2-5-88
Vol. 53 No. 24
Pages 3325-3570

federal register

Friday
February 5, 1988

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

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

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for six months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

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

Guide to Record Retention Requirements in the CFR

A Supplement to the Guide, revised as of January 1, 1988, is published as Part II of this issue.

Contents

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

ACTION
NOTICES
Grants; availability, etc.:
VISTA projects; Regions 3 and 9, 3408

Agency for International Development
NOTICES
Meetings:
Mediterranean fruitfly eradication program in Guatemala; correction, 3490

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 3330
Oranges (navel) grown in Arizona and California, 3329
PROPOSED RULES
Pickles; grade standards
Correction, 3403, 3490
(2 documents)

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Soil Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 3421
(3 documents)

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Criminal and Violent Behavior Research Review Committee et al., 3458
Meetings; advisory committees:
February, 3458

Arctic Research Commission
NOTICES
Vacancy announcement, 3410

Army Department
NOTICES
Agency information collection activities under OMB review, 3421
Meetings:
Armed Forces Epidemiologial Board; correction, 3490
Science Board, 3422
(2 documents)

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Grant and cooperative agreement awards:
Louisiana Health and Human Resources Department, 3458
Morehouse School of Medicine, 3459
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—Prevention and surveillance projects, 3554

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 3489

Coast Guard
RULES
Waterfront facilities:
Liquefied natural gas, 3370

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Administration Office et al., 3410

Commercial Space Transportation Office
NOTICES
Environmental statements; availability, etc.:
Commercial expendable launch vehicle programs; Vandenburg Air Force Base, CA, 3479

Commission of Fine Arts
NOTICES
Meetings, 3420

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh; correction, 3420
Poland, 3420
Turkey; correction, 3420
Export visa requirements; certification, waivers, etc.:
Pakistan, 3420

Commodity Credit Corporation
RULES
Federal claims collection; tax refund offset, 3330

Commodity Futures Trading Commission
RULES
Foreign futures and options transactions, 3338
NOTICES
Contract market proposals:
Coffee, Sugar & Cocoa Exchange, Inc.—International Market Index, 3420

Defense Department
See Air Force Department; Army Department; Navy Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Acosta Pharmacy, 3467
Clausing, Vernon D., D.O., 3468

Education Department
RULES
Special education and rehabilitation services:
Regional resource and federal centers, 3524

Employment and Training Administration
NOTICES
Adjustment assistance:
Babcock & Wilcox Co., 3471
True Form Foundations Corp., 3471

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 3471

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Atomic energy agreements; subsequent arrangements, 3422, 3423
(2 documents)
Meetings:
National Petroleum Council, 3423

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 3424

Environmental Protection Agency
RULES
Toxic substances:
Testing requirements—
Methylcyclopentane; commercial hexane, 3382
NOTICES
Agency information collection activities under OMB review, 3444
Air pollution control:
Alternative fuels and fuel blends use, motor vehicle emission reductions; estimate guidance; report availability, 3445
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 3446
Weeky receipts, 3445
Hazardous waste:
Corrosive hazardous waste land disposal restrictions; effective date extension on case-by-case basis, 3446
Meetings:
Science Advisory Board, 3450
Toxic and hazardous substances control:
Premanufacture exemption applications, 3450
Water pollution control:
Clean Water Act violations; proposed administrative penalty assessment, 3450
Water pollution control; sole source aquifer designations:
Massachusetts, 3451

Equal Employment Opportunity Commission
RULES
Age discrimination in employment:
Private rights; supervised waivers and releases; suspension, 3370
Procedural regulations:
Directors, Determinations Review Program, Program Operations Office; authority delegation, 3369

Executive Office of the President
See Presidential Documents

Export Administration
See International Trade Administration

Farm Credit Administration
RULES
Farm credit system:
Disclosure to shareholders; accounting and reporting requirements—
Problem loans, etc., 3335
Disclosure to shareholders—
Problem loans, etc., 3334

Federal Aviation Administration
RULES
Noise standards; aircraft certification; helicopters, 3534
PROPOSED RULES
Airport radar service areas, 3528

Federal Bureau of Investigation
NOTICES
Meetings:
National Crime Information Center Advisory Policy Board, 3470

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Generic determination of rate of return on common equity for public utilities, 3339, 3342
(2 documents)
Natural Gas Policy Act, etc.:
Purchased gas adjustment regulations
Reporting and recordkeeping requirements, 3364
NOTICES
Natural gas certificate filings:
Penneast Gas Services Co. et al., 3425
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 3431
Mountain Fuel Resources, Inc., 3432
Overthrust Pipeline Co., 3432
Tarpon Transmission Co., 3433
Tennessee Gas Pipeline Co., 3432
Transcontinental Gas Pipe Line Corp., 3433
United Gas Pipe Line Co., 3434

Federal Maritime Commission
NOTICES
Agency information collection activities under OMB review, 3452
Agreements filed, etc., 3453
Freight forwarder licenses:
Mendoza International et al., 3453
Meetings; Sunshine Act, 3489
Tariffs, inactive; cancellation, 3453

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 3489

Federal Register Office
NOTICES
Guide to Record Retention Requirements in the CFR; supplement, 3492

Federal Register, Administrative Committee
See Federal Register Office

Federal Reserve System
RULES
Truth in lending (Regulation Z):
Preemption determination, 3332
NOTICES
Applications, hearings, determinations, etc.:
First City Acquisition Corp., 3454
First Potomac Bancorp, Inc., et al., 3455
Fleet/Norstar Financial Group, Inc., et al., 3456
Trustmark National Bank Profit Sharing Plan, 3456

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 3489

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
RULES
Endangered and threatened species:
Bariaco, 3565
Black-spored quillwort, etc., 3560
Louisiana pearlshell, 3567
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc.:
Innoko National Wildlife Refuge, AK, 3464
Selawik National Wildlife Refuge, AK, 3464
Yukon Flats National Wildlife Refuge, AK, 3465

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Puerto Rico, 3411
Texas—
Harvey Industries Television Plant, 3411
Vermont—
Wyeth Nutritionals, Inc., Processing Plant, 3412

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Health Resources and Services Administration; National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 3456
Organization, functions, and authority delegations:
Assistant Secretary for Health, 3457

Health Resources and Services Administration
NOTICES
Advisory committees; annual reports; availability, 3459

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
Decisions and orders, 3434
Special refund procedures; implementation, 3437, 3440 (2 documents)

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Interest rate changes, 3365
Maximum mortgage limits for high-cost areas, 3364
Termination of tenancy, 3366
NOTICES
Agency information collection activities under OMB review, 3461
Organization, functions, and authority delegations:
Regional offices, etc.; order of succession—
Minneapolis, 3463

Immigration and Naturalization Service
RULES
Immigration Reform and Control Act; implementation:
Nonimmigrant classification category for certain parents and children of special immigrants, 3331
PROPOSED RULES
Nonimmigrants; documentary requirements; waivers, etc.:
Admission of inadmissible aliens; parole—
Mentally retarded aliens accompanied by family member or guardian, 3403

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service
RULES
Trans-Alaska pipeline liability fund, 3395

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
RULES
Export licensing:
Commodity control list—
Electronic computers; COCOM review; correction, 3490
NOTICES
Antidumping:
Fabricated structural steel from Canada, 3412
Countervailing duties:
Carbon steel wire rod from Malaysia, 3413

Interstate Commerce Commission
RULES
Organization, functions, and authority delegations:
Proceedings Office, Director; rail abandonments, 3400
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 3466
Compensated intercorporate hauling operations, 3466
Railroad operation, acquisition, construction, etc.:
Abbeville-Grimes Railway Co., 3467
Housatonic Railroad Co., Inc., 3467

Justice Department
See Drug Enforcement Administration; Federal Bureau of Investigation; Immigration and Naturalization Service

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 3470

Land Management Bureau
NOTICES
Closure of public lands:
California, 3463
Environmental statements; availability, etc.:
Idaho wilderness study areas, 3463

Recreation management restrictions, etc.:
Merced River Area, CA, 3464

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
M & F Coal Co., 3472
Riverside Cement Co., 3473

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Diamond Shamrock Offshore Partners Limited Partnership, 3465

Minority Business Development Agency
NOTICES
Business development center program applications:
California, 3417

National Aeronautics and Space Administration
NOTICES
Agency information collection activities under OMB review, 3473
Meetings:
Aerospace Safety Advisory Panel, 3473
Space Applications Advisory Committee, 3473

National Archives and Records Administration
See Federal Register Office

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 3489

National Foundation on the Arts and the Humanities
PROPOSED RULES
Museum Services Institute:
Professional museum organizations; contracts and cooperative agreements, 3405

National Highway Traffic Safety Administration
NOTICES
New car assessment program:
Optional crash testing by motor vehicle manufacturers; eligibility criteria, 3479

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

National Institutes of Health
NOTICES
Meetings:
General Clinical Research Centers Committee, 3460
National Cancer Institute, 3460
National Institute of Allergy and Infectious Diseases, 3460
National Institute of Environmental Health Sciences, 3460

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Foreign fishing—
Fee schedule; correction, 3401
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 3401
NOTICES
Meetings:
Western Pacific Fishery Management Council, 3417, 3418 (2 documents)
Permits:
Marine mammals, 3418, 3419 (6 documents)

National Park Service
NOTICES
Environmental statements; availability, etc.:
Servicewide integrated pest management program, 3465

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 3422
Naval Research Advisory Committee, 3422

Nuclear Regulatory Commission
PROPOSED RULES
Practice rules:
Domestic licensing proceedings—
Geologic repository for disposal of high-level radioactive waste; negotiated rulemaking advisory committee, 3404
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 3475
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co. et al., 3475
General Public Utilities Nuclear Corp., 3475

Presidential Documents
PROCLAMATIONS
Special observances:
Prayer, National Day of (Proc. 5767), 3327
ADMINISTRATIVE ORDERS
Pakistan: nuclear devices; certification (Presidential Determination No. 88-5 of Jan. 15, 1988), 3325

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Health Resources and Services Administration; National Institutes of Health

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Big Sandy River, WY, 3410
Skalkaho Highline Wood Syphon, MT, 3410

State Department
NOTICES
Lebanon; U.S. passport travel restrictions extension, 3476
Meetings:
Inter-American Tropical Tuna Commission, United States National Section Advisory Committee, 3476
Private International Law Advisory Committee, 3476
North Korea; acts of international terrorism support determination, 3477

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Commercial Space Transportation Office; Federal Aviation Administration; National Highway Traffic Safety Administration
NOTICES
Agency information collection activities under OMB review, 3477
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 3478

Treasury Department
NOTICES
Bonds, Treasury:
2017 series, 3480
Notes, Treasury:
A-1998 series, 3482
R-1991 series, 3486

Veterans Administration
NOTICES
Agency information collection activities under OMB review; correction, 3487

Separate Parts In This Issue

Part II
National Archives and Records Administration, Office of the Federal Register, 3492

Part III
Department of Education, 3524

Part IV
Department of Transportation, Federal Aviation Administration, 3528

Part V
Department of Transportation, Federal Aviation Administration, 3534

Part VI
Department of Health and Human Services, Centers for Disease Control, 3554

Part VII
Department of the Interior, Fish and Wildlife Service, 3560

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
5767 3327
Administrative Orders:
Presidential Determinations:
No. 88-5 of January 15, 1988 3325

7 CFR
907 3329
910 3330
1403 3330
Proposed Rules:
52 (2 documents) 3403, 3490

8 CFR
214 3331
Proposed Rules:
212 3403

10 CFR
Proposed Rules:
2 3404

12 CFR
226 3332
620 (2 documents) 3334, 3335
621 3335

14 CFR
21 3534
36 3534
Proposed Rules:
71 3528

15 CFR
399 3490

17 CFR
30 3338

18 CFR
37 (2 documents) 3339, 3342
389 3364

24 CFR
201 3364
203 3364
232 3365
234 3364
235 3365
247 3366
886 3366

29 CFR
1601 3369
1627 3370

33 CFR
4 3370
126 3370
127 3370

34 CFR
305 3524

40 CFR
799 3382

43 CFR
29 3395

45 CFR
Proposed Rules:
1180 3405

49 CFR
1011 3400
1152 3400

50 CFR
17 (3 documents) 3560-3567
611 3401
642 3401

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

Presidential Documents

Title 3—

The President

Presidential Determination No. 88–5 of January 15, 1988

Determination Pursuant to Section 670(a) and Section 620E(d) of the Foreign Assistance Act, as Amended

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Sections 620E(d) and Section 670(a) of the Foreign Assistance Act of 1961, as amended ("the Act"), I hereby:

(1) determine pursuant to Section 670(a)(1) of the Act that material, equipment, or technology covered by that provision was to be used by Pakistan in the manufacture of a nuclear explosive device; and,

(2) determine and certify, as a result of the determination in paragraph (1) above and pursuant to Section 670(a)(2) of the Act, that not providing assistance referred to in Section 670(a)(1) of the Act to Pakistan would be seriously prejudicial to the achievement of United States nonproliferation objectives and otherwise jeopardize the common defense and security; and,

(3) determine, pursuant to Section 620E(d) of the Act, that the provision of assistance to Pakistan under the Act through April 1, 1990, is in the national interest of the United States and therefore waive the prohibitions of Section 669 of the Act with respect to that period.

You are hereby authorized and directed to report immediately this determination and certification, together with the statement setting forth specific reasons therefor, to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, January 15, 1988.

[FR Doc. 88–2644
Filed 2–4–88; 10:56 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 5767 of February 3, 1988

National Day of Prayer, 1988

By the President of the United States of America

A Proclamation

Americans in every generation have turned to their Maker in prayer. In adoration and in thanksgiving, in contrition and in supplication, we have acknowledged both our dependence on Almighty God and the help He offers us as individuals and as a Nation. In every circumstance, whether peril or plenty, whether war or peace, whether gladness or mourning, we have searched for and sought God's presence and His power, His blessings and His protection, His freedom and His peace, for ourselves, for our children, and for our beloved land.

That was surely so at the very beginning of our Nation, in the earliest days of our quest for independence and liberty. It could only be thus, for a people who recognized God as the Author of freedom; who cherished the ancient but ever new words of Leviticus, "Proclaim liberty throughout all the land unto all the inhabitants thereof" and who cast those words where they would ring out forever, on the Liberty Bell; who affirmed along with Thomas Jefferson that the God Who gave us life gave us liberty as well.

So did they believe, those who gathered in Carpenters' Hall in Philadelphia in 1774, the members of the First Continental Congress. They had come together, in times that tried men's souls, to deliberate in the united interests of America and for our "civil and religious liberties." John Adams later wrote his wife Abigail about what followed: "When Congress first met, Mr. Cushing made a motion that it should be opened with prayer." Some delegates opposed the motion, citing differences in belief among the members; but Sam Adams, that bold lover of liberty and our country, arose to utter words of healing and unity.

"I can hear the prayer," he said, of anyone "of piety and virtue who is . . . a friend to his country." He went on to suggest that a clergyman of a persuasion other than his own open the First Continental Congress with prayer.

And so it happened. Because Sam Adams gave voice to all the goodness, the genius, and the generosity that make up the American spirit, the First Continental Congress made its first act a prayer—the beginning of a great tradition.

We have, then, a lesson from the Founders of our land, those giants of soul and intellect whose courageous pledge of life and fortune and sacred honor, and whose "firm reliance on the protection of Divine Providence," have ever guided and inspired Americans and all who would fan freedom's mighty flames and live in "freedom's holy light." That lesson is clear—that in the winning of freedom and in the living of life, the first step is prayer.

Let us join together, Americans all, throughout our land. Let us join together, in factories and farms, in homes and offices, in places of governance and places of worship, and in outposts everywhere that service men and women defend us. Let us, young and old, join together, as did the First Continental Congress, in the first step—humble, heartfelt prayer. Let us do so for the love of God and His great goodness, in search of His guidance and the grace of repentance, in seeking His blessings, His peace, and the resting of His kind and holy hands

on ourselves, our Nation, our friends in the defense of freedom, and all mankind, now and always.

By joint resolution of the Congress approved April 17, 1952, the recognition of a particular day set aside each year as a National Day of Prayer has become a beloved national tradition.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 5, 1988, as a National Day of Prayer. I call upon the citizens of our great Nation to gather together on that day in homes and places of worship to pray, each after his or her own manner, for unity in the hearts of all mankind.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-2645
Filed 2-4-88; 11:21 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 671]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 671 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 5 through February 11, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 671 (§ 907.971) is effective for the period February 5 through February 11, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987-88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on February 2, 1988, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8 to 3 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for naval oranges is improving.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

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

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.971 is added to read as follows: (This section will not appear in the Code of Federal Regulations.)

§ 907.971 Navel Orange Regulation 671.

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 5, 1988, through February 11, 1988, are established as follows:

(a) *District 1*: 1,204,000 cartons;
(b) *District 2*: 196,000 cartons;
(c) *District 3*: Unlimited cartons;
(d) *District 4*: Unlimited cartons;

Dated: February 3, 1988.

Robert G. Keeney,

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

[FR Doc. 88-2556 Filed 2-4-88; 12:48 pm]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 599]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 599 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 215,000 cartons during the period February 7 through February 13, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 599 (§ 910.899) is effective for the period February 7 through February 13, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

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

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

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

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

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on February 2, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 10-2 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is weak.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.899 is added to read as follows:

[This section will not appear in the Code of Federal Regulations.]

§ 910.899 Lemon Regulation 599.

The quantity of lemons grown in California and Arizona which may be handled during the period February 7, 1988, through February 13, 1988, is established at 215,000 cartons.

Dated: February 3, 1988.

Robert C. Keeney,

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

[FR Doc. 88-2555 Filed 2-4-88; 12:47 pm]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1403

Referral of Delinquent Debts to IRS for Tax Refund Offset

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final Rule.

SUMMARY: The interim rule set forth at 7 CFR 1403.46, (52 FR 2393, Jan. 22, 1987) which provides procedures under which Commodity Credit Corporation (CCC) may refer to the Secretary of the Treasury delinquent debts owed to CCC for collection by offset against Federal income tax refunds, is adopted as final with one minor change.

EFFECTIVE DATE: This regulation shall become effective February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Donaldson, Claims Specialist, (202) 447-4048.

SUPPLEMENTARY INFORMATION: This action has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Domestic Assistance Programs to which this final rule applies are: Commodity Loans and Purchases, 10.051; Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Storage Facilities and Equipment loans, 10.056; Wheat Production Stabilization, 10.058; Rice Production Stabilization, 10.065; Grain Reserve Program, 10.067; as listed in the Catalog of Federal Domestic Assistance.

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

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

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

This regulation adopts as final, with one major change, the interim rule set forth at 7 CFR Part 1403.46 which established procedures to be followed by CCC in implementing 31 U.S.C. 3702A, the authority under which Federal agencies refer delinquent debts to the Department of the Treasury for collection by offset against tax refunds owed to named persons. Under 26 U.S.C. 6402(d), the Internal Revenue Service (IRS) may collect debts referred by Federal agencies by offset against refunds payable after December 31, 1985 and before July 1, 1988. The statute provides that a Federal agency furnish a debtor with notice of a proposed IRS offset and at least 60 days within which to present evidence regarding the debt.

The interim rule, published on January 22, 1987, in the **Federal Register** [52 FR 2393], provided a 60-day period for the public to submit comments. No comments were received with respect to the interim rule.

CCC is adopting the interim rule as a final rule with one minor change. The interim rule provided that for debts becoming delinquent on or after November 1, 1986, CCC would include the notice of intent to refer the debt for tax refund offset in the initial demand letter and the required notification. In the final rule, at § 1403.46(d), the wording is changed to require written notice either in the initial demand letter or in a separate written notification.

List of Subjects in 7 CFR Part 1403

Credit reporting procedures, Delinquent debts.

Accordingly, the interim rule amending 7 CFR Part 1403 which was published at 52 FR 2393 on January 22, 1987, is adopted as a final rule with the following change:

PART 1403—[AMENDED]

1. The authority citation for Part 1403 continues to read as follows:

Authority: Sec. 4, Pub.L. 80–89, 62 Stat. 1070, as amended, (15 U.S.C. 714b) and Sec. 2653(a)(1), Pub.L. 98–369, 98 Stat. 1153 (31 U.S.C. 3720A).

2. Section 1403.46(d) is revised to read as follows:

§ 1403.46 Referring delinquent debts to IRS for tax refund offset.

* * * * *

(d) A delinquent debtor will be sent written notification that CCC intends to refer the debt to IRS for tax refund offset. CCC shall include such notice of intent in the initial demand letter and notification of indebtedness required pursuant to the Federal Claims Collection Standards at 4 CFR Parts 101 through 105, and the Setoff and Withholding regulations at 7 CFR Part 13 or 1408, or in a separate written notification of such specific intent.

* * * * *

Signed at Washington, DC., on February 1, 1988.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–2485 Filed 2–4–88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1006-88]

8 CFR Part 214

Rule Revision To Add New Nonimmigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This revision will add a new section to implement Pub. L. 99–603, which created a new nonimmigrant classification.

DATES: Interim rule effective November 6, 1986. Comments must be received on or before March 7, 1988.

ADDRESSES: Submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–5014.

SUPPLEMENTARY INFORMATION: On November 6, 1986, President Reagan signed Pub. L. 99–603, the Immigration Reform and Control Act of 1986. Section 312 of Pub. L. 99–603 amended section 101(a)(27)(I) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101, to add a new category of "special immigrants", covering certain officers and employees of international organizations and their immediate relatives. A new section 101(a)(15)(N), 8 U.S.C. 1101, was also added to create a nonimmigrant category for certain parents and children of section 101(a)(27)(I) special immigrants.

The new nonimmigrant classification was added to minimize any family separations caused by ineligibility for special immigrant status on behalf of certain parents and children of persons accorded section 101(a)(27)(I) status.

Compliance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant economic impact on a substantial number of small entities.

This rule is not a major rule within the definition of section 1(b) of E.O. 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, under control number 1115–0053.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended to read as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1184; 8 CFR Part 2.

2. Section 214.2 is amended by redesignating paragraph (n) as paragraph (o) and adding a new paragraph (n) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(n) *Certain parents and children of section 101(a)(27)(I) special immigrants.*

(1) *Parent of special immigrant.* A parent of a child accorded special immigrant status under section 101(a)(27)(I)(i) of the Act may apply for and remain in status under section 101(a)(15)(N)(i) of the Act as long as the permanent resident child through whom eligibility was derived remains a child as defined in section 101(b)(1) of the Act.

(2) *Child of section 101(a)(27)(I) special immigrants and section 101(a)(15)(N)(i) nonimmigrants.* Children

of parents granted nonimmigrant status under section 101(a)(15)(N)(i) of the Act, or of parents who have been granted special immigrant status under section 101(a)(27)(I) (ii), (iii) or (iv) of the Act may be granted status under section 101(a)(15)(N)(ii) of the Act for such time as each remains a child as defined in section 101(b)(1) of the Act.

(3) *Admission and extension of stay.* A nonimmigrant granted (N) status shall be admitted for not to exceed three years with extensions in increments up to but not to exceed three years. Status granted under this section shall terminate on the date the child as defined in section (n)(1) and (n)(2) no longer qualifies as a child as defined in section 101(b)(1) of the Act.

(4) *Employment.* A nonimmigrant admitted in or granted (N) status may request authorization for employment pursuant to procedures in § 274a.12 of this chapter.

* * * * *

Dated: December 23, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88-2498 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0612]

Truth in Lending; Determination of Effect on State Law; Indiana

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Preemption determination.

SUMMARY: The Board is publishing in final form a determination that a provision in the law of Indiana is inconsistent with the Truth in Lending Act and Regulation Z and therefore preempted. This final determination that the provision is preempted has an effective date of October 1, 1988, although compliance may begin from the date of the Board's determination.

EFFECTIVE DATE: October 1, 1988, with compliance optional before that date.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Attorney, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the Federal act or the implementing provisions of the regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. If the Board determines that a state-required disclosure is inconsistent with the Federal law, the state law is preempted to the extent of the inconsistency and disclosures using the inconsistent term or form may not be made.

The determination regarding Indiana law is issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(3)).

Preemption determinations have an effective date of the October 1 that follows the determination by at least six months, as required by section 105(d) of the act. As a result, this determination has an effective date of October 1, 1988, although compliance may begin before that time.

(2) *Principles followed in preemption analysis.* In determining whether a state law is inconsistent with Federal provisions, § 226.28(a)(1) of Regulation Z, which implements section 111 of the act, provides that state requirements are inconsistent with, and therefore preempted by, the Federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A state law is contradictory, and therefore preempted, if it significantly impedes the operation of the Federal law or interferes with the purposes of the Federal statute. Two examples of contradictory state laws are included in § 226.28(a)(1). They are (1) a law that requires the use of the same term to represent a different amount or a different meaning than the Federal law, or (2) a law that requires the use of a term different from the Federal term to describe the same item.

The following principles, which were developed in previous preemption determinations (48 FR 4454, February 1, 1983), were applied in making the current determinations:

- For purposes of making preemption determinations, state law is deemed to require the use of specific terminology in the state disclosures if the state statute uses certain terminology in the disclosure provision.
- A state disclosure does not "describe the same item," under § 226.28(a)(1), if it is not the functional equivalent of a Federal disclosure.
- Preemption occurs only in those transactions in which an actual inconsistency exists between the state law and the Federal law.
- A state law is not inconsistent merely because it requires more information than Federal law or requires disclosure in transactions where Federal law requires none.

In general, preemption determinations are limited to those provisions of state law identified in the request for a determination, and that is the case in the present determination. At the Board's discretion, however, other state provisions that may be affected by the Federal law also may be addressed.

(3) *Discussion of specific request and final determination.* The Board was asked to examine section 8(d) of the recently amended Indiana "Loan Broker" statute, Ind. Code section 23-2-5-1 *et seq.*, to determine whether that section of the state law requires certain disclosures that contradict the disclosures required under section 106(a) and § 226.4(a) of the Truth in Lending Act and Regulation Z, respectively.

The Board published a proposed determination on September 4, 1987 (52 FR 33596). In that proposal, the Board proposed to preempt the state disclosure requirement in those instances where the state law would call for inconsistent disclosures. Eight commenters addressed the proposal; commenters included banks, a Federal Reserve Bank, a Federal Home Loan Bank, the Secretary of State for the State of Indiana, the Indiana Securities Commissioner, and the Attorney General of Indiana. The majority of comments supported the Board's proposal, generally citing the state law's interference with the intent of the Federal scheme. The officials representing the State of Indiana, however, opposed the proposal, questioning the Board's authority to affect a law directed at a group that is not subject to the Truth in Lending Act, namely loan brokers. The final determination regarding the Indiana law at issue, together with the reasons for the Board's action, are set forth below.

The relevant provisions of the state statute (which has an effective date of September 1, 1987) are as follows:

23-2-5-8. *Disclosure statement.*

(d) A loan broker shall deliver to any person who proposes to become obligated for a loan an estimated disclosure statement if the creditor would be required to deliver to the person a disclosure statement under the Truth-in-Lending Act (15 U.S.C. 1601-1667e) for the transaction. The estimated disclosure statement:

(1) shall be delivered to the person before the person becomes contractually obligated on the loan; or

(2) shall be delivered or placed in the mail to the person not later than three (3) business days after the person enters into an agreement with the loan broker;

whichever occurs first. The estimated disclosure statement must contain all of the information and be in the form required by the Truth-in-Lending Act (15 U.S.C. 1601–1667e) and regulations under the Act. However, the annual percentage rate, finance charge, total of payments, and other matters required under the Truth-in-Lending Act (15 U.S.C. 1601–1667e) shall be adjusted to reflect the amount of all fees and charges of the loan broker that the creditor could exclude from a disclosure statement. The disclosure statement must state at the top in at least 10 point type: "The following is an estimated disclosure statement showing your loan transaction as if the fees and charges you are scheduled to pay us were charged to you directly by the creditor." After the estimated disclosure statement is delivered to any person, the loan broker shall deliver to the person an additional statement redisclosing all items if the actual annual percentage rate will vary from the annual percentage rate contained in the original estimated disclosure by more than one-eighth of one percent (0.125%). Any required additional disclosure statement shall be delivered or placed in the mail before consummation of the loan or the elapse of three (3) days after the information that requires redisclosure becomes available, whichever occurs first.

The requesting party asked for a determination as to whether the requirement imposed by this section that loan brokers reflect all of their fees and charges in their calculation of, among other items, the finance charge and annual percentage rate that must be disclosed to potential borrowers is preempted by the Truth in Lending Act and Regulation Z. Section 106(a) and § 226.4(a) of the Federal statute and regulation, respectively, state that, in any consumer credit transaction, the finance charge includes charges paid by the consumer that are imposed by the creditor as an incident to the extension of credit. Under Regulation Z, charges imposed by third parties are not finance charges as long as the creditor does not require the parties services or retain the charges. Thus, fees charged by a loan broker are not finance charges provided that the creditor does not require the use of the broker. (See Official Staff Commentary, 12 CFR 226.4(a)–3.)

Since the state statute requires that loan brokers include their fees in calculating the finance charge and annual percentage rate in cases where the creditor would exclude such fees in calculating those same items for the Federal disclosures, the Board has determined that the state disclosure requirement is preempted in those instances where the state law would require the use of the same term to disclose a different amount than would be disclosed under Federal law. In such cases, the state disclosure would contradict the disclosures required under Federal law and interfere with the intent of the Federal scheme.

Although the Board, in the past, has made preemption determinations concerning laws whose coverage may extend to parties who are not considered creditors for purposes of Regulation Z (for example, Arizona in 1985 and South Carolina in 1983), the issue is raised directly in this instance. Specifically, one comment letter, representing the views of officials from the State of Indiana, questioned whether the Board's preemption authority extends to a law governing loan brokers, parties who are not subject to the requirements of the Truth in Lending Act and Regulation Z.

Section 111(a)(1) of the Federal act permits the Board to "annul, alter, or affect the laws of any state relating to the disclosure of information in connection with credit transactions * * * to the extent that those laws are inconsistent with the provisions of [the Federal law]." Although this section goes on to refer to "creditors" who may not make disclosures using an inconsistent term or form, the Board does not view this reference as limiting the scope of its authority to carry out the overall purpose of the Truth in Lending Act. The reference to creditors in this section is descriptive of parties who are directly covered by the act's provisions. The Board, however, in considering the impact of a state statute on the operation of the Federal law, believes that use of this term is not meant to exclude laws concerning other parties or classes of transactions that might undermine the purpose of the Federal law. Congress, in granting the Board broad authority to effectuate the purpose of the Truth in Lending Act, could not have foreseen every group or class of transactions that might interfere with this purpose. Because of this, the Board's authority at times may necessarily affect transactions that the act does not reach on its face, particularly when, as in this case, the state statute effectively interferes with the operation of the Federal scheme. For these reasons, the Board, in reviewing Indiana's statute for its overall effect on the purpose and operation of the Federal law, does not feel constrained by the fact that the state law is directed towards loan brokers, a group not itself subject to the Truth in Lending Act and Regulation Z.

In this instance, therefore, the Board has determined that, although the parties involved are not "creditors" under the Truth in Lending Act, this circumstance does not outweigh the fact that the effect of the state statute is clearly inconsistent with the purpose of the Federal law, which is to promote the informed use of consumer credit by requiring clear, uniform, and meaningful disclosures about its terms and costs. The Board believes that, in this instance, the approach chosen by the state will undermine the intent of the Federal scheme by confusing consumers who will receive two different sets of disclosures—both purporting to describe the cost of credit—that contain different figures described by the same terminology. Although the Board recognizes that the state disclosure is meant to inform consumers about costs that they may incur in certain credit transactions, this purpose should not be served in a manner that interferes with the operation of the Federal scheme. In such cases, where the state law requires the use of the same term to disclose a different amount than would be disclosed under Federal law, the state law clearly contradicts the requirements of the Federal law and is therefore preempted.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

(4) *Preemption determination.* The following order sets forth the preemption determination, which will also be reflected in the Official Staff Commentary on Regulation Z (Supplement I to Part 226).

Order

Pursuant to section 111 of the Federal Truth in Lending Act as revised in March 31, 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221), the Board has determined that a certain provision in the law of Indiana is inconsistent with and therefore preempted by the Federal law. The determination is as follows:

Preemption determination—Indiana. Effective October 1, 1988, the following provision in the State law of Indiana is preempted by the Federal law:

In section 23–2–5–8 of Indiana's "Loan Broker" statute, the inclusion of the loan broker's fees and charges in the calculation of, among other items, the finance charge and annual percentage rate disclosed to potential borrowers is inconsistent with sections 106(a) and

226.4(a) of the Truth in Lending Act and Regulation Z, respectively, and is preempted in those instances where the use of the same term would disclose a different amount than that required to be disclosed under Federal law.

