting Rule for an additional six month period ending June 30, 1987 while it continues its review of the current evaluation criteria.

The CSAE anticipates that revised criteria, subject to Commission approval, will be available to review specialist performance by December 31, 1987. In the event revised criteria have not been implemented by this date, however, it is anticipated that the postings will resume under the current Mandatory Posting Rule.

The proposed rule change is consistent with section 6 of the Act in that it will encourage the dissemination of more competitive markets by the MSE, thereby promoting just and equitable principles of trade, and, in general, protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

CSAE representatives and Exchange staff have been meeting on an ongoing basis with Floor member representatives to receive input on revising specialist evaluation criteria.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Exchange anticipates that revised specialist evaluation criteria will be developed by December 31, 1987. The Board determined to suspend the application of the Mandatory Posting Rule for an additional six month period ending June 30, 1987 with the expectation that the CSAE representatives, Exchange staff members, and Floor members will submit to the Board revised specialist evaluation criteria in the near future.

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, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by October 7, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with

[1] *See*, Securities Exchange Act Rel. No. 24444 (May 12, 1987) 52 FR 19002.

[2] In this regard, we note that the Exchange indicated in SR-MSE-87-1 that it intended to submit revised specialist performance evaluation criteria to the Commission by June 30, 1987. The Exchange noted, however, that if it had not submitted revised evaluation criteria to the Commission by that date, it would resume posting securities for applications under the Mandatory Posting Rule for the six month period ending June 30, 1987. This rule filing suspends the posting again for the first half of 1987.

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.

As noted in the previous Commission order approving suspension of the Mandatory Posting Rule for the two six month periods ending June 30 and December 31, 1986, [3] the Commission believes that it is important for the Exchange to monitor the performance of MSE specialists and co-specialists to ensure that they provide the best possible markets for the securities they trade. In this regard, the Commission believes the Exchange's plan to revise its mandatory posting evaluation criteria is part of continuing effort to develop comprehensive, balanced, and fair specialist performance standards.

Based on the above, 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 in that approval of the proposed rule change would suspend the application of the Rule for an additional six months while simultaneously providing the Exchange with additional time to complete its review and submit to the Commission revised specialist evaluation performance criteria. The Commission, therefore, believes that accelerated approval of the proposed rule change is appropriate.

It is therefore ordered, pursuant to section 19(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.[4]

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21367 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for United Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 10, 1987

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Del-Val Financial Corporation, Common Stock, $1.00 Par Value (File No. 7-0437)

Furr's/Bishop's Cafeterias, L.P., Depositary, Preference, Units (File No. 7-0438)

John Fluke MFG., Co., Common Stock, $.50 Par Value (File No. 7-0439)

Americus Trust for American Express Shares, Scores (File No. 7-0440)

Americus Trust for Ford Shares, Scores (File No. 7-0441)

Americus Trust for Mobil Oil Shares, Scores (File No. 7-0442)

Americus Trust for Bristol-Myers Shares, Scores (File No. 7-0443)

Americus Trust for Coca-Cola Shares, Scores (File No. 7-0444)

Americus Trust for Dow Chemical Shares, Scores (File No. 7-0445)

Americus Trust for General Electric Shares, Scores (File No. 7-0446)

Lewis Galoob Toys, Inc., Common Stock, $.01 Par Value (File No. 7-0447)

Turner Broadcasting System, Inc., Class A Common Stock, 6¼ Par Value (File No. 7-0448)

Turner Broadcasting System, Inc., Class B Common Stock, 6¼ Par Value (File No. 7-0449)

Solitron Devices, Inc. (Del.) Common Stock, $1.00 Par Value (File No. 7-0450)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21370 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in an Over-the-Counter Security

September 9, 1987.

The Midwest Stock Exchange, Inc. ("MSE") on September 4, 1987, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act:

File No.	*Symbol*	*Issuer*
7-0485	MSFT	Microsoft Corp., Common Stock, $.001 Par Value.

Comments

Interested persons are invited to submit on or before September 30, 1987, written comments, data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are requested to address whether they believe the grant of UTP is consistent with section 12(f)(1)(C). In considering an application for extension of UTP to OTC securities under section 12(f)(1)(C), the Commission is required to take account of, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the activity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21371 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

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[3] See, Securities Exchange Act Rel. No. 24444 (May 12, 1987), 52 FR 19002.

[4] 17 CFR 200.30-3.

[Release No. 34-24880; File No. SR-NYSE-87-14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc.; Indications of Interest Upon Openings and Reopenings

On April 30, 1987, the New York Stock Exchange, Inc. ("NYSE") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change that would revise the NYSE's policy on opening and reopening of trading after indications of interest have been disseminated by the specialist. The proposal also sets forth the NYSE's policy on when a specialist may commence dissemination of indications of interest in a security that has been subject to a trading halt. The proposed rule change was noticed in Securities Exchange Act Relases No. 24510 (May 26, 1987), 52 FR 20657. No comments were received.

The proposal retains the current requirement of waiting at least fifteen minutes from the first indication of interest before reopening a stock, but reduces the additional delay required for reopening when more than one indication is necessary. Under the proposal, the additional fifteen minute waiting period currently required after each subsequent indication would be reduced to either five or ten minutes depending upon the circumstances.[1]

The proposal also sets forth situations where opening indications will be permitted, subject in most cases to the waiting periods described above. It permits the dissemination of an initial indication with the approval of a Floor Official before 9:30 for a security which is a spinoff or for which a trading halt had existed at the close of the prior trading session; permits indications before opening the security in the case of an initial public offering with the approval of a Floor Director or Floor Governor; and in any other situation, permits pre-opening indications with the approval of a Floor Director or Floor Governor and authorizes them to tailor the waiting periods to the situation.[2]

In its filing, the NYSE states that the purpose of the proposed rule change is to eliminate its competitive disadvantage arising out of inconsistencies between the CTA Plan, of which the NYSE is a participant, and the NYSE's policy on reopenings. The CTA Plan permits markets to resume trading after fifteen minutes as measured by "T time" (*i.e.*, the time at which news has been fully disclosed), so long as the market has disseminated indications of interest during that fifteen minute period, [3] whereas the NYSE cannot resume trading until fifteen minutes after the last indication prints. The proposed rule change reflects the NYSE's determination that, when one or more indications follows an initial indication, investors and other off-floor participants will have an adequate time to react to indications. As noted above, there still would be the fifteen minute minimum requirement, thereby continuing a longer waiting period than required under the current CTA Plan.

The Commission has carefully reviewed the proposal and believes the proposal adequately balances the need to provide the public sufficient time to react to indications of interest with the NYSE's desire to be competitive with other marketplaces. Although the proposal does reduce the overall waiting period where successive indications occur, it does not premit the reopening of the market any earlier than fifteen minutes from the first indication. The NYSE will monitor the implementation of these procedures and report its findings to the Commission at the conclusion of the first year of the policy's operation.

The Commission also believes that the granting to Floor Officials, Governors, and Directors of discretion to approve disseminations for pre-opering indications in instances such as contemplated in the proposal is appropriate. Floor officials are appointed by the Exchange for the purpose of ensuring that required procedures are followed by members. These officials are trained to make appropriate decisions concerning procedures on the floor and should be very familiar with floor operations and trading situations. Accordingly, the NYSE should be able to rely on their expertise in authorizing pre-opening indications. Based on the above, the Commission finds that the proposed rule change is consistent with the requirements for the Act and the rules and regulations thereunder applicable to a national securities exhange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefor ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-87-14) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 4, 1987.

[FR Doc. 87-21368 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[1] The fifteen minute waiting period may be reduced to ten minutes if one of more indications perceded it and the last indication and the immediately preceding indication do not overlap. The waiting period may be reduced to five minutes if one or more indications preceded it and the last indication and the immediately preceeding indication do overlap.

[2] For example, under the revised policy the NYSE has indicated that a Floor Director of Floor Governor may approve pre-9:30 indications where significant news concerning and NYSE-listed company was released after the market closed the day before and in situations such as "Triple Witching" days, to provide for more orderly trading. *See* sections (1)(d) and (2)((b), File No. SR-NYSE-87-14, at 1-2. In Securities Exchange Act Release No. 24596 (June 16, 1987), 52 FR 23618, the Commission granted accelerated approval of a proposal by the NYSE (File No. SR-NYSE-87-17) to permit, among other things, pre-opening indications of interest and the reduction of waiting periods on the June 19 "Expiration Friday" in order to assist in handling order flow associated with the concurrent expiration of stock index futures, stock index options and options on stock index futures. These procedures were not utilized, however, since the volume and volatility on June 19 was less than on previous Expiration Fridays.

[3] *See* Securities Exchange Act Release No. 22981 (March 13, 1986), 51 FR 8731.

[Release No. 24895; File No. ODD-87-3]

Self-Regulatory Organizations; The Options Clearing Corp.; Order Granting Approval to Proposed Amendments to Options Disclosure Document

On August 29, 1987, the Options Clearing Corporation ("OCC"), in conjunction with the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. [collectively, the self-regulatory organizations ("SROs")] submitted to the Commission amended copies of an options disclosure document ("ODD") pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act").[1] Rule 9b-1 requires that the ODD contain information concerning, among other matters, the mechanics of buying, writing and exercising standardized options, and the risks of trading the options, and prohibits a broker or dealer from accepting a customer's options order, or approving a customer's account for trading, unless the broker furnishes the customer with an ODD.

[1] 17 CFR 240.9b-1 (1986).

The disclosure document filed with the Commission reflects recent changes in the options markets. For example, the revised document discusses some of the special characteristics and risks of internationally-traded options; [2] the commencement of evening trading in foreign currency options; [3] the possibility that the settlement value of certain index options may be determined by reference to the prices of the constituent stocks at times other than the close of trading; [4] proposals to trade options on Treasury yield measures that would be settled in cash rather than by the delivery of underlying securities; [5] and new settlement procedures for foreign currency options.[6] The ODD also states that in the future the time period during which European-style options may be exercised may be extended beyond the current one-day period.[7]

Rule 9b-1 provides that an options market must file five copies of amendments to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information fisclosed and the protection of investors. This provision is intended to permit the Commission either to accelerate or extend the time period definitive copies of a disclosure document may be distributed to the public.

The Commission has reviewed the amended disclosure document and finds that it is consistent with the protection of investors and in the public interest to allow its distribution as of September 17, 1987.[8]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21369 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[2] *E.g.*, the document discusses the possibility that option premiums in foreign countries for internationally-traded options may not reflect current prices of the underlying interests in the United States, because foreign options markets may be open for trading during hours or on days when U.S. markets are closed.

[3] As of the date of this release, one U.S. options market, the Philadelphia Stock Exchange ("Phlx"), plans to initiate trading in foreign currency options during evening trading sessions. *See* Securities Exchange Act Release No. 24652, June 29, 1987, 52 FR 25680.

[4] Disclosure regarding this issue previously was approved by the Commission, and was made by the OCC and SROs, by means of a supplement to the ODD. *See* Securities Exchange Act Release No. 24259, March 25, 1987, 52 FR 10651. The present amendments provide further disclosure of the ramifications of settlement procedures based on other than the closing prices of the underlying stocks.

[5] As of the date of this release, the Commission has not approved any new debt option contracts as described in the amended ODD's new section on Treasury yield options. Assuming that such Treasury yield options ultimately are approved for options trading, the Commission separately will consider, at that time, whether the ODD, as approved in this Order, adequately describes the characteristics and risks of such options. Accordingly, the Commission's determination to approve the revised ODD does not necessarily entail a conclusion that the ODD disclosure regarding proposed Treasury yield options complies with Rule 9b-1.

[6] The revised ODD states that the Intermarket Clearing Corporation ("ICC"), a wholly owned subsidiary of OCC, may act as OCC's agent in making foreign currency settlements with OCC Clearing Members. ICC's settlement procedures are same as those of OCC. In addition, OCC has established procedures whereby Clearing Members may permit customers to make settlement directly with an OCC correspondent bank.

[7] At the current time all of the European-style options traded on U.S. markets are exercisable only on the day before expiration. The Commission reserves judgment regarding the adequacy of the revised ODD's disclosure concerning this matter pending the filing of SRO proposals to effectuate such a change, and Commission approval thereof.

[8] Rule 9b-1 provides that the use of an options disclosure document shall not be permitted unless the options classes to which the document relates are the subject of an effective registration statement on Form S-20 under the Securities Act of 1933. Post-Effective Amendment No. 1 to OCC's Form S-20 registration statement covering the options classes discussed in the ODD became effective on April 30, 1987. *See* Registration No. 33-4165.

[Release No. 34-24889; File No. SR-Phlx-87-20]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] the Philadelphia Stock Exchange, Inc. (Phlx" or "Exchange"), on June 10, 1987, filed with the Securities and Exchange Commission ("Commission") a proposed rule change that would allow the Phlx to list options on a 20-stock Utility Index. The proposed rule change was published for comment in Securities Exchange Act Release No. 24722 (July 20, 1987), 52 FR 28403. No comments were received on the proposed rule change.

The Phlx proposes to list options on a Utility Index which it has developed. This narrow-based index [3] would be comprised of 20 common stocks of domestic companies that are involved primarily in electric power generation. These companies include many of the most highly capitalized American electric utility companies. The Utility Index would be capitalization-weighted and its value would be updated at least every minute during the trading day.[4]

Options on the Utility Index would be traded pursuant to current Exchange rules governing the trading of index options.[5] These rules govern matters such as units of trading, exercise prices, expiration cycles, premium quotations, position and exercise limits, and replacement of stocks in an index. The only rule amendment proposed by the Phlx in connection with listing Utility Index options is an amendment to Rule 1006A ("Other Restrictions on Options Transactions and Exercise") that would specify that the Exchange would offer only European-style options on the Utility Index and that, accordingly, restrictions on exercise would be in effect until the last trading day prior to expiration.[6]

The Commission previously has indicated that minimum standards should be designed to ensure that narrow-based index options are not used as a subterfuge to trade options on individual stocks that do not meet the options eligibility standards [7] or as a

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] A narrow-based index generally is considered an industry index designed to be representative of price movements in particular categories of stocks. *See* Phlx Rule 1000A(11). The Utility Index will be subject to the Phlx's rules relating to narrow-based indexes, which often differ from the requirements relating to broad-based indexes. For example, Phlx Rule 722 requires margin for short call and put positions in narrow-based indexes to be deposited and maintained in an amount equal to the premium, or market value of the contract, plus 15% of the index's dollar value, less any amount the option is out-of-the-money, with a minimum required margin of premium plus 5% of the contract's dollar value. By contrast, the margin requirement for a broad-based index generally is the premium, or market value of the contract, plus 5% of the index's dollar value, less any amount the option is out-of-the-money, with a minimum required margin of premium plus 2% of the index's dollar value. Under Phlx Rule 1001A(b)(1), position and exercise limits for narrow-based indexes are 8,000 contracts, while Phlx Rule 1001A(a) sets position and exercise limits for broad-based indexes at an aggregate contract value of $300 million.

[4] Details relating the calculation of the Index value and the composition of the Index, including a list of the specific stocks and their prices, market values and relative weights in the Utility Index, were included in the original rule filing. *See* 52 FR at 28404-05.

[5] *See* Phlx Rules 1000A-1103A.

[6] Although a European-style option is designed so that exercise cannot occur prior to the option's expiration date, investors are free to trade out of their positions at any time throughout the life of the option.

[7] The options exchanges have adopted uniform options eligibility standards. To be eligible for options trading, a company's common stock must, for example, have a market price per share of at

Continued

way to trade options on one stock that makes up a very large proportion of the index.[8] The Commission decided, however, that, rather than setting an absolute minimum number of securities that could be included in a narrow-based index, the exchanges should establish appropriate standards and submit proposed index options to the Commission for review.

In view of the Commission's concerns regarding potential abuses in connection with narrow-based indexes, the exchanges generally have set forth criteria that must be met for industry or narrow-based indexes. For example, the Pacific Stock Exchange's ("PSE") rules require that no stock comprise greater than 50% of the index and that any stock constituting greater than 10% of the index be eligible for options trading.[9] In addition, if the index consists of fewer than 20 stocks, at least 50% of its value must be comprised of options-eligible stocks; if it consists of 20 or more stocks, at least 35% of its value must be options-eligible stocks. Other exchanges, however, such as the Phlx, have chosen to provide less specific guidance in their Rules as to what minimum criteria must be satisfied for designation as a narrow-based index.[10]

Regardless of the specificity provided by an exchange in its rules, however, the Commission must determine that the proposed index option satisfies the relevant statutory criteria. In particular, the Commission must find that the proposed index contains a sufficient number of active and liquid stocks so that the index is not susceptible to manipulation, and that the index is not used as a surrogate for trading options on securities that themselves are not options-eligible.