Board of Governors of the Federal Reserve System, February 1, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-2382 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 620

Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA) adopts an interim rule amending Part 620 relating to disclosure of the condition and classification of loans (problem loans) to senior officers and directors and their immediate families and affiliated organizations. The interim rule implements a provision of the Agricultural Credit Act of 1987 (Pub. L. 100-233), which amends section 5.17(a)(9) of the Farm Credit Act of 1971, 12 U.S.C. 2252(a)(9), by placing limitations on the disclosure the FCA can require in shareholder reports of problem loans to senior officers and directors and their immediate families. The new statute requires the amendment to be implemented within 30 days of enactment (January 6, 1988). To comply with the statute the FCA adopts an interim rule, effective one week from publication. The FCA invites comment on the amendment.

DATES: The interim rule shall become effective February 12, 1988. Comments must be received on or before March 7, 1988.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020

or

James Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4483, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On April 7, 1987, the FCA held a public hearing in response to concern expressed by institutions in the Farm Credit System (System) with provisions of the FCA's regulations that required disclosure in shareholder reports of problem loans from the reporting institution to its senior officers, directors and their immediate families and affiliated organizations (12 CFR Part 620). In response to the testimony presented at that hearing, the FCA proposed amendments to Part 620 and 621 (52 FR 30374, August 14, 1987). The comment period closed October 15, 1987. During the comment period bills were introduced and considered in the United States Congress that, among other things, would limit disclosure that the FCA can require of problem loans to directors and their immediate families in a manner different from that which had been proposed on August 14, 1987. The limiting provision was enacted into law on January 6, 1988, as an amendment to section 5.17(a)(9) of the Farm Credit Act of 1971. (Section 424 of the Agricultural Credit Act of 1987, Pub. L. 100-233.)

Because the amendments to § 620.3(j)(2) and (3) proposed on August 14, 1987 relating to problem loans to senior officers and directors are inconsistent with the new statutory limitations, the FCA has withdrawn the proposed amendments (see Final Rule published elsewhere in today's **Federal Register**) and now adopts an interim rule implementing the new statutory limitation. This limitation prohibits the FCA from requiring in shareholder reports disclosure of the conditon or classification of a loan to a director of the institution who has resigned before the time for filing the applicable report with the Farm Credit Administration or whose term of office will expire no later than the date of the shareholder meeting to which the statement relates. The FCA interprets "resign" to mean that the officer or director has actually vacated office. In addition, the statute limits disclosure that can be required of members of immediate families of directors to those who reside with directors or those in whose loan or business operation the director has a material financial or legal interest. The legislative history of the section indicates that Congress also intends the limitations on disclosure to apply to senior officers. (See H.R. Rep. No. 490, 100th Cong., 1st Sess. 268.)

The statute requires the newly enacted limitation to be implemented within 30 days of enactment. To comply with the statutory mandate, the FCA adopts an interim rule, effective one week from publication, and invites comment on that rule. The amendment makes reporting and disclosure less burdensome for Farm Credit institutions, and adopting the interim rule will enable institutions to prepare their annual reports to shareholders for 1987 in accordance with the new statute. Because the statute requires immediate implementation and because the interim rule implements a straight-forward restriction contained in the statute, the FCA finds, pursuant to 5 U.S.C. 553(b)(B), that notice and comment prior to adoption are impracticable and contrary to the public interest. Comments received after the effective date of the interim rule will be considered and any necessary adjustments will be made in the final rule. For the reasons stated above, the FCA, pursuant to 5 U.S.C. 553(d)(1) and (2) and 12 U.S.C. 2252(b)(2), finds good cause to make this regulation effective in less than 30 days.

Section 620.3(j)(3) is revised by deleting paragraph (i)(C), substituting a new paragraph (ii), redesignating the current paragraph (ii) as (iii) and revising the introductory text to paragraph (iii). The effect of this revision is to require a separate statement with respect to the collectibility of loans to senior officers and directors that reflects the newly enacted statutory restrictions. The requirements of the regulation are unchanged with respect to loans that are not made in the ordinary course of business or are not made on substantially the same terms as those available to other persons for comparable transactions.

As stated above, the FCA interprets "resign" to mean that the officer or director has actually vacated the office. The FCA will monitor any resignations through its examination process to assure that they have been accomplished in good faith and not merely to circumvent the regulation.

List of Subjects in 12 CFR Part 620

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statements.

As stated in the preamble, Part 620 is amended as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 is revised to read as follows:

Authority: Secs. 5.17(a)(9) and (10), Pub. L. 99–205, 99 Stat. 1678, 12 U.S.C. 2252(a) (9) and (10); Sec. 424, Pub. L. 100–233.

2. In § 620.3, paragraphs (j)(3) introductory text and (j)(3)(i) are revised, paragraph (j)(3)(ii) is redesignated as (j)(3)(iii), a new paragraph (j)(3)(ii) is added, and newly redesignated (j)(3)(iii) introductory text is revised to read as follows:

§ 620.3 Contents of the annual report to shareholders.

* * * * *

(j) *Transactions with senior officers and directors*

* * * * *

(3) Loans to senior officers and directors.

(i) To the extent applicable, state that the institution has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

(A) Were made in the ordinary course of business; and

(B) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(ii) To the extent applicable, state that no loan to a senior officer or director, or to any organization affiliated with such person, or to any immediate family member who resides in the same household as such person or in whose loan or business operation such person has a material financial or legal interest, involved more than the normal risk of collectibility; *provided* that no such statement need be made with respect to any director or senior officer who has resigned before the time for filing the applicable report with the Farm Credit Administration, or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

(iii) If the conditions stated in paragraphs (j)(3)(i) and (ii) of this section do not apply to the loans of the persons or organizations specified therein, with respect to such loans, state:

* * * * *

3. Newly redesignated (j)(3)(iii)(E) is amended by changing the reference "(j)(3)(i)(A) through (C)" to read "(j)(3)(i) and (j)(3)(ii)."

4. Newly redesignated (j)(3)(iii)(G) is amended by changing the reference "(j)(3)(i)(c)" to read "(j)(3)(ii)."

Dated: February 2, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–2483 Filed 2–4–88; 12:46 pm]

BILLING CODE 6705–01–M

---

12 CFR Parts 620 and 621

Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts final amendments to Part 620 relating to disclosure of the condition or classification of loans to senior officers and directors and their immediate families and affiliated organizations and a final amendment to Part 621 relating to accounting and reporting requirements. The FCA withdraws proposed amendments to Part 620 that are either inconsistent with or that require further consideration in light of the Agricultural Credit Act of 1987, Pub. L. 100–233, and adopts minor substantive, technical and clarifying amendments to Part 620 that were proposed on August 14, 1987. The amendment to Part 621 deletes an obsolete examining classification from the definition of "other high risk loans."

EFFECTIVE DATE: This regulation shall become effective after the expiration of 30 days from publication during which either or both Houses of Congress are in session. A document will be published in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020

or

James Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4483, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On April 7, 1987, the FCA held a public hearing in response to concerns expressed by institutions of the Farm Credit System (System) with provisions of the FCA's regulation that required disclosure in shareholder reports of problem loans from the reporting institution to its senior officers and directors and their immediate families and affiliated organizations (12 CFR Part 620). In response to the testimony presented at that hearing, the FCA proposed amendments to Parts 620 and 621 (52 FR 30374, August 14, 1987). The comment period closed October 15, 1987.

During the comment period, bills were introduced in the United States Congress that, among other things, would limit disclosure that the FCA can require of the condition and classification of loans (problem loans) to directors and their immediate families in a manner different from that which had been proposed on August 14, 1987. The limiting provision was enacted into law on January 6, 1988, as an amendment to section 5.17(a)(9) of the Farm Credit Act of 1971. (See section 424 Agricultural Credit Act of 1987, Pub. L. 100–233). The amendment prohibits the FCA from requiring in shareholder reports disclosure of the condition or classification of a loan to a director of the institution who has resigned before the time for filing the applicable report with the Farm Credit Administration or whose term of office will expire no later than the date of the meeting of stockholders to which the statement relates. In addition, the statute limits disclosure that can be required of members of a director's immediate family to those who reside with the director or those in whose loan or business operation the director has a material financial or legal interest. The legislative history of the section indicates that Congress also intends the limitations on disclosure to apply to senior officers. (See H.R. Rep. No. 490, 100th Cong., 1st Sess. 268.) The new statute requires the limitations to be implemented within 30 days of enactment.

A. Part 620—Disclosure to Shareholders

1. Transactions with Senior Officers and Directors

In response to the concerns expressed at the public hearing, the FCA proposed to amend § 620.3(j)(3) to require in shareholder reports disclosure of problem loans to relatives of senior officers and directors with which such officer or director has a business relationship, instead of immediate family members, as defined in § 620.1(c). The amendment would also have required problem loans to immediate family members not having a business relationship with the officer or director to be reported to the FCA. In addition, the institution would have been required to inform shareholders that this disclosure to the FCA was available

upon request. Similar amendments were proposed to § 620.3(j)(2)–Transactions other than loans. The FCA also proposed to amend § 620.3(j)(3) to allow a director or senior officer to avoid disclosure of a problem loan by resigning or by correcting the problem within 60 days of the identification of the problem, provided that if the director or officer ran for election or were reappointed or reemployed within two years, the disclosure that would have been required but for the resignation would have been required to be made to shareholders prior to election or in the next annual report, whichever came first.

Because these proposed amendments to § 620.3(j) (2) and (3) are inconsistent with the new statutory limitation, the FCA withdraws them. To comply with the statutory requirements, an interim rule implementing the new statutory limitation is also published today, effective one week from publication, with opportunity for comment. (See interim rule published elsewhere in today's **Federal Register**.)

The FCA also proposed an amendment to § 620.3(j)(3)(i) to clarify that Federal Land Bank Associations (FLBAs) must disclose loans from the Federal land bank (FLB) to the FLBA's senior officers and directors that do not meet the conditions of § 620.3(j)(3) (i) and (ii). (The amendment was inadvertently omitted from the actual text of the proposed regulation.) The clarification was proposed to reflect the fact that the FLB rather than the FLBA is the primary creditor. The FCA believed that the System had understood the regulation to require such disclosure and the comments confirmed that this was the case. The FCA adopts the proposed amendment as part of the final regulation.

2. Transactions With Other Farm Credit Institutions

The FCA proposed amendments that would require disclosure of loans to the reporting institution's senior officers and directors, their affiliated organizations and immediate family members from any Farm Credit institution having a supervisory relationship with the reporting institution if the loan did not meet the criteria of § 620.3(j)(3)(i). The FCA withdraws this proposed amendment pending further consideration of the impact of the restructuring provisions of the new statute on the issues addressed by the proposed amendment.

3. Definition of "business relationship"

The FCA proposed a definition of "business relationship," a term used in the proposed amendments to § 620.3(j) (2) and (3). The FCA withdraws the proposed definition, as the term is not used in the final regulation.

4. Other Changes

The FCA adopts the proposed amendment to § 620.1(a), which revises the definition of "affiliated organization" by substituting "partner" for the third "director" in the definition. This change would eliminate organizations in which the person's only role is to serve as director and would include within the definition organizations in which the person has a partnership interest. Comments received on this change were supportive.

The FCA adopts a number of other minor substantive and technical changes and corrections that were proposed.

Section 620.21(c) is amended to clarify that the most recent quarterly report need not be actually sent with the annual information statement if it has already been sent to shareholders, by inserting "preceded or" before "accompanied." However, persons who have become shareholders since the most recent quarterly report was disseminated should be provided with a copy of it, either at the time they become shareholders or with the annual information statement. Comments received on this proposed changed were supportive.

Section 620.3(c) is amended to clarify that the requirement to disclose material pending legal proceedings is not intended to require routine disclosure of pending enforcement proceedings before the FCA, by deleting the words "or agency." Rather, the reporting institution will need to consider whether the enforcement proceeding or the circumstances giving rise to it are so material that they should be disclosed. Comments received on this proposed change were supportive.

The FCA adopts the following proposed technical amendments and corrections:

Section 620.2(k) is amended by deleting the "s" in "reports" in the first sentence and inserting "also" before "include" in the third sentence.

Section 620.10(a) is amended by changing "reporting requirements" to "report" in the last sentence.

Section 620.11(b)(2) is amended by changing "that" to "than" in the first sentence.

Section 620.11(b)(4) is amended by changing the second "that" in sentence 2 to "and," and inserting "that" between "accounts" and "have" in sentence 3.

Section 620.20(b) is amended to correct the citation contained therein from 621.21 to 620.21.

B. Part 621—Accounting and Reporting Requirements

Part 621 is amended to delete all references to "vulnerable" loans, by deleting § 621.2(a)(18)(i) and redesignating §§ 621.2(a)(18) (ii), (iii), (iv), and (v). Section 621.2(24), which defines "vulnerable" is also deleted.

With this deletion, non-performing loans are defined without reference to examining classifications. This amendment was proposed by the FCA primarily because the examining classification set forth in the regulation is outdated and because the use of examining classifications to define "other high risk loans" introduces a more subjective judgment into the primarily objective criteria for determining loan performance categories. It was also believed that this change would respond in part to the concern expressed at the hearing that some loans would be required to be disclosed because of immaterial irregularities or lack of documentation that would cause the loan to be classified as "vulnerable," even though the borrower was current on his or her payments.

Comments received on this change were generally supportive, but some commenters believed it an insufficient response to their concern that disclosure might be required even though the loan is not contractually past due, but has suffered a decline in collateral value. The FCA reemphasizes that the collectibility of a loan must be evaluated on the basis of the likelihood that the institution will be able to collect all of the contractual principal and interest over the life of the loan in light of all current information available about the borrower's operations. This is especially important in view of the fact that many loans are annual payment loans. If the institution has information about the borrower's operations that indicates that the borrower will not be able to make such a payment when it becomes due, the loan may be deemed to involve a greater than normal risk of collectibility even though it is not yet contractually past due.

The heading of § 621.4 is amended to correct the spelling of "Accrual."

List of Subjects in 12 CFR Parts 620 and 621

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statements, Accounting and reporting requirements, Report of condition and performance.

As stated in the preamble, Parts 620 and 621 of Chapter VI, Title 12 of the

Code of Federal Regulations is amended as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 continues to read as follows:

Authority: Secs. 5.17(a) (9) and 10, Pub. L. 99–205, 99 Stat. 1678, 12 U.S.C. 2252(a) (9) and (10); Sec. 424, Pub. L. 100–233.

Subpart A—Annual Reports to Shareholders

2. Section 620.1 is amended by revising paragraph (a) to read as follows:

§ 620.1 Definitions.

(a) "Affiliated organization" means any organization, other than a Farm Credit organization, of which a director, senior officer or nominee for director of the reporting institution is a partner, officer, or majority shareholder.

* * * * *

3. Section 620.2 is amended by revising paragraph (k) to read as follows:

§ 620.2 Preparing, distributing, and filing the report.

* * * * *

(k) For purposes of this part, each annual and quarterly report of a Federal land bank shall present the financial statements of the Federal land bank and its District Federal land bank associations on a combined basis. The annual and quarterly reports of a Federal intermediate credit bank shall present the financial statements of the Federal intermediate credit bank and its district production credit associations on a combined basis. The respective reports shall also include at a minimum the statement of condition and statement of income for the bank only. These statements may be in a summary form and shall disclose the basis of presentation if different than the accounting policies of the combined bank and association statements.

4. Section 620.3 is amended by revising paragraphs (c) and (j)(3)(i) introductory text to read as follows:

* * * * *

§ 620.3 Contents of annual report to shareholders.

* * * * *

(c) *Legal proceedings.* Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution is a party, of which any of its property is the subject, or which involved claims that the institution may be required by contract or operation of law, to satisfy. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought.

* * * * *

(j) *Transactions With Senior Officers and Directors*

* * * * *

(3) Loans to senior officers and directors.

(i) To the extent applicable, state that the institution (or in the case of a Federal land bank association, its district Federal land bank) has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

* * * * *

Subpart B—Quarterly Report to Shareholders

5. Section 620.10 is amended by revising paragraph (a) to read as follows:

§ 620.10 Preparing, distributing and filing the report.

(a) Each institution of the Farm Credit System except Federal land bank associations shall prepare a quarterly report for each fiscal quarter beginning with the quarter ending June 30, 1986, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution. The report shall conform to the requirements set forth in § 620.11.

* * * * *

6. Section 620.11 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

* * * * *

(b) * * *

(2) *Interim statements of income.* When any major income statement caption is less than 15 percent of average net income for the 3 most recent fiscal years and the amount in the caption has not increased or decreased by more than 20 percent since the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the 3 most recent fiscal years, the average loss shall be used for purposes of this test.

* * * * *

(4) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to make the interim information presented not misleading. Institutions may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and the adequacy of additional disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure that would substantially duplicate the disclosure contained in the most recent audited financial statements (such as a statement of significant accounting policies and practices), and details of accounts that have not changed significantly in amount or composition since the end of the most recent completed fiscal year may be omitted. However, disclosure shall be provided of events occurring subsequent to the end of the most recent fiscal year that have a material impact on the institution. Disclosures should encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization, including significant new indebtedness or modification of existing financing agreements; and the reporting entity resulting from business combinations or dispositions.

* * * * *

Subpart C—Association Annual Meeting Information Statement

7. Section 620.20 is amended by revising paragraphs (b) and (c) to read as follows:

§ 620.20 Preparing, distributing, and filing the information statement.

* * * * *

(b) The statement shall contain, at a minimum, the information specified in § 620.21 and, in addition, such other material information as is necessary to make the required statement, in light of the circumstances under which they are made, not misleading.

(c) The statement shall incorporate by reference the annual report to shareholders required by Subpart A of this part. In addition, if any institution holds its annual meeting of shareholders more than 134 days after the end of its fiscal year, the statement shall be preceded or accompanied by the most

recent quarterly statements required by Subpart B of this part.

* * * * *

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

8. The authority citation for Part 621 continues to read as follows:

Authority: Sec. 5.17 (a) (9) and (10), Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2252(a) (9) and (10).

Subpart A—Accounting Requirements

§ 621.2 [Amended]

9. Section 621.2 is amended by removing paragraph (a)(18)(i) and redesignating paragraphs (a)(18) (ii), (iii), (iv) and (v) as paragraphs (a)(18) (i), (ii), (iii), and (iv); and by removing paragraph (a)(24).

10. Section 621.4 is amended by revising the heading to read as follows:

§ 621.4 Accrual basis of accounting.

Dated: February 2, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-2484 Filed 2-4-88; 12:50 pm]

BILLING CODE 6705-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim order regarding the application of foreign futures and option rules to certain persons located outside the United States.

SUMMARY: On August 5, 1987, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** final rules governing the offer and sale of foreign futures and option contracts in the United States. 52 FR 28980. By order dated December 21, 1987, the Commission postponed the effective date of the rules from January 4, 1988 to February 1, 1988. 52 FR 48811, December 28, 1987.

In promulgating such rules governing foreign futures and option transactions, the Commission adopted an exemptive provision in rule 30.10 which permits persons located outside the United States who solicit or accept orders from U.S. customers for foreign futures and options transactions, and who are subject to a comparable regulatory scheme in the jurisdiction in which they are situated, to apply for an exemption from the application of certain of the rules applicable to such transactions. 52 FR 28980 at 29001.

In that connection, several foreign exchanges and foreign regulators, on behalf of their members or persons whom they regulate, respectively, have either applied for the broad-based exemption in rule 30.10 of the foreign futures and options rules or have expressed their intent to do so. In large part because of the intervening market events of October, the Commission has been unable to fully consider the submissions made in this regard to date. For this reason, the Commission believes that it would not be inappropriate to adopt an interim measure which would permit the Commission to address these petitions without requiring such persons to cease sales of foreign futures products to customers located in the United States in the interim commencing February 1, 1988, when the rules become effective. The Commission believes that permitting persons who currently sell foreign futures products to clients in the United States to continue those relationships on or after February 1, 1988, subject to certain conditions, would avoid the unnecessary disruption of ongoing business relationships without sacrificing the purposes for which the rules were adopted. In the absence of an interim order, by February 1, 1988, such persons located outside the United States, among other requirements, would be required to register with the Commission as futures commission merchants and open offices in the United States pursuant to rule 30.4(a) or cease selling foreign futures products into the United States. In the alternative, such persons could carry all U.S. customer accounts through a U.S. futures commission merchant on a fully-disclosed basis as required by rule 30.3(b) of the foreign futures and options rules and act only in the capacity of introducing brokers pursuant to rule 30.5(a). 52 FR at 28998-28999.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

For the reasons discussed above, as a consequence, the Commission has determined to issue this interim order to permit persons located outside the United States selling foreign futures products to clients in the U.S. on whose behalf a foreign exchange and/or regulator has filed a petition for relief under rule 30.10 to continue such activities with existing foreign futures clients located in the United States. for a sixty-day period to April 4, 1988 provided the following conditions are satisfied:

(1) A petition for exemption under rule 30.10 was filed on behalf of such persons prior to February 1, 1988;

(2) Such persons actually were in the business of selling products which are the subject of the part 30 rules to customers located in the U.S. and defined in rule 30.1(c), 52 FR 28998, prior to January 4, 1988;

(3) Such persons: (a) agree not to solicit or attempt to solicit and (b) do not solicit or attempt to solicit transactions in respect of foreign futures products for or on behalf of any new customers located in the U.S. pending a final determination by the Commission on the above-referenced exemption request;

(4) Persons who are the subject of this interim order must have in effect a valid and binding appointment of an agent in the United States for service of process in accordance with the procedures set forth in rule 30.5(a), 52 FR at 28999, prior to accepting any new positions from or on behalf of existing customers located in the U.S. on or after February 1, 1988; [1] and

(5) The applicable foreign exchange or regulator notifies the National Futures Association of the persons on whose behalf it is requesting the relief addressed herein.

This order would temporarily defer only the registration, capital and separate account requirements of part 30, as well as the *specific* risk disclosure requirements in rule 30.6 and the requirement that all accounts subject to the provisions of part 30 be carried by or through a futures commission merchant (which must maintain an office in the U.S.) on a fully-disclosed basis, with respect to such persons. All other aspects of the Commodity Exchange Act ("Act") and regulations thereunder and, in particular, rule 30.9 relating to fraud would be effective. Specifically, all such sales must otherwise be consistent both with the Act and the regulations thereunder, as appropriate, and with any applicable requirements of the foreign jurisdiction. Further, the Commission notes that this interim relief will not extend to the offer or sale of any foreign option contract except pursuant to the trade-option exemption in Commission rule 32.4(a) or Commission order,[2] notwithstanding

[1] Thus, prior to, or in the absence of, an appointment of an agent for service of process, persons who are the subject of the relief herein may only accept orders to liquidate positions entered into before February 1, 1988 and continue to service any such positions, e.g., issue margin calls and/or accept maintenance margin deposits.

[2] This prohibition is subject to the trade-option exemption in Commission rule 32.4(a), 17 CFR

Continued

authorization of such product by the Commission pursuant to rule 30.3(a), 52 FR at 28998. Accordingly, a person who is the subject of this relief may not offer or sell such option products to customers located in the U.S. during the sixty-day period unless the Commission has actually granted the broad-based exemption in rule 30.10 based on comparability of regulation or the person otherwise registers and complies with the remaining rules in part 30 of the Commission's regulations. Finally, the Commission notes that the failure to comply with the conditions specified above may affect the Commission's determination to grant the foreign firm the exemption based on comparability of regulation or the ability of a foreign exchange and/or regulator to petition on behalf of their numbers or persons whom they regulate. Of course, any person selling products traded on or subject to the rules of a contract market to U.S. customers must register in the appropriate capacity and comply with the Act and the regulations thereunder.[3]

Accordingly, the Commission hereby orders that, notwithstanding the effective date of the foreign futures and options rules, for a sixty-day period to April 4, 1988, the Commission will not apply the registration, capital and separate account requirements of these rules as well as the *specific* risk disclosure requirements of rule 30.6 and the requirement that all transactions subject to the part 30 rules be carried by or through a futures commission merchant on a fully-disclosed basis, to certain persons located outside the U.S. with respect to whom the Commission and the National Futures Association have been given notice on or before February 1, 1988 consistent with the conditions set forth in this order.

Issued in Washington, DC on January 29, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88-2323 Filed 2-4-88; 8:45 am]

BILLING CODE 6351-01-M

32.4(a) (1987), and the Commission's order dated April 9, 1986 authorizing banks located in the United States to grant options on foreign currencies traded on the Montreal Exchange as principals for business-related purposes, 51 FR 12698 (April 15, 1986), which continue in effect notwithstanding the effective date of the foreign futures and options rules.

[3] *See* 45 FR 18356, 18360 (March 20, 1980).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

January 29, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5, the Commission issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period February through April 1988. This rate is set at 12.42 percent.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION:

Benchmark Rate of Return on Common Equity for Public Utilities

Issued January 29, 1988.

On January 29, 1988, the Commission issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this amended procedure, the Commission determines that the benchmark rate of return on common equity applicable to rate filings made during the period February 1 through April 30, 1988, is 12.42 percent.

According to the amended § 37.9, each quarterly benchmark rate of return is set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 100 utilities. The average yield is used in the following formula with fixed adjustment factors (determined in the annual proceeding) to determine the cost rate:

$$k_t = 1.02\ Y_t + 4.36$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The median dividend yield for the sample of utilities for the third and fourth quarters of 1987 are 7.58 and 8.21 percent, respectively. The average is 7.90 percent. Using the latter yield produces an average cost of common equity of 12.42 percent. The attached appendix provides the supporting data for the latest quarter used in this update.

Generally, a rule becomes effective not less than 30 days after it is published in the **Federal Register**. A rule may become effective sooner if the agency finds that there is good cause to do so. 5 U.S.C. 553(d) (1982). The Commission finds good cause to make this rule effective February 1, 1988. Specifically, this notice is intended to supplement the generic rate of return rule announced in Order No. 489, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission revises, Part 37, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below, effective February 1, 1988.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act 16, U.S.C. 791-a-825r (1982); Department of Energy Organization Act 42 U.S.C. 7101-7352 (1982).

2. In paragraph (d) of § 37.9, the table is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure

* * * * *

(d) * * *

* * * * *

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, (Docket No. RM87-35-000) (Final Rule) (Order No. 489).

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return ( )
2/1/86–4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86–7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86–10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86–1/31/87	1.02	4.54	6.75	11.43	12.75
2/1/87–4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87–7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87–10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87–1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88–4/30/88	1.02	4.36	7.90	12.42	12.42

Appendix

Note: The Appendix will not be published in *Code of Federal Regulations*

Exhibit No. and Title

1—Initial Sample of Utilities
2—Utilities Excluded from the sample for the Indicated Quarter due to either Zero Dividends or a cut in Dividends for this Quarter or the prior Three Quarters
3—Annualized Dividend Yields for the Indicated Quarter for Utilities retained in the sample

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

Exhibit 1
Exhibit 2
Exhibit 3

Exhibit 1.—Sample of Utilities

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Service	CIP	4931
Central Louisiana Electric	CNL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
Cilcorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Emergy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy System.	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc-VA	D	4931
DPL Inc	DPL	4931
Duke Power Co	DUK	4911
Duquesne Light Co	DQU	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric Co	EDE	4911
Fitchburg Gas & Elec Light	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911

Exhibit 1.—Sample of Utilities—Continued

Utility	Ticker symbol	Industry code
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Gulf States Utilities Co	Hawaiian Electic Inds	4911
HE	Houston Industries Inc	4911
HOU	I E Industries Inc	IEL4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Elec	IWG	4931
IPALCO Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
Long Island Lighting	LIL	4931
Lousiville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Middle South Utilities	MSU	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
NECO Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric System	NES	4911
New York State Elec & Gas	NGE	4931
Niagara Mohawk Power	NMK	4931
Northeast Utilities	NU	4931
Northern Indiana Public Serv	NI	4931
Northern States Power-MN	NSP	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utilities	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Light	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital Corp	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
Public Service Co of Colo	PSR	4931
Public Service Co of Ind	PIN	4911
Public Service Co of N H	PNH	4911
Public Service Co of N Mex	PNM	4931
Public Service Enterprises	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931

Exhibit 1.—Sample of Utilities—Continued

Utility	Ticker symbol	Industry code
Savannah Elec & Power	SAV	4911
Scana Corp	SCG	4931
Sierra Pacific Resources	SRP	4931
Southern Calif Edison Co	SCE	4911
Southern Co	SO	4911
Southern Indiana Gas & Elec	SIG	4931
St Joseph Light & Power	SAJ	4931
TECO Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electic Power Co	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
Unitil Corp	UTL	4911
Utah Power & Light	UTP	4911
Utilicorp United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Power & Light	WPL	4931
Wisconsin Public Service	WPS	4931

N=100

Exhibit 2.—Utilities Excluded From the Sample for the Indicated Quarter Due to Either Zero Dividends or a Cut in Dividends for This Quarter or the Prior Three Quarters

[Year=87; Quarter=4]

Ticker symbol and Utility	Reason for exclusion
CMS—CMS Energy Corp.	Dividend rate was zero for the quarter ending 12/31/87
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending 03/31/87
GSU—Gulf States Utilities Co.	Dividend rate was zero for the quarter ending 12/31/87
LIL—Long Island Lighting.	Dividend rate was zero for the quarter ending 12/31/87
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending 12/31/87
NI—Northern Indiana Public Serv.	Dividend rate was zero for the quarter ending 09/30/87
NMK—Niagara Mohawk Power.	Dividend rate was reduced in the quarter ending 09/30/87

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUI IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

[Year=87; Quarter=4]

Ticker symbol and Utility	Reason for exclusion
PIN—Public Service Co of Ind.	Dividend rate was zero for the quarter ending 12/31/87

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUI IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

[Year=87; Quarter=4]

Ticker symbol and Utility	Reason for exclusion
PNH—Public Service Co of NH.	Dividend rate was zero for the quarter ending 12/31/87

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUI IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

[Year=87; Quarter=4]

Ticker symbol and Utility	Reason for exclusion
RGS—Rochester Gas & Electric.	Dividend rate was reduced in the quarter ending 09/30/87

N=10

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

[Year=87; Quarter=4]

Ticker symbol	Price, 1st month of Qrtr-High	Price, 1st month of Qrtr-Low	Price, 2nd month of Qrtr-High	Price, 2nd month of Qrtr-Low	Price, 3rd month of Qrtr-High	Price, 3rd month of Qrtr-Low	Average price	Dividends annual rate	Annual dividend yield
AEP	29.125	23.125	27.250	24.125	26.625	24.375	25.771	2.260	8
ATE	35.500	30.000	33.500	29.750	31.250	28.750	31.458	2.680	8
AYP	39.500	31.375	38.750	36.000	37.750	35.250	36.438	3.000	8
BGE	33.625	22.250	34.000	28.750	30.625	28.750	29.667	1.900	6
BKH	23.875	19.500	24.500	20.875	23.375	21.000	22.188	1.280	5
BSE	22.000	16.750	20.250	18.875	19.625	17.875	19.229	1.820	9
CER	36.000	30.500	33.750	30.250	31.875	29.000	31.896	2.340	7
CES	32.000	25.250	29.875	26.500	28.750	26.250	28.104	2.800	9
CIN	27.125	23.125	25.250	23.750	25.250	23.275	24.646	2.200	8
CIP	23.875	19.500	22.125	19.625	21.750	19.875	21.125	1.720	8
CNH	24.500	20.500	22.875	21.000	21.625	16.500	21.167	2.960	13
CNL	32.875	28.500	32.375	29.625	31.250	29.500	30.688	2.200	7
CPL	35.625	30.250	33.750	32.000	33.750	32.125	32.917	2.760	8
CSR	33.625	27.000	32.250	28.000	30.250	28.000	29.854	2.280	7
CTP	15.375	12.500	16.000	14.375	16.875	14.000	14.854	1.400	9
CV	23.375	20.625	23.875	21.250	23.875	21.125	22.354	1.900	8
CWE	36.500	25.250	29.500	27.000	29.500	26.750	29.083	3.000	10
CX	18.500	14.875	17.750	15.375	17.375	16.000	16.646	2.560	15
D	45.750	36.625	44.500	39.375	42.375	40.000	41.438	3.080	7
DEW	19.875	16.250	19.000	16.750	18.000	16.875	17.792	1.413	7
DPL	27.125	22.125	24.750	23.000	24.250	22.500	23.958	2.080	8
DQU	12.750	10.625	12.250	10.875	11.875	11.250	11.604	1.200	10
DTE	14.875	12.500	14.750	13.625	14.625	13.125	13.917	1.680	12
DUK	50.250	40.125	48.375	42.000	43.750	42.500	44.500	2.800	6
ED	46.125	37.500	45.625	41.375	43.875	41.500	42.667	2.960	6
EDE	28.125	27.375	30.875	27.875	31.000	29.625	29.146	2.120	7
EUA	30.250	24.000	29.375	26.000	28.250	25.250	27.188	2.300	8
FGE	25.125	20.875	21.500	20.375	21.625	20.750	21.708	1.600	7
FPC	36.750	29.375	35.875	32.375	33.875	31.625	33.313	2.480	7
FPL	32.875	24.375	31.250	27.375	29.750	27.750	28.896	2.120	7
GMP	24.000	20.500	22.750	20.500	26.000	22.125	22.646	1.860	8
HE	28.750	22.250	28.000	25.375	27.500	25.000	26.146	1.920	7
HOU	34.250	26.500	32.500	29.375	30.250	28.750	30.271	2.880	9
IDA	26.250	19.000	24.000	21.250	23.500	21.125	22.521	1.800	7
IEL	24.500	20.875	24.375	22.125	23.875	21.625	22.896	2.020	8
IOR	20.875	17.375	20.375	18.625	20.375	18.750	19.396	1.640	8
IPC	27.000	21.250	25.125	22.250	24.250	22.375	23.708	2.640	11
IPL	24.125	19.250	23.375	22.000	22.500	20.750	22.000	1.560	7
IPW	23.250	21.000	23.875	21.375	21.625	19.375	21.750	1.960	9
IWG	40.750	35.000	37.375	34.500	38.375	34.875	36.813	3.040	8
KAN	25.875	20.000	25.125	22.625	23.875	22.250	23.292	1.650	7
KGE	22.250	16.000	19.750	18.375	19.250	18.375	19.000	1.480	7
KLT	28.125	21.000	27.625	24.500	26.250	24.375	25.313	2.240	8
KU	19.625	15.000	18.875	17.875	18.500	17.000	17.813	1.300	7
LOU	35.500	30.500	33.625	31.875	32.625	30.125	32.375	2.660	8
MAP	26.500	23.000	27.625	23.375	27.125	25.000	25.438	1.800	7
MPI	25.625	19.500	23.875	20.125	22.250	20.500	21.979	1.660	7
MT	36.375	29.875	32.625	29.750	31.875	29.500	31.667	2.680	8
MWE	19.875	15.000	18.875	16.500	18.125	16.250	17.438	1.520	8
NES	26.750	20.000	25.250	22.750	23.750	21.125	23.271	2.040	8
NGE	28.125	22.500	26.000	23.125	24.750	20.125	24.104	2.640	10
NPT	20.125	16.750	19.750	18.500	20.500	18.125	18.958	1.500	7
NSP	33.500	26.250	32.500	29.125	31.500	28.500	30.229	2.020	6
NU	23.125	18.000	21.875	20.000	20.875	19.000	20.479	1.760	8
NVP	19.625	16.375	19.250	17.625	19.625	18.250	18.458	1.480	8
OEC	21.500	16.500	20.625	19.125	20.500	18.375	19.438	1.960	10