The Phlx's proposed Utility Index satisfies all of the guidelines described above, even the very detailed criteria set forth in PSE Rule XXI. No stock in the Utility Index comprises more than 10% of the value of the index.[11] The stocks in the Index are, for the most part, activity traded.[12] In addition, 80% of the stocks in the 20-stock Utility Index are options-eligible.[13] Finally, no one individual or group of the 20 stocks has a capitalization that is so large in comparison to the other stocks in the Index that its price movements will impact disproportionately the Index's value. Consequently, the Commission does not believe that purchases or sales of several of the utility stocks comprising the Index would make the Index readily susceptible to manipulation.

The trading of listed options on an index of domestic utility stocks will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of utility stocks. In this regard, the Commission notes that the Phlx Utility Index are currently comprised correlates very closely to movements of leading utility averages.[14] Institutional and individual investors, among others, with substantial investments in utility stocks will be able to use the Phlx Utility Index to hedge their exposure or to supplement their dividend income by writing Utility Index call options.[15]

Application of the Phlx's existing rules governing trading of index options should ensure that Utility Index options trading is conducted in a fair and orderly manner. In addition, the Phlx has in place surveillance procedures for other narrow-based indexes currently trading on the Phlx. These procedures will be used by Phlx staff to ensure that unusual trading in the Utility Index will be identified and investigated quickly.

The availability of options on the Utility Index should help to remove impediments to a free and open market and should facilitate transactions in securities. Accordingly, 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[16] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 9, 1987.

[FR Doc. 87-21313 Filed 9-15-87; 8:45 am]

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least $10 and be held by a minimum of 6,000 shareholders. In addition, the company must have at least seven million publicly-traded shares outstanding, the trading volume of which must have been at least 2.4 million shares in the preceding 12 months. *See, e.g.*, American Stock Exchange Rule 915; Chicago Board Options Exchange Rule 5.3.

[8] *See* Securities Exchange Act Release No. 20396 (November 18, 1983), 48 FR 53691.

[9] *See* PSE Rule XXI, Section 3(b)-(e).

[10] For example, Phlx Rule 1009A provides that the securities underlying the index do not have to meet the requirements of Phlx Rule 1009, which provides the minimum criteria necessary for a security to qualify for options trading. *See* note 7, *supra*.

[11] According to the figures attached as *Exhibit* A to the original rule filing, 52 FR at 28405, Pacific Gas and Electric Co., at 8.92% of the Index's total capitalization, comprised the greatest percentage of the Utility Index value as of June 4, 1987.

[12] All of the Utility Index's 20 component stocks are listed and traded on the New York Stock Exchange. For the six-month period March 1, 1987 through August 31, 1987, average daily trading volume for these stocks has ranged from a low of approximately 164,178 shares for Centerior Energy to a high of 775,232 shares for Pacific Gas and Electric.

[13] According to the Phlx, 16 of the 20 Utility Index stocks are options-eligible. These include: American Electric Power Co.; Centerior Energy Co.; Commonwealth Edison Co.; Consolidated Edison of N.Y., Detroit Edison Co., Dominion Resources, Inc.; Duke Power Co.; FPL Group Inc.; Houston Industries, Inc.; Niagara Mohawk Power Corp.; Pacific Gas and Electric Co.; Philadelphia Electric; Public Service Enterprise Group; Southern California Edison Co.; Southern Company; and Texas Utilities Co. The four utility stocks that are not options-eligible are: Union Electric Co.; Pacificorp; Ohio Edison Co.; and Northeast Utilities.

[14] According to figures supplied by the Phlx, the correlation coefficients for the Utility Index as compared with the Dow Jones Utility Average (15 stocks) and the Standard & Poor's Electric Average (21 stocks) are greater than 95% over terms ranging from 150 days to 10 years. *See* letter from William W. Uchimoto, Acting General Council, Phlx, to David Underhill, Attorney, Divison of Market Regulation, SEC, dated August 6, 1987.

[15] Unlike the regulations under the Commodity Exchange Act, the federal securitities laws do not contain an explicit "economic purpose" test for new options products. Nevertheless, to approve a new options proposal the Commission must be satisfied that its introduction is in the public interest. *See* section 6(b)(5) of the Act, 15 U.S.C. 78(f)(b)(5) (1982). Such a finding would be difficult with respect to an options product that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. While it is unclear whether an index product based on 20 utility stocks will attract widespread investor participation, the Commission accepts the Phlx's representation in a September 8, 1987 telephone conversation that a utility industry index would serve an economic function by allowing investors to hedge portfolios of utility stocks and take positions with respect to price movements in the utility segment of the market. Telephone conversation between Michele Berkowitz, Staff Counsel, Phlx, and David Underhill, Attorney, Division of Market Regulation, SEC. Accordingly, because the Commission is satisfied that the Index will not raise regulatory problems and can serve an economic function, the Commission believes it is up to the business judgement of the exchange to determine whether to introduce the product.

[16] 15 U.S.C. 78f (1982).

[17] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-24897; File No. SR-SCCP-87-02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Change

The Stock Clearing Corporation of Philadelphia ("SCCP") on June 6, 1987, filed a proposed rule change with the Commission under section 19(b) of the Securities Exchange Act ("Act"). As explained in greater detail below, the proposal would authorize SCCP to establish procedures for the automated

transfer and processing of customers' security accounts. The Commission published notice of the proposal in the **Federal Register** on July 17, 1987, to solicit public comment.[1] No public comment was received. This order approves the proposal.

I. Description

The proposal would authorize SCCP to establish procedures for the automated transfer and processing of customer securities accounts on behalf of SCCP participants.[2] The procedures would include the establishment of time periods and regulations for the automated transfer of a participant's customers' securities accounts, including transfer initiation forms, instructions, reports to participants, and any information required by SCCP to transfer a securities account from one clearing agency participant to another participant. Further, SCCP would be authorized to adopt procedures concerning acceptances or rejections of customers' account transfer and the transfer of items in customer accounts through its Continuous Net Settlement ("CNS") System or Trade-by-Trade System.[3] SCCP further states that it currently is drafting rules of implementation for this enabling proposal.[4]

The proposal provides that SCCP would not be liable for the completeness or accuracy of the information contained in a participant's request to transfer a customer's securities account through the facilities of SCCP or otherwise; for the completeness or accuracy of any documentation necessary for a participant to transfer a customer's securities account; or for the vailidity of information regarding any particular asset contained in a customer securities accounts. SCCP states that its sole responsibility would be to make any transfer initiation documentation or information forms available to the delivering participant who is to transfer the account or to return such forms to the receiving participant to whom the account is to be transferred.[5]

II. SCCP's Rationale

The purpose of the proposal is to allow transfers of customer securities accounts among SCCP participants, and between a SCCP participant and a participant of another registered clearing agency that has established an automated account transfer service. SCCP states that the proposal would provide the necessary enabling authority for SCCP to establish procedures for an automated account transfer service, including applicable forms, reports, instructions, or other necessary information and data. SCCP also states that the proposal is consistent with the Act, particularly section 17A of the Act, because it would facilitate the prompt and accurate clearance and settlement of securities transactions, including customer account transfers.

III. Discussion

The Commission believes that SCCP's proposal is consistent with the Act. The Commission believes that the proposal would promote the timely and accurate transfer of customer's securities accounts in accordance with section 17A of the Act and, more particularly, that the use of automated procedures for transferring accounts would enhance efficiency and reduce expenses in account transfer processing. The proposal also should help to reduce, for depository-eligible securities, the manually intensive handling of security certificates and related paperwork between broker-dealers.

The Commission notes that ACATS is already in effect at NSCC[6] and at Midwest Clearing Corporation.[7] Additionally some securities exchanges, including the New York Stock Exchange[8] and the Midwest Stock Exchange,[9] require their member organizations dealing with the public to use ACATS for customer account transfers.

The Commission also notes that SCCP's proposal includes disclaimers of SCCP responsibility for, among other things, the accuracy or completeness of instructions of reports for customer account transfers. The Commission believes those disclaimers are appropriate because SCCP generally would not be in position to monitor those documents for completeness or accuracy. Under the proposal, SCCP would act simply as intermediary in relaying account transfer information to NSCC (as its facilities manager for ACATS) and among participants. The proposal does not alter SCCP's higher standard of care applicable to the safeguarding of securities and funds. Accordingly, the Commission believes that SCCP's standard of care under the proposal is consistent with the Act.[10]

The Commission recognizes that the proposal authorizes SCCP to establish procedures for the ACATS services and that it provides a framework for that service in SCCP's rules. Accordingly, SCCP must file its procedures for review under the Act before initiating any customer's account transfer on behalf of SCCP participants.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act and, in particular, with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR-SCCP-87-02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 10, 1987.

[FR Doc. 87-21314 Filed 9-15-87; 8:45 am]

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[1] *See* Securities Exchange Act Rel. No. 24696 (July 10, 1987), 52 FR 27093.

[2] SCCP would provide services primarily to Philadelphia Stock Exchange ("PHLX") members and SCCP participants that are not members of the National Securities Clearing Corporation ("NSCC").

[3] SCCP states in its filing the NSCC has agreed to serve as the facilities manager for the proposal. SCCP would accept the transfer information requests from its clearing firms, transmit the information on tape to NSCC for processing, accept the processed data from NSCC and furnish the reports to its clearing firms. Telephone conversation between William W. Uchimoto, Acting General Counsel, SCCP, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 24, 1987.

[4] SCCP plans to adopt rules of implementation in the form of a procedural manual pursuant to section 19(b)(3)(A) of the Act. Telephone conversation between William W. Uchimoto, Acting General Counsel, SCCP, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 24, 1987. Additionally, PHLX plans to adopt a rule requiring its member organizations dealing with the public to use ACATS. Telephone conversations between William W. Uchimoto, Acting General Counsel, PHLX, and Thomas C. Etter, Attorney, Securities and Exchange Commission, September 9, 1987.

[5] The proposal would not affect SCCP's liability for establishing CNS positions which are governed by SCCP's existing rules. Telephone conversation between William W. Uchimoto, Acting General Counsel, SCCP, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 24, 1987.

[6] *See* Securities Exchange Act Rel. No. 22481 (September 30, 1985), 50 FR 41274.

[7] *See* Securities Exchange Act Rel. No. 24218 (March 16, 1987), 52 FR 9230.

[8] *See* Securities Exchange Act Rel. Nos. 22913 (February 14, 1986), 51 FR 6845; and 22662 (November 26, 1985), 50 FR 49643.

[9] *See* Securities Exchange Act Rel. No. 24819 (August 19, 1987), 52 FR 32229.

[10] *See, e.g.*, Securities Exchange Act Rel. Nos. 16900 (June 17, 1980), 45 FR 41920; 22940 (February 24, 1986), 51 FR 7169.

[Rel. No. IC-15971; 812-6818]

Application; Compagnie Financiere de Suez

September 10, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Campagnie Financiere de Suez.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from the provisions of the 1940 Act.

Summary of Application: Applicant seeks an order permitting it to issue and sell in the United States its debt or equity securities, either directly or in the form of American Depository Shares, evidenced by American Depository Receipts.

Filing Date: The application was filed on August 7, 1987 and amended on September 10, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 30, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Michael Gruson, Esq. or Jonathan Weld, Esq., Shearman and Sterling, 153 East 53rd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-3026, or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is the holding company of the Suez group (the "Suez Group"), a leading French banking organization which ranks by total assets among the largest banking and financial organizations in the world. Through its principal operating subsidiary, Banque Idosuez (the "Subsidiary"), and other banking subsidiaries, the Suez Group offers a full range of general commercial banking services to large corporate clients and individual customers. In addition to its commercial banking activities, the Suez Group provides a wide range of banking services throughout France and internationally, including corporate finance advice and advice on mergers and acquisitions, portfolio administration and custodial services and, outside the United States, underwriting of securities issues. The Subsidiary is currently operating under an SEC exemptive order permitting it to issue commercial paper notes and other debt securities in the United States (Investment Company Act Rel. No. 13517, Sept. 20, 1983).

2. At December 31, 1986, Applicant had consolidated total assets of $51.6 billion. Consolidated customer deposits and loans each amounted to $14.9 billion. Estimated consolidated net worth (excluding good will) at December 31, 1986 was $2.6 billion and consolidated net income for 1986 was $372 million.[1]

In addition to the Subsidiary, the Suez Group includes a number of financial and other companies, within and outside of France.

3. The French government, which presently owns all the shares of the Applicant, is planning to sell the shares pursuant to its privatization program. The privatization of the Applicant is tentatively scheduled for the beginning of October.

4. Applicant and its banking subsidiaries are subject to extensive government regulations in France under a structure that is generally comparable to regulation applicable to banks and bank holding companies in the United States. Rules and regulations governing the operation of french banks and other credit institutions range from licensing requirements and restrictions on the scope of non-banking activities to detail balance sheet ratios and regular reporting and reserve requirements.

5. Applicant has a substantial banking presence in the United States through the New York and Chicago branches of the Subsidiary and the offices and agencies of the Subsidiary in other states. The New York and Chicago branches of the Subsidiary are principally engaged in wholesale commercial lending. The United States branches operate under licenses from the Superintendent of Banks of the State of New York and Illinois and are subject to State supervision and regulation substantially equivalent to those applicable to banks organized under the banking laws of New York and Illinois. The other United States offices and agencies of the Subsidiary are subject to extensive regulation under state laws comparable to the regularoty requirements of the States of New York and Illinois.

6. In addition, Applicant is subject to federal reporting requirements under the Bank Holding Company Act of 1956, and the United States branches, offices and agencies of the Subsidiary are subject to reporting and examination requirements under the International Banking Act of 1978, which are similar to those imposed on domestic banks that are members of the Federal Reserve System.

7. Applicant wishes to be able to have access to the United States capital markets through private placements or public offerings of its debt, and its equity securities, either directly or in the form of American Depositary Shares represented by American Depositary Receipts. With respect to public offerings of its debt and equity securities, and Applicant would register such securities under the Securities Act of 1933 (the "1933 Act") and would become subject to and would comply with the reporting requirements applicable to foreign issuers under the Securities Exchange Act of 1934. Although the Applicant would offer its debt or equity securities to the general public, it has been advised by its investment banks that the market for such securities would be largely institutional investors.

8. Applicant would ensure that any future placement, including the private placement to be made in connection with the privatization described above, of its debt or equity securities in the United States under circumstances not requiring registration under the 1933 Act would meet the prevailing standards for exemption from registration. Applicant would not effect any such private placement without obtaining an opinion of Under States counsel that the placement would be exempt from the registration requirements of the 1933 Act.

Applicant's Legal Analysis

1. The requested order is necessary or appropriate in the public interest. By

[1] Amounts stated in United States dollars ($) have been converted form French Francs (FF) at the rate of exchange of $1 = 6.4555 FF, the medium of the buy and sell rates for the United States dollar on the Paris Stock Exchange on December 31, 1986. On August 4, 1987 the rate of exchange was $1 = 6.2445 FF.

providing the Applicant with the opportunity to have greater access to the United States capital markets, approval of the application would advance the policies underlying the International Banking Act of 1978, which include placing United States banks and foreign banks on a basis of competitive equality in their United States transactions. Approval would also make a foreign issuer's debt or equity securities available to the general investing public, as well as to institutional and sophisticated investors, subject to the protections of the United States securities laws.

2. The requested order is consistent with the protection of investors. Applicant is subject to a comprehensive scheme of regulation both in France and the United States. Imposition of a second scheme of regulation would impose superfluous inhibitions and expense without contributing to the protection of investors. The requested order is consistent with the purposes of the 1040 Act because regulation of institutions similar to the Applicant was not within the intent of the 1040 Act.

Applicant's Conditions

Applicant agrees to the following undertakings:

1. In connection with the private placements and registered offerings of Applicant's debt and equity securities, the disclosure contained in the prespectus or private placement memorandum would be at least as comprehensive as that customarily provided with respect to foreign issuers making those type of offerings in the United States. Any prospectus or memorandum relating to an offering would contain a description of Applicant. It would also contain the Applicant's most recently published financial statements audited by a firm of independent public accountants of recognized international standing and would disclose any material differences between the accounting principles applied in the preparation of such financial statements and United States generally accepted accounting principles applicable to United States banks. Such financial statements would be updated to reflect material changes in the financial condition of Applicant

2. Applicant agrees that all issues of its debt securities in the United States shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that Applicant's United States counsel shall have certified that such rating has been received, provided, however, that no such rating need to obtained with respect to any such issue if, in the opinion of Applicant's United States counsel, an exemption from registration is available under Section 4 of the 1933 Act.

3. Applicant undertakes that in the event of an offering in the United States of debt securities denominated in a currency other than United States dollars, Applicant will set forth in the prospectus or memorandum relating to such offering (i) the rate of exchange between the currency in which the securities are denominated and United States dollars as of a recent date and (ii) appropriate disclosure of the risks to investors regarding the potential for exchange rate fluctuations.

4. Applicant undertakes to submit expressly to the jurisdiction of the federal and New York courts in the City of New York for the purpose of any suit, action or proceeding arising out of any offering conducted in reliance upon the order of the SEC requested hereby or in connection with the debt or equity securities distributed thereby. Applicant further undertakes that in connection with any such offering of debt or equity securities it would appoint an agency in the City of New York to accept service of process. Such submission to jurisdiction and appointment of an agent for service of process would be irrevocable for as long as any of the Applicant's debt or equity securities issued in reliance upon the order of the SEC requested hereby remained outstanding in the United States. Such submission of jurisdiction and appointment of agency for service of process would not affect the right of any holder of such debt or equity securities to bring suit in any court having jurisdiction over the Applicant by virtue of the offer and sale of the securities or otherwise. The agent for service of process would not be a trustee for the holders of securities or have any responsibilities or duties to act for such holders.

5. Applicant has a substantial banking presence in the United States through the New York and Chicago branches of the Subsidiary, and the Subsidiary's offices and agencies in other states. Applicant represents that it has no present intention to curtail its banking operations in the United States so as to cease to be regulated as a bank in the United States. If, however, such operations are curtailed in the future with the result that the Applicant is no longer regulated as a bank in the United States, the Applicant agrees that it will continue to comply with the undertakings concerning the Applicant's submission to jurisdiction and appointment of an agent for service of process, as set forth above, until such time as there shall be no holder in the United States of the Applicant's debt or equity securities issued in reliance upon any order made pursuant to the application.

6. Applicant would issue debt or equity securities in the United States only so long as the Applicant is supervised and examined by French governmental authorities having the power of supervision over financial institutions in France and, in respect of its United States banking operations, by state or federal authorities in the United States having the power of supervision over banks and bank holding companies in the United States. Applicant represents that it has no present intention to curtail its banking operations in France so as to cease to be subject to banking regulation in France.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21372 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15969; File No. 812-6758]

Application; Valley Opportunities Incorporated

September 9, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Valley Opportunities Incorporated ("Applicant").

Relevant 1940 Act Sections: Order requested under section 3(b)(2), or, alternatively, under section 6(c) exempting the Applicant from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities investment company or, alternatively, granting it an exemption from all provisions of the 1940 Act and the rules and regulations thereunder.

Filing Date: The Application was filed on June 12, 1986, and amended on September 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any request must be

received by the SEC by 5:30 p.m., on October 2, 1987. Request a hearing in writing, giving the nature of your request, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send the request to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESS: Secetary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Valley Opportunities Incorporated, 120 South Front Street, Mankato, Minnesota 55601.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030, of the Division of Investment Management (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from either the SEC's public reference branch in person, or the SEC's commercial copier (800)-231-3282 (in Maryland, (301)-258-4300).

Applicant's Representations

1. Applicant is a newly organized development stage company formed to encourage commercial and industrial development in the Mankato-North Mankato area of southern Minnesota. Applicant's common stock has initially been distributed in an offering made pursuant to Rule 506 of Regulation D under section 4(2) of the Securities Act of 1933 (the "1933 Act"). Approximately $626,000 was raised from 26 investors in this offering, all of which are businesses located in the Mankato-North Mankato area. All of the investors represented in their subscription documents that they acquired the shares for purposes of investment and not for resale. The common shares of the Company are also subject to substantial restrictions on transfer, and bear a restrictive legend to that effect. No public active trading market is expected ever to develop for such common shares.

2. Applicant has been advised by counsel, and in turn has advised its investors, that it is not an "investment company" for purposes of the 1940 Act by virtue of the provisions of section 3(c)(1) of the 1940 Act, since Applicant is not making and does not currently propose to make a public offering of its securities and since its outstanding securities are held by less than 100 persons. Applicant now contemplates raising up to an additional $400,000-$600,000 from a large group of investors, however, which is likely to raise the total number of Applicant's security holders to over 100, pursuant to Regulation A or section 3(a)(11) under the Securities Act of 1933, as amended. Because of this, Applicant hereby requests an order pursuant to section 3(b)(2) of the 1940 Act, declaring that Applicant is directly and "primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading securities", or pursuant to section 6(c) of the 1940 Act, exempting Applicant from all provisions of the 1940 Act.

3. Applicant's Articles of Incorporation require the investment of 75% of its stockholders' equity, up to $750,000, in securities issued or guaranteed by, or backed with the full faith and credit of, the United States government or any state or local government unit, or in certificates of deposit of, or accounts in any bank or savings and loan institution, provided that the full amounts of such investments are insured by the FDIC or the FSLIC (hereinafter the "permitted investments"). Applicant may use the remaining 25% of the stockholders' equity and the income from such permitted investments in furtherance of the primary purpose of Applicant, which is to foster commercial and economic development in the Mankato-North Mankato area. Applicant's activities are focused on attracting new businesses to the area through, for example, advertisements in trade journals, direct mailings, surveys of local businesses, referrals from local chambers of commerce and various state agencies and other suitable activities. Applicant also provides a wide range of services as an accommodation to new businesses in its locale.

Applicant's Legal Conclusions

1. Applicant concedes that it may fall within the definition of an investment company under section 3(a)(3) of the 1940 Act because the value of its permitted investments most likely will exceed 40% of the value of Applicant's total assets. Moreover, although Applicant is primarily engaged in the business of promoting commercial and industrial development in a narrowly defined geographic area, it is possible that, due to the requirement that 75% of its stockholders' equity be invested in the permitted investments, Applicant could be deemed to be primarily engaged in the business of investing in securities, and therefore could fall within the definition of an "investment company" under section 3(a)(1) of the 1940 Act. Applicant contends, however, that the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes and the policies of the 1940 Act.

2. In support of its assertion, Applicant states that its board of directors has adopted a resolution requiring that no more than 40% of its investments may be made in securities which do not meet the definition of "government securities" as set forth in section 2(a)(16) of the 1940 Act. Moreover, Applicant asserts that although it is intended that applicant will be self-sustaining and eventually profitable, all investors have been advised that the primary purpose of applicant is the promotion of commercial and industrial development, and not the maximization of return on its shareholders' equity investments. Applicants Articles of Incorporation require a vote of two-thirds of the shareholders in order to change the requirement that 75% of its funds be invested in "permitted investments". This arrangement leaves the day-to-day operations of Applicant to its staff and to the volunteers serving the Applicant's board of directors, and reserves the decisions with respect to large investments or changes in its capital fund to its shareholders.

3. Applicant asserts that its primary business and the business of its predecessor (Valley Industrial Development Company ("VIDC"), a not-for-profit corporation which carried out development activities in the Mankato-North Mankato prior to Applicant's formation) has always been and will continue to be the promotion of economic and commercial development, rather than investment in securities. Applicant's and VIDC's recent activities are examples of such primary purpose. Second, although Applicant's offering materials warned of the applicability of the 1940 Act, its promoters, in their business plan, and Applicant's offering materials clearly identified its primary business as that of promoting commercial and economic development. Moreover, the marketing efforts of Applicant's many volunteers have focused almost exclusively on the economic and commercial development aspects of Applicant.

4. Applicant's present behavior is consistent with its primary purpose of promoting development, as evidenced by its activities to date, and management's almost single-minded attention to development activities, as opposed to investment activities. Management of Applicant and VIDC spend no more than 1% of their time in managing the capital fund. An investment committee consisting of four

bankers from the community makes the decisions with respect to Applicant's capital fund, but only one brief meeting of the committee has been held, to date. Another meeting of the committee is scheduled in the next few weeks but in view of the selfimposed limits on the use of Applicant's capital fund, the meeting is anticipated to last only about half an hour. Applicant currently has approximately 75% of its capital fund (approximately 470,000 of the total of $600,000 approximately) invested in United States Treasury obligations. The decision to restrict the capital fund to such conservative investments was intended to ensure a high degree of safety in preserving Applicant's capital with a minimum of investment management, as opposed to increasing the capital fund through aggressive investment management. Accordingly, Applicant's investment committee spends very litle time in managing the capital fund, which distinguishes it from virtually all investment companies.

5. Although Applicant's sole source of "income" is the income from its capital fund, the real source of its income is the proceeds raised from local businesses who are investing in the economic and commercial development of their community and not in the hope that they would get a favorable return on their money. The proceeds from Valley's capital fund are not likely to cover expenses, but in the event that they do, that will be the only true income from the operations. And although Applicant's offering materials clearly identify the goal of making Applicant a profitable operation, were it not for the thousands of hours of free time devoted by its promoters, a large portion of the offering proceeds would have been consumed by now.

Applicant's Conditions

If the requested order is granted, the Applicant agrees to the following conditions:

1. Applicant will not engage in the trading of securities for short-term speculative purposes.

2. Applicant will be subject to all administrative, procedural and jurisdictional provisions of the 1940 Act and sections 9, 17(a)-(e), 31, 36(a) and 37 of the rules promulgated thereunder, as well as all sections of the 1940 Act and the rules promulgated thereunder necessary to implement and enforce the above sections of the 1940 Act, as if it were a registered investment company.

3. Regarding any future offerings of its securities, Applicant will (a) not make such offerings unless they are only to promote the industrial and commercial development in the area consistent with its Articles of Incorporation; (b) make such offerings only to residents of or businesses having a substantial presence in the Area; (c) require purchasers to represent that (i) they are purchasing for investment and not with a view to resale, (ii) with respect to any person purchasing in excess of $10,000 of the securities being offered, the amount purchased does not exceed 20% of such purchaser's net worth and (iii) they have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment; (d) require purchasers to enter into a shareholders' agreement whereby the Issuer and the Shareholders will have the right to purchase a selling Shareholder's securities for the same price initially paid by such selling shareholder to Issuer for the Shares to be sold; and (e) provide disclosure to investors prior to purchase of the conditions imposed by this Condition (3) and the restriction on the payment of dividends imposed by Condition (4);

4. Dividends will not be paid to Applicant's shareholders without Applicant either registering under the 1940 Act or obtaining the prior approval of the SEC;

5. Applicant will hold regular meetings of its shareholders for the purpose of electing directors and transacting whatever other business may come before the meeting;

6. Applicant will submit for shareholder ratification or approval at each annual shareholders' meeting the appointment of an independent certified public accountant engaged by Applicant;

7. Applicant will make available to shareholders its annual audited financial statements; and

8. Applicant will not repurchase any of its shares for a purchase price greater than it received upon the original issuance of such shares.

9. Applicant will continue to invest its funds with a view toward promoting industrial and commercial development in the Mankato-North Mankato area, and thus the development of a productive economic climate in the area, and not to making profits through investments in securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-21313 Filed 9-15-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Daggett, California; Closing

Notice is hereby given that on or about September 11, 1987, the Flight Service Station at Daggett, California, will be closed. Services to the general aviation public of Daggett, formerly provided by this office, will be provided by the Flight Service Station in Riverside, California. This information will be reflected in the reissuance of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Arlene B. Feldman,

Acting Director, Western-Pacific Region.

Issued in Lawndale, California, on September 2, 1987.

[FR Doc. 87-21230 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[BS-Ap-Nos. 2684 and 2699]

Metro North Commuter Railroad

The Metro North Commuter Railroad has petitioned the Federal Railroad Administration (FRA) seeking approval to remove all automatic wayside signals and install a traffic control system with the cap signals between milepost 0.7 and milepost 6.1 on the Harlem Line, all within the City of New York, New York. These proceedings are identified as FRA Block Signal Application Nos. 2684 and 2699.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on these proposals.

Accordingly, a public hearing is hereby set for 10:00 a.m. on December 10, 1987, in Room 305A of the Jacob K. Javits Federal Building at 26 Federal Plaza in New York, New York.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all intial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their

initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on September 10, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87-21327 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-06-M

[BS-Ap-No. 2705]

Southern Pacific Transportation Co.

The Southern Pacific Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue the automatic block signal system between Lyoth, California, and Fresno, California, a distance of approximately 122 miles. This proceeding is identified as FRA Block Signal Application No. 2705.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on these proposals.

Accordingly, a public hearing is hereby set for 10:00 a.m. on November 10, 1987, in Room 210 of the U.S. Post Office Builidng at 801 I Street in Sacramento, California.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on September 10, 1987.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87-21328 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-06-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The American Judiciary Branch: A Study Tour for Turkish Justice Officials: The Office of Private Sector Programs will assist in supporting a two-week study tour to expose Turkish justice officials to the Judiciary Branch of the U.S. Government. This program will focus on the constitutional origin of the judicial systems in both societies as well as American legal processes and the administration of justice in our democracy. The program will include travel to Washington, DC, and at least one state capital. Participants will include representatives of Turkey's judicial/legal system.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

Dated: August 25, 1987.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 87-21275 Filed 9-15-87; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice under the Federal Advisory Committee Act of the meetings of the following Federal Advisory Committees.

Merit review board for	Date	Time	Location
Nephrology	Sept. 28, 1987	8 a.m. to 5 p.m.	Washington Plaza.[1]
Do	Sept. 29, 1987	do	
Alcoholism and Drug Dependence	Oct. 1, 1987	8 a.m. to 5 p.m.	Room 119, VA Central Office.[2]
Respiration	Oct. 4, 1987	7 p.m. to 10 p.m.	Vista Hotel.[3]
Do	Oct. 5, 1987	8 a.m. to 5 p.m.	
Infectious Disease	Oct. 9, 1987	7 p.m. to 10 p.m.	New York Hilton.[4]
Do	Oct. 10, 1987	8 a.m. to 5 p.m.	
Do	Oct. 11, 1987	8 a.m. to 12 p.m.	
Surgery	Oct. 11, 1987	8 a.m. to 6 p.m.	Pacific A [5] Hyatt Regency.
Hematology	Oct. 19, 1987	8 a.m. to 5 p.m.	Room 119, VA Central Office.
Mental Health and	Oct. 21, 1987	do	Vista Hotel.
Behavioral Science	Oct. 22, 1987	do	
Do	Oct. 23, 1987	do	
Gastroenterology	Oct. 26, 1987	do	Vista Hotel.
Do	Oct. 27, 1987	do	
Neurobiology	Oct. 26, 1987	do	Vista Hotel.

Merit review board for	Date	Time	Location
Do	Oct. 27, 1987	do	
Do	Oct. 28, 1987	do	
Cardiovascular Studies	Oct. 29, 1987	do	Room 119, VA Central Office.
Do	Oct. 30, 1987	do	
Oncology	Nov. 2, 1987	do	Room 119, VA Central Office.
Do	Nov. 3, 1987	do	
Endocrinology	Nov. 5, 1987	do	Vista Hotel.
Do	Nov. 6, 1987	do	
Basic Sciences	Nov. 9, 1987	do	Room 119, VA Central Office.
Do	Nov. 10, 1987	do	
Immunology	Nov. 12, 1987	8 a.m. to 5 p.m.	Room 119, VA Central Office.
Do	Nov. 13, 1987	do	

[1] Washington Plaza, 10 Thomas Circle, Washington, DC 20005.
[2] Veterans Administration Central Office, 810 Vermont Avenue, NW Washington, DC 20420.
[3] Vista International Hotel, 1400 M Street, NW, Washington, DC 20005.
[4] New York Hilton Hotel, 1335 Avenue of the Americas, New York, NY 10019.
[5] Hyatt Regency San Francisco, Embarcadero, San Francisco, CA 94111.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans' Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. Arlene E. Mitchell, Chief, Program Review Division, Medical Research Service, Veterans Administration, Washington, DC (202) 233–5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: September 10, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–21312 Filed 9–15–87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 179
Wednesday, September 16, 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).

FEDERAL COMMUNICATIONS COMMISSION

September 10, 1987.

FCC To Hold Open Commission Meeting, Thursday, September 17, 1987

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 17, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Revision on Part 15 of the rules regarding the operation of radio frequency devices without an individual license. Summary: The FCC will consider the adoption of a Notice of Proposed Rule Making which addresses a number of changes in the technical and administrative provisions for operation of a non-licensed radio frequency device.

General—2—Title: Amendment of Parts 2 and 22 of the Commission's Rules to permit liberalization of technology and auxiliary service offerings in the Domestic Public Cellular Radio Telecommunications Service. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making proposing technical and operational changes in the cellular service.

General—3—Title: Amendment of Parts 2 and 22 of the Commission's Rules relative to Cellular Communications Systems (Gen. Docket No. 84-1231); Amendment of Parts 2, 15 and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 900 MHz Reserve Band for private Land Mobile Use (Gen. Docket 84-1233); 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 (Gen. Docket No. 84-1234). Summary: The Commission will consider a second Memorandum Opinion and Order addressing eight petitions for reconsideration of frequency allocations made in the *Report and Order* in the above proceedings.

General—4—Title: Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations concerning *Ex Parte* Communications and Presentations in Commission Proceedings. Summary: The Commission will consider whether any aspects of its new *ex parte* rules should be reconsidered.

Common Carrier—1—Title: Report and Order in CC Docket No. 86-309, *Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off of the Island of Puerto Rico.* Summary: The Commission will consider adoption of Policies concerning the authorization of common carrier facilities to provide service off of Puerto Rico.