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

[Year=87; Quarter=4]

Ticker symbol	Price, 1st month of Qrtr-High	Price, 1st month of Qrtr-Low	Price, 2nd month of Qrtr-High	Price, 2nd month of Qrtr-Low	Price, 3rd month of Qrtr-High	Price, 3rd month of Qrtr-Low	Average price	Dividends annual rate	Annual dividend yield
OGE	32.375	28.000	30.625	29.375	30.000	28.250	29.771	2.180	7
ORU	32.875	25.000	30.375	28.000	29.125	26.750	28.688	2.220	7
PCG	19.875	15.000	19.125	17.375	17.875	15.750	17.500	1.920	10
PE	20.625	16.750	20.500	19.000	19.375	18.125	19.063	2.200	11
PEG	26.750	20.000	25.625	22.750	24.000	21.750	23.479	2.000	8
PGN	26.750	20.750	24.375	21.625	22.625	20.625	22.792	1.960	8
PNM	25.000	20.000	24.125	20.625	21.500	17.375	21.438	2.920	13
PNW	31.500	26.375	28.625	26.750	28.625	26.500	28.063	2.800	9
POM	24.375	18.000	24.375	20.000	23.000	20.750	21.750	1.300	5
PPL	37.875	28.625	35.750	33.125	33.875	31.750	33.500	2.680	8
PPW	35.625	26.750	33.625	31.625	33.250	30.500	31.896	2.520	7
PSD	21.875	17.750	20.125	18.875	19.875	18.750	19.542	1.760	9
PSR	21.250	17.250	20.750	18.875	21.250	18.875	19.708	2.000	10
SAJ	21.750	17.750	20.875	17.625	20.000	18.000	19.333	1.320	
SAV	19.250	14.625	21.625	18.375	21.375	19.125	19.063	1.000	5
SCE	33.750	27.625	33.625	30.500	31.500	29.625	31.104	2.380	7
SCG	33.000	26.500	31.625	29.375	29.875	28.125	29.750	2.320	7
SDO	33.750	28.250	32.750	30.375	31.500	29.250	30.979	2.500	8
SIG	36.375	31.000	35.000	31.250	35.750	31.000	33.396	2.120	6
SO	23.625	17.875	22.750	21.000	22.750	20.750	21.458	2.140	9
SRP	23.375	18.000	21.500	19.875	21.750	19.750	20.708	1.760	8
TE	27.875	22.500	23.875	22.500	24.000	22.000	23.792	1.340	5
TEP	58.250	50.875	55.875	52.250	53.500	49.250	53.333	3.600	6
TNP	20.375	17.250	19.625	18.125	19.000	17.500	18.646	1.390	7
TXU	31.750	26.000	30.000	28.000	28.125	25.500	28.229	2.800	9
UCU	17.034	13.358	16.500	14.625	16.750	14.750	15.503	1.020	6
UEP	25.500	19.875	23.875	21.875	22.375	20.750	22.375	1.920	8
UIL	26.500	21.250	26.500	24.125	27.625	24.875	25.146	2.320	9
UTL	33.625	29.500	31.250	30.000	30.250	29.375	30.667	1.960	6
UTP	29.875	20.750	29.125	27.250	27.875	25.000	26.646	2.320	8
WEC	26.250	21.000	24.750	21.500	23.750	22.000	23.208	1.440	6
WPL	48.000	43.750	46.500	43.750	45.250	42.500	44.958	3.120	6
WPS	22.750	18.875	22.500	20.125	21.500	19.875	20.938	1.540	7
WWP	26.875	22.250	24.500	22.875	25.250	22.250	24.000	2.480	10

N=90

[FR Doc. 88-2465 Filed 2-4-88; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 37

[Docket No. RM87-35-000; Order No. 489]

Generic Determination of Rate of Return on Common Equity for Public Utilities

January 29, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) adopts a procedure for determining and updating the benchmark rate of return on common equity for the jurisdictional operations of electric public utilities. The Commission determines that the average cost of common equity for those jurisdictional operations for the year ending June 30, 1987 was 11.21 percent. The benchmark rates of return will remain advisory only and are intended to provide guidance to companies and intervenors in individual rate cases and to serve as a reference point for the Commission in its deliberations.

The Commission also provides that the benchmark rate of return will be applied in proceedings under section 206 of the Federal Power Act (FPA) as well as in proceedings under FPA section 205. The benchmark rate of return to be applied in a section 206 proceeding is the benchmark rate in effect on the date the Commission sets a rate for investigation.

The Commission will hold another annual generic rate of return proceeding for the year ending June 30, 1988.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8283.

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

SUPPLEMENTARY INFORMATION:

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

Issued January 29, 1988.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this final rule estimating the average cost of common equity for the jurisdictional operations of public utilities [1] for the year ending June 30, 1987 (hereafter the "base year") and adopting a quarterly indexing procedure to establish benchmark rates of return on common equity for use in proceedings before the Commission. Benchmark rates of return determined through these procedures remain advisory, as were those resulting from the previous three annual proceedings.[2]

[1] The terms "public utilities" and "electric utilities" are used interchangeably.

[2] The annual proceedings were first established by Order No. 389, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29946 (July 25, 1984) (Docket No. RM80-36-000) (final rule) (Issued July 18, 1984) and Order No. 389-A, 49 FR 46351 (Nov. 26, 1984) (order denying rehearing) (Issued Nov. 21, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21802

Continued

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable." [3] In the exercise of this statutory responsibility, the Commission seeks to set rates of return on common equity that are fair to both ratepayers and utility stockholders. The allowed rate of return on common equity is now determined individually for each utility on a case-by-case basis. In July 1984, the Commission adopted procedures for the generic determination of benchmark rates of return on common equity and for their application in individual cases.[4] The Commission has conducted three prior proceedings to determine benchmark rates of return and has made those rates advisory only. In that advisory only status, benchmark rates are intended to provide guidance to parties to rate proceedings and to serve as a reference point for the Commission in setting allowed rates of return.[5]

As required by § 37.4 of the Commission's regulations, the Commission initiated a fourth proceeding to determine benchmark rates of return by issuing a Notice of Proposed Rulemaking (NOPR or Notice) on September 30, 1987.[6] The Commission received 14 timely comments.[7] Table 1 lists estimates of the average cost of common equity for the base year submitted by commenters, using the discounted cash flow methodology.

BILLING CODE 6717-01-M

(May 29, 1985) (Docket No. RM84-15-000) (final rule) (Issued May 20, 1985) and Order No. 420-A, 50 FR 34086 (Aug. 23, 1985) (Docket Nos. RM85-15-001, *et al.*) (order denying rehearing) (Issued Aug. 20, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (Jan. 6, 1986) (Docket No. RM85-19-000) (final rule) (Issued Dec. 26, 1985) and Order No. 442-A, 51 FR 22505 (June 20, 1986) Docket No. RM85-19-001, *et al.*) (order granting in part and denying in part requests for rehearing) (Issued June 11, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (Jan. 2, 1987) (Docket No. RM86-12-000) (final rule) (Issued Dec. 24, 1986) and Order 461-A, 52 FR 5757 (Feb. 26, 1987) (order denying rehearing) (Issued Feb. 19, 1987).

[3] 16 U.S.C. 824d (1982).

[4] Order No. 389, 49 FR 29946.

[5] *Id.* at 29954.

[6] Generic Determination Rate of Return on Common Equity for Public Utilities. 52 FR 37326 (Oct. 6, 1987) (Docket No. RM87-35-000) (notice of proposed rulemaking) (Issued Sept. 30, 1987).

[7] The Commission refers to commenters by abbreviations in the text that follows. See Appendix A for a list of commenters and their abbreviations.

Docket No. RM87-35-000

Table 1. Estimates of the Average Cost of Common Equity to Electric Utilities for the Year Ending June 30, 1987

Commenter 1/	Sample Size 2/	Model Used 4/	Current Dividend Yield	Quarterly Dividend Adjustment	Adjusted Dividend Yield	Constant Growth Rate	Required Rate of Return	Flotation Cost Adjustment	Cost of Common Equity
BEC	100	420	6.70	0.18	6.88	5.30	12.18	0.01	12.19
EEI	100	420	6.70	0.17	6.87	5.10	11.97	0.02	12.00
AUS	100	420	6.70	0.16	6.86	4.80	11.66	0.11	11.77
SWEP	100	420	7.14	0.15	7.29	4.32	11.61	0.02	11.63
NEP	100 3/	420	6.75	0.17	6.92	5.00	11.92	NR	11.92
	100 3/	420	6.75	0.15	6.90	4.50	11.40	NR	11.40
COMMISSION	100	420	6.70	0.15	6.85	4.34	11.19	0.02	11.21
FA STAFF	100	420	6.72	0.13	6.86	4.10	10.96	0.03	10.98
COOPERATIVES	100 3/	420	6.70	0.13	6.84	4.02	10.85	0.01	10.87
MINN	100	420	7.00	0.12	7.12	3.55	10.67	0.04	10.71

1/ See Appendix A for identification of commenters.
2/ Except as indicated, Commenter started with the Commission's sample of 100 utilities and made adjustments based on various criteria
3/ This sample begins with the 100 utilities in Salomon Brothers' Electric Utility Monthly publication.
4/ "420" refers to the Commission's "420 Model".
NR Not Reported

BILLING CODE 6717-01-C

III. Discussion

A. Overview

As discussed more fully below, the Commission adopts the procedure proposed in the NOPR for determining and updating the benchmark rate of return by relying on the discounted cash flow (DCF) method for estimating the rate of return on common equity.[8] The Commission estimates that the average cost of common equity for the jurisdictional operations of electric utilities during the base year was 11.21 percent. This is based on an unadjusted base year dividend yield of 6.70 percent, a growth rate of 4.34 percent, and a flotation cost adjustment of .02 percent.

The benchmark rates of return also become applicable to proceedings under FPA section 206. The benchmark rate of return in effect on the date the Commission sets a rate for investigation in the section 206 proceeding will generally be applied.

In the NOPR, the Commission expressed its concern that, despite numerous urgings in previous rulemaking proceedings, parties are not giving due consideration to the benchmark rate of return. Therefore, the Commission is specifically requesting that all rate case participants, including staff and administrative law judges, evaluate the reasonableness of the applicable benchmark rate of return. The Commission believes that the analyses it receives will enable the Commission Staff and participants in the proceeding to use the benchmark rates of return as points of departure in setting allowed rates of return.

B. The Applicability of the DCF Model

The Commission is relying on the discounted cash flow method for estimating the rate of return on common equity. Specifically, that formula is:

$$k = (1+.5g)y+g$$

where:

k = market required rate of return
y = current dividend yield (current annual dividend rate divided by current market price)
g = expected annual dividend growth rate
(1+.5g) = dividend adjustment factor for quarterly dividend payments

Several commenters assert that the price volatility experienced by the stock markets during October 1987 makes the DCF model unusable.[9] American Electric Power Service Corporation (AEP) states that "there have been large speculative forces operating in the market for a substantial period" [10] and that those forces are responsible for the price volatility.

The Commission's use of the dividend yields for six months in the quarterly indexing procedure is designed to smooth out short-term market fluctuations that might exist if it used spot yields. These fluctuations may or may not be due to what AEP terms "speculation". However, if a utility's stock price changes for a substantial period of time for whatever reason, that utility seeking to raise new equity would be faced with a changed cost of equity. Rather than misstating a utility's cost of equity, as AEP claims, the DCF model as applied by the Commission recognizes that price changes can reflect a changed cost of equity.

Consumers Power Company (CPC) states that the recent extraordinary volatility in stock prices has contributed to rapidly changing dividend yields. CPC then cites the wide variability of yields as reducing the continuity of calculated yields used in the DCF model, and claims that the DCF methodology is rendered inapplicable. In particular, CPC charges that the large fall in utility stock prices during October 1987 may have "reduced the continuity of the calculated yields in the DCF model."[11]

On October 19, 1987, the Standard and Poor's 500 Stock Price Index declined by more than 20 percent, while the Salomon Brothers' 100 Electric Utility Index declined by roughly half as much. By December 15, 1987, stock prices had recovered somewhat: the decline in the S&P 500 Index had been reduced to 14 percent and that of the Salomon Brothers' 100 to less than 6 percent.[12] During this period, dividend yields calculated on a daily basis were volatile. The smoothing process discussed above is designed to remove short-term fluctuations in dividend yields and to preserve changes due to longer term trends. Historically, utility dividend yields tend to move in the same direction as interest rates. Appendix B shows the smoothed dividend yields and smoothed 30-year Treasury bond yields for each of the quarterly benchmark periods since the first quarter of 1986. The yields for the most recent period, measured between July and December 1987, are circled. The most recent yield is in line with dividend yields and interest rates in other periods, indicating that the continuity of dividend yields is still intact. The Commission therefore finds that dividend yields, as calculated in the quarterly indexing procedure, have not become discontinuous.

Alfred Winchell Whittaker (AWW) argues that market inefficiencies render the DCF model useless and cites some recent studies in the economic literature.[13] He charges that for the market to be efficient, "all investors [must] have access to all publicly available information, understand all of its implications, and correctly use the information in making all their investment decisions." As the Commission stated in the previous proceeding, "[t]he efficient market theory is founded upon the proposition that 'all relevant information is widely and cheaply available to investors and that all relevant and ascertainable information is already reflected in security prices' ".[14] The efficient market literature cited by AWW claims that variations in stock market prices appear to be too large to be explained by variations in subsequent dividend payments. The Commission considered this argument and rejected it in the previous proceeding, essentially because the findings of the studies cited are not generally accepted as proven propositions.[15] In addition, the dividend yield "smoothing" process used in the benchmark quarterly indexing procedure reduces short-term price variations. Thus, if the theory of excessive stock price volatility cited by AWW[16] proves correct, that fact would further support the use of the Commission's current methodology since it already smoothes "excessive" price fluctuations.

AEP argues that the DCF model misstates the cost of common equity capital. AEP argues that the model assumes erroneously that the market price of a stock is primarily or exclusively determined by current dividends and expected future increases in dividends, and ignores other factors such as expectations about changes in stock prices, inflation rates and speculative considerations.[17]

---

[8] The Commission notes that those procedures were also adopted in the third annual proceeding.

[9] American Electric Power Service Corporation (AEP) at 4–5, Associated Utility Services, Inc. (AUS) at 21, Consumers Power Company (CPC) at 3, Edison Electric Institute (EEI) at 32, Southern California Edison (SCE) at 2, and Alfred Winchell Whittaker (AWW) at 2–5.

[10] AEP at 4.

[11] CPC at 3.

[12] Calculated by Commission staff from raw data provided by Salomon Brothers.

[13] AWW at 4–7.

[14] 52 FR 30, quoting Brealey, R. and Myers, S. *Principles of Corporate Finance*, McGraw-Hill (1984) at 266.

[15] Order No. 461–A, 52 FR 5759.

[16] AWW at 4–5, citing R. Shiller "The Volatility of Stock Market Prices," 235 *Science* 33 (Jan. 1987) and Shiller, "Stock Prices and Social Dynamics," *Brookings Papers on Economic Activity* 457, 490 (1984).

[17] AEP at 3.

AEP misinterprets the theory underlying the DCF model. The DCF model used by the Commission shows the relationship between stock prices and dividends, growth rate of dividends, and shareholders' required rate of return. It does not assume that price is primarily determined by dividends alone. The DCF model assumes that price, "P_0", is determined by a combination of factors:

$$P_0 = \frac{D_0(1+.5g)}{k-g}$$

Two of these factors relate to dividends. The indicated current dividend is represented by the "D_0" term and the expected growth rate of dividends is represented by the "g" term. The other factor, the shareholders' required return on equity, the "k" term, also influences price. This term has several components, including expectations about the real interest rates, the expected rate of inflation, and the "risks" associated with owning a particular stock. It is this term that is estimated by the DCF model. Contrary to AEP's claim, prices in the DCF model change in response to changes in expectations associated with the "g" and "k" terms.

Two commenters question the ability of the constant growth DCF model to forecast stock market prices.[18] Associated Utility Services, Inc. (AUS) claims that equity price behavior is quite different from the assumptions of the constant growth DCF model. AUS cites a study it commissioned which found the constant growth DCF model wanting in its ability to predict accurately one-period stock price changes. AEP criticizes the DCF formula for its "inability to anticipate or explain the large movements in stock prices during October 1987."

The Commission agrees that the DCF model is a poor method for predicting future stock prices. A simplifying assumption underlying the constant growth DCF model is that the firm will grow at a constant rate. This implies that book value and dividends can be thought of as growing at roughly the same rate. If there were no changes in expectations from one year to the next, prices could be expected to grow at the same rate as earnings, dividends, and book value. AUS tested the relationship between a percentage change in market price and percentage changes in per share earnings, dividends, and book value over a one-year period. Since expectations do change, it is not surprising that AUS found that the model did a poor job of explaining changes in stock prices. The DCF model is used to estimate the return required by investors at the time the analysis is performed. It is not intended to forecast price changes, changes in market conditions, or changes in expectations. A year later, expectations about interest rates, dividends, and growth rates will likely have changed. Prices change because expectations change. A test to determine whether a DCF model can forecast stock price changes is not a valid test of the model.

Several commenters question the size of the difference between the benchmark rate of return and bond yields.[19] The Commission finds problems with commenter studies measuring the premium between the quarterly benchmark rates of return and bond yields. Several commenters use spot bond yields in their analyses.[20] In the quarterly indexing procedure used to develop the benchmark rate, the Commission uses a six-month dividend yield to smooth short-term market fluctuations inherent in spot yields. A similar smoothing process should be used to remove short-term fluctuations from bond yields before any comparison is made.

In addition, some commenters mismatched the time periods for comparison between the benchmark rate and bond yields. While it is true that a benchmark rate of return is meant to apply to a particular period, it is calculated by the Commission using dividend yield data from a period prior to the applicability period. Therefore, a fair comparison should contrast the benchmark rate of return with contemporaneous smoothed bond yields.

AUS argues that the validity of the Commission's benchmark rate of return should be tested by analyzing the reasonableness of the quarterly DCF calculations. AUS compares each of the quarterly benchmark rates of return [21] with the yields of A-rated public utility bonds for the benchmark applicability period. The decline in the spread between those benchmark rates and bond yields from 4.12 percentage points for the February to April 1986 benchmark period to 0.74 percentage points for the August to October 1987 benchmark period demonstrates, in AUS's words, "the basic infirmity of the DCF approach."

Concerning AUS's test of the validity of the benchmark rate of return, the Commission notes that AUS's risk premiums were incorrectly calculated. The correct comparison contrasting the benchmark rate of return with contemporaneous yields on the A-rated bonds used by AUS appears in Table 2. This table presents data beginning with the results of the second annual proceeding, when the Commission adopted a six-month average dividend yield for use in updating the quarterly benchmarks through 1987.

TABLE 2.—COMPARISON OF THE DCF-CALCULATED RATE OF RETURN ON COMMON EQUITY AND A-RATED PUBLIC UTILITY BOND YIELDS

Benchmark applicability period	Dividend yield measurement period	Benchmark rate of return (percent)	A-rated public utility bond yields (percent)	Spread (implied risk premium) (percent)
February 1986 to April 1986	July 1985 to December 1985	13.75	11.80	1.95
May 1986 to July 1986	October 1985 to March 1986	13.08	10.83	2.25
August 1986 to October 1986	January 1986 to June 1986	12.18	9.81	2.37
November 1986 to January 1987	April 1986 to September 1986	11.43	9.42	2.01
February 1987 to April 1987	July 1986 to December 1986	11.20	9.35	1.85
May 1987 to July 1987	October 1986 to March 1987	11.30	9.13	2.17
August 1987 to October 1987	January 1987 to June 1987	11.74	9.37	2.37
November 1987 to January 1988	April 1987 to September 1987	12.27	10.19	2.08

[18] AEP at 4–5 and AUS at 26–27.

[19] AUS at 59, CPC at 2–3, and AWW at i–ii.

[20] AUS and CPC used spot yields. It could not be ascertained whether AWW used spot yields or smoothed yields.

[21] Calculated without regard to the cap initially used for indexing purposes.

In contrast with AUS's claim, the Commission finds the risk premiums implied by its quarterly benchmark rates of return are consistent: over the two-year period they varied by only 0.42 percentage points, and had an average value of 2.13 percentage points.

CPC claims that the DCF methodology produces benchmark equity returns without meaningful premiums over prevailing debt rate levels [22] (the benchmark rate of return for the November 1987 to January 1988 quarter was 12.24 percent, while the average yield of Baa utility bonds in September 1987 was 11.58 percent). CPC suggests that this situation falls short of the *Bluefield* standard that a utility should have an opportunity to earn returns comparable to unregulated companies of similar risk levels.[23]

CPC compares the benchmark rate applicable to the period November 1987 through January 1988 (12.24 percent), calculated based on dividend yields and growth rates from April through September 1987, to spot yields for September 1987 (11.58).[24] The difference in yields or risk premium, is 0.66 percentage points. The Commission disagrees with this analysis. As discussed above, bond yields must be smoothed to remove wide fluctuations in prices that may occur if spot yields are used. The smoothed bond yield is 10.19 percent. When the proper comparison is made, the premium is 2.05 percentage points.[25]

AWW finds a negative correlation between the Commission's DCF-produced cost of equity and 30-year U.S. Treasury bond yields—a result contrary to expectation since financial theory holds that the cost of equity reflects the current interest rate plus a constant premium for additional risk.[26]

AWW does not present sufficient data for the Commission to verify his results. He does not specify whether his data represent spot yields or smoothed yields and/or whether they are from the benchmark measurement period or the benchmark applicability period. In any event, a graph of the benchmark rates of return and smoothed 30-year Treasury bond yields is shown in Appendix C. The two rates can be seen to change in the same direction. The Commission's analysis shows that the correlation between the two rates is positive.[27]

Constant maturity 30-yr U.S. Treasury bond yields	Benchmark applicability period
10.30	2/86-4/86
9.40	5/86-7/86
8.13	8/86-10/86
7.45	11/86-1/87
7.47	2/87-4/87
7.51	5/87-7/87
8.01	8/87-10/87
8.80	11/87-1/88

Commenters suggest that the DCF formulation used by the Commission is wrong.[28] In particular, Edison Electric Institute (EEI) states that the Commission's DCF methodology systematically understates the cost of equity capital through its failure to distinguish properly between nominal and effective interest rates. EEI concludes that the DCF model fails to reflect the fact that utility dividends are generally paid quarterly.[29] This charge is incorrect.

The issue of the difference between nominal and effective interest rates has been addressed by the Commission in previous proceedings.[30] The derivation of the Commission's DCF model began with a model which measures the investors' effective required rate of return on common equity when dividends are paid quarterly.[31] The Commission described this formula as including "the benefits to investors of getting the dividends in four quarterly installments rather than in a lump sum at the end of the first year. These benefits are, of course, the additional return investors may obtain by reinvesting the dividends received quarterly in the same or another comparable investment until the end of the year."[32] Because the investor retains the quarterly payments and can reinvest them, the utility's cost should reflect only the (nominal) amount of the dividends received by the investors. A model which allows a utility to capture its investor's effective required rate of return on common equity would compensate the investor twice—once through the dividend actually paid by the utility and once through the investor's reinvestment of that dividend in some alternative investment. The model used by the Commission subtracts the return investors receive through the reinvestment of dividends from their required rate of return. The Commission finds that its DCF model does properly distinguish between nominal and effective interest rates and that it also properly reflects quarterly dividends paid by utilities.

AWW compares the DCF benchmark rates of return to book returns of unregulated companies an argues that the DCF results are too low.[33] AWW concludes that the DCF methodology cannot be squared with the governing legal standards on utility returns set out in *Federal Power Commission* v. *Hope Natural Gas. Co.*[34] He argues that it fails to meet either the comparable earnings standard ("the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks") or the attraction of capital standard ("the return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital") because it ignores actual developments in financial markets and the earnings of other companies with corresponding risks.

AWW raised the issue of comparable rates of return between unregulated companies and utilities in the previous annual proceeding and provides no new information. The Commission rejects this argument for the same reasons that it stated in the previous proceeding.[35] There is compelling economic justification for relying on the market cost of capital as the standard for rate of return decisions. Furthermore, a market cost of capital approach addresses both the comparable earnings and attraction of capital standards of the *Hope* decision. In the Commission's judgment, the DCF method is the best available means of estimating the market cost of capital.

AUS and AWW claim that when a market-derived allowed return, such as that derived from the DCF model, is applied to a book value rate base, the result is an incorrect level of earnings.[36]

[22] CPC at 2-3.

[23] Citing *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).

[24] CPC uses Moody's Baa-rated utility bonds.

[25] In computing the six-month bond yield the Commission used the A-rated Moody's bond yields submitted by AUS as Schedule 6 in its comments. Since bonds rated Baa are more risky than bonds rated A, the premium between Baa bond yields and the benchmark will be slightly smaller than that for A-rated bonds.

[26] AWW at i-ii.

[27] The coefficient of determination between the two rates R^2, is 0.97, indicating that 97 percent of the variation in the benchmark rate of return is explained by changes in 30-year Treasury bond yields. The following Treasury bond yields were used in the calculation:

[28] EEI at 34-35 and AWW at 7.

[29] EEI at 34-35, citing C.J. Cicchetti and J.D. Makholm, "The FERC's Discounted Cash Flow: A Compromise in the Wrong Direction," *Public Utilities Fortnightly* (July 9, 1987) pp. 11-15.

[30] 52 F.R. at 15-16.

[31] 51 F.R. at 348.

[32] *Id.*

[33] AWW at 2-3.

[34] 320 U.S. 591 (1944).

[35] 52 FR at 29-30, and 50 FR at 21,823.

[36] AUS at 25 and AWW at 10

Specifically, they claim that when a utility's market-to-book ratio is above one, applying a DCF-based allowed rate of return to a book value rate base results in earnings that are too low. Conversely, when a utility's market-to-book ratio is below one, applying a DCF-based allowed rate of return to a book value rate base results in earnings that are too high. Both commenters argue that the allowed rate of return should be applied to a market value rate based rather than to book value.

The following example demonstrates the circularity of their claim. Equity capital costs generally rise as interest rates rise. Conversely, equity capital costs generally fall as interest rates fall. During periods of rising equity costs, utilities generally file for rate increases to cover these higher costs. This action protects utility shareholders from declines in the value of their stock. The result is a tendency to maintain a utility's existing market-to-book ratio during periods of rising equity costs.

During periods of falling capital costs, the revenue required to meet shareholder capital cost requirements also declines. Until a utility files for new rates at the lower capital cost, it continues to charge rates based on the higher equity capital costs that existed when the current rates were set. The result is a tendency for the utility to earn more than its shareholders currently require [37] and a concomitant increase in the price of the utility's common stock and market-to-book ratio.[38]

When capital costs are below those of the previous filing, applying the allowed rate of return to a market value rate base would perpetuate the unnecessarily high revenues at the expense of utility's customers. Applying the allowed rate of return to a book value rate base would reduce revenues to the level required by shareholders at the new lower cost of equity.[39] These revenues will provide the utility with an opportunity to recover all costs including the cost of capital.

The argument over the application of an allowed rate of return to a market value rate base is an old one and the problem of circularity inherent in that approach has been long and widely recognized. The Supreme Court's statement in *Federal Power Commission v. Hope Natural Gas Co.* that "rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated" reflects its recognition of that problem.[40] The market value of an enterprise or its common stock depends upon its earnings or anticipated earnings, which in turn depend upon the rates allowed. Thus, market value is a result of the ratemaking process and may not properly be the beginning of that process as well.[41]

For these reasons, and because commenters have failed to present convincing evidence that their approach is superior, the Commission finds that its policy of applying the allowed rate of return to a book value rate base is appropriate.[42]

C. Sample

As proposed, the Commission will use a sample of 100 electric utilities [43] based on the standards adopted in the prior annual proceedings. There are three bases for selection of this sample. First, the sample is representative of the electric utility industry as a whole. Second, the relevant price and dividend data are generally available for all of these companies. Finally, the data are readily accessible from more than one source.

The sample consists essentially of those publicly traded electric utilities or combination companies that meet the following explicit standards:

(1) The utility is predominantly electric; [44]

(2) The utility has its stock traded on either the New York or American Stock Exchanges;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission on a case-by-case basis, based on unique circumstances.[45]

The fourth standard provides the Commission the discretion to eliminate companies for which data may be unavailable or inappropriate.

The Commission will continue using the following screening criteria in each quarterly calculation to ensure that the data for each company is available and that it can reasonably be employed in a mechanical fashion without producing distorted or unreasonable statistics. Companies will be dropped from the sample for the following reasons:

(i) The company's common stock no longer is publicly traded due to merger or other action;

(ii) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(iii) The Commission determines on a case-by-case basis that some other occurrence causes the dividend yield for that company to be substantially misleading and to bias the resulting quarterly average.[46]

The first screen ensures data availability. If a company is no longer publicly traded, it will not have a current market price (and yield). The seond screen eliminates companies for which data would probably be inappropriate in a constant growth DCF model. The third screen provides the Commission the further discretion to eliminate atypical companies, if necessary.

---

[37] Earnings above those required by the shareholders may be offset, to some extent, by an increase in other costs.

[38] The rise in the price of a utility's common stock under these conditions is roughly analogous to the rise in the price of a bond as interest rates decline, *i.e.*, the interest payments to investors are worth more as capital market rates decline.

[39] If a utility is slow to file during a period of rising equity costs or if the regulator is slow to act, the utility's revenues will fall below the level required by its shareholders. The utility's common stock price and its market-to-book ratio would also fall. If the allowed rate is applied to this lower market value, the resulting revenue will remain below that required by the stockholders and the lower stock price will be perpetuated.

[40] 320 U.S. at 601.

[41] *See* Kahn, Alfred E., *The Economics of Regulation: Principles and Institutions: Principles*, John Wiley & Sons (1970) at 37–38. Phillips, Charles F., Jr., *The Economics of Regulation*, Richard D. Irwin (1965) at 217–219.

[42] This issue has also been raised in previous proceedings. *See, e.g.* 52 FR at 29–30 and 50 FR at 21–829.

[43] 52 FR at 37,327. See Appendix D for a list of the utilities included in the sample.

[44] Operationally the Commission has selected all companies classified in the industry groupings "Electric Services" or "Electric and Other Services Combined" by Standard and Poor's Compustat Services, Inc. (Compustat). These industry groupings are supposed to conform as nearly as possible to the Office of Management and Budget's Standard Industry Classification Codes. The Compustat "Electric Services" industry grouping (Industry Classification Number 4911) is defined as establishments engaged in the generation, transmission and/or distribution of electric energy for sale where these services constitute 90% or more of revenues. The industry grouping "Electric and Other Services Combined" (Industry Classification Number 4931) is defined as establishments primarily engaged in providing electric services in combination with other services, with electric services as the major part though less than 90% of revenues (Utility Compustat II User Manual (1987)).

[45] Three companies which met the first three standards were eliminated from the sample. Southwestern Public Service Company was eliminated because it is the only utility that uses a non-standard fiscal year which does not end at the end of the calendar quarter. This causes its dividend yield to be out of time with the rest of the companies. CP National was deleted because, in spite of its being listed as a predominantly electric company, only 18 percent of its revenues in 1986 were derived from electric sales and only 13 percent of its assets as of the end of 1986 were electric. Compustat moved this company from its utility data base to its telecommunications data base in September 1987. Finally, Catalyst Energy Development Corporation was omitted because it has never paid common stock dividends.

[46] A list of the utilities excluded from calculation of the base year dividend yield appears in Appendix E.

EEI comments that the exclusion from the dividend yield computation of companies which reduced or omitted their dividend payments because of financial difficulties (the second screening criterion) causes the average cost of common equity to be understated because the sample is not representative of the entire industry.[47]

It is interesting to note that while EEI suggests that the elimination of the riskiest companies through the sampling procedure will lead to a downwardly biased result, Cooperatives argue that the potential exists for an upwardly biased result through exclusion of diversified firms, with assumed lower dividend yields, from the dividend yield calculation and inclusion of those same firms, with their assumed higher expected growth rates, in the growth rate sample. FA Staff makes a somewhat similar point in suggesting that a number of reputedly diversified companies be eliminated from the sample.

Although the Commission concurs in theory with EEI that all companies should be included in the sample, it finds that the effects of excluding some risky companies are mitigated by the other screens used by the Commission, as well as by the use of a median dividend yield.[48] Moreover, the number of companies excluded still represents a small segment of the industry. For the foregoing reasons, the Commission finds that the sampling procedure adopted will result in a group of companies that is reasonably representative of the electric utility industry.[49]

The North Carolina Electric Membership Corporation, *et al.* (Cooperatives) suggest that the sample of utilities used to estimate the dividend yield term be the same group of companies used to estimate the long-run expected growth rate in order to avoid potential mismatching of dividend yields and growth rates. They maintain that if this is not done, the rate of return would be upwardly biased by excluding diversified utilities (which typically have lower than average dividend yields and higher than average growth rates) from the calculation of the industry dividend yield but including them in the determination of the industry growth rate. CPC also criticizes the Commission's use of two independent samples to determine dividend yields and growth rates.[50]

The Commission is not persuaded that the potential magnitude of the bias alleged by Cooperatives and CPC warrants a change in the Commission's position that there should be no requirement that the sample of companies used to estimate the growth rate conform to the sample of companies used to calculate the dividend yield. The assumption, of course, is that the growth rate sample is sufficiently broad-based to be representative of the industry. Commenters should be able to rely on the best available industry data in conducting their analyses. If the Cooperatives believe that the approach they suggest will lead to more accurate results, they are, or course, free to submit such an analysis in future proceedings.

The Cooperatives would go further and eliminate those utilities which had been expected to reduce dividends during the prior twelve months on the ground that investors anticipate dividend reductions and bid down the prices of the stock prior to the official announcement of dividend reductions.[51]

The Commission believes that the exclusion from the sample of firms expected to reduce their dividends would be somewhat premature and speculative. It is the policy and practice of the Commission to exclude companies only when obvious error or bias would result from their inclusion. The existence of a high dividend yield may portend a short-term aberration, but it may also reflect high capital costs and the Commission would prefer to wait for actual adverse dividend actions before excluding a firm. In any event, concern for such outliers is mitigated by the use of the median as the measure of the average.[52]

The Financial Analysis Branch of the Commission's Office of Electric Power Regulation (FA Staff) proposes to eliminate from the industry sample an additional 29 companies which have begun to diversify into unregulated businesses. Its rationale is that diversified companies have a different risk profile than firms which are solely regulated utilities because diversified companies as a group have lower dividend yields, higher expected earned returns and, therefore, higher price-to-book ratios. It suggests that the lower dividend yields of diversified companies are due to increase retention ratios in order to put more money into diversification efforts. In the alternative, FA Staff suggests that, should the Commission choose not to address the diversification issue in this proceeding, it monitor the effects of diversification on the industry average cost of equity in future proceedings.[53]

Although FA Staff's data show some divergence between diversified and non-diversified utilities in dividend yields, expected earned returns, and price-to-book ratios, they also show that the costs of equity for the two groups currently remain very close.[54] Nonetheless, the Commission agrees that diversification is an increasingly important factor in the electric utility industry and the Commission intends to continue to monitor its effects on the industry average cost of equity in future proceedings. The Commission believes that its present sampling procedures regarding diversified firms are adequate.[55]

The Cooperatives also suggest that the electric utility industry is significantly segmented between nuclear and non-nuclear groups. It offers statistical data showing that the non-nuclear group has lower twelve-month average dividend yields (by 150 basis points during the period ended June 30, 1987), higher retention ratios and retention growth, higher median stock financing growth, and therefore a lower cost of equity (10.61 percent compared to 11.52 percent over the same period).[56]

The issue raised by the Cooperatives regarding the nuclear-nonnuclear segmentation has been raised before.[57] The Commission's response remains that benchmark rates of return are currently advisory only and there is no presumption that they are applicable to any segment of the industry. Moreover, despite the Cooperatives' statistical results,[58] the Commission believes that the industry-average benchmark is useful as a point of departure in individual rate cases.

D. Dividend Yield

The Commission adopts the dividend yield policy used in the earlier proceedings, as proposed. Under this policy, the dividend yield used in the DCF model is the median of the dividend yields of those companies that

[47] EEI, Appendix A at 3.

[48] 52 FR at 17, 51 FR at 352.

[49] Those companies which were excluded from the sample because of a recent reduction or omission of their dividends presumably would not be subject to application of the benchmark rate of return.

[50] Cooperatives at 75–78, and CPC at 3.

[51] Cooperatives at 74–83.

[52] 50 FR at 21813.

[53] FA Staff at 1, 12.

[54] FA Staff at 12–14.

[55] 51 FR at 351 at fn. 65.

[56] Cooperatives at 107–115.

[57] See, *e.g.*, 52 FR 14 at fn. 32.

[58] As discused *infra*, the Commission modifies the growth rate analysis done by the Cooperatives so that these results can not be taken as conclusive on the issue of the distribution of costs in the electric utility industry.

remain in the sample after application of the screening criteria described above (median yield).[59] The quarterly dividend yield for each company will be computed by dividing the dividend rate by the price. The dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend times four. The price is the simple average of the three monthly high and low prices for the quarter.

The dividend yield for the base year is the average of four quarterly median yields. The dividend yield used in the quarterly indexing procedure will be the average of two quarterly median yields.

Most commenters use the method proposed by the Commission to compute the dividend yield and do not raise significant objections. EEI, however, identifies the use of the median dividend yield rather than the arithmetic mean as a technical problem with the Commission's methodology. Specifically, EEI observes that because the distribution of electric utility dividend yields has been consistently skewed to the right (*i.e.*, there are more "outliers" with high dividend yields than with low dividend yields), the arithmetic mean is higher than the median of the distribution. EEI claims that the Commission's use of the median dividend yield rather than the mean causes the resultant rates of return to be systematically understated. EEI's proposed alternative to the median is to eliminate "outliers" beyond three standard deviations from the arithmetic mean and to use the resulting arithmetic mean as a measure of the dividend yield for the average utility. In defense of its proposal, EEI argues that the Commission has instituted a "screening process" that should eliminate most, if not all, utilities with unusually high dividend yields based on special circumstances, particularly those utilities which have omitted or recently reduced their dividends. EEI suggests that because of the screening process the "need for control of the impact of extreme values by using the median dividend yield is substantially reduced."[60]

EEI further supports its proposed use of the arithmetic mean by arguing that the risk differential procedure the Commission proposes for individual rate cases depends on a comparison of the subject utility with the "average utility" based on the arithmetic mean of company-specific data for various measures of risk. EEI argues that to be consistent the Commission should also compute its benchmark rate of return on the basis of the arithmetic mean of the dividend yields.

In evaluating alternative measures of the average dividend yield in a previous proceeding the Commission found that:[61]

> * * * the appropriate measure of the average should be a rate that is reasonable for the greatest number of companies. Using such a measure should minimize the number of times a utility or its customers will argue for a rate other than the benchmark because the utility is significantly more or less risky than average.

The Commission found that, of the alternative measures proposed, including the arithmetic mean, the median best met this requirement.[62] It also found that the median was the measure least affected by the existence of extreme values in the data.[63] EEI has not convinced the Commission that these conclusion are wrong. Moreover, the Commission notes that the important property of the median is that there will be an equal number of companies above and below the median. The mean of a skewed distribution does not have either property. The Commission's "screening process" cited by EEI does not eliminate skewness. Truncating the distribution as EEI suggests, by eliminating all dividend yield "outliers" greater than three standard deviations from the mean would not guarantee the elimination of the skewness. The arithmetic mean remains a less appropriate measure than the median.

EEI is under the erroneous impression that the Commission would require the use of risk differential analyses containing measures for the "average utility" calculated as an arithmetic mean. The Commission is not requiring any specific form of risk differential analysis. If utilities believe that using the arithmetic mean in such analyses would lead to systematically understated awards, they need not use it. Since there is no requirement to use the arithmetic mean when measuring risk in a risk differential analysis, there is no problem of inconsistency.

Cooperatives suggest that, in computing the base year dividend yield, an averaging period of less than 12 months would better reflect changing market conditions. They state that the DCF model is a long-run expectations model. Cooperatives suggest that it is often necessary to smooth out short-term dividend yields to reduce the effects of variations which do not reflect investors' long-run expectations, but that care must be taken not to oversmooth the spot dividend yields and thereby miss fundamental changes.

The Commission believes that an averaging period of twelve months in computing the base year dividend yield better reflects market conditions. Cooperatives have previously proposed computing the base year dividend yield over a period of less than twelve months.[64] The Commission continues to reject the use of an averaging period of less than one year for computing the base year dividend yield, primarily because the use of a dividend yield over only half of the base year will not provide a reasonable estimate of the cost of common equity for the entire year since the cost during the first half of the year may be different than that for the second half.[65]

The base year dividend yield using the average of the four quarterly median yields for the year ended June 30, 1987, is 6.70 percent.[66]

E. Growth Rate

In the NOPR, the Commission proposed to rely on both a fundamental analysis approach and a two-stage growth model to estimate the expected growth rate in this proceeding.[67] In a fundamental analysis, the two underlying components of growth are evaluated—growth from retention of earnings (br) and growth from sales of new common stock (sv).[68] In a two-stage growth analysis, near-term and long-term growth expectations are evaluated separately. The Commission also proposed to consider other data and methods to estimate expected growth as a check on the reasonableness of the above analyses.

Eight commenters make growth rate recommendations. These growth rate recommendations range from 3.55 percent by the Minnesota Department of Public Service (MINN) to 5.3 percent by Boston Edison Company, *et al.* (BEC).

[59] *See*. Order No. 420, 50 Fed. Reg. at 21,812; Order No. 442, 51 FR at 352–353, Order No. 461, 52 FR at 17–18.

[60] EEI at 32–33.

[61] Order No. 420, 50 FR at 21,814.

[62] *Id.*

[63] *Id.*

[64] 52 FR at 17.

[65] 52 FR at 17–18.

[66] The median dividend yields for the third and fourth quarters of 1986 and for the first and second quarters of 1987 are 6.33, 6.54, 6.54, 7.40 percent, respectively. *See* Appendix B for a list of the companies included in the sample and the companies excluded in each of the four base year quarters.

[67] 52 FR at 37327.

[68] Growth from retained earnings, or internal growth, is a function of the expected return on common equity (r) and the expected retention ratio (b). Growth from sales of new common stock, or external growth, is a function of how much stock is expected to be sold (s) and at what price relative to book value (v). The formula for estimating the growth rate based on such a fundamental analysis is thus: $g=br+sv$.

See Table 3. The raw growth rate data relied on by the commenters is presented in Table 4. Based on a review and evlauation of the growth rate analyses submitted by the commenters in this proceeding, the Commission finds the expected growth rate during the base year to be 4.34 percent.

TABLE 3.—SUMMARY OF GROWTH RATE RECOMMENDATIONS

Commenter	Growth rate	Basis for recommendation
Utilities		
1. BEC	5.3	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
2. EEI	5.1	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
3. AUS	4.8	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Analyst forecasts. 4. Two-stage growth analysis.
4. NEP	4.5/5.0	1. Hist. DPS growth rates. 2. Base year fundamental analysis. 3. Analyst forecasts.
5. SWEP	4.32	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Analyst forecasts.
Customers		
6. Cooperatives	4.02	1. Base year fundamental analysis. 2. Hist. EPS, DPS, and BVPS growth rates.
Other Commenters		
7. FA Staff	4.10	1. Projected fundamental analysis.
8. MINN	3.55	1. Hist. EPS and DPS growth rates. 2. Analyst forecasts.

TABLE 4.—RAW GROWTH RATE DATA

Rate(s)	Type of rate	Commenter
Historical DPS Growth Rates		
5.00	5-year median	AUS.
4.80	5-year median	BEC.
3.91/4.26	5-year mean/median	EEI.
5.0	5-year median	NEP.
5.3/5.5	5-year mean/median	Cooperatives.
5.49	5-year average	SWEP.
5.4/5.0	10-year mean/median	Cooperatives.
5.00	10-year median	AUS.
3.2	10-year annual average	MINN.
5.30	10-year median	BEC.
5.16/5.15	10-year mean/median	EEI.
5.54	10-year median	NEP.
Historical EPS Growth Rates		
6.38	5-year median	AUS.
5.50	5-year median	BEC.
3.56/4.61	5-year mean/median	EEI.
6.8/6.5	5-year mean/median	Cooperatives.
7.83	5-year average	SWEP.
5.2/5.3	10-year mean/median	Cooperatives.
4.88	10-year median	AUS.
3.6	10-year annual average	MINN.
5.60	10-year median	BEC.
5.76/5.96	10-year mean/median	EEI.
Historical EPS Growth Rates		
3.3/30	5-year mean/median	Cooperatives.
2.9/2.5	10-year mean/median	Cooperatives.
Base Year Fundamental Growth Rates		
	(b)(r)+(s)(v)	
4.9	4.2+.7	BEC.
5.1	4.02+1.04	EEI.
3.7	3.6+.1	NEP.
4.02	3.85+.17	Cooperatives.
4.77	4.77+(Not reported)	AUS.
4.1	3.7+.4	FA Staff.
3.14	(Not reported)	SWEP.
Projected Fundamental Growth Rates		
	(b)(r)+(s)(v)	
5.2	5.1+.1	BEC.
5.2	5.1+.1	EEI.
Analyst Near Term Forecasts		
4.05	I/B/E/S average	AUS.
4.0	I/B/E/S median	BEC.
3.5/4.0	I/B/E/S mean/median	EEI.
3.85	Zack's mean	MINN.
3.9/4.0	Zack's mean/median	NEP.
3.9/4.1	Zack's mean/median	Cooperatives.
4.2/3.5	Value Line DPS mean/median.	Cooperatives.
4.13	Value Line DPS median	AUS.
4.25	Value Line DPS median	BEC.
4.2/4.3	Value Line DPS mean/median.	EEI.
Analyst Near Term Forecasts		
3.8	Value Line EPS median	AUS.
3.62	Value Line EPS median	BEC.
3.5/3.7	Value Line EPS mean/median.	EEI.
3.2/3.0	Value Line EPS mean/median.	Cooperatives.
3.6/3.7	Merrill Lynch DPS median.	BEC.
3.7/3.7	Merrill Lynch DPS mean/median.	EEI.
3.6/3.7	Merrill Lynch EPS mean/median.	BEC.
3.6/3.7	Merrill Lynch EPS mean/median.	EEI.
4.9/5.0	Salomon Brothers' Normalized Growth mean/median.	Cooperatives.
5.0/5.0	Salomon Brothers' Normalized Growth mean/median.	EEI.
5.0	Salomon Brothers' Normalized Growth median.	BEC.
4.25	Salomon Brothers	SWEP.

Both Cooperatives and FA Staff rely on similar fundamental growth analyses in making their recommendations. Cooperatives recommend 4.02 percent and FA Staff recommends 4.10 percent for its 91-company sample.[69] The difference in the results is a function of somewhat different estimates for the four factors: "b", "r", "s", and "v". Cooperatives use an expected return on common equity (r) of 13.89 percent, while FA Staff uses 13.7 percent. For the expected retention ratio (b), Cooperatives use 27.27 percent and FA Staff uses 27 percent. This leads to a "br" component of 3.85 percent for Cooperatives and 3.7 percent for FA Staff. Cooperatives estimate the expected growth rate in common equity due to new stock sales (s) to be 0.50 percent, while FA Staff estimates it to be 1.2 percent. Finally, Cooperatives use 33 percent for the accretion factor (v), and FA Staff uses 31.5 percent. Therefore, the "sv" component for Cooperatives is .17 percent and for FA Staff it is .4 percent.

The Commission's finding with respect to the expected growth rate gives considerable weight to the analyses submitted by Cooperatives and FA Staff. As noted above, both rely on a straightforward fundamental analysis and arrive at similar conclusions. The Commission believes that there is little basis for preferring one analysis over the other. Nonetheless, some modification of these analyses is appropriate to recognize that base year data or near-term estimates are not always the best proxies for investors' long-term expectations. While the Commission believes that the estimates

[69] Cooperatives at 92 and FA Staff at 12–14.

of "r" and "s", although somewhat different from one another, are reasonable, some comment is in order regarding the estimates of "b", the retention ratio, and "v", the accretion factor.

The Commission has previously noted that the selection of the retention ratio can have a substantial impact on the end result of a fundamental growth analysis.[70] In the last two proceedings, the Commission has found that 28–32 percent represented a reasonable range of projected retention rates and used 30 percent in its own calculations.[71] In this proceeding, evidence suggests that the dividend payout ratio has risen recently and that a ratio above 70 percent is projected for the near-term future. Indeed, the analyses of both Cooperatives and FA Staff incorporate retention rates lower than 28 percent. However, the Commission believes that, despite recent data and near-term expectations for the dividend payout ratio, the evidence is not persuasive that investors have long-term expectations that deviate significantly from the 70 percent ratio the Commission has adopted in the last two proceedings.[72] As a result, the Commission will continue to use 70 percent as its best estimate of investors' expectations of the industry average dividend payout ratio over the long-term.

The Commission's belief that it would not be reasonable for investors to expect a price-to-book ratio over the long-term to approximate the high level achieved during the base year has a similar, although offsetting, effect. Nonetheless, the analyses of both Cooperatives and FA Staff incorporate such an assumption in estimating the "v" factor. A more reasonable assumption is that the industry expects to earn a return on common equity above the cost of equity over the near-term, thus accounting for the relatively high market-book ratio, but that it expects that the market prices of electric utility securities should move closer to book value over the long-term as expected earned returns of electric utilities correspond more closely to the cost of capital. The best evidence that the Commission can find in the record regarding the expected price-to-book ratio is the 1.31 used by both BEC and EEI in performing their projected fundamental growth analyses.[73] That number is based on the product of Value Line's projections of a 9.5 price-earnings ratio and a 13.8 percent return on average common equity for the 1989-1991 period.[74] When the modified data is incorporated into the analyses done by Cooperatives and FA Staff and the two results are averaged, the average growth estimate is 4.34 percent.[75]

$g = b \times r + s \times v$

FA Staff: $g = (.30)(13.7) + (.012)(.237)$

$g = 4.11 + .28 = 4.39$

Cooperatives:

$g = (.30)(13.87) + (.0050)(.237)$

$g = 4.16 + .12 = 4.28$

In arriving at its growth rate recommendation of 5.3 percent, BEC uses a fundamental growth analysis, as well as historical and projected data. Based on a 90-company sample, BEC calculates that the median 5 and 10-year historical growth rates in earnings and dividends were from 4.8 percent to 5.6 percent.[76]

In its base year fundamental analysis, BEC calculates growth from retained earnings (br) to be 4.2 percent and growth from common stock sales (sv) to be .7 percent, giving a growth rate estimate of 4.9 percent.[77] The variables used in the analysis generally were calculated from data during the base year ending June 1987. BEC also did an analysis of projected fundamental growth. For the "br" component, BEC used 5.1 percent based on Value Line 1989–1991 projections of "percent retained to common equity" for the Electric Utility Industry Composite. For the "sv" component, BEC arrived at 0.1 percent, giving a projected growth estimate of 5.2 percent.[78]

The "s" factor used was 0.5, based on a judgmental adjustment of Value Line projections of 0.1 percent. The "v" factor $(1-[1/(P/B)])$ used was 0.237, based on a Value Line 1989–1991 projection of 1.31 for the price-book ratio (calculated by multiplying the projected return on average equity of 13.8 percent by the projected price-earnings ratio of 9.5.) Thus, $sv = .0050 \times 0.237$ or 0.1 percent.

BEC also looked at near-term growth rate forecasts of earnings and dividends made by various analysts and investment advisory services: Value Line (3.62–4.25 percent), Merrill Lynch (3.6–3.7 percent), I/B/E/S (4.0 percent) and Salomon Brothers (5.0 percent). BEC concludes that the low end of this range would produce an unreasonable cost of equity and that investors would not rely upon such projections.[79]

Given the relative comparability of its base year fundamental growth estimate of 4.9 percent and its projected fundamental growth estimate of 5.2 percent, BEC initially reasons that a two-stage growth analysis is unnecessary. However, for purposes of considering the more pessimistic outlook reflected in analyst forecasts, it computes a two-stage growth rate of 4.7 percent by assuming that investors expect growth to decline from a current 5.0 percent to 4.5 percent after five years and to remain at that level thereafter.[80]

Based on the data sources examined and growth analyses performed, BEC concludes that a range of 4.7–5.3 percent is reasonable for the electric utility industry.[81] Subsequently, however, BEC effectively recommends the upper end of this range because of three factors that it believes should be taken into account. First, some of the riskiest companies were excluded from the sample. Second, the use of a mean dividend yield, rather than the median, may have produced a higher result. And third, several companies in the sample were experiencing depressed growth periods because of dividend cuts and the prospect of dividend restorations had not been fully captured in its analysis.[82]

The Commission finds that BEC's growth rate recommendation is somewhat high for several reasons. More weight is given to historical growth rates than warranted. While historical growth rates do provide a reference point, the Commission agrees with Cooperatives that additional analyses are needed before it can be concluded that investors expect the future to replicate the past. Although BEC attempts to bolster the use of historical growth rates, its reasoning is not persuasive. For example, it points to a declining payout ratio as offsetting increasing returns on equity in past years. Recently, however, returns have declined and payout ratios have risen from 1986 levels. The Commission believes that these changes would cause investors to be very cautious about extrapolating past growth rates into the future.

The appropriations of such investor caution can be shown in another way. If

[70] 50 FR at 21,819.

[71] 52 FR at 22.

[72] *See, e.g.*, BEC at Appendix 6 and EEI at Appendix 6, showing dividend payout ratios that have moved above and below 70 percent over the last ten years.

[73] BEC at 22 and EEI at Attachment A13.

[74] The 13.8 percent return on average common equity used by BEC and EEI is also the average of the 13.7 percent used by FA Staff and the 13.87 percent used by Cooperatives.

[75] For purposes of calculating the flotation cost adjustment, *infra*, the Commission finds that an "s" factor of .85 percent, based on an average of the estimates made by Cooperatives and FA Staff, is reasonable.

[76] BEC at 7.

[77] *Id.* at 13–16.

[78] *Id.* at 16–23.

[79] *Id.* at 24–25.

[80] *Id.* at 25–28.

[81] *Id.* at 28–29

[82] *Id.* at 37–38.

investors were actually expecting a long-term growth rate of 5.3 percent, what rate of return on common equity would this imply? If the growth from new stock sales is expected to be relatively modest over the foreseeable future, as most commenters seem to agree, the industry would be expected to earn a return on common equity above 15 percent. In fact, assuming a dividend payout ration of 70 percent, the payout adopted by the Commission in this proceeding, the expected return on common equity would be 17 percent, *i.e.*, given g=br, (and assuming sv=.2, the average of the findings of Cooperatives and FA Staff) then 5.1=3r and r=17.0 percent. Because earned returns and interest rates in general have declined since last year, the Commission does not find such investor expectations to be plausible for the long-term.

The Commission also has problems with BEC's dual analysis based first on base year and then on projected data. The attractiveness of the fundamental growth analysis is that it enables one to look individually at the components of expected growth: "b", "r", "s", and "v". For each component, the task is to make a best estimate of what investors expect the value to be. In some cases, that best estimate may be a function of base year data. In other cases, projected data may be more reasonable to use. Without explaining why, BEC goes about mechanically first applying base year data to obtain one estimate (4.9 percent) and then projected data to obtain another estimate (5.2 percent). It is unclear to the Commission why the factor inputs to those two analyses need to be kept separate. One fundamental growth analysis should be enough.

When computing the "sv" component in the first analysis, BEC merely extrapolates base year data on the market-book ratio and other primarily historical date from EEI and Value Line on the growth rate of aggregate common equity. When computing the "sv" component in the second analysis, BEC concedes that something more than mere extrapolation is required: "the sv term must not be mechanically input into the DCF equation but must be evaluated to determine to what extent investors expect external growth, either positive or negative, to continue in the future." [83] In its first analysis, BEC gets 0.7 percent and in the second analysis, it gets 0.1 percent. The Commission is unable to determine which estimate of "sv" BEC favors.

With respect to the "br" component, BEC computes 4.2 percent in its base year analysis by multiplying the realized returns on common equity during the base year by the actual retention ratios. Depending on the facts and circumstances, one might argue that the base year data for the industry is a best estimate of what investors expect in the future. Instead, BEC uses projected Value Line data for "br" and arrives at a 5.1 percent estimate. Again, the Commission cannot determine which estimate BEC considers the best. Based on the same kind of analysis it performed above regarding historical growth rates, the Commission is skeptical about the reliability of the 5.1 percent number, particularly when Value Line reports "br" data in the aggregate and it is not possible to discern what "b" and "r" terms were used.

Interestingly, the Value Line projected data can be used to derive the "br" component by looking at "b" and "r" separately, and BEC used most of this data in computing a projected price-to-book ratio.[84] BEC calculated a projected return on average equity of 13.8 percent from Value Line data and noted that Value Line projected the price-earnings ratio for the industry to be 9.5. Value Line also projects the dividend yield to be 7.5 percent.[85] The product of these two variables gives the dividend payout ratio, *i.e.*,

$$P/E \times D/P = D/E,$$

which turns out to be 71.25 percent ($9.5 \times .075$). Therefore, the retention ratio or "b" is .2875. Thus, "br" is $.2875 \times 13.8$ or 3.97 percent.

Which estimate is better, 5.1 percent or 3.97 percent? They are both based on projected Value Line data, although the latter estimate allows one to see the individual "b" or "r" terms and appraise their reasonableness. The latter estimate is also consistent with the preponderance of the analyst forecasts. As a result, if BEC used its projected "sv" of .1 percent, and the alternative projected "br" of 3.97 percent, it would have arrived at a growth estimate of 4.07 percent, significantly different from the 4.9 percent and 5.2 percent estimates it derived from its two separate fundamental growth analyses.

EEI recommends an expected growth rate of 5.1 percent based on a variety of approaches.[86] It leans most heavily on base year and projected fundamental analyses which yield 5.1 percent and 5.2 percent, respectively. The two fundamental analyses are very similar to those submitted by BEC and the projected fundamental analysis appears to be identical to BEC's comparable analysis.

EEI also presents 5 and 10-year historical growth rates in earnings and dividends. The 5-year growth rates range from 3.56–4.61 percent. The 10-year growth rates range from 5.15–5.96 percent. EEI notes, however, that if a number of utilities which reported negative growth rates were eliminated from the sample, the 5-year growth rates would be at the lower end of the range for 10-year growth rates.

EEI relies on analyst forecasts made by Value Line, Merrill Lynch, I/B/E/S, and Salomon Brothers. These range from 3.5 to 5.0 percent, but center generally around 4.0 percent. The two-stage growth analysis relied on by EEI used an initial growth rate of 5.1 percent, based on its fundamental analysis, and assumed that growth would decline to a constant rate of 4.0 percent after five years. Using this approach, EEI calculated a composite growth rate of 4.3 percent. EEI argues that both the analyst forecasts and the two-stage growth analysis reflect a downward bias since "analysts appear to have been unduly influenced" by temporary disruptions in earnings that have affected some utilities.[87]

AUS recommends an expected growth rate of 4.8 percent based on an equal weighing of its two-stage analysis (4.83 percent) and its fundamental analysis (4.77 percent).[88] The two-stage analysis used data derived from averaging seven historical and forecasted growth rates taken from Value Line and I/B/E/S. The mean of these rates (4.69 percent) was used for the first stage and the median (4.88 percent) was used for the long-run second stage beginning after five years. AUS's fundamental analysis was based entirely on retention growth rates projected by Value Line for 1987, 1988, and 1990–1992.[89] Although AUS does not attempt to specify a particular "sv" component in its fundamental analysis, it notes that with market-to-book ratios well above one, the "sv" component would be positive and thus produce additional growth.

New England Power Company (NEP) recommends a growth rate in the range of 4.50 to 5.00 percent.[90] Its analysis includes historical growth rates, a fundamental analysis, and earnings projections made by Zacks Investment Research in June 1987. The median 5 and 10-year growth rates in dividends (for

[83] BEC at 19.

[84] BEC at 22.

[85] See FA Staff at Attachment E.

[86] EEI at Attachment A-5.

[87] EEI at 18.

[88] AUS at 41–42.

[89] *Id.* at 36–37.

[90] NEP at Appendix 6.

periods ending in 1986) are shown as 5.0 percent and 5.54 percent, respectively. In its fundamental anaysis, NEP calculates the median retention growth rate to be 3.6 percent and the external growth rate to be 0.1 percent, or a composite growth rate of 3.7 percent. The median is 4.0 percent when total retention growth is calculated for each company separately. Finally, the projected 5-year earnings growth rates published by Zacks were 3.90 percent for the mean and 4.00 percent for the median.[91]

Southwestern Electric Power Service Company (SWEP) recommends a 4.318 percent growth rate based on a 60–40 weighing of future projections and historical data.[92] The historical data consists of a fundamental growth rate of 3.14 percent, which was derived from Compustat data for the base year, and 5-year historical growth rates in earnings and dividends published by E.F. Hutton of 5.49 percent and 7.83 percent, respectively. The future projections are based on 5-year forecasts of earnings and dividends made by E.F. Hutton of 3.54 percent and 2.84 percent, respectively, and by Salomon Brothers of 4.24 percent.[93] The criticism that the Commission directed at BEC's analyses is also partially applicable to the analyses submitted by EEI and AUS.[94] For example, both EEI and AUS draw on the same type of aggregate "br" data projected by Value Line. As the Commission has said before, the appeal of the fundamental growth analysis is that it allows an evaluation of the individual components that influence growth in earnings and dividends. If one's analysis uses data that precludes this evaluation, it tends to undercut the benefits of the fundamental growth analysis and is therefore deserving of less weight. This is particularly true when projected data available on an individual basis from the same source produces a much lower growth rate from retained earnings, as was demonstrated in the Commission's discussion of BEC's analysis.

EEI's fundamental growth analyses were very similar to these of BEC. Indeed, as Table 4 indicates, they both show the same results. Therefore, the Commission's reservations regarding the nature of BEC's dual fundamental analysis apply to EEI as well.

AUS's growth rate recommendation was also based on a simple average of four historical growth rates published by Value Line and three projections—two by Value Line and one by I/B/E/S. Although such a procedure may be used as a reference point in a growth rate analysis, the Commission is unable to give it much weight without some explanation of why the averaging of these selected numbers is likely to produce the growth rate expected by investors.

The Commission finds it difficult to square the underlying analysis with NEP's growth rate recommendation of 4.5–5.0 percent. NEP's fundamental analysis yields a growth rate of 3.7 percent or 4.0 percent, depending on the computational procedure used, and these results are essentially the same as the five-year earnings forecast made by Zack's Investment Research—3.90 percent for the mean and 4.0 percent for the median.[95] While the 5 and 10-year historical growth rates in dividends are stated to be 5.0 percent and 5.54 percent, respectively, such historical rates cannot carry as much weight as results that are the product of a more reasoned analysis. As a consequence, the Commission believes that NEP's analysis better supports a growth rate recommendation of approximately 4.0 percent than one of 4.5–5.0 percent.