Common Carrier—2—Title: Order on Reconsideration, CC Docket 86-111, Separation of Costs of regulated telephone service from costs of nonregulated activities. Summary: The Commission will consider petitions for reconsideration of various aspects of its Joint Cost Order.

Mass Media—1—Title: Amendment of Parts 1, 63, and 76 of the Commission's Rules to Implement the provisions of the Cable Communications Policy Act of 1984 (MM Docket No. 84-1296). Summary: The Commission will consider a Memorandum Opinion and Order addressing certain amendments to its rules implementing provisions of the Cable Communications Policy Act of 1984.

Mass Media—2—Title: Amendment of Parts 63, and 76 of the Commission's Rules to Implement the provisions of the Cable Communications Policy Act of 1984 (MM Docket 84-1296). Summary: The Commission will consider a Further Notice of Proposed Rule Making concerning its rules implementing provisions of the Cable Communications Policy Act of 1984.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632-5050.

Issued: September 10, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-21407 Filed 9-14-87; 11:10 am]

BILLING CODE 6712-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 14, 1987:

A closed meeting will be held on Tuesday, September 15, 1987, at 2:30 p.m. An open meeting will be held on Wednesday, September 16, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 15, 1987, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injunctive actions.
Formal order of investigation.

The subject matter of the open meeting scheduled for Wednesday, September 16, 1987, at 10:00 a.m., will be:

1. Consideration of whether to issue a release publishing for public comment proposed Rules 13e–2 and 14d–11 which would prohibit, subject to certain exceptions, purchases, offers to purchase, arrangements or understandings to purchase or solicitation of offers to sell which would result in any person increasing his ownership by ten percent or more of a class of securities once a tender offer has formally commenced for such class of securities and until 10 business days after the scheduled expiration date of the tender offer, unless such actions are conducted pursuant to the tender offer rules. The restriction would apply to the target company, bidders and third parties. The proposed Rules would subject bidders to similar requirements, and exceptions thereto, from the time a bidder commences a tender offer by means of public announcement until either it formally commences by other means or 30 business days have expired since the bidder has withdrawn such public announcement. For further information, please contact David A. Sirignano at (202) 272–3097 or Jonathan E. Gottlieb at (202) 272–2607.

2. Consideration of whether to propose changes in Forms 10–K and 10–Q that would require registrants, after reasonable inquiry, to provide information not filed in Form 3 and 4 reports required during the reporting period and identify any of their directors, officers, or ten percent security holders that have failed to file all of their Form 3 and 4 reports required during the reporting period in a timely manner. Copies of the Form 3 and 4 would be required to be sent to the registrant to aid its monitoring of such filings.

In addition, the Commission will consider proposing to condition the safe harbor of Rule 144 upon the seller having filed all required Forms 3 and 4 in a timely manner during the 12 months preceding filing of Form 144 and any sales pursuant to the Rule. Form 144 would be amended to include a positive representation concerning the seller's compliance with Section 16(a) of the Securities Exchange Act of 1934. For further information, please contact Brian Lane at (202) 272.2589.

3. Consideration of whether to adopt Rule 206(4)–4 under the Investment Adviser's Act of 1940 which would codify an investment adviser's fiduciary obligation to disclose material financial and disciplinary information to clients. For further information, please contact Debra J. Kertzman at (202) 272–2107.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–3085.

Jonathan G. Katz,

Secretary.

September 11, 1987.

[FR Doc. 87–21361 Filed 9–11–87; 4:36 pm]

BILLING CODE 8010–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, September 15, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731–TA–343 (Final) (Tapered Roller Bearings and Parts Thereof from Japan)—briefing and vote.
6. Inv. 731–TA–383 (Preliminary) (Certain Bimetallic Cylinders from Japan)—briefing and vote.
7. Inv. 701–TA–224 (Final) (Remand) (Live Swine and Pork from Canada)—briefing and vote.
8. Any items left over from previous agenda.

CONTRACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary,

September 3, 1987.

[FR Doc. 87–21378 Filed 9–11–87; 4:37 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 33315—dated September 2, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 9, 1987.

Change in time for the meeting: 9:30 a.m., Wednesday, September 9, 1987.

In conformity with 19 CFR 201.37(b), Commissioners Leibeler, Burnsdale, Eckes, and Rohr determined that Commission business required the change in time of the meetingg on September 9, 1987, and affirmed that no earlier announcement of the change in time was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Lodwick disapproved.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

September 4, 1987.

[FR Doc. 87–21379 Filed 9–11–87; 4:37 pm]

BILLING CODE 7020–02–M

federal register

Wednesday
September 16, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Lepidomeda vittata (Little Colorado Spinedace) To Be a Threatened Species With Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Lepidomeda vittata (Little Colorado Spinedace) To Be a Threatened Species With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Lepidomeda vittata* (Little Colorado spinedace), a native fish of Arizona, to be a threatened species and determines its critical habitat under the authority contained in the Endangered Species Act (Act) of 1973, as amended. A special rule is proposed that would allow take for certain purposes in accordance with Arizona State laws and regulations. The Little Colorado spinedace historically occurred throughout the upper portions of the Little Colorado River drainage, but is now found only in portions of East Clear, Chevelon, Silver, and Nutrioso Creeks and the Little Colorado River in Coconino, Navajo, and Apache Counties, Arizona. The decline of this species results from habitat alteration and loss due to impoundment, removal of water from the streams, channelization, grazing, road building, urban growth, and other human activities. The decline is also related to the introduction and spread of exotic predatory and competitive fish species, and the use of ichthyotoxins in many of its native streams. In addition, several water development projects have been or are being proposed for the remaining habitat of the species. Remaining Little Colorado spinedace habitat is found on U.S. Forest Service, Bureau of Land Management, State of Arizona, and privately-owned lands. This rule will implement Federal protection provided by the Act for *Lepidomeda vittata.*

DATE: The effective date of this rule is October 16, 1987.

ADDRESSES: The complete file for this rule is available for public inspection during normal business hours, by appointment, at the U.S. Fish and Wildlife Service Regional Office, 500 Gold Avenue SW., Room 4000 (P.O. Box 1306) Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Burton, Endangered Species Biologist, Endangered Species Office, U.S. Fish and Wildlife Service, Region 2 (see **ADDRESSES** above) 505/766–3972 or FTS 474–3972.

SUPPLEMENTARY INFORMATION:

Background

The Little Colorado spinedace, *Lepidomeda vittata,* was first collected west of the 100th meridian by members of the U.S. Topographical and Geographical Survey (Wheeler 1889). The species was described by E.D. Cope in 1874 from that collection. Cope listed the type locality as the "Chiquito Colorado," which was later defined as "the Little Colorado River somewhere between the mouth of the Zuni River and Sierra Blanca (White Mountain)" (Miller and Hubbs 1960). This fish is a member of the family Cyprinidae and is generally less than 10 centimeters (4 inches) in total length. The species is endemic to the upper portions of the Little Colorado River and to its north flowing, permanent tributaries on the Mogollon Rim and the northern slopes of the White Mountains in eastern Arizona. This naturally restricted historic range has been significantly reduced in the past 50 years by habitat destruction, use of fish toxicants, and the introduction of exotic predatory and competitive fish species.

Populations of the Little Colorado spinedace, like those of many other desert fishes, fluctuate dramatically from year to year. There are many reasons for these fluctuations, and historically they have probably reflected cyclic periods of drought and/or increasd rainfall. However, in more recent history the impact of human populations and their increasing demand for water has adversely affected the normal fluctuations of the spinedace populations. Various uses of water by man have adversely altered spinedace habitat, resulting in accentuated population lows and reduced population highs. Such activities could lead to the extirpation of the Little Colorado spinedace in areas that normally would have sustained populations of the fish through drought periods. Such population fluctuations make it difficult to delineate precisely the current range of the Little Colorado spinedace. Spinedace populations have fallen to extremely low levels several times within the past 25 years. During these population lows, extensive collection efforts may fail to take spinedace at locations that formerly supported healthy populations. These same locations may once again support spinedace populations during good water years. Little Colorado spinedace are presently known from the following locations (Miller 1961, Miller and Hubbs 1960, Minckley 1973, Minckley and Carufel 1967, Miller 1963, Minckley and McCall 1977):

(1) *East Clear Creek and its Tributaries.* Coconino County, Arizona. The spinedace occupies approximately 35 stream miles extendingf upstream from the confluence with Clear Creek to the headwaters near Potato Lake. The stream flows through the Apache-Sitgreaves and Coconino National Forests, with some interspersed privately-owned lands. At present the only tributary known to harbor Little Colorado spinedace is Leonard Canyon at Dines Tank (T.13N., R.12E., Sec.28); however, during periods of higher population levels it is likely that spinedace occupy the other tributaries, particularly near their confluence with East Clear Creek.

(2) *Chevelon Creek.* Navajo County, Arizona. The spinedace occupies approximately 8 miles of stream from the confluence with the Little Colorado River, near Winslow, upstream to Bell Cow Canyon. Lands in this area are privately-owned, with the exception of a small portion, which is the Arizona Game and Fish Department's Chevelon Creek Wildlife Area.

(3) *Silver Creek.* Navajo County, Arizona. The spinedace occupies approximately 20 stream miles of Silver Creek extending from its confluence with the Little Colorado River upstream to its headwaters near the town of Silver Creek. The stream flows primarily on privately-owned lands with only small sections of stream flowing through State and Bureau of Land Management lands.

(4) *Little Colorado River.* Apache County, Arizona. The Little Colorado spinedace is found sporadically throughout approximately 40 miles of permanent stream in this area, from the town of St. Johns upstream to the permanent headwaters in the White Mountains near the town of Greer. Upstream from St. Johns, the river flows through privately-owned lands, then through contiguous State lands, and the through additional privately-owned lands around the town of Springerville. The upper end of the river flows through the Apache-Sitgreaves National Forest with only a few privately-owned inholdings.

(5) *Nutrioso Creek.* Apache County, Arizona. The spinedace occupies approximately 12 stream miles from the confluence with the Little Colorado River upstream to near the town of Nutrioso. The stream flows through privately-owned lands around the towns of Springerville and Nutrioso; however, approximately 5 miles of the stream flows through the Apache-Sitgreaves National Forest, and a small portion flows through State-owned lands.

The Little Colorado spinedace inhabits very small to moderate sized streams and is characteristically found in pools with water flowing over fine gravel and silt-mud substrates. During periods of drought spinedace are believed to persist in springs and intermittent streambed pools; and during flooding they tend to distribute themselves throughout the stream. The spinedace spawns primarily in early summer, but continues at a reduced level until early fall (Minckley 1973).

The Colorado spinedace was included in the Service's "Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species" published in the **Federal Register** on December 30, 1982 (47 FR 58454–60). It was considered a category 1 species, indicating that the Service had substantial biological information to support a proposal to list as endangered or threatened. On April 12, 1983, the Service received a petition from the Desert Fishes Council to list the Little Colorado spinedace. This petition was found to contain substantial scientific or commercial information, and a notice of finding was published on June 14, 1983 (48 FR 27273). After a review and evaluation of the petition's merits, the Service found that the petitioned action is warranted, and a notice of the finding that the species warranted listing was published in the **Federal Register** on July 13, 1984 (49 FR 28583). A proposed rule to list *Lepidomeda vittata* was published on May 22, 1985 (50 FR 21095).

Lepidomeda vittata is listed by the State of Arizona as a threatened species, Group 3 (Arizona Game and Fish Commission 1982), which are those species ". . . whose continued presence in Arizona could be in jeopardy in the foreseeable future."

Summary of Comments and Recommendations

In the May 22, 1985, proposed rule (50 FR 21095) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *White Mountain Independent*, Show Low, Arizona, on June 18, 1985, that invited general public comment. Fifteen letters of comment were received. No public hearing was requested or held.

Comments in opposition to the listing were received from Phelps Dodge Corporation. Both the U.S. Forest Service and the Arizona Department of Transportation support the listing but oppose the critical habitat designation.

The Arizona State Clearinghouse had no comments on the proposal. Letters in support of the listing and designation of critical habitat were received from The Nature Conservancy, Arizona Game and Fish Department, the Desert Fishes Council, Dr. R.R. Miller, and Mr. C.O. Minckley. Economic Data were provided by the U.S. Bureau of Reclamation, Federal Highways Administration, Environmental Protection Agency, Arizona Game and Fish Department, U.S. Forest Service, and Arizona Department of Transportation.

The Nature Conservancy supported both the listing and designation of critical habitat and recommended that the watersheds for the stream segments indentified as critical habitat be included in that designation. The Service feels that the inclusion of the entire watershed in a critical habitat designation for this fish is not justified biologically. The designation of critical habitat is used for those areas that are crucial to the continued survival of a species and normally includes areas occupied either permanently or temporarily by the species. Although the Service has authority, under section 3(5)(A)(ii) of the Act, to designate as critical habitat areas that are not occupied by the species, the best available scientific data do not substantiate the entire watershed, as critical to the survival of the spinedace. However, the Service recognizes the importance of the watersheds in maintaining quality habitat for the spinedace, and the Service believes that any Federal activities in the watersheds that would adversely affect the critical habitat, as designated in the rivers, would be subject to section 7 of the Endangered Species Act. If it should later appear that buffer zones in the watershed are essential to the conservation of the species and, therefore, should be designated as critical habitat, then the Service will propose appropriate revisions to the critical habitat.

Phelps Dodge Corporation expressed opposition to the proposed rule for the following reasons: (1) It would jeopardize the water supply to its Morenci operations; (2) it may prevent any significant future developments or modifications of the few streams that exist in Arizona and on some in New Mexico; and (3) it should have been preceded by an Environmental Impact Statement and a Regulatory Impact Analysis. The Service response is as follows: (1) Existing operations are subject to the requirements of section 7(a)(2) of the Act if Federal agency involvement continues with respect to the project. Ongoing projects subject to the continuing exercise of Federal discretion must comply with section 7(a)(2) at all stages of project planning and implementation. As noted in *TVA* v. *Hill*, 437 U.S. 153 (1978), "it is clear Congress foresaw that section 7 would, on occasion, require agencies to alter ongoing projects in order to fulfull the goals of the Act" 437 U.S. at 186 (footnote omitted). Critical habitat designation is not expected to affect existing operations; however, if Federal involvement is required for these operations to continue they would be subject to the requirements of section 7(a)(2) of the Act. (2) Presently, approximately 44 miles of stream in Arizona, which represent a very small percentage of the States' entire surface drainage, are being proposed for critical habitat designation. Critical habitat designation does not prevent all development or modification, but prohibits Federal actions that are likely to result in the destruction or adverse modification of critical habitat. Thus, any activity funded, authorized or conducted by the Federal government must be planned to avoid the destruction or adverse modification of critical habitat. (3) On October 25, 1983, on the basis of recommendations from the Council on Environmental Quality and on a decision by the Sixth Circuit Court of Appeals, the Service published a notice in the **Federal Register** (48 FR 49244; October 25, 1983) stating that Environmental Assessments would no longer be prepared for regulations adopted pursuant to section 4(a) of the Endangered Species Act. It has been the Service's past experience that when National Environmental Policy Act (NEPA) environmental assessments were prepared for section 4(a) actions, all resulted in a finding of no significant impact. Statutory deadlines for listing a species and declaring its critical habitat, as well as the statutory limits on the Service's discretion, make preparation of an Environmental Impact Statement (EIS) both impractical and unnecessary. Preparation of an EIS would not be consistent with the purposes and policies of either the Act or NEPA, which basically center on environmental protection. The Service prepares both a determination of effects and an economic analysis document on each critical habitat rule in compliance with Executive Order 12291 and section 4(b)(2) of the Act, respectively. These documents include an analysis of the best information available on economic or other impacts posed by the designation of critical habitat and an

analysis of any alternative critical habitat boundaries. When added to the administrative record generated through the public comment period of a proposed rule, this economic analysis should provide, at the very least, the functional equivalent of NEPA documentation, which would satisfy the information-gathering, analytical, and environmental protection goals of the Act. In further response to this comment, the Service notes that Regulatory Impact Analyses (RIA) are only required for "major rules" as defined by Executive Order 12291. Because the Department's Determination of Effects for this rule indicates that, after an analysis of impacts, the critical habitat rule is not major, no RIA is required.

The Arizona Game and Fish Department supported both the listing and the designation of critical habitat. The Department did, however, question the impact that stocking of rainbow trout into portions of the Little Colorado River, including extant spinedace habitat, could have upon the species. The Department further pointed out that it has not been demonstrated that rainbow trout prey extensively on spinedace. Arizona also requested that future use of piscicides not be ruled out in these waters. The Service responds that stocking of "put and take" size rainbow trout into habitats occupied by spinedace does not have a direct impact on the species since rainbow trout of that size are primarily insectivorous and most are caught by anglers soon after being stocked. Competition for food and space may occur briefly, but principally during the times that spinedace metabolism is low. A far greater threat to the spinedace comes from the brown trout, which is not only piscivorous, but is also capable of successfully reproducing and establishing itself in these streams. Future use of piscicides in streams supporting Little Colorado spinedace would be evaluated and if long-term benefits accrued to the spinedace which outweighed short-term impacts, use of piscicides would be considered. If an action of this type were to be conducted on Federal lands, or was to be done by the State using Federal funds, section 7 consultation would be required.