The Commission also proposed in the Notice to make use of a two-stage growth analysis. However, the Commission agrees with Cooperatives that it is too difficult to differentiate meaningfully between the first and second stages of growth to confidently rely on a two-stage growth analysis in this proceeding.[96] The Commission notes, however, that this conclusion itself is derived from a finding that the expected growth rates for the first and second stages are too close to differentiate.[97] Therefore, despite NEP's general criticism that it is impractical to use a two-stage analysis,[98] the Commission continues to believe that the two-stage approach represents a useful analytic tool that can illuminate the growth rate implications of near-term and long-term forecasts.[99]

The 3.55 percent recommendation made by MINN is the lowest recommendation made by the remaining commenters. This estimate is based on a simple average of the ten-year historical growth rate in dividends (3.2 percent) and earnings (3.6 percent), as well as the mean five-year earnings growth rate of 3.85 percent projected by Zack's Investment Research in September 1987.[100] In addition to the general shortcoming of giving great weight to an extrapolation of historical growth rates without any explanation as to why investors would expect them to persist into the future, the historical growth rates offered by MINN also deviate significantly from those of all other commenters, as shown in Table 4. As a result, both the nature of the analysis and the unexplained and unusually low historical growth rates require that the Commission give little weight to MINN's growth rate recommendation.

If the growth rate estimates of BEC and MINN are excluded, the range of remaining growth rate recommendations narrows to 4.02 percent (Cooperatives) to 5.1 percent (EEI), or a bit over 100 basis points. Reasonable people may differ as to the weight to be given to particular analyses and results with this range. However, based on its evaluation of the analyses submitted in this proceeding, the Commission is persuaded that the growth rate expected by investors falls within the lower part of the 4.02–5.1 percent range. Specifically, as discussed above, the Commission finds the expected growth rate in this proceeding to be 4.34 percent, based primarily on a modified version of the fundamental growth analyses submitted by Cooperatives and FA Staff.

F. Corroborative Evidence

1. Introduction

Although few commenters offered corroborative evidence, most of those that did used some kind of risk premium approach. The Commission reviews this evidence and other publicly available data below.

2. Risk Premium Analyses

Three commenters offer the risk premium approach to cost of common

[91] *Id.* at Appendix 2–6.

[92] SWEP at 3.

[93] *Id.* at Exhibit C.

[94] Although SWEP's growth rate recommendation (4.318 percent) is at the lower end of the range, the Commission cannot give much weight to it. As with MINN's recommendation, the recommendation made by SWEP is based on an analysis which is little more than a mechanical averaging of some historical and projected data, some of which is significantly different from similar data offered by most other commenters and which cannot be verified because the underlying computations were not made available.

[95] NEP at Appendix 2–3.

[96] Cooperatives at 96–97.

[97] 52 FR 22–23. Expected near-term growth rates have declined from those determined in recent proceedings. That decline is reflected in the analyst near-term forecasts in Table 3, *supra*, when compared with similar forecasts in last year's proceeding. 52 Fed. Reg. 21 at Table 3.

[98] As it did last year, NEP criticizes the use of a two-stage model to estimate growth rates. It believes that such an analysis is only useful when dealing with individual companies having special problems. It also believes that it is probably impossible to conduct accurately a two-stage analysis of a large group of utilities in a generic context because of the added imprecision of estimating first and second-stage growth rates for each individual company.

[99] *Id.* at fn.103.

[100] MINN at 3.

equity determination for corroborative purposes.[101] AUS calculates that the yield on Moody's A-rated public utility bonds averaged 9.36 percent for the twelve months ended June 30, 1987. Noting the trend in interest rates since the end of the study period and projections made by economic forecasters, AUS concludes that a ten percent yield on long-term public utility bonds would be "conservative in the context of a risk premium calculated common equity cost rate."

Although AUS presents the results of seven risk premium studies, its conclusions are largely based upon an independent study of the risk premiums applicable only to electric utilities. For the period 1926–86, AUS calculates the risk premium (using annual holding period returns) of electric utility common equities over public utility bonds, to be 4.03 to 5.88 percentage points, depending on the measurement technique applied. For the 1952–86 subperiod, the risk premiums range from 5.60 to 7.01 percentage points. AUS concludes that the appropriate risk premium for electric utilities is at least four percentage points. When added to the 10 percent long-term debt attraction rate projected by AUS, a 14 percent cost of common equity is produced.

Whereas AUS utilizes risk premium data as much as sixty years old, BEC uses more contemporary data in its risk premium analyses. BEC calculates an equity risk premium as the average difference between the rate of return allowed electric utilities on common equity, as reported in Salomon Brothers and Value Line publications, and each utility's July 1987 bond yield. The median risk premiums are about 5.25 percentage points using the allowed returns on equity reported by Salomon Brothers, and about 5.3–5.5 percentage points, using Value Line data. Noting that some of the allowed returns on common equity were granted several years ago, when capital costs were higher, BEC arbitrarily reduced the equity risk premium to four percentage points, which, when added to the 9.36 percent average yield of A-rated public utility bonds over the base year, produces a risk premium-based cost of equity of 13.36 percent.

NEP uses the risk premium approach to calculate the cost of common equity in two ways. NEP first calculates for each electric utility, for each year from 1977 to 1986, a risk premium which is the difference between the yield to maturity of a selected bond in June of each year, and a DCF estimate of the cost of common equity. The DCF growth factor is the ten-year least squares growth rate in dividends declared per share. Adding the ten-year average 2.68 percentage point average risk premium so derived to the average of July 1986 and June 1987 yields to maturity for a bond of each company produces an average investors' return requirement of 12.20 percent.

NEP also performed a second risk premium analysis, identical to the first, except that yearly growth rate estimates were calculated using the "internal growth" rate methodology, which is the product of the earned rate of return on common equity and the earnings retention rate. Adding the ten-year 2.07 percentage point average risk premium so derived to the average of July 1986 and June 1987 yields to maturity for a bond of each company yields an average investors' return requirement of 11.47 percent.

The obvious problem with any risk premium approach is that it is very difficult to determine what the risk premium actually is. Not only is it unknown, but it is likely to vary over time as well. Whatever historical relationships existed between debt and equity securities during the past sixty years may no longer exist.

There are good reasons to question the stability of long-run risk premiums, especially as applied to recent years. First, electric utilities have experienced major upheavals in the recent past due to OPEC, Three Mile Island, Chernobyl and other phenomena. These developments have had an impact on the risk of all electric utility investments. The relationship between the risk of utility and all industry bonds has probably changed as well.

Second, as the Commission has stated in prior generic rate of return proceedings, the historical relationship between debt and equity securities changed in 1979 when the Federal Reserve Board changed its policies.[102] Since then, interest rates have been more volatile. The Commission believes that this change has affected the risks associated with long-term bonds more than it has those related to common stock. Therefore, current risk premiums are likely to be less than previous ones.

Third, both *ex post* and *ex ante* public utility common stock and bond returns comprise a variety of components, including: anticipated and unanticipated inflation; the risk of default; duration; interest rate risk; business risk; call protection (in the case of bonds); liquidity risk and purchasing power risk.[103] These risks directly affect capital costs for both common stocks and bonds. As economic conditions change, so does the impact of different risk components.[104] Therefore, in the Commission's opinion, long-term risk premium studies, which reflect an average distribution of the risks just enumerated, do not necessarily provide risk premiums which are applicable to the current environment.[105] The use of an equity risk premium which is based on realized holding period returns for an extended historical period cannot be accepted at face value.

In addressing the specifics of AUS's analyses, the Commission notes that the risk premiums were calculated over a sixty-year historical period. For this reason alone, they are suspect. Moreover, the Commission is comfortable with the notion that risk premiums generally tend to decline in periods of high interest rates, and *vice versa*. During that extended period, the average yield on A-rated public utility bonds was 6.09 percent,[106] which is significantly lower than the 9.63 percent yield for the base year. Therefore, it would be logical to conclude that, even were historical risk premiums applicable to contemporary times, an historical risk premium so derived is probably somewhat overstated because it corresponds to a lower level of interest rates than currently exist.

Even were AUS's risk premiums applicable to a contemporary period, it seems that further refinements are required. AUS's risk premiums are based on differences in holding period rates of return, which are effective annual rates, not nominal rates such as those on which the Commission's allowance on common equity is based. For proper comparison, the Commission believes that the stock and bond holding period rates of return should be

[101] AUS at 43–54; BEC at 40–43; NEP at 7.

[102] *See, e.g.*, Order No. 420, 50 FR at 21822.

[103] *Id.* at 21,821.

[104] For example, during recessionary periods investors become very concerned with default risk, often to the detriment of other risk factors. During difficult business periods, investors are quite sensitive to the fact that bond investors have priority over common shareholders in case of liquidation, and some bonds are more risky than others. During more prosperous times, these concerns may fade as investors concern themselves with the other risk components which impact their investment decisions. During stock market panics, such as occurred on October 19 and 20, 1987, investors' most immediate concerns are with liquidity risk.

[105] In the Commission's view it is still an open question whether the yield on long-term bonds can ever exceed that of common stock; the Commission can only recognize that stock and bond investors shoulder different risks, in different proportional amounts, at various times.

[106] Moody's Public Utility Manual (1986) and Bond Guide (various issues).

converted to nominal rates so that the resulting difference may be added to the nominal rate in effect during the base period. It would appear that the risk premiums reported by AUS are overstated by approximately 0.31 percentage points due to this factor.[107]

The Commission is also not convinced that BEC's approach to the determination of a risk premium is useful. BEC's calculation of risk premiums relies primarily upon the reported allowances on common equity for individual electric utilities. The Commission notes the inherent circularity of BEC's analysis; *i.e.*, BEC would have the Commission base its equity allowance on previously-approved equity allowances. This would shift the Commission's responsibility for setting just and reasonable rates to the states, who are largely represented in BEC's analyses. Even were the analyses limited to Commission equity allowances, the results of such a study would remain inherently circular. For this reason, the Commission rejects BEC's risk premium analysis.

NEP's analyses are the best reasoned of the risk premium studies. Those analyses have as their basis an individual DCF calculation of the cost of common equity for each electric utility, for each of ten years. Therefore, acceptance of the validity of the risk premiums so derived (2.68 and 2.07 percentage points, an average value of 2.38) rests upon the reasonableness of NEP's estimates of the cost of common equity, as well as upon the appropriateness of using ten-year average risk premiums today. With respect to the latter issue, the Commission notes that A-rated public utility bond yields averaged 12.33 percent over the period 1977–86, whereas they averaged 9.36 percent for the base year.[108] Therefore, NEP's average risk premium of 2.38 percentage points might somewhat understate the current premium. Concerning the reasonableness of NEP's methodologies, the Commission notes that the ten-year least squares growth rate calculations were made during a period when industry averaged dividend payout ratios increased and then subsided; therefore the historical dividend growth rates may not have been sustainable. NEP's earnings retention growth rates also ignore the negative effects of common stock sales below book value, which have had the effect of inhibiting book value growth. For these reasons, the risk premiums calculated by NEP tend to be overstated. When both effects are considered, it would appear that NEP's average risk premium, 2.38 percentage points, represents a reasonable estimate of the current risk premium. When added to the yield on A-rated public utility bonds of 9.36 percent for the base-period, the estimated cost of common equity is 11.74 percent. This tends to corroborate the Commission's conclusion in this proceeding.

While the Commission has concerns with the quantification of specific risk premiums, it continues to believe that the ranking of securities based on relative risk provides useful information. Table 5, below, presents selected interest rates for the base year for this proceeding and for previous annual proceedings. A comparison of these rates to the industry average required rates of return shows premiums that the Commission believes are consistent over time and consistent across securities based on risk differences.

TABLE 5.—SELECTED INTEREST RATES AND RISK PREMIUMS

[In percent]

	Year ending June 30—			
	1984	1985	1986	1987
Selected Interest Rates [1]				
Treasury bills: 3 month (new)	9.24	8.76	6.82	5.54
Treasury bonds: 10 year constant matur	12.11	11.75	9.06	7.53
Moody's public utility bonds:				
Aaa	12.84	12.47	10.08	8.69
Aa	13.44	13.10	10.45	9.06
A	13.80	13.53	10.81	9.36
Baa	14.41	13.96	11.31	9.74
Market required ROE for electric utilities (using 420 model)	15.25	14.73	13.02	11.19
Selected Risk Premiums [2]				
Treasury bills	6.0	6.0	6.2	5.7
Treasury bonds	3.1	3.0	4.0	3.7
A-rated public utility bonds	1.5	1.2	2.2	1.8

[1] Rates are average of monthly rates.

[2] Risk premiums are determined by subtracting the average yield for the specified security from the nominal rate determined from the 420 model.

Sources: Federal Reserve Statistical Release G.13 and Federal Reserve Bulletin (various dates). Moody's Public Utility Manual and (1986) Moody's Bond Survey (various dates).

Generally, as one moves down the list of securities in Table 5, the greater the associated risks the higher the required rate of return. While there may be circumstances in which the relative position of one or more of these securities may change for short periods of time, such circumstances are not the norm. The relative positions depicted in Table 5 are consistent with the Commission's understanding of the relative risks of the referenced securities: *i.e.*, Federal government securities have lower default risk than public utility securities; short-term securities yield less than long-term securities; and lower bond ratings imply higher default risk and higher rates of return.

In conclusion, the Commission finds no inconsistency between its finding of a market cost of common equity for the base year of 11.21 percent and interest rates for the same time period. The implied risk premiums, while smaller than long-term historical data would suggest, appear very plausible, especially in light of the changed relationship between debt and common stock since 1979.

3. Market-to-Book and Earnings-Price Ratio Evidence

FA Staff evaluates the expected earned rate of return on common equity with reference to the price-to-book (P/B) ratio. When the P/B ratio is above one, FA Staff states that the expected earned rate of return on common equity overstates the cost of common equity, and *vice versa*. Using this reasoning, FA Staff argues that its estimate of the expected earned rate of return on common equity of 13.70 percent, together with the base-year P/B ratio in excess of unity (1.46), is consistent with its cost of common equity finding of 10.98 percent.[109]

FA Staff also looked at the relationship between the market cost of common equity and earnings-price (E/P) ratios. FA Staff states that when the price-to-book ratio is above one, the E/P ratio understates the market cost, and *vice versa*. FA Staff estimates that the E/P ratio is 9.38 percent for the base period, a finding which it claims is also consistent with its P/B ratio and its cost of common equity.

Cooperatives took the E/P ratio analysis one step further, arguing that the precise amount by which the E/P ratio overstates or understates the market cost of common equity is equal to:

[107] 1926–86 annual stock returns = 10.82 percent. 1926–82 annual bond returns = 5.16 percent. Estimated stock quarterly nominal yield = $4((1.1082)^{.25}-1) = 10.41$ percent. Estimated bond semi-annual nominal yield $= 2(1.0516)^{.5}-1) = 5.06$ percent. The difference is 5.35 percent, which is .31 percentage points less than the 5.66 percent calculated by AUS.

[108] Moody's Public Utility Manual (1986) and Moody's Bond Survey (various issues).

[109] FA Staff's discussion used numbers from the 62-utility subgroup, which excluded diversified utilities. The Commission has here substituted data from its 91-utility group.

$$\text{Growth rate in Total common, Common equity} \times \frac{1-\text{Price-to-Book Ratio}}{\text{Price-to-Book Ratio}}$$

Estimating the price-to-book ratio for the base period to be 1.49 and the growth rate in total common equity to be 4.76 percent, Cooperatives calculate the understatement to be 1.57 percentage points. Cooperatives then add this to their calculation of the industry average E/P ratio of 9.21 percent to obtain an adjusted yield of 10.78 percent, thereby corroborating their DCF cost of capital estimate of 10.85 percent.

FA Staff's presentation in this proceeding is substantially similar to those filed in the three earlier annual proceedings.[110] Its analysis is not entitled to great weight because of its lack of precision. If one were to accept FA Staff's presentations at face value, they would appear to support nearly any cost of common equity estimate in the range of 9.38 to 13.70 percent. And, the 11.21 percent cost of common equity found reasonable by the Commission is certainly within that range.

Cooperatives claim that an adjusted E/P ratio analysis corroborates its cost of capital estimate of 10.87 percent. However, the Commission notes that Cooperatives' adjusted E/P ratio is merely a derivative of the discounted cash flow model which uses book value growth, *i.e.*, the "k = D/P+br+sv" model. The presentation is a tautology in that a minor reformulation of the primary model has been used to demonstrate the validity of the model itself. Therefore, Cooperatives' adjusted E/P analysis is not useful as corroborative evidence in this proceeding.

4. Interest Coverage Analysis

AUS tests the fairness of the rate of return on common equity using an interest coverage test. AUS calculates that, using industry average capital structures outstanding on June 30, 1984, 1985, and 1986, and the generic rates of return in effect at those times, the pre-tax industry interest coverages were 3.8 times, 3.8 times, and 3.2 times, respectively. AUS also shows that, using an estimated equity cost rate of 11.94 percent and income tax rate of 34 percent, the industry average pre-tax interest coverage drops to 2.9 times on June 30, 1987. AUS argues that it is necessary to have a 14 percent rate of return on common equity in this proceeding because that return would produce a 3.25 times pre-tax interest coverage (which is the midpoint of the A bond rating criteria).[111]

The Commission notes that there are three factors which largely determine the interest coverage factor: (a) The rate of return on common equity; (b) the capital structure ratio; and (c) the income tax rate. Thus, coverage factor could be increased from 2.9 times to 3.25 times through one of three means, or a combination thereof: (a) Increasing the rate of return on common equity to 14.0 percent, as proposed by AUS; (b) increasing the tax rate from 34 percent to 43 percent (a change not within the control of the Commission or the parties); or (c) increasing the common equity ratio from 42.3 percent to 45.9 percent.

If the market perceives the reduction in interest coverages (which are primarily a consequence of the reduction in the federal income tax rate)[112] as increasing shareholder risk (as AUS's claims would appear to suggest), then an increase in capital costs should result, and the Commission's market-oriented rate of return techniques should capture this change. To make a second explicit adjustment to the allowance on common equity, as AUS suggests, might double-count the effects on such a fundamental change.[113] The Commission believes that it should continue to place primary reliance on market-oriented approaches to the determination of a public utility's allowance on common equity. Results-oriented analyses, such as the pre-tax interest coverage measure, are not dispositive of the determination of the rate of return on common equity. Neither are they useful for corroborative purposes.

G. Flotation Costs

The Commission adopts the technique used in prior annual proceedings to adjust the required rate of return for flotation costs. Thus, utilities are compensated only for issuance costs, such as underwriters' compensation and legal and printing fees, and those costs are reflected in an industry average adjustment to the market required rate of return.

The following formula determines an increment to the cost of common equity which reflects the average annualized amount of flotation cost incurred by the utility industry:[114]

$$k^* = \frac{fs}{(1+s)}$$

where:

k^* = flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price

s = proportion of new common equity expected to be issued annually to total common equity

Commenters' estimates for "f", average flotation cost as a percentage of offering price, range from 2.40 to 2.87 percent, with the exception of EEI's 3.66 percent.[115] EEI's estimate is atypical, largely due to the company sample used in its analysis. It was the only commenter to include in its sample Public Service Company of North Carolina, whose major source of revenue is the sale of natural gas rather than electricity.

The Commission finds the analyses of AUS, FA Staff and BEC, which include the same five new issues, to be the most complete and adopts their estimated 2.87 percent value of "f" in deriving the value of flotation cost "k*".[116]

The expected proportion of new common equity issued annually, "s", was found in the growth rate section above to be 0.85 percent. Applying the 2.87 percent estimate of issuance costs, "f", and the 0.85 percent estimate of new equity financing, "s", to the above formula, the Commission finds a flotation cost adjustment of .02 percent, or 2 basis points.[117]

BEC used a methodology that perpetually amortizes flotation costs, applied it to all outstanding equity capital and arrived at an 18-basis point flotation cost adjustment. In this proceeding, as well as in previous proceedings, BEC and others have argued for a perpetual amortization of

[110] *See, e.g.*, Order No. 461, 52 FR at 24.

[111] AUS at 19–20.

[112] The reduction in the corporate income tax rate alone accounts for a decline in the pre-tax interest coverage from 3.4 times to 2.9 times.

[113] Utilities could also elect to increase the common equity ratio, thereby increasing the pre-tax coverage factor.

[114] Order No. 461, 52 FR at 25–26.

[115] AUS at 40, BEC at 34, EEI Attachment A at 20, FA Staff at 11, Cooperatives at 92, and SWEP at Exhibit D.

[116] BEC derived the median issuance cost for year ending June 30, 1987 to be 2.87 percent but has used a 2.5 percent value for "f" in its estimate of K*.

[117] Flotation cost adjustment—

$$= \frac{0.0287\ (0.0085)}{1.0085}$$

$$= 0.0002$$

AUS used the Commission's flotation cost adjustment formula and arrived at an 11-basis point adjustment. Its calculation was based on an estimate of "f" which reflected the proportion of new equity to be issued annually to the total common equity of the *issuing companies*. Its definition of "f" is not the one adopted by the Commission which is the proportion of new equity to be issued annually to the total common equity of the *industry*.

flotation costs to be applied to *all* outstanding equity not just new issues. In the second annual proceeding, the Commission dealt with the same arguments in detail.[118] Basically, there are two methods of recovering flotation costs, amortization and current cost recovery. The Commission explained that for new companies the perpetual amortization method and current cost recovery methods lead to the same recovery of costs. Once the perpetual amortization method is adopted, it must be continued and entails recovery each year on all outstanding stock. Similarly, once the current recovery is adopted, it also must be continued. This method recovers costs as they occur and overrecovery would result if costs of past issues were recovered each year.

Once either method is adopted it should be continued. The Commission wished to start the generic proceedings with a clean slate. Thus, it adopted a policy of current cost recovery in the earlier proceedings and will continue this policy in the current proceeding.[119]

H. Quarterly Indexing Procedure

The Commission adopts the quarterly indexing procedure established in the third annual proceeding and proposed in the NOPR.[120] In that indexing procedure, quarterly changes in the cost of common equity are tied to changes in utility dividend yields. The average cost of common equity is indexed to the average of the median dividend yields for the two most recent calendar quarters for the company sample. The benchmark rate of return on common equity is set equal to the cost of common equity.

Most commenters accept the use of the proposed six-month dividend yield for quarterly indexing purposes. However, AUS recommended that a 12-month dividend yield be used. The issue of using twelve months of data rather than six has been discussed and rejected in earlier annual proceedings because the Commisson believes it would not provide a sufficiently current estimate of dividend yield.[121] The Commission reaffirms the use of a six-month dividend yield in the quarterly indexing procedure.

The growth rate/flotation cost parameter for the quarterly indexing procedure based on the findings of this proceeding is 4.36 percent. This parameter will remain fixed until the next proceeding.

[118] 51 FR at 364.

[119] Order No. 442, 51 FR 365.

[120] *See* 52 FR at 37,326.

[121] 51 FR at 357 and 52 FR at 27.

I. Extension of the Generic Rate to Section 206 Proceedings

The Commission adopts the proposal to make the benchmark rate of return applicable to rate investigations under section 206 of the FPA. Under section 206, the Commission may on its own motion or upon complaint by a third party review jurisdictional rates or charges. If it determines that they are unjust, unreasonable, unduly discriminatory, or preferential, it may determine just and reasonable terms and fix the terms by order.[122]

Commenters in general oppose extending a generic rate of return to FPA section 206 proceedings. Several commenters argue that the Commission should not extend the rate of return concept to section 206 proceedings because of the differences between section 205 and section 206 proceedings.[123] Commenters argue application of a generic rate of return would shift the burden of proof,[124] abrogate existing contracts on insufficient grounds,[125] increase litigation expenses,[126] and heighten uncertainty over prevailing rates.[127] Commenters discuss whether the benchmark rate in section 206 proceedings should be a rebuttable presumption or advisory only.[128] Finally, commenters criticize the proposed use of the benchmark rate of return in effect at the time of the final Section 206 decision and offer various alternatives.[129]

Most of the comments on this issue are based on a misunderstanding of the proposal. The commenters' arguments reflect an erroneous presumption that the Commission intended the benchmark to be used as a rebuttable presumption. The list of disadvantages cited by commenters would be relevant concerns only if the generic rate were to be a rebuttable presumption. In fact, the Commission intended that the generic rate be advisory only. Therefore, in practice, a complainant in a section 206 proceeding will have to prove that the challenged rate is unjust, unreasonable, unduly discriminatory, or preferential in light of the circumstances of the particular utility. However, the participants in the proceeding may introduce the applicable generic rate of return as evidence of the industry average rate. The generic rate of return will not be conclusive evidence, but will merely supplement the specific showing now required. The Commission expects to apply the generic rate of return where appropriate, but is mindful that decisions in individual cases must be supported as if the generic rate of return had not been established.

The Commission believes that commenters have failed to identify significant differences between section 205 and 206 proceedings. In fact, the Commission believes that the similarities between section 205 and 206 proceedings outweigh the differences. Both proceedings involve a determination by the Commission of whether rates, changes, rules and regulations set by public utilities for jurisdictional transmission or sale of electric energy are or are not just and reasonable; and, in each, the availability of a generic rate would be useful as a indication of the industry average and as a device for narrowing differences among parties. Therefore, the Commission is convinced that it is appropriate to apply the generic rate of return to both proceedings on an advisory basis.

As to the particular benchmark rate to be used in FPA section 206 proceedings, the Commission is persuaded by the comments to apply the benchmark rate of return in effect on the date the Commission sets a rate for investigation under FPA section 206.

J. Frequency of Proceeding

In the NOPR, the Commission proposed to amend the existing regulation, which requires an annual proceeding to determine a benchmark rate of return on common equity for the jurisdicational operations of public utilities, to require that those proceedings be conducted as needed, but not more often than annually. The Commission expressed its belief that annual proceedings are unnecessary, since industry average growth rates and flotation cost adjustments appear to fluctuate over a very small range. However, the Commission also proposed to initiate proceedings to determine benchmark rates on its own motion or upon motion by any person that shows changed circumstances sufficient to warrant modification of one or more parameters of the quarterly indexing procedure in effect. Since the "parameters" of the DCF model consist of the dividend yield and growth rate (plus flotation costs) and the dividend yield is already adjusted automatically through the quarterly adjustment mechanism, "changed circumstances" would generally be a change in the sum

[122] 16 U.S.C. 824e(a) (1982).

[123] EEI at 23.

[124] BEC at 14, CGE at 4, EEI at 24, and NEP at 4–5.

[125] BEC at 15–16.

[126] Southern at 4.

[127] CGE at 4.

[128] NEP at 5.

[129] BEC at 18, EEI at 25–26, and NEP at 5.

of the expected growth rate and flotation costs.

Commenters focus on two principal issues, the continued need for an annual proceeding and implementation of the proposal.

Among the general justifications for continuing the annual proceedings are the benefits of greater accuracy in rate of return decisions because the benchmark cannot become "unduly stale," [130] closer attention to changes in security markets and the consequent ability to respond more quickly to those changes,[131] and the relatively minimal cost ("resources needed to keep the benchmark up to date on an annual basis would appear to be extremely small.") [132]

Several commenters suggest that recent volatility in capital markets generally strengthens the case for annual proceedings.[133] EEI suggests that the Commission's "premise of stability in industry average growth rates and flotation costs appears to be based on limited historical data with uncertain application to the future." [134]

The Commission continues to believe that the proposal to hold proceedings periodically, but less frequently than annually, may have merit because the triggering event for a new proceeding should be actual changed circumstances in the markets for utility shares rather than the mere passage of time. In this proceeding, the Commission has analyzed data for the year ending June 30, 1987 in determining the growth rate of 4.34 percent. However, since that data was collected, there has been a period of unusual stock market volatility, which has probably had an impact, although not yet quantifiable, on growth rate expectations. Therefore, in order to consider thoroughly the effects of these events on the cost of common equity and because the growth rate using pre-October 1987 data has moved to the margin of the narrow range is has occupied for the last several years, the Commission will hold another annual generic rate of return proceeding and in that proceeding will decide whether to hold subsequent annual proceedings or to convert to periodic proceedings as proposed in the NOPR in this docket. Also, the Commission notes that in the next proceeding, it may limit its proposal to a determination of the growth rate and flotation cost to be used in the quarterly indexing procedure.

[130] BEC at 9, NEP at 6.

[131] BEC at 8.

[132] *Id.*

[133] EEI at 27, MINN at 4.

[134] *Id.* at 27.

K. Fixed Growth Rate/Flotation Cost Parameter

In the NOPR, the Commission proposed that the parameters of the quarterly indexing procedure be set based on a combined finding of an industry average growth rate and flotation cost adjustment of 4.6 percent so long as the sum of those two figures is within the range of 4.3 to 4.8 percent. However, the Commission also proposed that it would initiate a new proceeding if circumstances changed sufficiently to warrant a modification of those parameters.

Commenters criticized the proposal because: (1) The Commission had advanced no convincing rationale for the 4.6 percent figure; (2) the 4.6 percent adjustment is no longer reliable because extraordinarily volatile stock prices may lead to changes in the parameters of the constant growth DCF model; (3) use of the 4.6 percent parameter would further rigidify an already overly mechanical methodology for determining the benchmark rate of return; and (4) locking in a growth rate/flotation cost parameter would reduce the Commission's ability to establish benchmark rates which reflect market realities as closely as possible.[135]

Commenters have convinced the Commission that a mechanical test may not be the best method for determining whether to initiate a new proceeding. Since the Commission will initiate a new proceeding for the year ending June 30, 1988, the Commission is not establishing a definite growth rate/flotation cost parameter for initiating new proceedings.

L. Differential Risk Analysis

In the NOPR, the Commission reiterated its request that all rate case participants (including trial staff) evaluate the reasonableness of the applicable benchmark rate of return, in light of the special circumstances of the subject utility. Specifically, the Commission requested that litigants submit substantive analyses of the risks of individual utilities *vis-a-vis* the average utility represented through the benchmark rates of return.

Several firms comment on the issue of differential risk analysis. BEC expresses concern that the NOPR implies a Commission intention to rely on a rebuttable presumption in favor of the benchmark and to permit deviation from the benchmark only with a "significant risk differential" can be established between the subject utility and the average utility. BEC then cites numerous administrative and legal problems with this approach.[136]

Similarly, AUS comments that a requirement of case-by-case risk differential analysis defeats the purpose of establishing an advisory generic rate of return and that there is no consensus in the industry or at the Commission on the proper methodology for determining differential risks.[137] EEI also expresses doubts that adequately supportable methods of measuring risk differentials can be developed.

Commenters on the issue of differential risk analysis exaggerate the import of the Commission's request in the NOPR that they evaluate the reasonableness of the benchmark rate in light of the special circumstances of the subject utility. Individual utilities must, as always, calculate their rate of return based on their particular circumstances and the Commission will continue to determine just and reasonable rates based on the facts in each case. The benchmark rate merely serves as further evidence of the industry average rate and is not the equivalent of a rebuttable presumption. The Commission does not intend to require a specific risk analysis, but rather to state that some analysis of factors causing a particular utility's divergence from the industry average would be useful to both the Commission and the utility.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [138] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission found that the proposed rule would not impose any regulatory or administrative burdens on a significant number of small entities because nearly all the jurisdictional utilities subject to the rule are too large to be considered "small entities" within the meaning of the Act. No comments were received on this finding and the modifications adopted in the final rule do not materially affect the earlier conclusion.

Accordingly, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

[135] AUS at 57–58, EEI at 29–31, NEP at 6, Cooperatives at 105, SWEPCO at 4.

[136] BEC at 19–23.

[137] AUS at 56.

[138] 5 U.S.C. 601–12 (1982).

V. Timing of Quarterly Updates and Effective Date of Rule

The Commission establishes a procedure which will be used to establish quarterly updates. The benchmark rates of return will generally be published on or before the fifteenth of the month following the close of a calendar quarter.

The first quarter will run from February 1 to April 30, the second quarter from May 1 to July 31, the third quarter from August 1 to October 31, and the fourth quarter from November 1 to January 31.

This rule becomes effective February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. Section 37.4 is revised to read as follows:

§ 37.4 Annual proceedings.

Each year the Commission will establish the growth rate and flotation cost to be used in the quarterly indexing procedure through informal rulemaking procedures under 5 U.S.C. 553.

3. In § 37.6, paragraph (a) is revised to read as follows:

§ 37.6 Application of benchmark rate of return in individual rate proceedings.

(a) *General rule.* Except as provided in § 37.8 and paragraph (b) of this section, it will be presumed that the allowed rate of return on common equity in an individual rate proceeding is the benchmark rate of return in effect at the time a rate schedule is filed pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (1982), or at the time the Commission sets a rate for investigation pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (1982).

* * * * *

4. Section 37.8 is revised to read as follows:

§ 37.8 Transitional provision.

The benchmark rates of return under this part will be advisory only. The Commission may take official notice of the benchmark rates of return in individual rate proceedings if they are not otherwise made a part of the record.

5. In addition to the amendments set forth above in 18 CFR Part 37, remove the words "annual" or "annually" in the following places:

(a) Section 37.3 (a) and (c);

(b) Section 37.9 (a)(1), (a)(2), and (a)(3).