The U.S. Forest Service supported the listing of the spinedace, but questioned the need for designating critical habitat for the species. The Fish and Wildlife Service responds that the designation of critical habitat for a listed species places a special emphasis upon those areas and notifies Federal agencies of their obligation to ensure that no action they authorize, fund, or carry out is likely to result in the destruction or adverse modification of critical habitat. The U.S. Forest Service also questioned the designation of intermittent reaches of stream as critical habitat. The Service responds that critical habitat does not have to be continually occupied by the species but may be used by the species during certain times of the year. Thus, a gravel bar that is dry during fall and winter may be used by spawning fish during spring and summer. In determining what areas are critical habitat, consideration is given to those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include sites for breeding, reproduction and rearing of offspring. Another question raised by the U.S. Forest Service involved the width of critical habitat outward from the stream and why only the stream was proposed as critical habitat. The Service responds that a riparian buffer zone is sometimes included in the critical habitat to indicate the importance of the stream bank ecosystem to the survival of the species and that actions along the stream banks can affect the continued existence of the fish. Because of the steep, canyon-like banks of much of the spicedace habitat, inclusion of riparian zones in the critical habitat was not included. (Also see the Service answer to the Nature Conservancy.) The U.S. Forest Service also questioned why the portion of Nutrioso Creek that flows through its land was singled out as critical habitat when the spinedace is found over a much broader range in the creek. The Service responds that only a small population of spinedace is found outside of the portion of Nutrioso Creek not fronted by U.S. Forest Service land, and that maximum protection for the species can be achieved by designating the U.S. Forest Service portion of the stream as critical habitat. The U.S. Forest Service also felt that time and effort spent gathering economic information for provision to the Service could be better used on other endeavors. The Service responds that the Act and other laws require the Service to prepare various economic and other impact analyses of critical habitat designations. The Service attempts to acquire the best available data when conducting these analyses. The Service recognizes and appreciates the time and effort spent by the U.S. Forest Service and other agencies in collecting and preparing this information.

The Arizona Department of Transportation requested that all bridge crossings be excluded from designation of critical habitat. The Service responds that the Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. The Economic Analysis prepared by the Service did not show the economic benefits of exclusion of the bridge crossings, or any other area being considered, to outweigh the benefits of designating the area as critical habitat. Furthermore, use of private, State, or local funds for activities which do not require a Federal permit is not restricted by the critical habitat designation. The Service will assist the Arizona Department of Transportation in developing a workable program which involves both protection of the spinedace and adequate and safe highway facilities for the public.

Mr. C. O. Minckley suggested that golden shiners were only a problem in the upper portion of Chevelon Creek and are far removed from the lower portion which is being designated as critical habitat. The Service has changed the rule to reflect this recommendation. He also suggested that the upper end of the Chevelon Creek critical habitat stop at Bell Cow Canyon. This recommendation was also incorporated into the final rule. Lastly, he suggested the Nutrioso Creek critical habitat be extended upstream to the town of Nutrioso and the reach of the Little Colorado River from Saint Johns to Lyman Reservoir be included in the critical habitat designation. The Service responds that suggested stream reaches were not included in the original proposal and have not been thoroughly sampled. Future efforts will include sampling the suggested reaches to determine if they contain those constituent elements essential to the conservation of the spinedace and which may require special management considerations or protection. If the suggested reaches fit the criteria of critical habitat, a proposal to revise the critical habitat designation can be published at a later date.

The Federal Highway Administration (FHA) noted that the map for the Nutrioso Creek portion of cirtical habitat was in error. Work completed on U.S. 666 in 1982 eliminated two of the three creek crossings below Nelson Reservoir. The Service responds that the map for critical habitat in this final rule had

been changed accordingly. The FHA also noted that a future upgrading project near the town of Nutrioso is planned; this is upstream from the critical habitat and no problems are expected.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Little Colorado spinedace should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 FR 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 the Little Colorado spinedace (*Lepidomeda vittata*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the historic habitat of the Little Colorado spinedace has been adversely modified or destoryed by human activities. One of the most detrimental of these has been the impoundment of the rivers and streams. The spinedace is a stream dwelling fish and is unable to exist in reservoirs. There are now approximately 150 impoundments in the Little Colorado basin, ranging in size from small stock tanks to reservoirs of up to 1,400 surface acres. Except for a few of the small stock tanks located on streams, these reservoirs are uninhabitable by the spinedace. In many areas, these reservoirs have inundated and thus destroyed previously occupied spinedace stream habitat. In addition, these impoundments have often resulted in the total or partial dewatering of long downstream reaches of stream, resulting in the destruction of spinedace habitat. The presence of these reservoirs also adversely affects the continued existence of the spinedace upstream and downstream from the reservoir through predation by, and competition with, exotic fish species.

Human uses including riparian destruction, urban growth, mining, timber and pulpwood harvest, road construction, livestock grazing, and other watershed disturbances have also been detrimental to spinedace habitat. The precise effects of many of these uses on fish populations, particularly spinedace, are difficult to define. However, these uses have resulted in many changes to the streams used by the Little Colorado spinedace such as dewatering, erosion and channel downcutting, chemical and organic pollution, alteration of flow regimes, alteration of stream temperature, and excessive siltation. In the 1880's, the Little Colorado River above Grand Falls was a perennial stream with extensive riparian areas of grasses, cottonwoods, and willows. Extensive swamps and marshy areas existed above the town of Winslow (Miller 1961). The river now has perennial flow only in the uppermost of 10 to 15 percent of its length.

Future threats to the remaining habitat of the Little Colorado spinedace come from the same human uses that have resulted in past habitat alteration and destruction. There are several proposed new water projects for the area, and additional new projects continue to be proposed as water demand increases. Wilkin's Dam, at the confluence of Clear and East Clear Creeks, is a proposed Bureau of Reclamation project, a part of the larger Mogollon Mesa project which would also include a new dam on upper Chevelon Creek. Wilkin's Dam would inundate approximately 8 miles of stream and significantly decrease downstream flows, while contributing significantly to the problem of exotic predatory and competitive fishes in East Clear Creek (see Factors C and E). This project is presently inactive and is not expected to be reactivated in the near future. In 1977, the Arizona Public Service Corporation did test drilling to tap groundwater in the Chevelon Creek drainage. This water was to be used for their Cholla Lake generating facility near Holbrook, Arizona; however, the quality of the water found in the test drilling was too poor for their needs. Additionally, the Arizona Game and Fish Department has identified nine potential sites within existing spinedace range that they are considering for future recreational impoundments.

Much of the remaining Little Colorado spinedace habitat is afforded some protection by inaccessibility or by public ownership of the lands. The East Clear Creek population is located on the Coconino and Apache-Sitgreaves National Forests; portions of the Little Colorado River, Silver and Nutrioso Creeks populations are also located on the Apache-Sitgreaves National Forest, and the lower portion of Chevelon Creek flows through a rugged canyon in relatively roadless country. As the human population of the adjacent areas increases, and the demand for water and recreational access increases, those spinedace populations on public or presently inaccessible lands will be subjected to mounting pressures for water projects, road construction, and other development.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence that the Little Colorado spinedace is overused for any of these purposes.

C. *Disease or predation.* Predation by exotic piscivorous fish has been shown to be a contributing factor in the decline of many native southwestern fishes, and has undoubtedly been a major factor in the decline of the Little Colorado spinedace. The spinedace was historically associated with few, if any, fish predators. Of the native fish species of the Little Colorado River, only the roundtail chub (*Gila robusta*) was a potential predator on spinedace. However, in the past 100 years, several exotic predatory fish species have been introduced into Little Colorado spinedace habitats. These species include black bullhead (*Ictalurus melas*), channel catfish (*Ictalurus punctatus*), yellow bullhead (*Ictalurus natalis*), green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterus salmoides*), and brown trout (*Salmo trutta*). The continuing adverse impact of these predators on the Little Colorda spinedace, and the possibility of further introduction and spread of predatory fish is a significant threat to the existence of the spinedace. The construction of reservoirs in or near spinedace habitat exacerbates the threat of exotic fish introductions and the spread of predatory fishes. This occurs because reservoirs are desirable habitat for many predatory game fishes, many of which are purposely introduced for recreational purposes. The introduction of such fish into these reservoirs allows and encourages their spread throughout the range of the Little Colorado spinedace. Additionally, parasites introduced with such exotic fish may also adversely affect the spinedace.

D. *The inadequacy of existing regulatory mechanisms.* The State of Arizona lists this species under Group 3 of the Threatened Wildlife of Arizona. Group 3 includes, "Species or subspecies whose continued presence in Arizona could be in jeopardy in the foreseeable future" (Arizona Game and Fish Commission 1982). Under this designation, taking of the Little Colorado spinedace is regulated and is allowed only under a collecting permit or by licensed angling. However, no protection of the habitat is included in such a designation and no management plan exists for this species.

E. *Other natural or manmade factors affecting its continued existence.* The

introduction of exotic fishes into the habitat of the Little Colorado spinedace poses a major threat to the spinedace from competitive interactions as well as from predation. In upper Chevelon Creek, golden shiners were present in such large numbers in 1965 that the Arizona Game and Fish Department treated the stream with a piscicide (fish toxicant) in an unsuccessful attempt to eradicate them. This treatment was considered necessary because the golden shiner competes with young game fish, particularly trout (Minckley 1973). Since the Little Colorado spinedace is "troutlike in its behavior and habitat requirements" (Miller 1963), it is quite likely that the golden shiner is also a significant competitor with the Little Colorado spinedace (Minckley and Carufel 1967). The possibility of the further introduction of other competitive species, particularly the red shiner (*Notropis lutrensis*) into spinedace habitats is an additional threat to the Little Colorado spinedace. The red shiner has been shown to displace the spikedace (*Meda fulgida*) in portions of the Gila River system (Minckley 1973). These shiners are widespread in Arizona. The red shiner is commonly used for bait, thus increasing the probability of its eventual introduction into Little Colorado spinedace habitat also increases that probability because of the increased use of bait in the fishery which develops in such reservoirs. Other exotic fishes, particularly cyprinids such as fathead minnow and Rio Grande killifish, may also be a competitive threat to the Little Colorado spinedace, and it has been found that the spinedace is generally rare or absent where exotic fish other than trout are present.

Another important factor in the decline of the Little Colorado spinedace has been the use of piscicides (fish toxicants) in the streams of the Little Colorado River drainage. Most of the major game fish streams of the drainage have been subjected to poisoning, with such chemicals as rotenone and toxaphene, in generally unsuccessful attempts to rid these streams of "trash" fish such as carp, suckers, chubs, and shiners and thereby improve the streams for game fish (Miller 1963). The Little Colorado River was treated from Lyman Reservoir downstream for approximately 10 miles in 1951, and Chevelon Creek was treated twice in 1965 (Mickley and Carufel 1967), and again several years later. These treatments undoubtedly significantly reduced both the populations and range of the Little Colorado spinedace.

No estimate has been made of Little Colorado spinedace population sizes; however, it is well known that their numbers fluctuate markedly. Because of this, threats to the spinedace must be analyzed as to their impact at the lowest population levels. Habitat alterations which may not significantly affect populations at moderate or high levels may be disastrous at low population levels, and could lead to extirpation of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Little Colorado spinedace as threatened. Threatened status seems appropriate because of the severely reduced range of the species, and because of the many threats to the fish and its remaining habitat. If this species is not listed, it could reasonably be expected to become endangered within the foreseeable future and thus not listing would be a violation of the Act's intent. Since the species is still extant in several locations and the threats to the species are generally localized, the species is not in danger of extinction at this time and thus endangered status is not appropriate.

Critical Habitat

Critical habitat, as defined by section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Little Colorado spinedace to include the following:

(1) *East Clear Creek, Coconino County, Arizona;* approximately 18 miles of stream extending from the confluence with Leonard Canyon upstream to the Blue Ridge reservoir dam, and approximately 13 miles of stream extending from the upper end of Blue Ridge Reservoir upstream to Potato Lake.

(2) *Chevelon Creek, Navajo County, Arizona;* approximately 8 miles of stream extending upstream from the confluence with the Little Colorado River to the confluence of Bell Cow Canyon.

(3) *Nutrioso Creek, Apache County, Arizona;* approximately 5 miles of stream from the Apache-Sitgreaves National Forest boundary upstream to the Nelson Reservoir dam.

These stream portions were chosen for critical habitat designation because they presently support healthy self-perpetuating populations of the Little Colorado spinedace. They provide all of the ecological, behavioral, and physiological requirements necessary for the survival of the spinedace. However, due to the extreme fluctuations which Little Colorado spinedace populations exhibit, these areas may not necessarily support the most stable and healthy populations of spinedace at any given time in the future. At present, the Silver Creek and Little Colorado River populations are spotty and/or difficult to locate, but this situation may change with periodic population fluctuations. This designation of critical habitat is based on the best available information. If new information demonstrates additional critical habitat areas are necessary for this species, they must be subject to a new **Federal Register** proposal.

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Any activity that would deplete the flow, lessen the amount of minimum flow, or significantly alter the natural flow regime of East Clear, Chevelon, or Nutrioso Creeks could adversely impact the critical habitat. Such activities include, but are not limited to, excessive groundwater pumping, impoundment, and water diversion. Any activity that would extensively alter the channel morphology of East Clear, Chevelon, or Nutrioso Creeks could adversely affect the critical habitat. Such activities include, but are not limited to, channelization, impoundment, excessive sedimentation from logging, grazing and other watershed disturbances, and riparian vegetation destruction. Also, any activity that would extensively alter the water chemistry of East Clear, Chevelon, or Nutrioso Creeks could adversely affect the critical habitat. Such activities include, but are not

limited to, release of chemical or biological pollutants at a point source or by dispersed release.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has evaluated the proposed critical habitat designation for *Lepidomeda vittata*, taking into consideration all additional comments received. Biological information was provided that warranted adjusting the boundaries of the critical habitat designation for Chevelon Creek.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7 (a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At present, no known Federal activities would be affected by this proposal. On East Clear Creek, the Little Colorado spinedace habitat is primarily on the Coconino and Apache-Sitgreaves National Forests. The Forest Service does not expect any significant impact on management of this area as a result of this proposal since the Little Colorado spinedace is already one of their emphasized species. Wilkin's Dam on Clear Creek is a Bureau of Reclamation project and section 7 consultation will be required if that project is ever reactivated (it is currently in inactive status). On Chevelon Creek, the majority of the land is privately-owned, and is used for livestock grazing. Other activities that might be affected by this proposal could include future water development projects if they are federally funded or authorized. At the lower end of Chevelon Creek, there is a small portion of land owned by the Arizona Game and Fish Department, which is the Chevelon Creek Wildlife Area. No effects from this proposal are expected on its management since it is already being managed for wildlife values and upon listing would include the spinedace. On the privately-owned lands on Silver and Nutrioso Creeks, and the Little Colorado River, no effect is expected from this proposal. It is possible that future water development projects on these lands might be affected if such projects have any Federal involvement. On portions of those streams on the Apache-Sitgreaves National Forest no effect is expected.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has the discretion, under section 4(d) of the Act, to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The State of Arizona presently regulates direct taking of the Little Colorado spinedace through the requirement of State collecting permits. Since the primary threat to this species stems from habitat disturbance and modification, and not from direct taking of the species or from commercialization, the Service concludes that the State's collecting permit system is more than adequate to protect the species from excessive taking, so long as such takes are limited to: educational purposes, scientific purposes, the enhancement of the propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, a special rule for the Little Colorado spinedace is proposed that will allow taking to occur for the above stated purposes without the need for a Federal permit, if a State collecting permit is obtained and all other State wildlife conservation laws and regulations are satisfied. In relying upon the State's permitting system, however, and not establishing separate Federal permitting procedures, the Service is issuing a final rule that in effect, precludes any further application of piscicides that would result in the taking of the Little Colorado spinedace, unless it is in accordance with an approved conservation plan for the species. The special rule also acknowledges the fact that incidental take of the species by State-licensed recreational fishermen is not a significant threat to this species. Therefore, such incidental take will not be a violation of the Act if the fisherman immediately returned the taken fish to its habitat. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule, all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory measure is necessary and advisable for the conservation of the Little Colorado spinedace.

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).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species is not a major rule under Executive Order 12291 and certifies that this designation 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.*). These determinations are based on a Determination of Effects

that is discussed below and available at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service (see ADDRESSES).

The Service has prepared an economic analysis and believes that economic and other impacts of this critical habitat designation on the Forest Service are not significant in the foreseeable future. The economic impact analysis concluded that Federal program costs would be minimal and would be incurred as the cost of planning to prevent introduction of exotic species and adverse effects from logging activities. No economic impacts on individuals or State and local governments were identified, and no impact on the national or regional economy, commerce, or employment were discerned.

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Author

The author of this final rule is Gerald L. Burton, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico (505/766-3972 or FTS 474-3972). Status information was provided by C.O. Minckley, Flagstaff, Arizona.

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

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

Part 17—[AMENDED]

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

Authority: 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 § 17.11(h) by adding the following, in alphabetical order under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population were endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*		
Spinedace, Little Colorado	*Lepidomeda vittata*	U.S.A. (AZ)	Entire	T	287	17.95(e)	17.44(t)
*	*	*	*	*	*		

3. Add the following paragraph (t) as a special rule to § 17.44

§ 17.44 Special rules—Fishes.

* * * * *

(t) Little Colorado spinedace (*Lepidomeda vittata*).

(1) No person shall take this species, except in accordance with applicable State Fish and Wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survivial of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (t) (1) through (3) of this section.

* * * * *

4. Amend § 17.95(e) by adding critical habitat of the Little Colorado spinedace in the same alphabetical order as the species occurs in § 17.11(h).

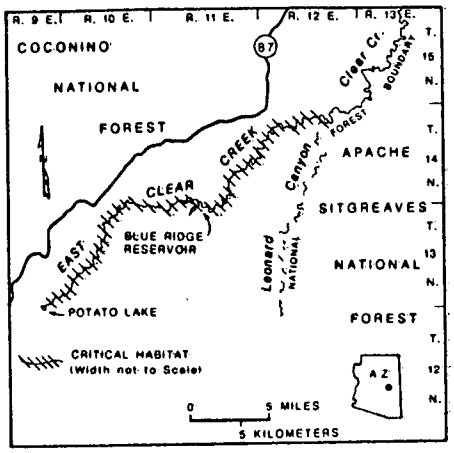
§ 17.95 Critical habitat—Fish and wildlife.

(e) * * *

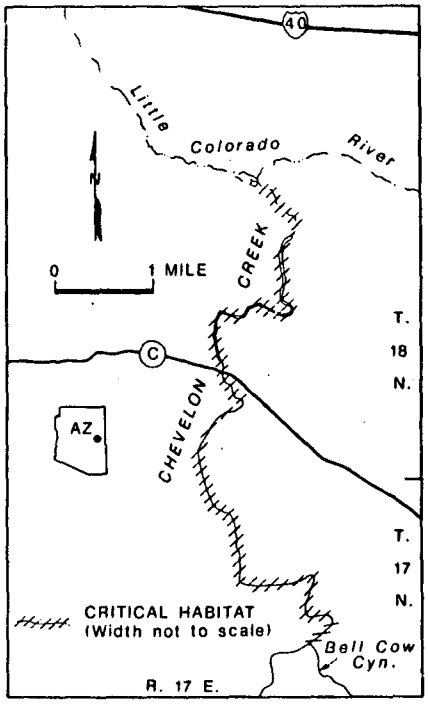
LITTLE COLORADO SPINEDACE (*Lepidomeda vittata*)

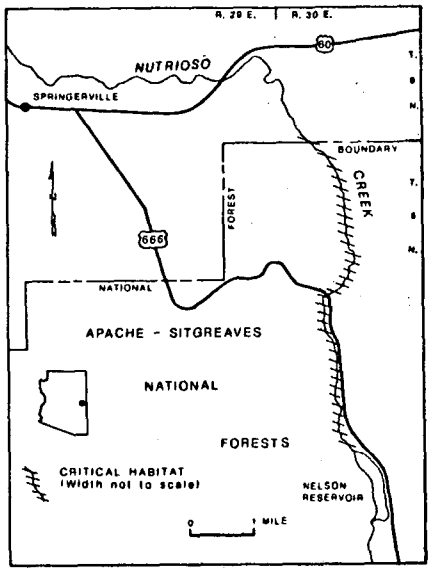
Arizona:

1. *Coconino County.* East Clear Creek; approximately 18 miles of stream extending from the confluence with Leonard Canyon (NE ¼ Sec. 11 T14N R12E) upstream to the Blue Ridge Reservoir dam (SE ¼ Sec. 33 T14N R11E), and approximately 13 miles of stream extending from the upper end of Blue Ridge Reservoir (east boundary SE ¼ Sec. 36 T14N R10E) upstream to Potato Lake (NE ¼ Sec. 1 T12N R9E).



2. *Navajo County.* Chevelon Creek; approximately 8 miles of stream extending from the confluence with the Little Colorado River (NW¼ Sec. 23 T18N R17E) upstream to Bell Cow Canyon (SE¼ of the SW¼ Sec. 11 T17N R17E).





3. *Apache County.* Nutrioso Creek; approximately 5 miles of stream extending from the Apache-Sitgreaves National Forest boundary (north boundary Sec. 5 T8N R30E) upstream to the Nelson Reservoir dam (NE¼ Sec. 29 T8N R30E).

Constituent elements, for all areas of critical habitat, include clean, permanent flowing water, with pools and a fine gravel or silt-mud substrate.

* * * * *

Dated: July 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-21285 Filed 9-15-87; 8:45 am]

BILLING CODE 4310-55-M

federal register

Wednesday
September 16, 1987

Part III

Department of Health and Human Services

Public Health Service

42 CFR Part 36
Indian Health Service; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

Indian Health Service

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: These are final rules governing who may receive health services from the Indian Health Service (IHS). Under these rules, and eligible person must be: (1) A member of a federally recognized Indian tribe, and (2) reside within a designated Health Service Delivery Area (HSDA). The regulation provides for a one-year transition period prior to implementation and a waiver for Indian children (18 and under) who are ineligible under the new rule and who have at least one natural parent who is eligible. These eligibility requirements are applicable to both direct and contract health services.

Under section 103(a) of the Indian Self-Determination Act, Pub. L. 93–638, 25 U.S.C. 450g(a), IHS funds may be expended only for carrying out the "functions, authorities, and responsibilities" which the Secretary would otherwise have carried out with those funds. Therefore, tribes and tribal organizations operating facilities under Pub. L. 93–638 must also adhere to the eligiblility provisions and procedures in these rules and are not authorized to serve persons with IHS funds who do not meet these criteria.

DATES: Effective March 16, 1988, except for the *Transition Provisions*, Subpart D, §§ 36.31 through 36.34, which are effective September 16, 1987 through September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Indian Health Service, Room 6A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 301–443–1116. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On June 10, 1986, a notice of proposed rulemaking (NPRM) was published in the **Federal Register** (51 FR 21118 et seq.) proposing changes to the regulations governing who may receive health services from the IHS. Interested persons were given until October 8, 1986, to submit written comments, suggestions, or objections. Because of the interest expressed in this proposal, on October 10, 1986 a notice was published in the **Federal Register** (51 FR 36412) extending the comment period to November 7, 1986.

A. Changes Made From the Proposed Rules

These rules are the product of a careful analysis of over 11,000 submissions by individuals; groups; Indian and non-Indian organizations; state, local, and tribal governments; and the Congress submitted to the Department during the comment period. In addition, we received approximately 10,000 pages of transcripts taken at more than 120 public meetings held at selected locations throughout the country. On the basis of this analysis the Department has modified the proposed rules as noted below:

1. The proposed eligibility requirement that persons must be one quarter (¼) or more Indian or Alaska Native ancestry has been deleted.

Many commentors expressed concern that inclusion of a specific blood quantum requirement would interfere with a tribe's sovereignty by eliminating some tribal members from eligibility based upon racial identity rather than on the political relationship which exists between tribes and the Federal Government. Other commentors opposed the blood quantum criteria for a variety of other reasons; e.g., establishment of a blood quantum requirement would: violate Indian treaty or statutory rights; shift the Federal government's financial burden and responsibility to others; be "termination"; be racial discrimination between Indians; divide Indian families; and present tremendous difficulties involved in proving degree of Indian descent.

The Department does not believe that any of these arguments necessarily preclude use of a specific blood quantum as a criteria for receipt of Federal health benefits. As we indicated in the preamble to the NPRM, blood quantum requirements, as well as tribal membership, have historically been used by Congress, Federal agencies, and the courts to determine who is an "Indian" for purposes of Federal benefits, claims, awards, and Federal jurisdiction. Nevertheless, there is substantial merit in many of the comments submitted and the overwhelming response by Indian people, tribal governments, and the Congress, was in opposition to the blood quantum criteria. There was strong feeling in the Indian community that criteria governing eligibility for IHS services should, to the extent possible, conform with tribal membership requirements and the use of blood quantum would eliminate some tribal members from eligibility for IHS services. We agree and, therefore, have deleted blood quantum as a criteria for eligibility in the final rule.

In addition, we have deleted the definition of Indian ancestry which specified descent from a member of a Federally recognized tribe. This was proposed as a means of calculating Indian blood quantum. Since the blood quantum criteria has been dropped and the tribal membership requirement remains, the definition is no longer needed.

2. Section 36.12 has been revised to delete the language in (a)(1) "* * *, or eligible for membership in, * * *" This language was originally included to permit those people of Indian descent who are eligible for, but not currently enrolled in, a federally recognized tribe to be eligible for IHS services. Although some commentors were against limiting eligibility to members of tribes, a majority of commentors, in opposing the blood quantum criteria, did so partially on the basis that tribal membership should be sufficient criteria. We have decided that any person eligible for tribal membership but not enrolled will have more than enough time to become a member during the one year transition period provided for in this regulation. This decision is consistent with our decision that only members of Federally recognized tribes will be eligible for IHS services.

Those Indian people who are eligible for tribal membership but who do not wish to exercise their membership eligibility for whatever personal reasons they may have, are free to make this choice. We recognize that they will also be choosing to be ineligible for IHS services. This same result follows when a tribal member chooses to move beyond the geographical range of the IHS program. In both cases, however, the individual has it within their power to change their selection.

3. The NPRM proposed to make non-Tribal Indians eligible if they were at least one-half (½) or more Indian descent. We have deleted this criteria because of our decision that eligibility should be based on tribal membership rather than blood quantum and because of the overwhelming opposition expressed to any blood quantum requirements. In opposing blood quantum, a majority of commentors did so at least partially on the basis that tribal membership should be a sufficient criteria. We agree. Services are provided to Indian people because of the political relationship which exists between tribes and the Federal Government rather than on a racial basis.

4. We have included an exception to the tribal membership requirement for minor children (18 and under) of tribal members. The child must have one natural parent who is a tribal member and the child must meet all other requirements. This exception does not apply to non-Indian adopted, foster or step-children of eligible Indians.

This exception is in response to commentor concern that minor Indian children of tribal members also be eligible for IHS services even if the children are not themselves tribal members. To some extent, family divisions have already occurred with the statutory curtailment of services to non-Indians enacted in 1983, (Pub. L. 97-394). Non-Indian foster, adopted, and step-children would continue to be excluded under this rule. Nevertheless, we believe it to be good public health policy to limit such family divisions as much as possible. In our view, an exception to the tribal membership requirement for Indian children not eligible for tribal membership is a reasonable accommodation which will help mitigate any harsh impact of this rule.

5. Section 36.12 as proposed would have allowed former residents of HSDA's and their minor children to return only to their home communities to obtain services without reestablishing residency. The final rule will permit former residents of HSDA's and their minor children to return to *any* HSDA (not necessarily their former community of residence) to obtain services available in IHS and IHS funded facilities. They will not, however, be eligible for contract health services. To preclude Indians from obtaining IHS services could restrict their mobility and discourage them from seeking employment in off reservation areas.

6. Section 36.15(d), governing changes in HSDA boundaries, has been revised to make it clear that while any tribe may request a change in HSDA boundaries, consultation with *all* the affected tribes is required. This is to assure that no tribe is unknowingly impacted by expansion or contraction of the HSDA resulting from the request of another tribe.

7. Section 36.12(b)(4) has been revised to delete language that would have required the prior written approval of the Service Unit Director, for good cause shown, to permit continued eligibility for a 90-day grace period after an eligible person ceased to reside in a HSDA. Language similar to that contained in the present regulations has been substituted, permitting persons who cease to reside in a HSDA and who are neither students nor transients to be eligible for services for a period of 90 days from such departure. This 90 day grace period is included in order to provide a reasonable period for the making of alternative arrangements for health services. We do not wish to impose an additional administrative burden by requiring either prior written approval of the Service Unit Director or the need to establish good cause.

8. Language has been added to provide for a transition period prior to implementation of the new rules. Many commentors expressed concern that those excluded by any new rules should be allowed adequate time to arrange alternate coverage for their health care needs. In order to provide time to obtain alternate services and to complete treatment underway we have provided for a transition period of one year as follows:

The rule will not take effect until six months after publication to permit time for administrative steps necessary for implementation and education. After implementation there will be a second six month grace period during which those who would lose their eligibility under the new regulation and who had made use of an IHS or IHS funded facility within 3 years prior to the implementation date, shall retain eligibility if they reside in a HSDA.

Provisions have been included to assure that persons no longer eligible under these rules but who on the last day of the one year transition period are under treatment for any active condition or under treatment for a chronic degenerative disease or condition will continue to be considered as IHS beneficiaries until such time as their condition may be stabilized and other health care providers and medical assistance programs can be located. These provisions provide that:

(1) Inpatients in IHS and IHS funded facilities and those receiving inpatient care under contract, including contract health services, may continue to receive services at IHS expense until the need for hospitalization and follow-up services has ended as determined by the responsible IHS or tribal physician, all other conditions being met including medical priorities;

(2) Those actively undergoing a course of outpatient treatment either in IHS and IHS funded facilities or through contract health services, termination of which would impair the health of the individual patient, may continue to receive the treatment at IHS expense for a reasonable length of time, until the course of treatment reaches a point where it may safely be terminated or the patient transferred to other providers as determined by the responsible IHS or tribal physician. In addition, treatment for chronic degenerative conditions may be provided for no longer than 1 year beyond the point where it was otherwise safe to transfer treatment to other providers; and

(3) All patients receiving care under (1) and (2) above shall be notified that, after discharge from care provided under any of the above circumstances, they will no longer be eligible for service as IHS beneficiaries. These patients shall be offered assistance in locating other health care providers and medical assistance programs.

9. For purposes of clarification, language has been added to the definitions of "appropriate ordering officials" and "Service unit Director" to include the equivalent contract official administering IHS programs under such authority as the Indian Self-Determination Act, Pub. L. 93-638.

10. The definition of "Program Director" has been deleted as this term is no longer used by the IHS.

11. The first sentence in § 36.12(c), has been revised to clarify that the provision applies both to IHS facilities and programs and to facilities and programs operated and/or owned by tribes and funded by the IHS.

12. Language has been added to § 36.15 (a) and (b) to clarify that HSDA's may only include geographic areas within the United States. Under the Snyder Act, appropriations are authorized for "Indians throughout the United States". This will remove from eligibility Indians residing outside the United States who in the past may have received direct services from IHS facilities.

13. Language has been added to § 36.16 to clarify that IHS will only maintain currently eligible people in its registration system and further that persons requesting Beneficiary Identification Cards (discussed later) need not submit new evidence of tribal membership and residence if such evidence is a already on file. The IHS will make the determination as to whether or not the materials on file are sufficent.

B. Discussion of comments

1. A number of commentors (approximately one-third) suggested that we retain the current eligibility rules rather than adopt the proposed changes. There was widespread confusion, however, as to what the current requirements were with a significant number under the mistaken opinion that the tribes currently determine eligibility for IHS services.

We believe that tightening eligibility requirements based upon tribal membership and residency and combining the requirements applicable to both direct and contract services will enable us to allocate resources better and will enhance coordination of patient care in IHS and non-IHS facilities. Moreover, Congress has directed that "* * * IHS must address the issue of an expanding service population, * * * in terms of defining who is or should be generally eligible for IHS services, * * *" (H.R. Rep. No. 97-942, 97th Cong., 2nd Sess. at p. 108 (1982).

2. Over 2400 commentors were against limiting eligibility to members of federally recognized tribes. On the other hand, of the more than 16,000 commentors opposing blood quantum, a majority did so at least partially on the basis that tribal membership should be a sufficient criteria. Some argued that the Snyder Act, as IHS's authorizing Legislation, does not specifically limit eligibility to members of Federally recognized tribes. Nevertheless, in appropriating funds, Congress has generally provided funds for services to federally recognized Indians.

The Federal governments' underlying policy is to serve Indians, not as individuals, but as members of Federally-recognized governmental entities. Consequently, the Bureau of Indian Affairs (BIA) has a formal procedure for identifying such entities, and in other cases Congress has recognized some tribes by statute. Moreover, the approach taken in this rule is consistent with the fact that Congress has recently defined the term "Indian" in three related statutes essentially to mean a person who is a member of Federally recognized tribe, i.e. section 4 (a) and (b) of the Indian Self-Determination Act, Pub. L. 93-638 (25 U.S.C. 450b (a) and (b)); section 4 (c) and (d) of the Indian Health Care Improvement Act, Pub. L. 94-437 (25 U.S.C. 1603 (c) and (d)); and section 4204(3) and 4226(4) of Subtitle C—"Indians and Alaska Natives" of the Omnibus Drug Act, Pub. L. 99-570.