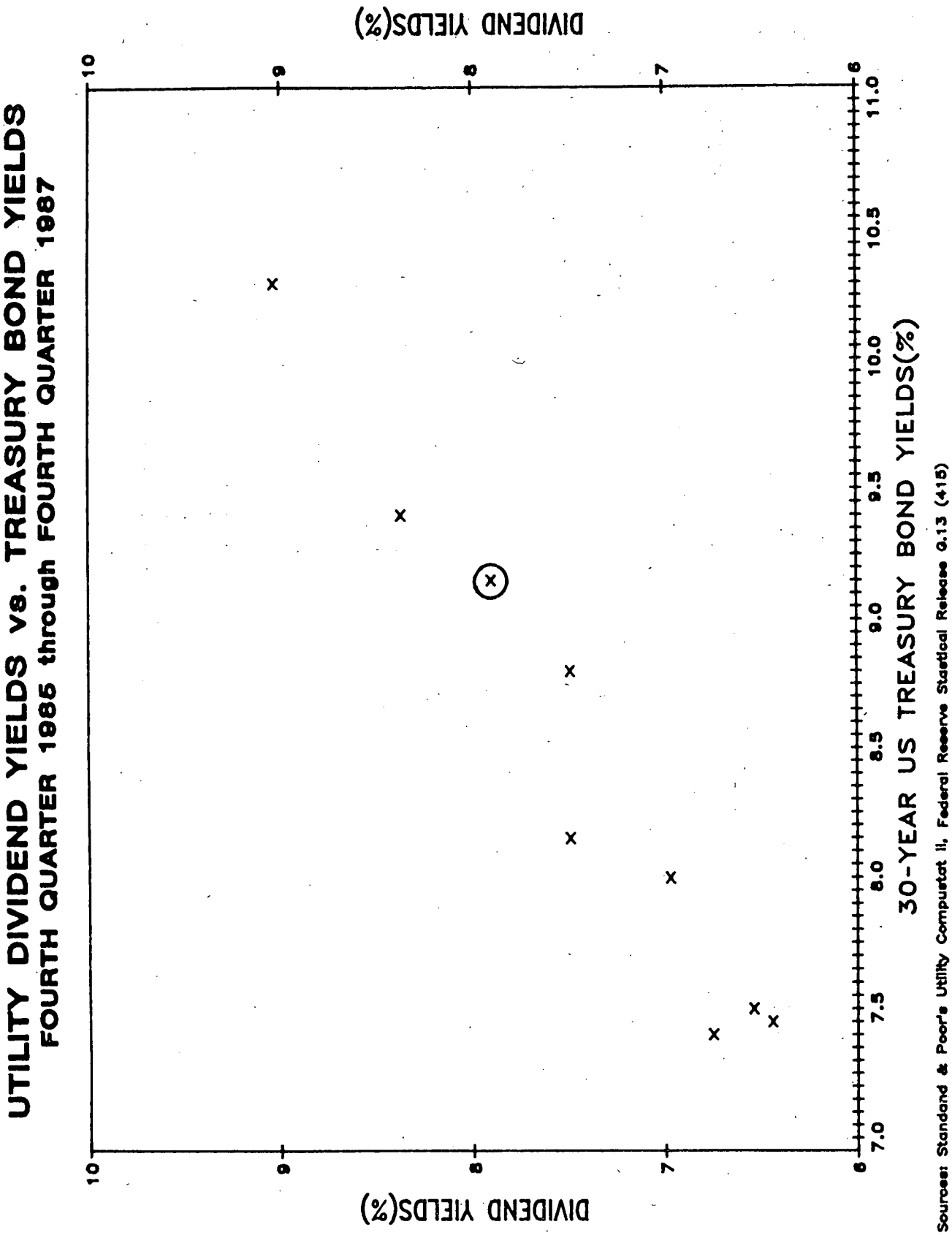
Note: These appendices will not appear in the Code of Federal Regulations.

APPENDIX A—LIST OF COMMENTERS

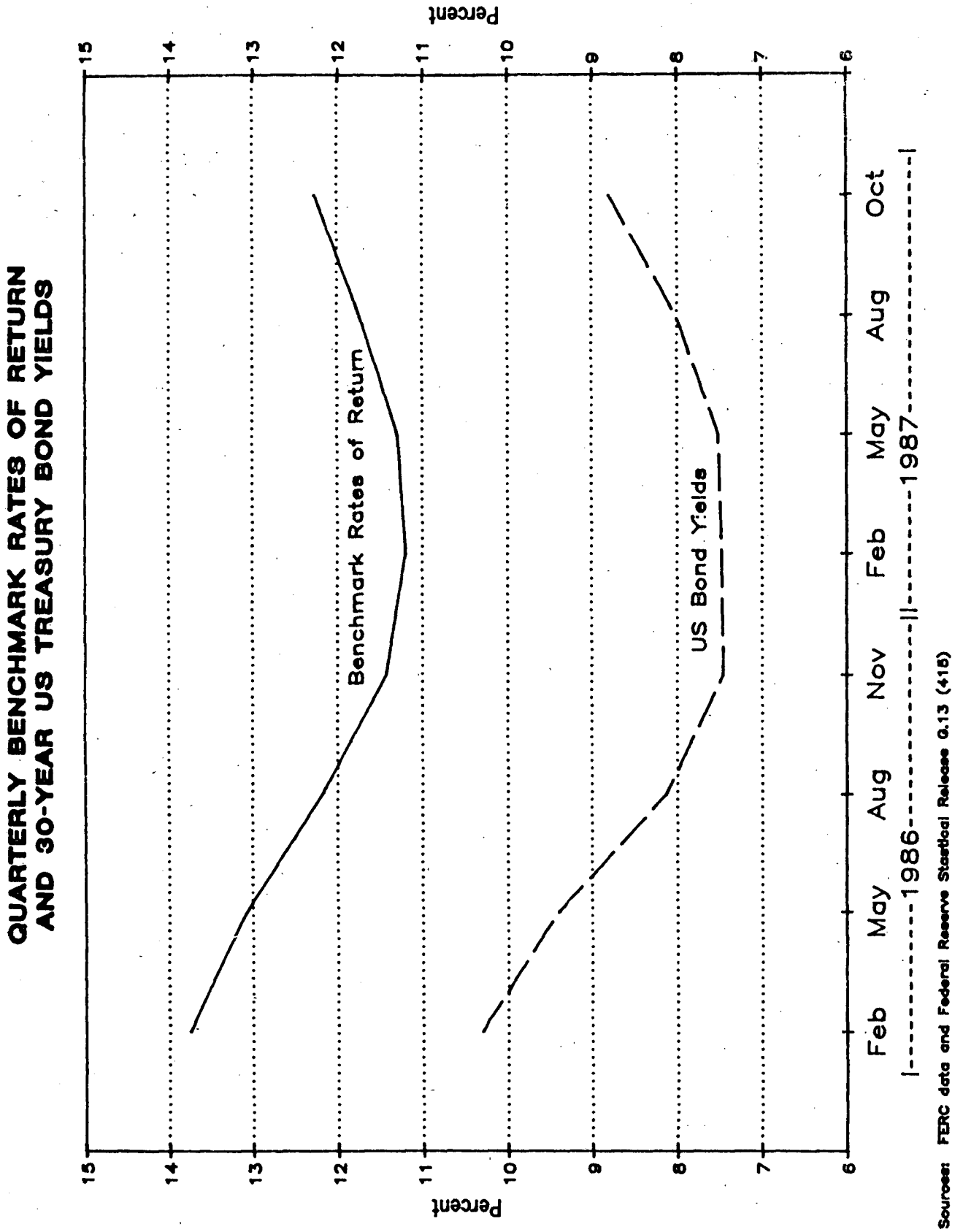
Commenter	Abbreviation
Companies:	
1. American Electric Power Service Corporation.	AEP
2. Associated Utility Services, Inc.	AUS
3. Boston Edison Company, et al.	BEC
4. Cincinnati Gas & Electric Company.	CGE
5. Consumers Power Company	CPC
6. Edison Electric Institute	EEI
7. New England Power Company	NEP
8. Southern California Edison Company.	SCE
9. Southern Company	Southern
10. Southwestern Electric Power Service Company.	SWEP
Customer: North Carolina Electric Membership Cooperation, et al.	Cooperatives
Regulatory Commission Staff:	
1. Financial Analysis Branch, Office of Electric Power Regulation, Federal Energy Regulatory Commission.	FA Staff
2. Minnesota Department of Public Service.	MINN
Other: Alfred Winchell Whittaker	AWW

BILLING CODE 6717-01-M

APPENDIX B


UTILITY DIVIDEND YIELDS vs. TREASURY BOND YIELDS
FOURTH QUARTER 1986 through FOURTH QUARTER 1987
DIVIDEND YIELDS(%)
10
9
8
7
6
7.0
7.5
8.0
8.5
9.0
9.5
10.0
10.5
11.0
30-YEAR US TREASURY BOND YIELDS(%)
Sources: Standard & Poor's Utility Compustat II, Federal Reserve Statical Release G.13 (415)

APPENDIX C



BILLING CODE 6717-01-C

Sample of Utilities Used for Base Year Dividend Yield Calculations and Quarterly Updates

1. Allegheny Power System
2. American Electric Power
3. Atlantic Energy Inc.
4. Baltimore Gas & Electric
5. Black Hills Corp.
6. Boston Edison Co.
7. Carolina Power & Light
8. Centerior Energy Corp.
9. Central & South West Corp.
10. Central Hudson Gas & Elec.
11. Central Ill Public Service
12. Central Louisiana Electric
13. Central Maine Power Co.
14. Central Vermont Pub. Serv.
15. Cilcorp Inc.
16. Cincinnati Gas & Electric
17. CMS Energy Corp.
18. Commonwealth Edison
19. Commonwealth Energy System
20. Consolidated Edison of NY
21. Delmarva Power & Light
22. Detroit Edison Co.
23. Dominion Resources Inc.-VA
24. DPL Inc.
25. Duke Power Co.
26. Duquesne Light Co.
27. Eastern Utilities Assoc.
28. Empire District Electric Co.
29. Fitchburg Gas & Elec. Light
30. Florida Progress Corp.
31. FPL Group Inc.
32. General Public Utilities
33. Green Mountain Power Corp.
34. Gulf States Utilities Co.
35. Hawaiian Electric Inds.
36. Houston Industries Inc.
37. I E Industries Inc.
38. Idaho Power Co.
39. Illinois Power Co.
40. Interstate Power Co
41. Iowa Resources Inc.
42. Iowa-Illinois Gas & Elec.
43. Ipalco Enterprises Inc.
44. Kansas City Power & Light
45. Kansas Gas & Electric
46. Kansas Power & Light
47. Kentucky Utilities Co.
48. Long Island Lighting
49. Louisville Gas & Electric
50. Maine Public Service
51. Middle South Utilities
52. Midwest Energy Co.
53. Minnesota Power & Light
54. Montana Power Co.
55. Neco Enterprises Inc
56. Nevada Power Co.
57. New England Electric System
58. New York State Elec. & Gas
59. Niagara Mohawk Power
60. Northeast Utilities
61. Northern Indiana Public Serv.
62. Northern States Power-MN
63. Ohio Edison Co.
64. Oklahoma Gas & Electric
65. Orange & Rockland Utilities
66. Pacific Gas & Electric
67. Pacificorp
68. Pennsylvania Power & Light
69. Philadelphia Electric Co.
70. Pinnacle West Capital Corp.
71. Portland General Corp.
72. Potomac Electric Power
73. Public Service Co. of Colo
74. Public Service Co. of Ind.
75. Public Service Co. of NH
76. Public Service Co. of N Mex.
77. Public Service Enterprises
78. Puget Sound Power & Light
79. Rochester Gas & Electric
80. San Diego Gas & Electric
81. Savannah Elec. & Power
82. Scana Corp.
83. Sierra Pacific Resources
84. Southern Calif. Edison Co.
85. Southern Co.
86. Southern Indiana Gas & Elec.
87. St. Joseph Light & Power
88. TECO Energy Inc.
89. Texas Utilities Co.
90. TNP Enterprises Inc.
91. Tucson Electric Power Co.
92. Union Electric Co.
93. United Illuminating Co.
94. Unitil Corp.
95. Utah Power & Light
96. Utilicorp United Inc.
97. Washington Water Power
98. Wisconsin Energy Corp.
99. Wisconsin Power & Light
100. Wisconsin Public Service

APPENDIX D.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Ticker symbol and Utility	Reason for exclusion
Year=86; quarter=3	
CMS—CMS Energy Corp	Dividend rate has zero for the quarter ending 09/30/86.
DQU—Duquesne Light Co.	Dividend rate reduced in the quarter ending 06/30/86.
FGE—Fitchburg Gas & Elec Light.	Dividend rate has zero for the quarter ending 09/30/86.
GPU—General Public Utilities.	Dividend rate has zero for the quarter ending 09/30/86.
GSU—Gulf States Utilities Co.	Dividend rate has zero for the quarter ending 09/30/86.
KGE—Kansas Gas & Electric.	Dividend rate reduced in the quarter ending 12/31/85.
KLT—Kansas City Power & Light.	Dividend rate reduced in the quarter ending 06/30/86
LIL—Long Island Lighting.	Dividend rate has zero for the quarter ending 09/30/86.
MAP—Maine Public Service.	Dividend rate has zero for the quarter ending 03/31/86.
MSU—Middle South Utilities.	Dividend rate has zero for the quarter ending 09/30/86
NI—Northern Indiana Public Serv	Dividend rate has zero for the quarter ending 09/30/86.

APPENDIX D.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

Ticker symbol and Utility	Reason for exclusion
PIN—Public Service Co of Ind.	Dividend rate has zero for the quarter ending 09/30/86.
PHN—Public Service Co of NH	Dividend rate has zero for the quarter ending 09/30/86.
Year=86; quarter=4	
CMS—CMS Energy Corp	Dividend rate has zero for the quarter ending 12/31/86.
DQU—Duquesne Light Co.	Dividend rate reduced in the quarter ending 06/30/86.
FGE—Fitchburg Gas & Elec Light.	Dividend rate has zero for the quarter ending 09/30/86.
GPU—General Public Utilities.	Dividend rate has zero for the quarter ending 12/31/86.
GSU—Gulf States Utilities Co.	Dividend rate has zero for the quarter ending 12/31/86.
KLT—Kansas City Power & Light.	Dividend rate reduced in the quarter ending 06/30/86.
LIL—Long Island Lighting.	Dividend rate has zero for the quarter ending 12/31/86.
MAP—Maine Public Service.	Dividend rate has zero for the quarter ending 03/31/86.
MSU—Middle South Utilities.	Dividend rate has zero for the quarter ending 12/31/86.
NI—Northern Indiana Public Serv.	Dividend rate has zero for the quarter ending 12/31/86
PIN—Public Service Co of Ind	Dividend rate has zero for the quarter ending 12/31/86
PNH—Public Service Co of NH.	Dividend rate has zero for the quarter ending 12/31/86

N=12
N=13

APPENDIX E.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Ticker symbol and utility	Reason for exclusion
Year=87; Quarter=1	
CMS—CMS Energy Corp.	Dividend rate was zero for the quarter ending 03/31/87
DQU—Duquesne Light Co.	Dividend rate reduced in the quarter ending 06/30/86.
FGE—Fitchburg Gas & Light.	Dividend rate was zero for the quarter ending 09/30/86.
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending 03/31/87
GSU—Gulf States Utilities Co.	Dividend rate was zero for the quarter ending 03/31/87.
KLT—Kansas City Power & Light.	Dividend rate reduced in the quarter ending 06/30/86.
LIL—Long Island Lighting.	Dividend rate was zero for the quarter ending 03/31/87.
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending 03/31/87

APPENDIX E.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

Ticker symbol and utility	Reason for exclusion
NI—Northern Indiana Public Serv.	Dividend rate was zero for the quarter ending 03/31/87.
PIN—Public Service Co of Ind.	Dividend rate was zero for the quarter ending 03/31/87.
PHN—Public Service Co of NH.	Dividend rate was zero for the quarter ending 03/31/87.
Year=87; Quarter=2	
CMS—CMS Energy Corp.	Dividend rate was zero for the quarter ending 06/30/87.
FGE—Fitchburg Gas & Elec Light.	Dividend rate was zero for the quarter ending 09/31/86.
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending 03/31/87.
GSU—Gulf States Utilities Co.	Dividend rate was zero for the quarter ending 06/30/87.
LIL—Long Island Lighting.	Dividend rate was zero for the quarter ending 06/30/87.
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending 06/30/87.
NI—Northern Indiana Public Serv.	Dividend rate was zero for the quarter ending 06/30/87.
PIN—Public Service Co of Ind.	Dividend rate was zero for the quarter ending 06/30/87.
PNH—Public Service Co of NH.	Dividend rate was zero for the quarter ending 06/30/87.

N=9.
N=11.

18 CFR Part 389

[Docket No. RM86-14-000; Order No. 483]

Revisions to the Purchased Gas Adjustment Regulations

January 29, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; Notice of OMB control number.

SUMMARY: The Federal Energy Regulatory Commission, on November 10, 1987, issued a final rule (Order No. 483) in Docket No. RM86-14-000, 52 FR 43854 (November 17, 1987). The rule revised the procedures by which an interstate natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers. This notice states that the Office of Management and Budget has approved the information collection requirements in Order No. 483.

EFFECTIVE DATE: The final rule in this docket is effective January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Phone: (202) 357-8020.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On December 16, 1987, the Commission issued a Notice of Suspension of Effective Date, which suspended the effective date of Order No. 483 until January 29, 1988, in order to give the OMB additional time to review the information collection provisions in the final rule. On January 25, 1988, the OMB approved the information collection requirements of 18 CFR Parts 154, 270, and 273 as amended by this rule under Control Number 1902-0070. Therefore, the final rule in Docket No. RM86-14-000 is effective January 29, 1988.

List of Subjects in 18 CFR Part 389

Reporting and recordkeeping requirements.

Accordingly, Part 389, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

Lois D. Cashell,
Acting Secretary.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. The Table of OMB Control Numbers in § 389.101(b) is amended by adding "§ 154.52" in the Section Column and inserting "0070" in the corresponding OMB Control Number column.

3. In § 389.101(b), the Table of OMB Control Numbers is amended by adding the following entries to the table. These entries follow "§ 154.111(a)(3)".

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

* * * * *

(b) *Display.*

* * * * *

154.301 0070
154.303 0070
154.304 0070
154.305 0070
154.306 0070
154.308 0070
154.309 0070
154.310 0070

* * * * *

4. The Table of OMB Control Numbers is amended by adding "§ 270.101" after "Part 270" and in the Section Column and inserting "0070" in the corresponding OMB Control Number Column and by revising the OMB Control Number Column corresponding to "§ 273.302" to read "0070, 0084".

[FR Doc. 88-2326 Filed 2-4-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 201, 203, and 234

[Docket No. N-88-1764; FR-2438]

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 mortgage limits for St. Mary's County, Maryland; Bloomington, Indiana MSA; South Bend-Mishawaka, Indiana MSA and the Portsmouth-Dover-Rochester, New Hampshire/Maine MSA. 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: February 5, 1988.

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

This Document

Today's document increases the high-cost mortgage amounts for St. Mary's County, Maryland; Bloomington, Indiana MSA; South-Bend-Mishawaka, Indiana MSA and the Portsmouth-Dover-Rochester, New Hampshire/Maine MSA.

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, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, St. Mary's County (Maryland) has a one-family limit of $81,900. The combination home and lot loan limit for St. Mary's County is $81.900 × .80, or $65,520.

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, St. Mary's County (Maryland) has a one-family limit of $81,900. The lot-only loan limit for St. Mary's County is $81,900 × .20, or $16,380.

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 I.—HUD FIELD OFFICE—MANCHESTER OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Portsmouth-Dover-Rochester, New Hampshire/Maine MSA, Rockingham County, NH, Strafford County, NH, York County, ME	$90,000	$101,300	$122,650	$142,650

REGION III.—HUD FIELD OFFICE—BALTIMORE, MD

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
St. Mary's County	$81,900	$87,600	$106,450	$122,850

REGION V.—HUD FIELD OFFICE—INDIANAPOLIS OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Bloomington, IN MSA, Monroe County	$71,800	$80,900	$98,250	$113,350
South Bend-Mishawaka, IN MSA, St. Joseph County	74,600	84,000	102,050	117,750

Date: January 26, 1988.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-2488 Filed 2-4-88; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Parts 232 and 235

[Docket No. R-88-1373; FR-2483]

Mortgage Insurance; Changes in Interest Rates

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

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on certain Section 232 (Mortgage Insurance for Nursing Homes) loans and on all Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these

programs into line with competitive market rates.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under Section 232 (fire safety equipment) and Section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA Section 232 (fire safety equipment) and Section 235 insurance programs has been lowered from 10.50 percent to 9.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement 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 amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health. Loan programs: Housing and community development. Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR 232 continues to read as follows:

Authority: Sections 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before February 1, 1988, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before February 1, 1988, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after February 1, 1988, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Date: January 28, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-2489 Filed 2-4-88; 8:45 am]

BILLING CODE 4210-27-M

---

24 CFR Parts 247 and 886

[Docket No. R-88-1328; FR-1950]

Termination of Tenancy—Section 8 Housing Assistance Payments Program—Special Allocations

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

ACTION: Final rule.

SUMMARY: This final rule amends 24 CFR Part 886, which governs policies and procedures for the Section 8 Loan Management Program (Subpart A) and the Section 8 Property Disposition Program (Subpart C). The rule; (1) Removes requirements for public housing agency (PHA) and HUD participation in terminations of tenancy; (2) removes provisions stating that public housing lease and grievance procedures are applicable to PHA-owned Section 8 projects under Subpart C; (3) deletes existing termination of tenancy requirements and applies 24 CFR Part 247—Evictions from Certain Subsidized and HUD-Owned Projects, to all terminations of tenancy under Part 886; and (4) modifies requirements governing lease provisions.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Housing, (202) 426-3970, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 5, 1987, HUD published a proposed rule to revise 24 CFR Part 886 (52 FR 16403). This Part governs HUD's policies and procedures for the Section 8 Loan Management Program (Subpart A) and the Section 8 Property Disposition Program (Subpart C). HUD's rule proposed: (1) To remove requirements for public housing agency (PHA) and HUD participation in terminations of tenancy; (2) to remove provisions stating that public housing lease and grievance procedures are applicable to certain PHA-owned Section 8 projects under Subpart C; (3) to delete existing termination of tenancy requirements and apply 24 CFR Part 247—Evictions from Certain Subsidized and HUD-Owned Projects to all terminations of tenancy under Part 886; and (4) to modify requirements governing lease provisions. HUD received five comments in response to the proposed rule.

Two commenters argued against any Federal intervention in terminations of tenancy in HUD-assisted projects. These commenters argued that State laws adequately protect the interests of assisted families and that additional Federal procedures only complicate the termination process.

The termination of tenancy procedures contained in HUD regulations were imposed to ensure that landlords of federally subsidized housing do not act arbitrarily in evicting assisted families, and to ensure that such families are accorded due process in connection with evictions. HUD continues to believe that these requirements are desirable for the protection of the essential rights of assisted families.

Two commenters urged HUD to incorporate certain requirements contained in existing § 886.128(a) into Part 247. This section requires the project owner to give the family a written notice of the eviction, stating the grounds and advising the family that they have 10 days (or greater number, if any, that may be required by local law) within which to respond to the owner. These commenters argued that this provision is necessary to protect the rights of assisted families. They also argued that the 10-day response period provides an avenue to families to discuss the proposed eviction with the owner and encourages out of court settlements that reduce litigation costs, thus benefiting both owners and families. One commenter noted that this requirement is particularly helpful to families that are experiencing financial problems.

While HUD believes that families will be provided with an adequate opportunity to respond to a proposed termination through State judicial procedures, HUD has provided the family with an informal opportunity to respond to a proposed termination through provisions in the model lease As noted in the proposed rule, HUD Handbook 4350.3—Occupancy Requirements of Subsidized Multifamily Programs, Appendix 19a requires the project owner to advise the family that it has 10 days to discuss a proposed termination of tenancy with the project owner. HUD believes that this lease provision is sufficient to encourage the informal resolution of disputes that would otherwise be brought to court.

Commenters asserted that the Handbook is not legally binding or enforceable and argued that the failure to include this provision in the regulation may result in unnecessary litigation concerning the scope of HUD's termination of tenancy requirements

Sections 886.127(b) and 886.327(b) of the final rule provide that the lease between the owner and the family must comply with HUD regulations and requirements, and must be on the form required by HUD. HUD believes that these sections are sufficient to ensure that leases will contain the described provision and that the lease will create a legally binding and enforceable obligation on the part of the project owner to provide families with a 10-day opportunity to respond to a termination notice.

One commenter objected to the revised definition of eligible project contained in § 886.102. This commenter believed that the proposed definition would subject any multifamily residential project that is subject to a mortgage insured under the National Housing Act to the provisions of Subpart A. This section has not been revised. The definition contained in § 886.102 identifies the types of projects that are eligible to apply for and receive Section 8 assistance under Subpart A. Eligible projects that do not receive assistance under Subpart A are not covered by the regulation. The proposed rule did not make any changes to the definition of eligible project, but merely moved this definition from existing § 886.101(a) to § 886.102.

Findings

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities Changes included in this rule involve clarifications of eviction procedures The proposed rule does not alter the goals of the programs covered under Part 886. Any effect on small entities should be minor

This rule was listed as item 991 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40382) under Executive Order 12291 and the Regulatory Flexibility Act

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 247

Low and moderate income housing, Public housing, Tenant eviction.

24 CFR Part 886

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

Accordingly, 24 CFR Parts 247 and 886 are revised to read as follows:

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

1. The authority citation for 24 CFR Part 247 is revised to read as follows:

Authority: Sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); Secs. 211, 221, and 236 National Housing Act (12 U.S.C. 1715b, 1715*l*, and 1715z-1); Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 247.1 [Amended]

2. In § 247.1, the word "occupacy" is removed and the word "occupancy" is added in its place.

3. Section 247.2(e) is revised to read as follows:

§ 247.2 Definitions.

* * * * *

(e) "Subsidized project" means a multifamily housing project (with the exception of a project owned by a cooperative housing mortgagor corporation or association) that receives the benefit of subsidy in the form of: (1) Below-market interest rates under section 221(d)(3) and (5), or interest reduction payments under section 236 of the National Housing Act; (2) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; or (3) direct loans under section 202 of the Housing Act of 1959 (including a project assisted under 24 CFR Part 885). Subsidized project also includes a multifamily housing project that receives the benefit of subsidy in the form of housing assistance payments under the Section 8 Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR Part 886, Subpart A) or housing assistance payments under the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart C).

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

4. The authority citation for 24 CFR Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 886.101, paragraph (b) is removed, paragraph (c) is redesignated as paragraph (b), and paragraph (a) is revised to read as follows:

§ 886.101 Applicability.

(a) The policies and procedures of this subpart apply to Housing Assistance Payments under Section 8 of the United States Housing Act of 1937 on behalf of Eligible Families in Eligible Projects (see definitions in § 886.102).

* * * * *

6. Section 886.102 is amended by revising the definitions for the terms "eligible project" and "lease" to read as follows:

§ 886.102 Definitions.

* * * * *

Eligible Project. Any existing subsidized or unsubsidized multifamily residential project that is subject to a mortgage insured or any section of the National Housing Act; any such project subject to a mortgage that has been assigned to the Secretary; any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; or a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR Part 885).

* * * * *

Lease. A written agreement between the owner and a family for leasing of a decent, safe and sanitary dwelling unit to the family.

* * * * *

§ 886.106 [Amended]

7. In § 886.106, paragraph (c) is removed.

8. Section 886.119(a)(5) is revised to read as follows:

§ 886.119 Responsibilities of owner.

(a) * * *

(5) Termination of tenancies, including evictions;

* * * * *

§ 886.122 [Removed and reserved]

9. Section 886.122 is removed and the section is reserved.

10. Section 886.127 is revised to read as follows:

§ 886.127 Lease requirements.

(a) *Term of lease.* (1) The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the contract if the remaining term of the contract is less than one year.

(2) During the first year of the lease term, the owner may not terminate the tenancy for "other good cause" under 24 CFR 247.3(a)(3), unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the lease term, the owner may not terminate the tenancy for "other good cause" based on the failure by the family to accept the offer of a new lease.

(3) The lease may contain a provision permitting the family to terminate the lease on 30 days advance written notice to the owner. In the case of a lease term for more than one year, the lease must contain this provision.

(b) *Required and prohibited provisions.* The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:

(1) *Admission of guilt.* Agreement by the family (i) to be sued, (ii) to admit guilt, or (iii) to a judgment in favor of the owner, in a court proceeding against the family in connection with the lease.

(2) *Treatment of family property.* Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.

(3) *Excusing owner from responsibility.* Agreement by the family not to hold the owner or the owner's agents responsible for any action or failure to act, whether intentional or negligent.

(4) *Waiver of notice.* Agreement by the family that the owner does not need to give notice of a court proceeding against the family in connection with the lease, or does not need to give any notice required by HUD.

(5) *Waiver of court proceeding for eviction.* Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.

(6) *Waiver of jury trial.* Agreement by the family to waive any right to a trial by jury.

(7) *Waiver of appeal.* Agreement by the family to waive the right to appeal,

or to otherwise challenge in court, a court decision in connection with the lease.

(8) *Family chargeable with legal costs regardless of outcome.* Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

11. Section 886.128 is revised to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart.

12. Section 886.302 is amended by revising the definition for the term "lease" to read as follows:

§ 886.302 Definitions.

* * * * *

Lease. A written agreement between the owner and a family for leasing of decent, safe and sanitary dwelling unit to the family.

* * * * *

§ 886.305 [Removed and reserved]

13. Section 886.305 is removed and the section is reserved.

14. Section 886.306 is revised to read as follows:

§ 886.306 Notices.

Before a project is approved for sale in accordance with this subpart, and as a part of the process of preparing a disposition recommendation in accordance with 24 CFR Part 290, the field office manager must notify in writing the chief executive officer of the unit of general local government in which the project is located (or the designee of that officer) of the proposed sale with housing assistance, and must afford the unit of local government an opportunity to review and comment upon the proposed sale in accordance with 24 CFR Part 791. Local government review should address consistency with the housing needs and strategy of the community, rather than strict conformance to the limitations on variations from housing assistance plan goals which are contained in Part 791.

§ 886.309 [Amended]

15. In § 886.309(e), the reference to "§ 886.328" is removed and "§ 886.327 and Part 247 of this title" is added in its place.

§ 886.322 [Removed and reserved]

16. Section 886.322 is removed and the section is reserved.

17. Section 886.327 is revised to read as follows:

§ 886.327 Lease requirements.

(a) *Term of lease.* (1) The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the contract if the remaining term of the contract is less than one year.

(2) During the first year of the lease term, the owner may not terminate the tenancy for "other good cause" under 24 CFR 247.3(a)(3), unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the lease term, the owner may not terminate the tenancy for "other good cause" based on the failure of the family to accept the offer of a new lease.

(3) The lease may contain a provision permitting the family to terminate on 30 days advance written notice to the owner. In this case of a lease term for more than one year, the lease must contain this provision.

(b) *Required and prohibited provisions.* The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:

(1) *Admission of guilt.* Agreement by the family (i) to be sued, and (ii) to admit guilt, or (iii) to a judgment in favor of the owner, in a court proceeding against the family in connection with the lease.

(2) *Treatment of family property.* Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.

(3) *Excusing owner from responsibility.* Agreement by the family not to hold the owner or the owner's agents responsible for any action or failure to act, whether intentional or negligent.

(4) *Waiver of notice.* Agreement by the family that the owner does not need to give notice of a court proceeding against the family in connection with the lease, or does not need to give any notice required by HUD.

(5) *Waiver of court proceeding for eviction.* Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.

(6) *Waiver of jury trial.* Agreement by the family to waive any right to a trial by jury.

(7) *Waiver of appeal.* Agreement by the family to waive the right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

(8) *Family chargeable with legal costs regardless of outcome.* Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

18. Section 886.328 is revised to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart.

Date: February 2, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-2490 Filed 2-4-88; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; Delegation of Authority

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is publishing this final rule amending its procedural regulation at 29 CFR 1601.21(d) to provide for delegation of authority from the Program Director, Office of Program Operations, to the Director, Determinations Review Program, Office of Program Operations to make determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties.

DATE: Effective February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Office of Legal Counsel (202) 634-6690.

SUPPLEMENTARY INFORMATION:

For the Commission.

Clarence Thomas,

Chairman.

Accordingly, Part 1601 is amended as follows:

PART 1601—[AMENDED]

1. The authority citation for 29 CFR Part 1601 continues to read as follows:

Authority: Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-12(a), unless otherwise noted.