The definition of "Indian" in the Indian Self-Determination Act reflects the special relationship between tribes and the Federal Government. Basing eligibility on tribal membership will strengthen the role and position of tribes as well as provide IHS with a consistent definition of "Indian". In our view, reliance on tribal membership will have positive implications for Indian self-determination, the role and authority of tribal government, inter-tribal relationships, and the existing Federal-Indian relationship.

This approach will also be relatively simple to administer as it will basically be left to the tribes to verify who their members are. Indian persons or groups not currently federally recognized have a formal process through which they may petition for such recognition through the BIA's Federal acknowledgement program.

3. Many commentors expressed the view that the tribes should determine who is eligible for services for the IHS. We believe that deletion of the (¼) blood quantum criteria as an additional requirement to tribal membership will accommodate these concerns.

The tribal membership criteria without the (¼) blood quantum requirement clarifies that IHS services are not provided to Indian people because of their racial identity but rather primarily on the political relationship which exists between tribes and the Federal government. The tribal governments, by establishing their membership requirements, also establish eligibility for IHS services for their members who choose to reside in an IHS Health Service Delivery Area (HSDA).

4. Some commentors were concerned about the effect on those who would no longer be eligible for care and were in favor of permanently "grandfathering" in current eligibles who would not meet the new requirements. We believe these concerns are adequately addressed by a number of provisions in this rule directed at mitigating its impact on persons no longer eligible as IHS beneficiaries. These provisions include the one-year transition period, provision for minor Indian children, and provisions to assure continuity of care for persons in active treatment or with chronic degenerative conditions. In light of these provisions we have rejected the idea of permanently grandfathering all former eligibles.

5. Some commentors suggested that this was a "major rule" under Executive Order 12291, and a regulatory impact analysis was required. As was explained in the preamble in the NPRM, the proposed rule does not have cost implications for the economy of $100 million or more independent of the IHS appropriation, nor will it result in a major increase in cost for consumers, industries, or Government agencies, nor will it adversely affect competition. Accordingly, it has been determined that the rule is not a major rule under Executive Order 12291, and a regulatory impact analysis is not required.

6. Some commentors suggested that non-Indian spouses and other non-Indian family members of an eligible Indian should be eligible for services as IHS beneficiaries. This is not possible under current law. The fiscal year 1983 Appropriation Act for the Department of the Interior and Related Agencies, Pub. L. 97-394, which includes the appropriation for the Indian Health Service, restricted eligibility for non-Indians for no-charge services to situations involving a pregnancy, acute infectious diseases or public health hazards. IHS regulations have been amended to conform to Pub. L. 97-394 (48 FR 11220 et seq.), and this rule retains those restrictions.

7. A number of Commentors stated that they were opposed to the geographic residency requirement. The reasons were varied but included the arguments that all tribal members should be eligible regardless of residency and that residency violates the Snyder Act which provides for services for Indians throughout the United States. This is an issue we previously addressed in 1978 in connection with promulgation of the contract health services regulations (42 FR 34650 et seq., August 4, 1978). While IHS does have authorizing legislation (Snyder Act, etc.) to provide services to "Indians throughout the United States"; in appropriating funds Congress has generally provided funds for services to federally recognized Indians who live on or near Federal Indian reservations with certain exceptions, e.g. Urban projects.

This rule initially includes as HSDAs all current Contract Health Service Delivery Areas (CHSDA) and non-CHSDA service areas. In addition, the final rule adopts the proposed administrative method permitting the Director, IHS to revise HSDA boundaries after consultation with the Indian tribes affected and consideration of the criteria spelled out in the rule. Tribes are also allowed to request boundary changes. Revisions made by the Director will be published in the **Federal Register**.

8. Some commentors were concerned that combining eligibility rules for direct and contract health services and limiting eligibility to residents of the HSDA's will, for the first time, deny direct services to many Indians in areas beyond the HSDA's. Residency within a defined geographic service area is currently a requirement under the contract health service regulations and under this rule a residency requirement would apply to both direct and contract health services. We believe that requiring residency on or near reservations for both direct and contract care is not only a key element of this

rule but is also prudent policy and consistent with Congressional intent.

9. This rule does away with the "close economic and social ties" test. If an Indian person resides in a HSDA and is a member of a Federally recognized tribe, he or she is eligible for IHS services both direct and contract. There were 37 tribal comments and 317 individual comments in favor of a residency requirement. Those in favor of residency did not address the close ties test. Nevertheless, we believe that deleting the close ties test is consistent with the overall approach and will simplify administration of the program and provide the individual with a clearer eligibility requirement.

10. Several commentors requested that implementation of the proposed regulations be postponed for various periods because there had not been enough consultation with the tribes. The issues involved in the NPRM were first presented in June 6, 1983, when a **Federal Register** notice (48 FR 25273) was published which outlined a number of options for eligibility criteria for Indians served by the IHS and solicited comments on these options. The proposed regulations have received extensive public exposure with a 150 day comment period resulting in over 11,000 submissions by individuals; groups; Indian and non-Indian organizations; state, local and tribal governments; and the Congress. In addition, over 120 public meetings were held to take public comments which resulted in over 10,000 pages of transcripts.

11. Some commentors were in favor of giving the tribes power to clear, veto, or even solely define the geographic composition of the HSDA's. This could defeat the concept of residency on or near reservations. As we indicated in the proposal, it is our intention to leave current service delivery areas in place at the outset to avoid any disruptions in service delivery patterns. The rule permits any Indian tribe located within a HSDA to submit to the appropriate Area Director(s) requests for changes in HSDA boundaries based on criteria contained in the regulation. The rule includes consultation with any other tribes affected by the proposal. The tribal request, all tribal comments, and the Area Director's recommendation and findings will be submitted to the IHS Director or the Director's designee, who makes the final determination.

12. A number of commentors were concerned that the rule might have a disproportionate impact on Indians in California and, therefore, special rules should be included for California Indians to take into account special historical factors in that State, such as failure to ratify treaties and past termination policies. Other commentors expressed opposite concerns claiming a special definition of California Indians would expand the current Indian service population in California and in effect "protect" the current California service population from the effects of any new eligibility rules, thus being unfair to Indians in other parts of the country who would be subject to and would have to bear the impact of any new rules.

Establishing separate eligibility requirements for California could set a precedent both for local diverse eligibility criteria and for inclusion of non-tribal Indian groups in other states. We have concluded that, absent specific Congressional direction to do so, it would be inappropriate for the Department to treat California Indians differently under this rule. The relationship between the Federal government and Indian Tribes is well established. Mechanisms are in place to correct historical anomalies through the BIA Federal acknowledgement program. We believe the most reasonable and prudent poilcy with respect to eligibility for services from the IHS is to make it clear that such services are available to members of Federally recognized tribes. It is within the jurisdiction of the BIA Federal acknowledgment program and the Congress to correct any historical anomalies with respect to Indian groups not now recognized.

C. Fee for Service Care

As was explained in the proposed rule we are also updating the regulation to specify those circumstances in which the IHS may provide direct services at its facilities on a fee-for-service basis. These include:

(a) In emergencies under section 322(b) of the Public Health Service Act, 42 U.S.C. 249(b), and 42 CFR 32.111 of the regulations;

(b) To Public Health Service and other federal beneficiaries under Economy Act (31 U.S.C. 1535) arrangements to the extent that providing services does not interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries; and

(c) To non-beneficiaries residing within the HSDA under policies approved by the tribe or tribes located on the reservation but only to the extent that providing services does not, as determined by the IHS interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries.

This rule will not necessarily eliminate the actual provision of services to those individuals who will no longer retain eligibility. They may still receive services from IHS facilities on a fee-for-service basis under one of the above conditions.

D. Beneficiary Identification Cards (BIC)

Only 92 comments were received on this subject and of these 84 were opposed to the use of BICs. Nevertheless, a registration process and issuance of BICs will enable the IHS to have more accurate knowledge of beneficiary populations and make it easier to identify beneficiaries and to expedite the provision of services in the various clinical settings. The absence of a card will not preclude an otherwise eligible Indian from obtaining services, though it may delay the administrative determination that an individual is eligible for services on a no charge basis.

E. Evidence of Tribal Membership

We have added a provision to clarify responsibilities for determining or demonstrating that a person is a member of a federally recognized tribe. Identification of federally recognized tribes is a BIA responsibility and the IHS relies on the BIA both for identification of federally recognized tribes and for resolution of controversies as to whom or what body officially speaks for or represents a tribe. Obtaining acknowledgment as a Federally recognized tribe is governed by regulations at 25 CFR Part 83. The IHS will work with both the BIA and the tribes to determine membership but it is the responsibility of the individuals to demonstrate that they are member of a federally recognized tribe.

Under this rule, the IHS will recognize two methods of demonstrating tribal membership:

(1) Documentation that the applicant meets the requirements of tribal membership as prescribed by the charter, articles of incorporation, other legal instrument or traditional process of the tribe and has been officially designated a tribal member by an authorized tribal official or body; or

(2) Certification of tribal enrollment or membership by the Secretary of the Interior acting through the (BIA).

This will help local IHS officials identify beneficiaries as well as provide necessary guidance to resolve any disputes regarding tribal membership.

F. Comments Beyond Scope

Several comments were received that went beyond the scope of the notice. They include suggestions: (1) That IHS charge Indians for services provided, or require a means test; and (2) that IHS

use contract health service funds to buy group health insurance policies.

Determination Concerning Impact of the Rule

This rule does not have cost implications for the economy of $100 million or more independent of the IHS appropriation, nor will it result in a major increase in cost for consumers, industries, or Government agencies, nor will it adversely affect competition. Therefore, the Secretary has determined that the rule is not a "major rule under Executive Order 12291, and a regulatory impact analysis is not required. Further, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Paperwork Reduction Act

Sections 36.12(b)(2), 36.14(a), 36.15(d), and 36.16 contain information collections that are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980, which have been approved under control number 0915-0107.

List of Subjects in 42 CFR Part 36

Alaska natives, Indians, Health, Health facilities, Health service delivery areas, Contract health services.

Dated: May 28, 1987.

Robert E.Windom

Assistant Secretary for Health.

Approved: July 8, 1987.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, we are amending 42 CFR Part 36 as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: Sec. 3, 68 Stat. 674; 42 U.S.C. 2003, 42 Stat. 208, sec. 1, 68 Stat. 674; 25 U.S.C. 13, 42 U.S.C. 2001 unless otherwise noted.

2. Subpart A is amended by revising the title, removing § 36.1, and redesignating §§ 36.2 and 36.3 as §§ 36.1 and 36.2 respectively, to read as follows:

Subpart A—Purpose

Sec.

§ 36.1 Purpose of the regulations.

* * * * *

§ 36.2 Administrative instructions.

* * * * *

3. Subparts B and C are amended by:

A. Redesignating § 36.12(c) as § 36.11(d);

B. Revising § 36.12;

C. Revising and redesignating § 36.21 as § 36.10;

D. Redesignating § 36.24 as § 36.13;

E. Removing § 36.14 and by revising paragraph (a) introductory text of § 36.25 and then by redesignating § 36.25 as § 36.14. The revised paragraph (a) introductory text would read as set forth below;

F. Adding new § 36.15 and § 36.16 to read as set forth below; and

G. Adding OMB control number 0915-0107 at the end of §§ 36.12, 36.14, 36.15, and 36.16.

The revised and added portions of Subpart B read as follows:

§ 36.10 Definitions.

As used in this subpart: "Alternate resources" means resources other than those of the Indian Health Service available and accessible to the individual, such as health care providers and institutions, health care payment sources, or other health care programs for the provision of health services (e.g., Medicare, Medicaid, State or local health care programs or private insurance), for which the individual may be eligible or would be eligible except for the individual's eligibility for any IHS program.

"Appropriate ordering official" means, unless otherwise specified by contract with the health care facility or provider or by a contract with a tribe or tribal organization, the ordering official for the Service Unit in which the individual requesting contract health services or on whose behalf the services are requested, resides.

"Area Director" means the Director of an Indian Health Service Area Office designated for purposes for administration of Indian Health Service Programs.

"Contract health services" means health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service or those funded by the Service.

"Emergency" means any medical condition for which immediate medical attention is necessary to prevent the death or serious impairment of the health of an individual.

"Health Service Delivery Area" means a geographic area designated pursuant to § 36.15 of this Subpart.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et. seq.*, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Reservation" means any Federally recognized Indian tribe's reservation, Pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and Indian allotments if considered reservation land by the Bureau of Indian Affairs.

"Reside" means living in a locality with the intent to make it a fixed and a permanent home. The following persons will be deemed residents of the Health Service Delivery Area:

(1) Students who are temporarily absent from the Health Service Delivery Area during full time attendance at programs of vocational, technical, or academic education including normal school breaks;

(2) Persons who are temporarily absent from the Health Service Delivery Area for purposes of travel or employment (such as seasonal or migratory workers);

(3) Indian children placed in foster care outside the Health Service Delivery Area by order of a court of competent jurisdiction and who were residents within the Health Service Delivery Area at the time of the court order.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"Service" means the Indian Health Service.

"Service Unit Director" means the Director of Indian Health Service programs for a designated geographical or tribal area of responsibility or the equivalent official of a contractor administering an IHS program.

§ 36.12 Persons to whom health services will be provided.

(a) Subject to the requirements of this subpart, the Indian Health Service will provide direct services at its facilities, and contract health services, as medically indicated, and to the extent that funds and resources allocated to the particular Health Service Delivery Area permit, to persons of Indian or Alaska Native descent who:

(1) Are members of a federally recognized Indian tribe; and

(2) reside within a Health Service Delivery Area designated under § 36.15; or

(3) Are not members of a Federally recognized Indian tribe but are the natural minor children (18 years old or under) of a member of a Federally

recognized tribe and reside within a Health Service Delivery Area designated under § 36.15.

(b) Subject to the requirements of this subpart, the Indian Health Service will also provide direct services at its facilities and, except where otherwise provided, contract health services, as medically indicated and to the extent that funds and resources allocated to the particular Health Service Delivery Area permit, to people in the circumstances listed below:

(1) To persons who meet the eligibility criteria in paragraph (a) of this section except for the residency requirement, who formerly resided within a Health Service Delivery area designated under § 36.15, and who present themselves to any Indian Health Service or Indian Health Service funded facility (and to minor children of such persons if the children meet the eligibility criteria in paragraph (a) of this section except for the residency requirement). Contract health services may not be authorized for these individuals;

(2) To a non-Indian woman pregnant with an eligible Indian's child but only during the period of her pregnancy through post-partum (generally about 6 weeks after delivery). In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction;

(3) To non-Indian members of an eligible Indian's household if the medical officer in charge determines that the health services are necessary to control acute infectious disease or a public health hazard; and

(4) To an otherwise eligible person for up to 90 days after the person ceases to reside in a Health Service Delivery Area when the Service Unit Director has been notified of the move.

(c) Contract health services will not be authorized when and to the extent that Indian Health Service or Indian Health Service funded facilities are available and accessible to provide the needed care. When funds are insufficient to provide the volume of contract health services needed by the service population, the Indian Health Service shall determine service priorities on the basis of medical need. Contract health services will not be authorized when, and to the extent that, alternate resources for payment:

(1) Are available and accessible to the beneficiary, or

(2) Would be available and accessible if the beneficiary were to apply for them, or

(3) Would be available and accessible under state or local law or regulation in the absence of the individual's eligibility for contract health services from the Indian Health Service or Indian Health Service funded programs.

(d) The Indian Health Service may provide direct services at its facilities on a fee-for-service basis to persons who are not beneficiaries under paragraphs (a) and (b) of this section under a number of authorities including the following:

(1) In emergencies under section 322(b) of the Public Health Service Act, 42 U.S.C. 249(b), and 42 CFR 32.111 of the regulations;

(2) To Public Health Service and other Federal beneficiaries under Economy Act (31 U.S.C. 1535) arrangements to the extent that providing services does not interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries; and

(3) To non-beneficiaries residing within the Health Service Delivery Area when approved by the tribe or tribes located on the reservation but only to the extent that providing services does not interfere with or restrict the provision of services to Indian and Alaska Native beneficiaries.

(Approved by the Office of Management and Budget under control number 0915–0107)

§ 36.14 Reconsideration and appeals.

(a) Any person who has applied for and been denied health services or eligibility by the Indian Health Service or by any contractor contracting to administer an Indian Health Service program or portion of a program, including tribes and tribal organizations contracting under the Indian Self-Determination Act, shall be notified of the denial in writing together with a statement of all the reasons for the denial. The notice shall advise the applicant that within 30 days from the receipt of the notice the applicant * * * * * * * *

(Approved by the Office of Management and Budget under control number 0915–0107)

§ 36.15 Health Service Delivery Areas.

(a) The Indian Health Service will designate and publish as a notice in the **Federal Register** specific geographic areas within the United States including Federal Indian reservations and areas surrounding those reservations as Health Service Delivery Areas.

(b) The Indian Health Service may, after consultation with all the Indian tribes affected, redesignate the boundaries of any Health Service Delivery Area followed by publication of a notice in the **Federal Register.** Any redesignation of a Health Service Delivery area will include the reservation, and those areas close to the reservation boundaries which can reasonably be considered part of the reservation service area based on consideration of the following factors:

(1) The number of persons residing in the off-reservation area who would be eligible under § 36.12(a) (1) and (3).

(2) The number of persons residing in the off-reservation area who have traditionally received health services from the Indian Health Service and whose eligibility for services would be affected;

(3) The geographic proximity of the off-reservation area to the reservation; and

(4) Whether the Indians residing in the off-reservation area can be expected to need and to use health services provided by the Indian Health Service given the alternate resources (health facilities and payment sources) available and accessible to them.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Indian Health Service may designate States, subdivisions of States such as counties or towns, or other identifiable geographic areas such as census divisions or zip code areas, as Health Service Delivery Areas where reservations are nonexistent, or so small and scattered and the eligible Indian population so widely dispersed that it is inappropriate to use reservations as the basis for defining the Health Service Delivery Area.

(d) Any Indian tribal government may request a change in the boundaries of the Health Service Delivery Area. Such a request should be supported by documentation related to the factors for consideration set out in paragraph (b) of this section and shall include documentation of any consultation with or notification of other affected or nearby tribes. The request shall be submitted to the appropriate Area Director(s) who shall afford all Indian tribes affected the opportunity to express their views orally and in writing. The Area Director(s) shall then submit the request, including all comments, together with the Area's recommendation and independent findings or verification of the factors set out in paragraph (b) of this section, to the Indian Health Service Director or to the Director's designee for the Indian Health Service decision. The decision of the Indian Health Service Director or the Director's designee shall constitute final agency action on the tribe's request. Changes in the boundaries of Health Service Delivery Areas will be published in the **Federal Register.**

(Approved by the Office of Management Budget under control number 0915-0107)

§ 36.16 Beneficiary Identification Cards and verification of tribal membership.

(a) The Indian Health Service will issue Beneficiary Identification Cards as evidence of beneficiary status to persons who are currently eligible for services under § 36.12(a). Persons requesting Beneficiary Identification Cards must submit or have on file evidence satisfactory to the Indian Health Service of tribal membership and residence within a Health Service Delivery Area. The absence of a Beneficiary Identification Card will not preclude an otherwise eligible Indian from obtaining services through it may delay the administrative determination that an individual is eligible for services on a no charge basis.

(b) For establishing eligiblity or obtaining a Beneficiary Identification Card, applicants must demonstrate that they are members of a Federally recognized tribe. Membership in a Federally recognized tribe is to be determined by the individual tribe or the Bureau of Indian Affairs. Therefore, the Indian Health Service will recognize two methods of demonstrating tribal membership:

(1) Documentation that the applicant meets the requirements of tribal membership as prescribed by the charter, articles of incorporation, or other legal instruments or traditional processes of the tribe and has been officially designated a tribal member by an authorized tribal official or body; or

(2) Certification of tribal enrollment or membership by the Secretary of the Interior acting through the Bureau of Indian Affairs.

(c) Demonstrating membership in a Federally recognized tribe is the responsibility of the applicant. However, the Indian Health Service may consult with the appropriate tribe or the Bureau of Indian Affairs on outstanding questions regarding an applicant's tribal membership if the Indian Health Service has some documentation that it believes may be helpful to the tribe or the Bureau of Indian Affairs in making their determination.

(Approved by the Office of Management and Budget under control number 0915-0107)

Subpart C [Removed and Reserved]

G. The remaining portions of Subpart C, §§ 36.22 and 36.23 are removed, and Subpart C is removed and reserved.

H. A temporary Subpart D, consisting of §§ 36.31 through 36.34 is added, effective September 16, 1987 through September 18, 1989, subsequent to which Subpart D shall be removed and reserved.

Subpart D—Transition Provisions

§ 36.31 Transition period.

(a) The transition period for full implementation of the new eligibility regulations consists of three parts;

(1) A six month delayed implementation;

(2) A six month grace period; and

(3) A health care continuity period determined by medical factors.

§ 36.32 Delayed implementation.

(a) The eligibility requirements in Subparts A and B of this part become effective March 16, 1988.

(b) During the six month delayed implementation period the former eligibility regulations will apply.

§ 36.33 Grace period.

(a) Upon the effective date referred to in § 36.32(a), individuals who would lose their eligibility under the new eligilibity regulations published on September 16, 1987, and who have made use of an Indian Health Service of Indian Health Service funded service within three years prior to September 16, 1987 (date of publication of the new eligibility regulations) shall retain their eligibility for a six month grace period ending September 16, 1988. During this grace period such individual's eligibility will continue to be determined under the former regulations except that the new residency requirements established by Subparts A and B must be met for the individual to be eligible.

(b) All individuals who receive services during the grace period based on paragraph (a) of this section and whose eligibility will terminate on September 16, 1988, shall be notified in writing that after September 16, 1988 they will no longer the eligible for services as Indian Health Service beneficiaries. Such written notice should include an explanation of their appeal rights as provided in § 36.14 of the part. These patients shall be offered assistance in locating other health care providers and medical assistance programs.

§ 36.34 Care and treatment of people losing eligibility.

(a) Individuals who lose their eligibility on September 16, 1988, (end of the grace period) and on that date are actively undergoing treatment may still be provided services for a limited period in the following circumstances;

(1) Inpatients in IHS and IHS funded facilities and those receiving inpatient care under contract, including contract health services, may continue to receive such care and necessary follow-up services at Indian Health Service expense until the need for hospitalization and follow-up services has ended as determined by the responsible Indian Health Service or tribal physician, all other conditions being met including medical priorities;

(2) Those actively undergoing a course of outpatient treatment either in Indian Health Service and Indian Health Service funded facilities or through contract health services, termination of which would impair the health of the individual patient, may continue to receive the treatment at Indian Health Service expense for a reasonable length of time, until the course of treatment reaches a point where it may safely be terminated or the patient transferred to other providers as determined by the responsible Indian Health Service or tribal physician, all other conditions being met including medical priorities.

(3) Those under treatment for chronic degenerative conditions may be provided additional treatment at Indian Health Service expense for no longer than 1 year beyond the end of the grace period notwithstanding any determination that it was otherwise safe to transfer treatment to other providers, all other conditions being met including medical priorities.

(b) All patients receiving care under paragraph (a) of this section shall be notified in writing that, after discharge from care provided under any of the above circumstances, they will no longer be eligible for services as Indian Health Service beneficiaries. Such notice shall include an explanation of their appeal rights as provided in § 36.14 of this part. These patients shall be offered assistance in locating other health care providers and medical assistance programs.

[FR Doc. 87-21166 Filed 9-15-87; 8:45 am]

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federal register

Wednesday
September 16, 1987

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Special Federal Aviation Regulation No. 47; Special Flight Authorization for Noise Restricted Aircraft; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 24394; NPRM 87-9]

Special Federal Aviation Regulation No. 47; Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Special Federal Aviation Regulation (SFAR) 47 provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that are otherwise prohibited by the Part 91, Subpart E, noise restrictions. The current rule terminates on December 31, 1987. This proposal would extend SFAR 47 through December 31, 1989, and require all requests for special flight authorizations to be submitted in writing five days prior to effective date. The FAA does not plan to extend the SFAR beyond January 1, 1990.

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

ADDRESSES: Comments on the proposal are to be marked "Docket No. 24394" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24394, 800 Independence Ave., SW., Washington, DC 20591; or delivered in duplicate to Room 916, 800 Independence Ave., SE., Washington, DC. Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Laurette Fisher, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone: (202) 267-3561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of this proposal. The comments should contain the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments.

Before taking any final action on the proposal, the Administrator will consider the comments made on or before the closing date, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter submits a self-addressed, stamped postcard with the comment and on the postcard the following statement is made: "Comments to Docket No. 24394." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Synopsis of the Proposal

Under Part 91 of the Federal Aviation Regulations, on or after January 1, 1985, no person may operate a civil subsonic turbojet airplane with maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under Part 36. This restriction applies to U.S. registered aircraft that have standard airworthiness certificates and foreign registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. SFAR 47 was adopted February 26, 1985, (50 FR 7751, February 26, 1985) to permit certain operations of noise restricted aircraft without a formal grant of exemption under FAR Part 11. The FAA has determined this process to be very cost beneficial and time efficient to both the government and the private sector. On December 31, 1986, FAA extended SFAR 47 for a one-year period until December 31, 1987, in order to facilitate the removal of remaining non-noise compliant airplanes from the United States. The FAA believes that by January 1, 1990, nearly all non-compliant Stage 1 aircraft will have been modified to meet Stage 2 noise standards or be out of service. Moreover, if a situation arises that an aircraft needs to be hushkitted after January 1, 1990, the FAR Part 11 exemption process is available. The FAA plans no further action to extend the SFAR beyond this date.

In addition, from experience gained in the issuance of special flight authorizations, the FAA believes a change establishing a time frame for submitting SFAR 47 requests is required due to the number of last-minute requests submitted.

The FAA proposes to amend section 3 of SFAR 47 to require the applicant for a special flight authorization to submit its request in writing five days before the applicant's requested flight date. This time frame will prevent any delays in issuing the requested authorizations, and assist the applicant in insuring the flight can be commenced as planned.

Paperwork Reduction Act Approval

The reporting requirements contained in this proposal have been submitted to OMB for review. Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, DC 20503; Attention: FAA Desk Officer (Telephone 202-395-7340). A copy should be submitted to the FAA docket.

Economic Impact

This proposal has minimal economic impact. Adoption of the proposal would allow an alternative from the exemption process for certain operations, reducing administrative costs upon operators and the FAA. While the operations are not without some noise costs, these costs can be characterized as trivial, since the number of operations at any one local airport will be extremely low in number.

Even though benefits will exceed costs for this proposal, the FAA finds that the SFAR if adopted, is not likely to have significant economic impact upon a substantial number of small entities. The basis for this is the very low number of requests which FAA foresees as a result of the adoption of this proposal. This number should not exceed twenty over the life of the regulation. Accordingly, preparation of a full regulatory evaluation is not required.

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Airspace, Air

transportation, Airworthiness directives and standards.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared. The changes proposed in this rule do not significantly affect the quality of the human environment.

The Proposed Amendment

Accordingly, the FAA proposes to amend Part 91 of the Federal Aviation Regulations (14 CFR Part 91) by amending Special Federal Aviation Regulation 47 to read as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 State 1180); 42 U.S.C 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983].

Special Federal Aviation Regulation 47—[Amended]

2. By amending paragraph 3 to add one paragraph as follows:

(j) Written requests should be received five days prior to requested flight date.

3. By removing from paragraph 5 the word "1987" and substituting the word "1989."

The proposal has minimal economic consequences. Accordingly, for reasons stated earlier the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States.

Issued at Washington, DC on September 11, 1987.

Norman H. Plummer,

Director of Environment and Energy.

[FR Doc. 87-21357 Filed 9-15-87; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
September 16, 1987

Part V

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Inpatient Hospital Deductible and Coinsurance Amounts and Part A Premium for the Uninsured Aged for 1988; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-11-N]

Medicare Program; Inpatient Hospital Deductible and Coinsurance Amounts and Part A Premium for the Uninsured Aged for 1988

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and coinsurance amounts and the monthly hospital insurance premium for the uninsured aged for calendar year 1988 under Medicare's hospital insurance program. The Medicare statute specifies the formulae to be used to determine these amounts.

The inpatient hospital deductible will be $540. The daily coinsurance amounts will be: (a) $135 for the 61st through 90th days of hospitalization; (b) $270 for lifetime reserve days; and (c) $67.50 for the 21st through 100th days of extended care services in a skilled nursing facility.

The monthly Medicare hospital insurance premium for the 12 months beginning January 1, 1988 (for individuals who are not insured under the Social Security or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Part A) is $234.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Barb Klees, (301) 594-2780.

SUPPLEMENTARY INFORMATION:

I. Inpatient Hospital Deductible and Coinsurance Amounts

Section 1813 of the Social Security Act (the Act) (42 U.S.C. 1395(e)) provides for an inpatient hospital deductible and certain coinsurance amounts to be deducted from the amount payable by Medicare for inpatient hospital services and extended care services furnished an individual. Section 1813(b)(2) of the Act, as amended by section 9301 of the Omnibus Budget Reconciliation Act (OBRA) of 1986, Pub. L. 99-509, requires the Secretary to determine and publish by September 15 of each year the amount of the inpatient hospital deductible applicable for the following calendar year.

The 1988 inpatient hospital deductible and coinsurance amounts discussed below have been computed as required by section 1813 of the Act. The costs associated with this notice are the result of legislative requirements implemented by this notice. The amount of the deductible for 1988 under the formula has been determined to be $540. This represents a 4 percent increase over the deductible for 1987, which was $520. The 1987 deductible had increased 6 precent over that for 1986. The $520 amount for 1987 was prescribed by Congress in section 1813(b)(1) of the Social Security Act, as amended by section 9301 of OBRA.

Section 9301 of Pub. L. 99-509 amended section 1813 of the Act to establish a new method for computing the amount of the inpatient hospital deductible. Under the formula specified in the law, the deductible for calendar year 1988 must be equal to $520 (the deductible for the preceding year) multiplied by the percentage increase (that is, the update factor) for the prospective payment rates for inpatient hospital services effective October 1, 1987, and adjusted to reflect real case mix. The amount so determined is rounded to the nearest multiple of $4.

The applicable percentage increase for Medicare prospective payment rates is 2.7 percent, as announced in the **Federal Register** on September 1, 1987 (52 FR 33034). The case-mix adjustment factor is 1.46 percent.

A case-mix index is calculated for each hospital reflecting the relative costliness of that hospital's mix of cases compared to a national average mix of cases. We computed the increase in average case mix for hospitals paid under the Medicare prospective payment system (PPS) in fiscal year 1987. We used PPS bills available to us as of the end of July 1987. This is a total of about 6 million discharges for FY 1987. The increase in average case mix in FY 1987 is computed to be 1.46 percent.

In the June 11, 1987 notice of the Secretary's recommended update for PPS hospitals (52 FR 22386), we made no adjustment to the update factor for case mix, since at that time the date indicated an increase in case mix of 0.6 percent in FY 1987, which was small compared to increases in prior years. We considered all of this increase as due to changes in real case mix. Even though the measure of case-mix increase for FY 1987 has increased to 1.46 percent, we did not recommend any adjustment to the PPS update for FY 1988. Hence, we considered all of the 1.46 percent increase as changes in real case mix. By law, we must increase the deductible by the real case-mix increase of 1.46 percent.

Thus, the inpatient hospital deductible for calendar year 1988 is $520 times 1.027 times 1.0146, which equals $541.84 and is rounded to $540.

Because the coinsurance amounts in section 1813 of the Act are fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year, the increase in the deductible has the effect of also increasing the amount of coinsurance the Medicare beneficiary must pay. Thus, for inpatient hospital services or extended care services furnished in 1988, the daily coinsurance for the 61st through 90th days of hospitalization (¼ of the inpatient hospital deductible) will be $135; the daily coinsurance for lifetime reserve days (½ of the inpatient hospital deductible) will be $270; and the daily coinsurance for the 21st through 100th days of extended care services in a skilled nursing facility (⅛ of the inpatient hospital deductible) will be $67.50.

The estimated cost to beneficiaries due to these increases is $200 million. This amount is based on an estimated 7.3 million beneficiaries who will have 7.9 million benefit periods and use 2.9 million hospital coinsurance days, 1.1 million lifetime reserve days, and 4.2 million skilled nursing facility coinsurance days in 1988.

II. Part A Premium for the Uninsured Aged

Under the authority in section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1988 is $234.

Section 1818 of the Social Security Act (Act) provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

The formula specified in this section requires that, for the period beginning January 1, 1988, the 1973 base year premium ($33) be multiplied by the ration of (1) the 1988 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1, or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1988 inpatient hospital deductible was determined to be $540. The 1973 deductible was actuarially determined to be $76, although the 1973 deductible

was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council. (See 37 FR 21452, October 11, 1972.) The monthly premium for the 12-month period beginning January 1, 1988 has been calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law. Thus, the monthly hospital insurance premium is $33 × (540/76) = $234.47, which is rounded to $234.

The monthly hospital insurance premium for the uninsured aged for the 12-month period beginning January 1, 1988, will increase to $234. That amount is 4 percent higher than the $226 monthly premium amount for the 12-month period beginning January 1, 1987.

The estimated cost of this increase to the approximately 18 thousand enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $2 million.

III. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Sec. 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2) and sec. 1818(d)(2) of the Social Security Act. (42 U.S.C. 1395i-2(d)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 10, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 11, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-21553 Filed 9-16-87; 10:03 am]

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