2. The first sentence of 29 CFR 1601.21(d) introductory text is revised as follows:

§ 1601.21 [Amended]

* * * * *

(d) The Commission hereby delegates to District Directors, or upon delegation, Area Directors or Local Directors; and the Program Director, Office of Program Operations, or upon delegation, the Director, Determinations Review Program, Office of Program Operations or the Directors, Regional Programs, Office of Program Operations, the authority, except in those cases involving issues currently designated by the Commission for priority review, upon completion of an investigation, to make a determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties. * * *

[FR Doc. 88-2482 Filed 2-4-88; 8:45 am]

BILLING CODE 6570-06-M

29 CFR Part 1627

Congressional Action Concerning the Commission's Final Rule Allowing for Non-EEOC Supervised Waivers Under the Age Discrimination in Employment Act (ADEA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of congressional action regarding final rule on ADEA waivers.

SUMMARY: On July 30, 1987 the Equal Employment Opportunity Commission voted to approve a final rule creating a legislative regulation and administrative exemption allowing for non-EEOC supervised waivers of private rights under the Age Discrimination in Employment Act (under section 9 of the ADEA and 29 CFR 1627.15). This final rule was published in the **Federal Register** of Thursday, August 27, 1987 (52 FR 32293), effective thirty days thereafter.

On December 22, 1987 Congress passed and the President signed Public Law 100-202 (appropriations for fiscal year 1988) which includes the following language:

Provided, That the final rule regarding unsupervised waivers under the Age Discrimination in Employment Act, issued by the Commission on August 27, 1987 (29 CFR sections 1627.16(c)(1)-(3)), shall not have effect during fiscal year 1988: Provided further, That none of the funds may be obligated or expended by the Commission to give effect to any policy or practice pertaining to unsupervised waivers under the Age Discrimination in Employment Act.

EFFECTIVE DATE: December 22, 1987.

FOR FURTHER INFORMATION CONTACT: John K. Light, Attorney-Advisor, ADEA Division, Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507, (202) 634-6423.

Signed this 25th day of January 1988 at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88-2518 Filed 2-4-88; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 4, 126, and 127

[CGD 78-038]

Liquefied Natural Gas Waterfront Facilities

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes safety standards for the design and construction, equipment, operations, maintenance, personnel training, firefighting, and security at liquefied natural gas waterfront facilities. It implements the Ports and Waterways Safety Act of 1972, as amended, and is necessary to prevent or mitigate the results of an accidental release of liquefied natural gas (LNG) at a LNG waterfront facility (facility). This rule will reduce the possibility that such an accident could occur, and will reduce the damage and injury to persons and property should an accident occur.

EFFECTIVE DATE: This regulation is effective June 2, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 2, 1988.

ADDRESSES: The Final Evaluation and the Final Environmental Assessment and Findings of No Significant Impact are available for inspection and copying at the Marine Safety Council (G-CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, 20593-0001, (202) 267-1477. Normal office hours are between 7:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), (202) 267-0493, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) (51 FR 18276) in the May 16, 1986 issue of the **Federal Register** and received over 300 comments on the proposal. No requests for a public hearing were received. The rule has been changed in light of the comments received.

The NPRM discussed the need and the regulatory history of this rule. The reader should refer back to this NPRM if he or she is interested in this information.

This rule applies only to that part of the facility between each vessel and the last manifold or valve immediately before the receiving tank, while the regulations promulgated by the Research and Special Programs Administration (RSPA), DOT, apply to that part of the facility beyond the last manifold or valve immediately before the receiving tank. The RSPA proposal revised regulations in a separate NPRM (51 FR 18007), published on the same day as the Coast Guard NPRM. The RSPA final rule (52 FR 674) was published on January 8, 1987.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Michael V. Franchini, Project Manager, and Stanley M. Colby, Project Counsel, Office of the Chief Counsel.

General Comments

Over 300 comments were received on the NPRM from 15 different commenters, the largest group (9) representing gas industry associations or facility operators. Government agencies, non-industry organizations, and individuals also commented. The Coast Guard has reviewed the comments and has adopted those which it deems appropriate.

Some commenters were confused over the applicability of the NPRM to inactive existing facilities. Most of these regulations do *not* apply to inactive existing facilities. The three exceptions will apply only if the inactive existing facility will become active. They are §§ 127.007 (c), (d), and (e), 127.019(b), and 127.701 and are listed in § 127.001(c). At least some of the confusion resulted from the use of the term, "existing structures", for inactive existing facilities in proposed §§ 127.001(c) and 127.007(c) of the NPRM. As five commenters

recommended, this has been clarified in the final rule so that they are referred to as inactive existing facilities.

Seven different commenters recommended using the words, "active" or "inactive" to distinguish between existing facilities, while two of these commenters suggested definitions for these words. We agree with these comments and have based the definitions on criteria contained in proposed § 127.007(e)(2) of the NPRM. In that section the operator would be required to notify the Captain of the Port (COTP) when LNG transfer operations are not scheduled within the next 12 months. Therefore, "active" and "inactive" in the NPRM were based on activity within a 12 month period.

In the final rule, a facility that is transferring LNG or is scheduling a LNG transfer operation within 12 months of the most recent transfer operation is "active". The facility will remain "active", if a LNG transfer operation is scheduled within 12 months of the most recent transfer operation, so that it does not change status from active to inactive after each transfer. If a facility is not active, i.e. not transferring LNG or not scheduling a LNG transfer operation within 12 months, the facility is "inactive" and would be required under § 127.007(e)(2) to notify the COTP.

The term, "in the marine transfer area", has been deleted throughout the final rule (with two exceptions in §§ 127.613 and 127.615) because its use is repetitive and confusing. These regulations apply only to the marine transfer area of the facility and this is clearly stated in the first section of the regulations, § 127.001, Applicability. It does not need to be repeated in other sections. In the NPRM, the term, "in the marine transfer area", was not used in every section. It was also deleted in the final rule so that it cannot be inferred that the sections, that did not contain the term, applied beyond this area.

One comment concerned the proposed definition of marine transfer area and the last manifold or valve immediately before the receiving tanks on a facility which exports LNG. The commenter suggested that the last valve or manifold before the receiving tanks on an export facility would be the valve– on the landside of the tanks and would then include the receiving tanks in the marine transfer area. This would be true if you followed the flow of LNG from the process plant to the vessel and your perspective was from the process plant or landside. This overlooks the fact that in the definition in § 127.005 the boundaries of the marine transfer area begin at the vessel or where it moors and end before the receiving tanks. Therefore, the last manifold or valve is on the waterside of the tanks and the marine transfer area does *not* include the receiving tanks.

A few commenters suggested that these regulations would require existing facilities to make too many changes to their current operations. It is not our intent to place an undue burden on existing facilities or to attempt to make major changes to systems that already work. These regulations are meant to be, and are, minimum safety standards for the marine transfer area. If an existing facility cannot comply with these requirements, the operator has to change his operations, or submit a request for an alternative to the COTP. If this request is denied, the operator may appeal. No one set of regulations can be applied exactly to all existing facilities. The alternatives and appeals processes in §§ 127.015 and 127.017 allow existing facilities the flexibility that they need to operate without major changes to comply with these regulations.

Some commenters suggested that these regulations should contain more performance standards instead of prescriptive standards, and some additional performance standards have been included in the final rule, e.g. §§ 127.103 and 127.205. However, some proposed requirements were not suitable for formulation as performance standards. When the actual performance standards suggested by these commenters were evaluated, they were found to be too general and too vague and were not accepted.

Other commenters suggested that these regulations should be more like RSPA regulations. Every effort has been made to make these regulations are as similar as possible to the RSPA regulations, including consulting with RSPA during the rulemaking process. RSPA regulations apply to inland facilities and the landside of waterfront facilities, while Coast Guard regulations apply only to the waterside of waterfront facilities. The regulatory concerns are not the same, so the regulations cannot be identical. These regulations must also be as similar as possible to other Coast Guard regulations. If they are not similar to Coast Guard regulations, they will be difficult to enforce by Coast Guard personnel and difficult to comply with by facility owners and operators.

The following discusses the section-by-section comments to the NPRM, as well as changes to each section in this final rule.

Subpart A—General

Five commenters recommended adding the words, "for which a Letter of Intent under § 127.007 has been submitted", to the end of proposed § 127.001(b) so that inactive existing facilities are not required to comply with these regulations. It was never the intent of the Coast Guard that inactive existing facilities would have to comply with the proposed regulations. The proposed definition of "LNG waterfront facility" in the NPRM was such that a facility that did not transfer LNG was not a LNG waterfront facility and so did not have to comply with the regulations. We have clarified this point and satisfied the intent of these comments by adding the definition of the word, "active", and differentiating between active and inactive existing facilities in the regulations. The definition of "active" came from § 127.007(e)(2) in the NPRM and is discussed above with the general comments.

The same five commenters also recommended that the term, "existing structures" in § 127.001(c) be replaced with the word, "existing facilities". They reasoned that the word, "structure", was too generic and confusing. This confusion has been eliminated by referring to "existing structures" as "inactive existing facilities" in the final rule. Two sections, that apply to inactive existing facilities and were inadvertently left out in the NPRM, have also been added to § 127.001(c).

The Department of the Interior recommended a change to the definition of "environmentally sensitive areas" in § 127.005. Their change, to add the phrase, "other areas" deemed to be of high value to fish and wildlife resources", has been made.

Two commenters suggested a change to the proposed definition of "marine transfer area" in § 127.005. They recommended that the abbreviation, "(area)", be omitted to avoid any confusion with the other uses of the word, "area". This recommendation was accepted and the words, "marine transfer area", are used throughout the final rule instead of the word, "area". Three commenters recommended adding the words, "which is involved in the transfer of LNG", to the end of the definition of "marine transfer area" so that these regulations are not applied to process equipment or other areas under RSPA jurisdiction. This change was not made. These regulations address only those areas of the facility which are involved with the marine transfer of LNG. It would be inappropriate to apply them to areas beyond Coast Guard jurisdiction.

In § 127.007, Letter of intent, the words, "active existing facilities" are now used to differentiate between

active and inactive facilities, as recommended by six commenters. Less information than that proposed in the NPRM is now required in the letter of intent, in response to many commenter's requests. The requirement for maps and charts in § 127.007(d)(6) has been restricted to only that waterway used by the LNG vessels enroute to the facility, and has been reduced to within 25 kilometers of the facility. The information requirement in proposed § 127.007(d)(7) has been omitted because it is information that can be obtained by the COTP from other sources. Finally, changes to information in the letter of intent in § 127.007(e)(1) have been limited to changes only to the information in sections (d) (1) through (5). All of these changes will reduce the information reporting burden on facility operators and are in accordance with federal objectives under the Paperwork Reduction Act.

Four commenters requested that a time limit be placed in § 127.009, requiring the COTP to draft the letter of recommendation within 30 days. They wanted time to revise construction or operation plans if the COTP did not issue a favorable letter of recommendation. We agree that the COTP should prepare the letter of recommendation promptly so that delay and costs are minimized. However, circumstances vary and the Coast Guard does not intend to restrict the COTP or establish a right to a response in a specified time. There has been no demonstrated need for such provisions. Two commenters thought that the letter of recommendation was not necessary for existing facilities since their construction and operations had already been subject to review. This change has been made. The information proposed in § 127.007(d)(7) in the NPRM for the letter of intent still needs to be considered by the COTP when issuing a letter of recommendation. Because of this, this information, i.e. depths of water, tidal range, etc., has been included as § 127.009(d) in the final rule.

Two comments were made concerning proposed § 127.015, Appeals. They were: Including time limits on the actions of the COTP and requiring that any order remain in effect pending the outcome of the process. However, this section was not changed because the recommended changes would make this appeal procedure incompatible with procedures found in other Coast Guard regulations in Title 33. One of the above commenters also suggested time limits on the actions of the COTP be included in proposed § 127.017, Alternatives. Again, this change was not made. It is Coast Guard policy to complete the required correspondence promptly in order not to cause the operator undue delay and costs. There has been no demonstrated need for specified time limits.

The words, "active" and "inactive", are used again in §§ 127.019 (a) and (b) to differentiate between existing facilities, as recommended by five commenters. Three commenters were concerned that not enough time was allowed operators of active existing facilities to submit the *Operations Manual* and the *Emergency Manual* in § 127.019. They suggested that from 90–180 days be given to submit the manuals. In response to these comments, the effective date of these regulations has been set at June 2, 1988. This should allow enough time to implement any new requirements or changes that result from these regulations, without suspending transfer operations.

Four commenters recommended that the *Operations Manual* and *Emergency Manual* be maintained on-site and not submitted to the COTP. We disagree with this recommendation. The COTP needs to refer to these manuals during discussions with facility personnel, during examinations, and subsequent questions by Coast Guard personnel, and while responding to emergencies. Having copies at the COTP office will save the operator and the Coast Guard time when the COTP references the manuals instead of visiting the facility and examining systems and equipment there.

Subpart B—Design and Construction

Section 127.101(b) has been added in response to the comment that there are requirements in proposed § 127.103(a) that a facility be designed to resist earthquake forces, but no earthquake criteria were provided. One commenter pointed out the conflict in the NPRM between proposed § 127.615, which does not allow fires in the marine transfer area, and proposed § 127.103(c), which allowed direct combustion heating equipment in the marine transfer area of new facilities. Because it was never our intent to allow fires in the marine transfer area, and to make the requirements consistent with NFPA 59A, "Standards for the Production, Storage and Handling of LNG—1985 edition", § 127.103(c) has been deleted.

Section 127.103(d), concerning LNG and LPG storage tanks, has been rewritten in response to four comments, which recommended that the size limit be replaced with a performance standard. Section 127.103(d)(3) has been added in response to four comments, which stated there are other purposes for storage tanks in the marine transfer area.

Seven commenters recommended that "power systems" be changed to "power sources" in proposed § 127.107, Electrical power systems. These commenters argued that 100% redundant electrical systems are not necessary and not required in any other code or regulation. We agree and have made this change in the final rule. Five commenters expressed some confusion with the requirement in proposed § 127.107(b)(1) for emergency power for the control room. They questioned whether we intended that the emergency power source provide enough power for the operation of the control room itself or the systems operated from the control room. The emergency power source should not duplicate the operation of the electrical power source. It should provide power to only those systems necessary in an emergency. In order to eliminate this confusion and to be as specific as possible, § 127.107(b)(1) now requires emergency power only for the emergency shutdown system.

Six commenters made similar recommendations concerning the separate emergency lighting system in proposed § 127.109(a). This has been changed to "separate emergency lighting" so that there are not two redundant systems. Section 127.109(d)(1), one of the systems for which emergency lighting must be provided, has been changed to "emergency shutdown system" to be consistent with § 127.107(b)(1).

Six commenters recommended that, to be consistent, the proposed requirements in §§ 127.107 (d) and (e) for electrical equipment should be used in § 127.109(b)(1) for lighting equipment. Another commenter recommended in § 127.111(b)(1) that NFPA 70, the National Electric Code be used instead of Coast Guard regulations for intrinsic safety. We agree with both commenters that these paragraphs need to be consistent and that existing nationally-recognized codes should be used where possible. In order to eliminate the confusion of all three paragraphs referring to similar but different requirements in Coast Guard regulations and NFPA standards, and to make the electrical equipment requirements consistent throughout the regulations, §§ 127.107 (d) and (e), 127.109(b)(1), and 127.111(b) (1) and (2) have been omitted in the final rule in favor of § 127.101. In § 127.101 in the NPRM and in the final rule, the marine transfer area must meet NFPA 59A Chapter 7, Sections 7–6 and 7–7. These sections either refer to the

NFPA 70 requirements or are based on them.

Subpart C—Equipment

One commenter recommended a change to proposed § 127.201(a), Sensing and alarm systems, so that placement of the audio alarm in accordance with this requirement did not restrict its sound. In response to this recommendation the words, "where the sensors are located" are replaced with the word, "nearby". The words, "enclosed or covered" have been added to § 127.201(c)(1) because two commenters stated that, as proposed in the NPRM, it would require an excessive number of sensors.

Concerning § 127.205, Emergency shutdown, four commenters stated that outdoor gas sensors are notoriously unreliable when measuring LNG concentrations. They also said that the transfer operation is so well-manned, that it would be better to rely on the judgment of a qualified operator to activate the system. We agree that outdoor gas sensors may be unreliable, but do not agree that the activation of the emergency shutdown system should rely solely on the judgment of an operator. Instead of relying on outdoor gas sensors, the requirement in the final rule relies on measurements from the fixed sensors in § 127.201, which are located in enclosed areas, to activate the system automatically. The requirement to provide a means to activate the system manually, has not been changed.

Four commenters suggested that proposed § 127.207, Warning alarms, be omitted. We do not agree. This requirement applies only to new facilities and is essentially the same as the requirement that now applies to existing waterfront facilities in 33 CFR 126.16.

Subpart D—Operations

One change was made to § 127.301, Person in charge of shoreside transfer operations: Qualifications and certification. A commenter recommended a person in charge be allowed to obtain the required previous transfer experience at an inland or waterfront facility, since there are few active "facilities" as defined. The words, "at any facility", have been ommited to remove the restriction that the experience required in § 127.301(a)(1) be obtained at a facility covered by these rules. Two commenters stated that it is difficult to ensure that a person in charge "knows", as required by proposed §§ 127.301(a) (2)–(4), the hazards of LNG, etc. They recommended that the person in charge either take a written test or show documented training to demonstrate the required knowledge. We have rejected this recommendation. The requirement is more flexible as written in the NPRM. It will be up to the facility operator to determine, by any appropriate means, that the person in charge complies with this requirement.

One commenter was concerned that transfer operations at active existing facilities would be suspended while the *Operations Manual* and the *Emergency Manual* were being examined, because of the proposed requirement in § 127.309(a). The effective date of the regulations has been set at June 2, 1988. This should allow more than enough time to submit the above manuals for examination and have a copy returned under the procedures in § 127.019.

The requirements in § 127.311 (b) and (c) for motor vehicles have been changed so that they apply only during transfer operations. Three commenters recommended this change so that maintenance vehicles may be allowed in other parts of the marine transfer area when transfer operations are not being conducted. Four other commenters recommended that proposed § 127.311(b) read "No person may leave unattended a motor vehicle in a space in the marine transfer area * * *". We do not agree. Including this criteria would remove all restrictions on where a motor vehicle stops or parks in the marine transfer area as long as it was "attended". This would not restrict ignition sources.

Four commenters recommended that the words, "flammable materials", be added after "the following" in proposed § 127.313, Bulk storage. This was done so that quantities of nitrogen, dry chemical, CO_2, and water could be stored in the marine transfer area.

In proposed § 127.315, Preliminary transfer inspection, paragraph (a) was clarified, as suggested by one commenter, so that only the transfer piping to be used during the transfer is inspected. It is not necessary to inspect transfer piping that is not being used. Two commenters recommended that the density not be noted in § 127.315(b) because it is usually calculated based on temperature and pressure. We accept this recommendation and have revised the section accordingly. Two commenters said that the facility should not be responsible for the ship's moorings, as suggested in proposed § 127.315(d). This is not the intent of the proposed requirement, which concerns the transfer connections and not the moorings. It is the responsibility of the facility to ensure that these connections do not unduly restrict the movement of the ship due to tides. This section has not been revised. As recommended by four commenters, the references to sections which apply only to new facilities, in proposed §§ 127.315 (f) and (i) which apply to new and active existing facilities, have been omitted.

Two comments were made concerning proposed § 127.317(c), Declaration of inspection. One recommended that the signature of the relief person in charge was not needed and the other recommended revised wording, both without supporting reasons. Without such support, other than implied preference, there was no reason to make any changes to this section.

Several comments were made concerning proposed § 127.319, LNG transfer. We agreed with the recommendation that vessels be allowed to moor outboard of an LNG vessel with the permission of the COTP, and revised § 127.319(a)(3). This is necessary to provide moorings for vessels which receive oily wastes and for tugs. Concerning proposed § 127.319(b)(3)(iii), two commenters recommended that we define "uncontrolled fires". This is not necessary. When the meaning of a word is not distinguished by a definition of it in the regulations, it has the every-day meaning found in a dictionary. This is true in this case; "uncontrolled" means lack of control. Seven commenters questioned the distance proposed in § 127.319(b)(3). The resulting revisions simplify the requirement so that transfer operations must be discontinued before electrical storms or uncontrolled fires are adjacent to the marine transfer area. The reference in proposed § 127.319(b)(4) to § 127.109, which only applies to new facilities, has been omitted, as recommended by six commenters.

Concerning proposed § 127.321, Release of LNG, two commenters recommended changes that would allow facilities to release small amounts of LNG during normal operations, but did not recommend what amount could be released safely. We do not believe that there is an amount of LNG that can be released into the water safely. LNG spilled on the water could not be contained and would spread and evaporate very quickly. This release could easily find an ignition source. This recommendation was rejected.

Subpart E—Maintenance

Five commenters recommended that, in order to be consistent with RSPA requirements, we change §§ 127.403, Inspections, and 127.407(a), Testing, to read, "each calendar year, but with intervals not exceeding 15 months".

These changes were made because we agree that one facility piping system should not have two different inspection and testing intervals. Section 127.405(a)(1), which applies to active existing facilities, references subparts that apply only to new facilities. It has been revised to read, "the applicable requirements", as recommended by five commenters.

Two other changes were made to this subpart, both in proposed § 127.407, Testing. In § 127.407(a)(4), seven commenters stated that piping that is constantly kept at cryogenic temperature does not undergo physical or thermal stress from expansion/contraction and is not susceptible to corrosion. For these reasons, this piping does not need to be tested, and this exception has been included in this section. Also, the requirement to test the transfer system to 1.5 times the Maximum Allowable Working Pressure (MAWP) in proposed § 127.407(b) has been changed to 1.1 times the MAWP. Nine commenters pointed out that to test to 1.5 times the MAWP was not consistent with nationally recognized codes and almost impossible to accomplish with LNG piping.

Subpart F—Personnel Training

Four commenters expressed concern about the effective date of the training requirements in proposed § 127.501 for inactive existing facilities. Inactive existing facilities are not required to meet the training requirements in this section while they are inactive. For this reason, the applicability of this subpart has been clarified and included in the final rule in a new section, § 127.501, Applicability. Because the effective date of these regulations has been set at January 2, 1988, this new section also allows sufficient time to complete the required training.

Five commenters were confused with the applicability of our training requirements to employees who do not work in the marine transfer area. Because the regulations only apply in the marine transfer area, these training requirements only apply to employees who work in this area. The training descriptions in proposed §§ 127.501 (a)(1) and (b)(2)–(4) were respecified, but the training remains the same. These descriptions were too general in the NPRM and some commenters were not sure what was required.

Two commenters recommended that refresher training in proposed § 127.501(c) be required every 2 years, as required by RSPA. However, refresher training every 5 years is consistent with Coast Guard regulations for merchant seaman. Our experience with that program does not support the need for more frequent refresher training.

Subpart G—Firefighting

Proposed § 127.605, Emergency outfits, was rewritten as recommended by three commenters, so that the storage of the outfits is not limited to the marine transfer area. The final rule requires that there be an emergency outfit for each person whose duties include fighting fires, instead of requiring that, "Each area must have an emergency outfit * * *" This will ensure that the outfits are also available for use in other portions of the facility and not isolated in the marine transfer area. Two commenters questioned the need for emergency outfits. Protective clothing, i.e. emergency outfits, is needed for two purposes. First, any person involved in firefighting must be protected with at least an emergency outfit. Second, emergency outfits are usually needed by members of a rescue team (minimum of two) to rescue an injured person. The requirements in § 127.605 are minimum requirements. If no person is assigned to firefighting duties, the facility is only required to maintain two outfits for rescue purposes. This section does not require the facility to develop an extensive firefighting and rescue capability.

The requirement in proposed § 127.607(a), Fire main systems, to provide two water streams to each part of the marine transfer area can be excessive on a marine transfer area that is very large and spread out. It is not our intent to require facility operators to protect large areas of the marine transfer area that do not contain LNG. Therefore, this section has been rewritten, as two commenters recommended, so that two water streams must only be provided for each part of the LNG transfer piping and connections. Two other commenters recommended that these requirements go one step further and that only the portion of the marine transfer area within 100 meters of the loading flange be protected by water streams. This recommended change has not been made because protecting only the loading flange area would not be enough to protect most marine transfer areas. There may be exceptions to this. An example is where there are miles of transfer pipeline that can easily be isolated in many places along the line, where the transfer pipeline is not located near other structures or equipment in the marine transfer area, and where there are sufficient water streams to protect the loading flange area and the receiving tanks. However, this type of marine transfer area is rare. Because of this and because these requirements are not intended to result in major refitting of existing facilities, this may be a requirement for which a facility would request an alternative under § 127.017. This request could then be evaluated by the COTP.

In the same section, Fire main systems, § 127.607(c)(2) was intended to stand alone and not be required at the same time as paragraph (c)(1). However, six commenters interpreted these requirements so that the fire main system would provide the required pressure in paragraph (c)(2) while all the other hydrants were open as required in paragraph (c)(1). The words, "when only those two outlets are open", have been added to the end of § 127.607(c)(2) in order to clarify it. One commenter wanted to be able to use hoses that were greater than 1½ inches in diameter as required in § 127.607(f). This was accomplished by inserting the words "or more", after inches in this requirement.

The coverage of the dry chemical system in § 127.609(a) also concerned a few commenters. Two commenters recommended that the system not provide two dry chemical discharges to each part of the marine transfer area, but that it provide discharges only to that part along the LNG transfer piping and connections. Two other commenters recommended that it provide coverage to only the area around the loading flange. We agree that providing dry chemical discharges for the entire marine transfer area, which does not contain LNG, or for the transfer piping and connections, which may be very long, is unreasonable. Therefore, § 127.609(a) has been rewritten, as recommended by the comments, so that the dry chemical system provides discharges to only that area surrounding the loading arms. Two commenters suggested that this section be revised one step further, i.e. that only a dry chemical system be required, with no other requirements for number of discharges, coverage, etc. This comment was rejected because it would make the requirement too broad and too general. It would leave it completely up to the different COTPs and the facility operators to decide what dry chemical system should exist, without any guidance from the regulation.

Four comments were received concerning proposed § 127.613, Smoking, stating that smoking should be allowed in posted areas approved by the COTP. The requirement in the NPRM does not prohibit smoking in the marine transfer area. It only prohibits smoking when

there is LNG in the marine transfer area. Therefore, this comment was not accepted.

Subpart H—Security

Proposed § 127.703, Access to the marine transfer area, has been rewritten to allow into the marine transfer area personnel authorized by the facility operator and visitors with temporary identifying badges. Seven commenters recommended these changes so that elected officials, corporate executives, foreign dignitaries, etc. could be allowed into the marine transfer area.

Evaluation

The Transportation Systems Center (TSC) prepared a report entitled, *Preliminary Impact Analysis of the U.S. Coast Guard's Proposed LNG Regulations*, which is included in the docket file and is available through the Project Manager listed under "For Further Information Contact". For the analysis, a composite baseline standard was used by which the types of incremental costs and benefits, as well as their distributional effects, were identified. The baseline consisted of: (1) Current Coast Guard Waterfront Facilities regulations (33 CFR 126); (2) USCG facility operations plans which are issued by the COTP for the port in which an LNG facility is located; and (3) National Fire Protection Association (NFPA) standards. The primary LNG standard is NFPA 59A, "Standards for the Production, Storage and Handling of LNG—1985 edition". NFPA standards are considered to be minimum industry standards voluntarily adopted by the LNG industry. The analysis determined the impacts of the Advance Notice of Proposed Rulemaking (ANPRM) by identifying where the proposed regulations exceed current practices and, therefore, where costs and benefits would accrue.

Of the 72 sections contained in the ANPRM, 54 were analyzed in the TSC report. Thirty-five or 65% of the 54 analyzed, introduced no change from the current baseline standards. Of the nineteen sections of the ANPRM that exceeded current requirements and standards, fifteen resulted in administrative costs, mostly for facility operators. Most of these costs would be minimal and not recurring. An example of an administrative cost would be the preparation and submission of an *Operations Manual* and an *Emergency Manual* to the COTP. The impact of this requirement would be minimal because facility operators already submit much of this information to the COTP or maintain it themselves.

The proposed fire protection and security regulations of the ANPRM and NPRM were not analyzed by TSC because the Coast Guard's proposed regulations are similar to the RSPA's final rules found in 49 CFR Part 193. A telephone survey of all facilities indicated that the proposed regulations in the NPRM did not exceed known current industry practices. However, some comments to the NPRM indicated that this was not true for some of the proposed regulations. Changes to the final rule, as a result of these comments, ensure that these regulations do not exceed current industry practices.

To ensure the currency and validity of the TSC report, requests for estimates of the compliance costs of this NPRM, were sent to two operating facilities. The results were the latest cost figures and confirmed that the TSC report could still be applied to the NPRM. The survey information and the TSC report were both used in the final cost/benefit analysis.

Of the 52 sections contained in the NPRM, 39 or 75% introduced no change from the current baseline requirements and standards. Of the thirteen sections of the NPRM that exceed current requirements, 8 would result in administrative costs. This is a 32% decrease from ANPRM to NPRM in the number of sections in the rulemaking that exceed current requirements. These figures also apply to the final rule.

These safety standards will result in low compliance costs. According to the analysis in the Final Evaluation, the total initial cost of these regulations to the LNG industry is $96,000.00 and the annual recurring cost is $44,000.00. These costs represent such a relatively small amount of money to the industry that it is believed that these regulations will have no perceptible impact on the industry.

The TSC analysis concluded that due to the low probability of an LNG accident occurring, the expected value of the quantifiable benefits of the NPRM were low. The benefits would be great if an accident occurred. A "maximum credible accident", as discussed in the Final Evaluation, involving a pool fire of 30,000 m^3 in an area with a population density of 10 people per km^2 at the dock site, could result in 21 fatalities with a cost to society in excess of $21 million in property damage, injury, and loss of life. If the same pool fire occurred in an area with a population 1000 persons per km^2, the result could be 3,810 fatalities with social costs of over $3.8 billion in property damage, injury, and loss of life.

Accidents involving small amounts of LNG have occurred in the past. The National Transportation Safety Board (NTSB) investigated one such accident that occurred at a facility on October 6, 1979. According to NTSB report No. NTSB-PAR-80-2, "About 3:35 a.m., e.d.t., an explosion caused by liquefied natural gas vapors destroyed a transformer building at the reception facility of the Columbia LNG Corporation, Cove Point, Maryland. Odorless liquefied natural gas leaked through an inadequately tightened LNG pump seal, vaporized, passed through approximately 210 ft. of underground electrical conduit, and entered the substation building. One person was killed and one person was seriously injured. Damage to the facility was estimated at about $3 million."

Despite the very large savings that would result from preventing a major LNG accident or mitigating the results of an accident if it occurred at an LNG facility, it is difficult to precisely quantify the benefits that will accrue. This is because of the extremely low probability of a major LNG accident occurring. The limited number of reported LNG facility accidents requires that probability estimates of accidents be based on the theoretical analysis of factors which might lead to their occurrence. There is large inherent uncertainty associated with such estimates, and hence of the cost/benefit values derived from them. Because of such uncertainties, prudence dictates an extra measure of caution where there is potential for a catastrophic accident. Such caution should be weighed along with other considerations when judging the need for safety standards that can reduce the possibility of a catastrophic LNG accident. This is true even when these measures may not be justified based on a theoretical risk analysis.

The benefits that cannot be quantified were discussed in the preamble of the NPRM. They include replacing outdated regulations, filling a gap in federal regulations, making industry standards and practices mandatory, and consolidating and better organizing the regulations.

These safety standards are considered to be non-major under Executive Order 12291 of February 17, 1981 (3 CFR, 1982 Comp., p. 127) and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The total cost to the industry of these LNG safety standards does not exceed the $100 million threshold to qualify as a major rulemaking, and so a Regulatory Impact Analysis is not required.

This rule contains information collection requirements in sections

127.007, 127.015, 127.017, 127.019, 127.301, 127.317, and 127.409. They have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and assigned control number 2115-0552. As a result of the comments received, the information collection requirements have been reduced in the final rule.

The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is because few, if any, small entities are involved in these costly and highly technical operations. All the existing facilities are owned and operated by multimillion dollar corporations.

This regulatory project is not anticipated to have an adverse impact on the environment. It is intended to prevent or mitigate the results of a catastrophic accident at a facility.

The Final Evaluation and the Final Environmental Assessment and Finding of No Significant Impact have been placed in the rulemaking docket file and are available for inspection and copying from the Marine Safety Council (G-CMC), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1477.

List of Subjects

33 CFR Part 4

Reporting and recordkeeping requirements.

33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements

33 CFR Part 127

Harbors, Hazardous substances, Incorporation by reference, Natural gas, Security measures, Vessels

In accordance with the preceding, Subchapter L, Chapter I of Title 33, Code of Federal Regulations is amended as follows:

PART 4—[AMENDED]

1. The authority citation to Part 4 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

§ 4.02 [Amended]

2. By amending § 4.02 by adding a new listing in proper chronological sequence to read as follows:

33 CFR part or section where identified and described	Currrent OMB control number
* * * * *	
Part 127	2115-0552
* * * * *	

PART 126—[AMENDED]

3. The authority citation to Part 126 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

§ 126.05 [Amended]

4. By amending § 126.05(a) by adding the words ", except methane" after the words "any flammable or combustible liquid in bulk".

§ 126.10 [Amended]

5. By removing the word "Methane" from the list in § 126.10(d).

6. By adding a new Part 127 to read as follows:

PART 127—LIQUEFIED NATURAL GAS WATERFRONT FACILITIES

Subpart A—General

Sec.
127.001 Applicability.
127.003 Incorporation by reference.
127.005 Definitions.
127.007 Letter of intent.
127.009 Letter of recommendation.
127.011 LNG waterfront facility inspections.
127.013 Suspension of transfer operations.
127.015 Appeals.
127.017 Alternatives.
127.019 *Operations Manual* and *Emergency Manual*: Procedures for examination.

Subpart B—Design and Construction

127.101 Design and construction: General.
127.103 Piers and wharves.
127.105 Marine transfer area layout and spacing.
127.107 Electrical power systems.
127.109 Lighting systems.
127.111 Communications systems.
127.113 Warning signs.

Subpart C—Equipment

127.201 Sensing and alarm systems.
127.203 Portable gas detectors.
127.205 Emergency shutdown.
127.207 Warning alarms.

Subpart D—Operations

127.301 Persons in charge of shoreside transfer operations: Qualifications and certification.
127.303 Compliance with suspension order.
127.305 *Operations Manual.*
127.307 *Emergency Manual.*
127.309 *Operations Manual* and *Emergency Manual*: Use.
127.311 Motor vehicles.
127.313 Bulk storage.
127.315 Preliminary transfer inspection.
127.317 Declaration of inspection.
127.319 LNG transfer.
127.321 Release of LNG.

Subpart E—Maintenance

127.401 Maintenance: General.
127.403 Inspections.
127.405 Repairs.
127.407 Testing.
127.409 Records.

Subpart F—Personnel Training

127.501 Applicability.
127.503 Training: General.

Subpart G—Firefighting

Fire Equipment

127.601 Fire equipment: General.
127.603 Portable fire extinguishers.
127.605 Emergency outfits.
127.607 Fire main systems.
127.609 Dry chemical systems.
127.611 International shore connection.

Fire Protection

127.613 Smoking.
127.615 Fires.
127.617 Hotwork.

Subpart H—Security

127.701 Security on existing facilities.
127.703 Access to the marine transfer area.
127.705 Security systems.
127.707 Security personnel.
127.709 Protective enclosures.
127.711 Communications.

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

Subpart A—General

§ 127.001 Applicability.

(a) This part applies to the marine transfer area of new LNG waterfront facilities and to new construction in the marine transfer area of existing LNG waterfront facilities.

(b) Subparts A, D, E, F, and G and § 127.701 apply to the marine transfer area of active existing LNG waterfront facilities.

(c) Sections 127.007 (c), (d), and (e), 127.019(b), and 127.701 apply to the marine transfer area of inactive existing LNG waterfront facilities.

§ 127.003 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material may be obtained from the National Fire Protection Association at the address

indicated in 33 CFR § 127.003(b) of this section.

(b) The materials approved for incorporation by reference in this part are:

"National Fire Protection Association" Batterymarch Park, Quincy MA 02269

NFPA 10 Portable Fire Extinguishers, 1984
NFPA 30 Flammable and Combustible Liquids Code, 1984
NFPA 51B Fire Prevention in Use of Cutting and Welding Processes, 1984
NFPA 59A Production, Storage and Handling of Liquefied Natural Gas (LNG), 1985
NFPA 70 National Electrical Code, 1987
NFPA 251 Fire Tests of Building Construction and Materials, 1985

§ 127.005 Definitions.

As used in this part:

"Active" means transferring LNG or scheduling a LNG transfer operation within 12 months of the most recent transfer operation.

"Captain of the Port" (COTP) means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in Part 3 of this chapter, or an authorized representative.

"Commandant" means the Commandant of the U.S. Coast Guard or an authorized representative.

"Control room" means a space within the LNG waterfront facility from which facility operations are controlled.

"District Commander" means the Coast Guard officer designated by the Commandant to command a Coast Guard District as described in Part 3 of this chapter, or an authorized representative.

"Environmentally sensitive areas" include public parks and recreation areas, wildlife and waterfowl refuges, fishing grounds, wetlands, other areas deemed to be of high value to fish and wildlife resources, historic sites, and other protected areas.

"Existing" means constructed or being constructed under a contract awarded before (insert the effective date of these regulations).

"Fire endurance rating" means the duration for which an assembly or structural unit will contain a fire or retain structural integrity when exposed to the temperatures specified in the standard time-temperature curve in NFPA 251.

"Inactive" means not active.

"Impounding space" means a space formed by dikes and floors that confines a spill of LNG.

"Liquefied natural gas" (LNG) means a liquid or semisolid consisting mostly of methane and small quantities of ethane, propane, nitrogen, or other natural gases.

"Liquefied petroleum gas" (LPG) means a liquid consisting mostly of propane or butane or both.

"Loading flange" means the connection or group of connections in the cargo transfer pipeline on the facility that connects the facility pipeline to the vessel pipeline.

"LNG vessel" means a watercraft constructed or converted to carry LNG in bulk.

"LNG waterfront facility" (facility) means a waterfront facility, as defined in § 126.01, at which LNG transfer operations are conducted.

"Marine transfer area" means that portion of a facility between the vessel, or where the vessel moors, and the last manifold or valve immediately before the receiving tanks.

"Maximum allowable working pressure" (MAWP) means the maximum gauge pressure permissible at the top of equipment, containers, or pressure vessels while operating at design temperature.

"New" means constructed or being constructed under a contract awarded on or after (insert the effective date of these regulations).

"Person in charge of transfer operations on the vessel" is the person designated the person in charge of cargo transfer under 46 CFR 154.1831.

"Substructure" means the deck of a pier or wharf and the structural components below that deck.

§ 127.007 Letter of intent.

(a) An owner who intends to build a new facility or the owner or operator who plans new construction on an existing facility, must submit a letter of intent that meets paragraph (d) of this section to the COTP of the zone in which the facility is or will be located, at least 60 days before construction begins.

(b) The owner or operator of an active existing facility shall submit a letter of intent that meets paragraph (d) of this section to the COTP of the zone in which the facility is located.

(c) An owner or operator of an inactive existing facility shall submit a letter of intent that meets paragraph (d) of this section to the COTP of the zone in which the facility is located, at least 60 days before transferring LNG.

(d) Each letter of intent must contain—

(1) The name, address, and telephone number of the owner and operator;

(2) The name, address, and telephone number of the facility;

(3) The physical location of the facility;

(4) A description of the facility;

(5) The LNG vessels' characteristics and the frequency of LNG shipments to or from the facility; and

(6) Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility, within 25 kilometers (15.5 miles) of the facility.

(e) The owner or operator who submits a letter of intent under paragraph (a), (b), or (c), shall notify the COTP in writing within 15 days if—

(1) There is any change in the information submitted under paragraphs (d)(1) through (d)(5) of this section; or

(2) No LNG transfer operations are scheduled within the next 12 months.

§ 127.009 Letter of recommendation.

After the COTP receives the letter of intent under § 127.007 (a) or (c), the COTP issues a letter of recommendation to the owner or operator of the facility and to the state and local government agencies having jurisdiction, as to the suitability of the waterway for LNG marine traffic, based on the—

(a) Information submitted under §§ 127.007 (d)(3) through (d)(6);

(b) Density and character of marine traffic in the waterway;

(c) Locks, bridges, or other man-made obstructions in the waterway; and

(d) Following factors adjacent to the facility:

(1) Depths of the water.

(2) Tidal range.

(3) Protection from high seas.

(4) Natural hazards, including reefs, rocks, and sandbars.

(5) Underwater pipelines and cables.

(6) Distance of berthed vessel from the channel and the width of the channel.

Note.—The Coast Guard is authorized by law to establish water or waterfront safety zones, or other measures for limited, controlled, or conditional access and activity, when necessary for the protection of any vessel, structure, waters, or shore area.

§ 127.011 LNG waterfront facility inspections.

The operator shall ensure that the COTP or his representative is allowed to make reasonable examinations and inspections to determine whether the facility meets this part.

§ 127.013 Suspension of transfer operations.

(a) The COTP may issue an order to the operator to suspend LNG transfer

operations if the COTP finds any condition requiring immediate action to—

(1) Prevent damage to, or the destruction of, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters; and

(2) Protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss.

(b) Each order to suspend transfer operations issued under paragraph (a) of this section—

(1) Is effective immediately;

(2) Contains a statement of each condition requiring immediate action; and

(3) Is withdrawn by the COTP whenever each condition is corrected or no longer exists.

§ 127.015 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (e) of this section, any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section may—

(1) Appeal that ruling in writing to the District Commander of the district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section. Except as provided under paragraph (e) of this section, any person not satisfied with this ruling may—

(1) Appeal that ruling in writing to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Washington, DC 20593-0001; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(d) The Chief, Office of Marine Safety, Security and Environmental Protection issues a ruling after reviewing the appeal submitted under paragraph (c) of this section, which is final agency action.

(e) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) or (c) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 127.017 Alternatives.

(a) The COTP may allow alternative procedures, methods, or equipment standards to be used by an operator instead of any requirements in this part if—

(1) The operator submits a written request for the alternative at least 30 days before facility operations under the alternative would begin, unless the COTP authorizes a shorter time; and

(2) The alternative provides at least the same degree of safety provided by the regulations in this part.

(b) The COTP approves or disapproves any alternative requested under paragraph (a) of this section—

(1) In writing; or

(2) Orally, with subsequent written confirmation.

§ 127.019 Operations Manual and Emergency Manual: Procedures for examination.

(a) The owner or operator of an active existing facility shall submit two copies of the *Operations Manual* and of the *Emergency Manual* to the Captain of the Port of the zone in which the facility is located.

(b) At least 30 days before transferring LNG, the owner or operator of a new or an inactive existing facility shall submit two copies of the *Operations Manual* and of the *Emergency Manual* to the Captain of the Port of the zone in which the facility is located, unless the manuals have been examined and there have been no changes since that examination.

(c) If the COTP finds that the *Operations Manual* meets § 127.305 and the *Emergency Manual* meets § 127.307, the Captain of the Port returns a copy to the owner or operator marked "Examined by the Coast Guard".

(d) If the COTP finds that the *Operations Manual* or the *Emergency Manual* does not meet this part, the Captain of the Port returns the manual with an explanation of why it does not meet this part.

Subpart B—Design and Construction

§ 127.101 Design and construction: General.

The marine transfer area must meet the following criteria in NFPA 59A:

(a) Chapter 2, Sections 2-1.2 and 2-3.

(b) Chapter 4, Section 4-1.3.

(c) Chapter 6.

(d) Chapter 7, Sections 7-6 and 7-7.

(e) Chapter 8, except Sections 8-3, 8-5 and 8-7.2.

§ 127.103 Piers and wharves.

(a) If the facility is in a region subject to earthquakes, the piers and wharves must be designed to resist earthquake forces.

(b) Substructures, except moorings and breasting dolphins, that support or are within 5 meters (16.4 feet) of any pipe or equipment containing LNG, or are within 15 meters (49.2 feet) of a loading flange, must—

(1) Be made of concrete or steel; and

(2) Have a fire endurance rating of not less than two hours.

(c) LNG or LPG storage tanks must have the minimum volume necessary for—

(1) Surge protection;

(2) Pump suction supply; or

(3) Other process needs.

§ 127.105 Marine transfer area layout and spacing.

(a) LNG impounding spaces must be located so that the heat flux from a fire over the impounding spaces does not cause structural damage to an LNG vessel moored or berthed at the facility.

(b) Each LNG loading flange must be located at least 300 meters (984.3 feet) from the following which are primarily intended for the use of the general public or railways:

(1) Each bridge crossing a navigable waterway.

(2) Each entrance to any tunnel under a navigable waterway.

§ 127.107 Electrical power systems.

(a) The electrical power system must have a power source and a separate emergency power source, so that failure of one source does not affect the capability of the other source. The system must meet the National Electrical Code, NFPA 70.

(b) The emergency power source must provide enough power for the operation of the—

(1) Emergency shutdown system;

(2) Communications equipment;

(3) Firefighting equipment; and

(4) Emergency lighting.

(c) If an auxiliary generator is used as an emergency power source, it must meet Section 700-12 of NFPA 70.

§ 127.109 Lighting systems.

(a) The marine transfer area must have a lighting system and separate emergency lighting.

(b) All outdoor lighting must be located or shielded so that it is not confused with any aids to navigation and does not interfere with navigation on the adjacent waterways.

(c) The lighting system must provide an average illumination on a horizontal plane one meter (3.3 feet) above the deck that is—

(1) 54 lux (five foot-candles) at any loading flange; and

(2) 11 lux (one foot-candle) at each work area.

(d) The emergency lighting must provide lighting for the operation of the—

(1) Emergency shutdown system;

(2) Communications equipment; and

(3) Firefighting equipment.

§ 127.111 Communications systems.

(a) The marine transfer area must have a ship-to-shore communication system and a separate emergency ship-to-shore communication system.

(b) Each ship-to-shore communication system must be a dedicated system that allows voice communication between the person in charge of transfer operations on the vessel, the person in charge of shoreside transfer operations, and personnel in the control room.

§ 127.113 Warning signs.

(a) The marine transfer area must have warning signs that—

(1) Meet paragraph (b) of this section;

(2) Can be seen from the shore and the water; and

(3) Have the following text:

Warning
Dangerous Cargo
No Visitors
No Smoking
No Open Lights

(b) Each letter in the words on the sign must be—

(1) Block style;

(2) Black on a white background; and

(3) 7.6 centimeters (3 inches) high.

Subpart C—Equipment

§ 127.201 Sensing and alarm systems.

(a) Fixed sensors must have audio and visual alarms in the control room and audio alarms nearby.

(b) Fixed sensors that continuously monitor for LNG vapors must—

(1) Be in each enclosed area where vapor or gas may accumulate; and

(2) Meet Section 9–4 of NFPA 59A.

(c) Fixed sensors that continuously monitor for flame, heat, or products of combustion must—

(1) Be in each enclosed or covered Class I, Division 1, hazardous location defined in Section 500–5(a) of NFPA 70 and each area in which flammable or combustible material is stored; and

(2) Meet Section 9–4 of NFPA 59A.

§ 127.203 Portable gas detectors.

The marine transfer area must have at least two portable gas detectors capable of measuring 0–100% of the lower flammable limit of methane.

§ 127.205 Emergency shutdown.

Each transfer system must have an emergency shutdown system that—

(a) Can be activated manually; and

(b) Is activated automatically when the fixed sensors under § 127.201(b) measure LNG concentrations exceeding 40% of the lower flammable limit.

§ 127.207 Warning alarms.

(a) The marine transfer area must have a rotating or flashing amber light with a minimum effective flash intensity, in the horizontal plane, of 5000 candelas. At least 50% of the required effective flash intensity must be maintained in all directions from 1.0 degree above to 1.0 degree below the horizontal plane.

(b) The marine transfer area must have a siren with a minimum ⅓-octave band sound pressure level at 1 meter of 125 decibels referenced to 0.0002 microbars. The siren must be located so that the sound signal produced is audible over 360 degrees in a horizontal plane.

(c) Each light and siren must be located so that the warning alarm is not obstructed for a distance of 1.6 km (1 mile) in all directions.

Subpart D—Operations

§ 127.301 Persons in charge of shoreside transfer operations: Qualifications and certification.

(a) No person may serve, and the operator of the facility may not use the services of any person, as a person in charge of shoreside transfer operations, unless that person—

(1) Has at least 48 hours of LNG transfer experience;

(2) Knows the hazards of LNG;

(3) Knows the rules of this subpart; and

(4) Knows the procedures in the examined *Operations Manual* and the examined *Emergency Manual.*

(b) Before a person in charge of shoreside transfer operations supervises a transfer, the operator shall certify in writing that the criteria in paragraph (a) of this section are met. The operator shall maintain a copy of each current certification available for inspection at the facility.

§ 127.303 Compliance with suspension order.

If an order to suspend is given to the operator or owner of the facility, no LNG transfer operations may be conducted at the facility until the order is withdrawn by the COTP.

§ 127.305 Operations Manual.

Each *Operations Manual* must contain—

(a) A description of the transfer system including mooring areas, transfer connections, control rooms, and diagrams of the piping and electrical systems;

(b) The duties of each person assigned for transfer operations;

(c) The maximum relief valve setting or maximum allowable working pressure of the transfer system;

(d) The facility telephone numbers of facility supervisors, persons in charge of shoreside transfer operations, personnel on watch in the marine transfer area, and security personnel;

(e) A description of the security systems for the marine transfer area;

(f) The procedures for—

(1) Transfer operations including gauging, cool down, pumping, venting, and shutdown;

(2) Transfer operations start-up and shutdown;

(3) Security violations; and

(4) The communications systems; and

(g) A description of the training programs established under § 127.503.

§ 127.307 Emergency Manual.

Each *Emergency Manual* must contain—

(a) LNG release response procedures, including contacting local response organizations;

(b) Emergency shutdown procedures;

(c) A description of the fire equipment and systems and their operating procedures;

(d) A description of the emergency lighting and emergency power systems;

(e) The telephone numbers of local Coast Guard units, hospitals, fire departments, police departments, and other emergency response organizations;

(f) If the facility has personnel shelters, the location of and provisions in each shelter;

(g) First aid procedures and if there are first aid stations, the locations of each station; and

(h) Emergency procedures for mooring and unmooring a vessel.

§ 127.309 Operations Manual and Emergency Manual: Use.

The operator shall ensure that—

(a) LNG transfer operations are not conducted unless the facility has an examined *Operations Manual* and examined *Emergency Manual;*

(b) Each transfer operation is conducted in accordance with the examined *Operations Manual;* and

(c) Each emergency response is in accordance with the examined *Emergency Manual.*

§ 127.311 Motor vehicles.

(a) The operator shall designate and mark parking spaces that—

(1) Do not block fire lanes;

(2) Do not impede any exits;

(3) Are not located in any impounding space; and

(4) Are not within 15 meters (49.2 feet) of any storage tank or loading flange.

(b) During transfer operations, no person may—

(1) Stop or park a motor vehicle in a space that is not designated a parking space; or

(2) Refuel any motor vehicle.

§ 127.313 Bulk storage.

(a) The operator shall ensure that only the following flammable materials are stored in the marine transfer area:

(1) LNG.

(2) LPG.

(3) Vessel fuel.

(4) Oily waste from vessels.

(5) Solvents, lubricants, paints, and other fuels in the amount used for one day's operations and maintenance.

(b) Flammable liquids must be stored in accordance with Chapter 4 of NFPA 30.

§ 127.315 Preliminary transfer inspection.

Before transferring LNG, the person in charge of shoreside transfer operations shall—

(a) Inspect the transfer piping and equipment to be used during the transfer and replace any worn or inoperable parts;

(b) For each of the vessel's cargo tanks from which cargo will be transferred, note the pressure, temperature, and volume to ensure they are safe for transfer;

(c) Review and agree with the person in charge of cargo transfer on the vessel to—

(1) The sequence of transfer operations;

(2) The transfer rate;

(3) The duties, location, and watches of each person assigned for transfer operations; and

(4) Emergency procedures from the examined *Emergency Manual;*

(d) Ensure that transfer connections allow the vessel to move to the limits of its moorings without placing strain on the loading arm or transfer piping system;

(e) Ensure that each part of the transfer system is aligned to allow the flow of LNG to the desired location;

(f) Ensure that warning signs that warn that LNG is being transferred, are displayed;

(g) Eliminate all ignition sources in the marine transfer area;

(h) Ensure that personnel are on duty in accordance with the examined *Operations Manual;* and

(i) Test the following to determine that they are operable:

(1) The sensing and alarm systems.

(2) The emergency shutdown system.

(3) The communication systems.

§ 127.317 Declaration of Inspection.

(a) After the preliminary transfer inspection under § 127.315 has been satisfactorily completed, the person in charge of shoreside transfer operations shall ensure that no person transfers LNG until a Declaration of Inspection that meets paragraph (c) of this section is executed and signed in duplicate.

(b) The person in charge of shoreside transfer operations shall give one signed copy of the Declaration of Inspection to the person in charge of transfer operations on the vessel, and shall retain one signed copy at the facility for 30 days after completion of the transfer.

(c) Each Declaration of Inspection must contain—

(1) The name of the vessel and the facility;

(2) The date and time that transfer operations begin;

(3) A list of the requirements in § 127.315 with the initials of the person in charge of shoreside transfer operations after each requirement, indicating that the requirement is met;

(4) The signature of the person in charge of shoreside transfer operations and the date and time of signing, indicating that he or she is ready to begin transfer operations; and

(5) The signature of each relief person in charge and the date and time of each relief.

§ 127.319 LNG transfer.

During LNG transfer operations, the following must be met:

(a) The operator of the facility shall ensure that—

(1) The marine transfer area is under the supervision of a person in charge, who has no other assigned duties during the transfer operation;

(2) Personnel transferring fuel or oily waste are not involved in LNG transfer; and

(3) No vessels are moored outboard of any LNG vessel without the permission of the COTP.

(b) The person in charge of shoreside transfer operations shall—

(1) Be in continuous communication with the person in charge of transfer operations on the vessel;

(2) Ensure that an inspection of the transfer piping and equipment for leaks, frost, defects, and other symptoms of safety and operational problems is conducted at least once every transfer;

(3) Ensure that transfer operations are discontinued—

(i) Before electrical storms or uncontrolled fires are adjacent to the marine transfer area; and

(ii) As soon as a fire is detected; and

(4) Ensure that the lighting systems are turned on between sunset and sunrise.

Note.—Vessel transfer requirements are published in 46 CFR Part 154.

§ 127.321 Release of LNG.

(a) The operator of the facility shall ensure that—

(1) No person releases LNG into the navigable waters of the United States; and

(2) If there is a release of LNG, vessels near the facility are notified of the release by the activation of the warning alarm.

(b) If there is a release of LNG, the person in charge of shoreside transfer operations shall—

(1) Immediately notify the person in charge of cargo transfer on the vessel of the intent to shutdown;

(2) Shutdown transfer operations;

(3) Notify the COTP of the release; and

(4) Not resume transfer operations until authorized by the COTP.

Subpart E—Maintenance

§ 127.401 Maintenance: General.

The operator of the facility shall ensure that the equipment required under this part is maintained in a safe condition so that it does not cause a release or ignition of LNG.

§ 127.403 Inspections.

The operator shall conduct a visual inspection for defects of each pressure-relief device not capable of being tested, at least once each calendar year, with intervals between inspections not exceeding 15 months, and make all repairs in accordance with § 127.405.

§ 127.405 Repairs.

The operator shall ensure that—

(a) Equipment repairs are made so that—

(1) The equipment continues to meet the applicable requirements in subparts B, C, G, and H of this part and in NFPA 59A; and

(2) Safety is not compromised; and

(b) Welding is done in accordance with NFPA 51B and NFPA 59A, Chapter 6, Section 6–3.4.

§ 127.407 Testing.

(a) The operator shall pressure test under paragraph (b) of this section the transfer system, including piping, hoses, and loading arms, and verify the set pressure of the safety and relief valves—

(1) After the system or the valves are altered;

(2) After the system or the valves are repaired;

(3) After any increase in the MAWP; or

(4) For those components that are not continuously kept at cryogenic temperature, at least once each calendar year, with intervals between testing not exceeding 15 months.

(b) The pressure for the transfer system test under paragraph (a) of this section must be at 1.1 times the MAWP and be held for a minimum of 30 minutes.

§ 127.409 Records.

(a) The operator shall keep on file the following information:

(1) A description of the components tested under § 127.407.

(2) The date and results of the test under § 127.407.

(3) A description of any corrective action taken after the test.

(b) The information required by this section must be retained for 24 months.

Subpart F—Personnel Training

§ 127.501 Applicability.

The training required by this subpart must be completed before LNG is transferred.

§ 127.503 Training: General.

The operator shall ensure that each of the following is met:

(a) All full-time employees have training in the following subjects:

(1) Basic LNG firefighting procedures.

(2) LNG properties and hazards.

(b) In addition to the training under paragraph (a) of this section, each person assigned for transfer operations has training in the following subjects:

(1) The examined *Operations Manual* and examined *Emergency Manual*.

(2) Advanced LNG firefighting procedures.

(3) Security violations.

(4) LNG vessel design and cargo transfer operations.

(5) LNG release response procedures.

(6) First aid procedures for—

(i) Frostbite;

(ii) Burns;

(iii) Cardio-pulminary resuscitation; and

(iv) Transporting injured personnel.

(c) The personnel who received training under paragraphs (a) and (b) of this section receive refresher training in the same subjects at least once every five years.

Subpart G—Firefighting

Fire Equipment

§ 127.601 Fire equipment: General.

(a) Fire equipment and systems provided in addition to the requirements in this subpart must meet the requirements of this subpart.

(b) The following must be red or some other conspicuous color and be in locations that are readily accessible:

(1) Hydrants and standpipes.

(2) Hose stations.

(3) Portable fire extinguishers.

(4) Fire monitors.

(c) Fire equipment, if applicable, must bear the approval of Underwriters Laboratories, Inc., the Factory Mutual Research Corp., or the Coast Guard.

§ 127.603 Portable fire extinguishers.

Each marine transfer area must have—

(a) Portable fire extinguishers that meet 9–6.1 of NFPA 59A and Chapter 3 of NFPA 10; and

(b) At least one portable fire extinguisher in each designated parking area.

§ 127.605 Emergency outfits.

(a) There must be an emergency outfit for each person whose duties include fighting fires, but there must be at least two emergency outfits. Each emergency outfit must include—

(1) One explosion-proof flashlight;

(2) Boots and gloves of rubber or other electrically nonconducting material;

(3) A rigid helmet that protects the head against impact;

(4) Water resistant clothing that also protects the body against fire; and

(5) U.S. Bureau of Mines approved self-contained breathing apparatus.

(b) Emergency outfits under paragraph (a) of this section must be in locations that are readily accessible and marked for easy recognition.

§ 127.607 Fire main systems.

(a) Each marine transfer area must have a fire main system that provides at least two water streams to each part of the LNG transfer piping and connections, one of which must be from a single length of hose or from a fire monitor.

(b) The fire main must have at least one isolation valve at each branch connection and at least one isolation valve downstream of each branch connection to isolate damaged sections.

(c) The fire main system must have the capacity to supply—

(1) Simultaneously all fire hydrants, standpipes, and fire monitors in the system; and

(2) At a Pitot tube pressure of 618 kilonewtons per square meter (75 p.s.i.), the two outlets having the greatest pressure drop between the source of water and the hose or monitor nozzle, when only those two outlets are open.

(d) If the source of water for the fire main system is capable of supplying a pressure greater than the system's design working pressure, the system must have at least one pressure relief device.

(e) Each fire hydrant or standpipe must have at least one length of hose of sufficient length to meet paragraph (a) of this section.

(f) Each length of hose must—

(1) Be 1½ inches or more in diameter and 30.5 meters (100 feet) or less in length;

(2) Be on a hose rack or reel;

(3) Be connected to the hydrant or standpipe at all times; and

(4) Have a Coast Guard approved combination solid stream and water spray fire hose nozzle.

§ 127.609 Dry chemical systems.

(a) Each marine transfer area must have a dry chemical system that provides at least two dry chemical discharges to the area surrounding the loading arms, one of which must be—

(1) From a monitor; and

(2) Actuated and, except for pre-aimed monitors, controlled from a location other than the monitor location.

(b) The dry chemical system must have the capacity to supply simultaneously or sequentially each hose or monitor in the system for 45 seconds.

(c) Each dry chemical hose station must have at least one length of hose that—

(1) Is on a hose rack or reel; and

(2) Has a nozzle with a valve that starts and stops the flow of dry chemical.

§ 127.611 International shore connection.

The marine transfer area must have an international shore connection meeting the requirements of 46 CFR 162.034, a 2½ inch fire hydrant, and sufficient 2½ inch hose to connect the fire hydrant to the international shore connection on the vessel.

Fire Protection

§ 127.613 Smoking.

In the marine transfer area, the operator shall ensure that no person smokes when there is LNG present.

§ 127.615 Fires.

In the marine transfer area, the operator shall ensure that there are no fires when there is LNG present.

§ 127.617 Hotwork.

The operator shall ensure that no person conducts welding, torch cutting, or other hotwork unless that person has a permit from the COTP.

Subpart H—Security

§ 127.701 Security on existing facilities.

The operator shall ensure that any security procedure and arrangement on existing facilities, that were in use when LNG transfer operations were last conducted, be continued and maintained, or upgraded, whenever LNG transfer operations are conducted.

§ 127.703 Access to the marine transfer area.

The operator shall ensure that—

(a) Access to the marine transfer area from the shoreside and the waterside is limited to—

(1) Personnel who work at the facility including persons assigned for transfer operations, vessel personnel, and delivery and service personnel in the course of their business;

(2) Coast Guard personnel; and

(3) Other persons authorized by the operator; and

(b) No person is allowed into the marine transfer area unless that person is identified by a facility-issued identification card or other identification card displaying his or her photograph, or is an escorted visitor displaying an identifying badge.

§ 127.705 Security systems.

The operator shall ensure that security patrols of the marine transfer area are conducted once every hour, or that a manned television monitoring system is used, to detect—

(a) Unauthorized personnel;

(b) Fires; and

(c) LNG releases.

§ 127.707 Security personnel.

The operator shall ensure that no person is assigned security patrol duty unless that person has been instructed on security violation procedures.

§ 127.709 Protective enclosures.

The following must be within a fence or wall that prevents trespassing:

(a) Impounding spaces.

(b) Control rooms and stations.

(c) Electrical power sources.

§ 127.711 Communications.

The marine transfer area must have a means of direct communications between the security patrol and other operating or security personnel on duty on the facility.

Dated: September 3, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-2231 Filed 2-4-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42084C; FRL-3325-1]

Commercial Hexane and Methycyclopentane; Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 4(a) of the Toxic Substances Control Act (TSCA), EPA is issuing a final test rule requiring manufacturers and processors of commercial hexane to perform testing for subchronic toxicity, oncogenicity, reproductive toxicity, developmental toxicity, mutagencity, neurotoxicity, and inhalation and dermal pharmacokinetics and is terminating rulemaking under TSCA section 4(a) for subchronic toxicity, neurotoxicity, and inhalation and dermal pharmacokinetics testing of methylcyclopentane (MCP; CAS No. 96-37-7). Both actions follow EPA's proposed rule of May 15, 1986.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ("daylight" or "standard" as appropriate) time on February 19, 1988. This rule shall become effective on March 21, 1988. The incorporation by reference in the rule is approved by the Director of the Federal Register as of March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing of commercial hexane. This test rule is being promulgated under 40 CFR 799.2155. EPA also is terminating rulemaking under section 4(a) of TSCA for MCP because EPA believes testing of MCP is not necessary at this time.

I. Introduction

A. Test Rule Development Under TSCA

This document is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a) of TSCA, EPA must require testing of a chemical substance or mixture to develop appropriate health or environmental data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in the Agency's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300).

B. Regulatory History

As published in the **Federal Register** of May 21, 1985 (50 FR 20930), the Interagency Testing Committee (ITC) designated MCP for priority consideration for health effects testing, including neurotoxicity, cardiotoxicity, oncogenicity, genotoxicity, teratogenicity, and reproductive effects. The Agency responded to the ITC's recommendations for MCP by publishing in the **Federal Register** of May 15, 1986 (51 FR 17854) a proposed rule for neurotoxicity (schedule-controlled operant behavior, neuropathology, functional observation battery, motor activity, and developmental neurotoxicity screen), subchronic toxicity, and inhalation and dermal pharmacokinetics (absorption, distribution, metabolism, and excretion) testing of MCP. The Agency also proposed acute and subchronic toxicity, oncogenicity, reproductive toxicity, developmental toxicity, mutagencity, neurotoxicity (schedule-controlled operant behavior, neuropathology, functional observation battery, and motor activity), and inhalation and dermal pharmacokinetics (absorption, distribution, metabolism, and excertion) testing for commercial hexane. The proposal contained information on chemical profiles, production, uses, human exposure, and health effects of MCP and commercial hexane; discussed ongoing testing of *n*-hexane and its metabolites; discussed EPA's TSCA section 4(a) findings; described the proposed tests, the test standards, and the test substances to be used; specified

who would be required to conduct the proposed testing; specified reporting requirements for data to be developed under the rule; discussed enforcement provisions; and presented issues for comment. On June 27, 1986 (51 FR 23440), EPA published corrections to the proposed rule.

Pursuant to a request by the American Petroleum Institute (API), EPA issued a notice (51 FR 26170; July 21, 1986) extending the comment period for an additional 60 days to September 15, 1986. API contended in its request that the composition of the commercial hexane identified in the proposed rule did not conform to the range of commercial hexanes in current production and commerce. The extension of time was granted to allow additional time for API and its member companies to develop a more representative definition of commercial hexane and to assist in determining manufacturers and processors subject to the rule.

On October 7, 1986, EPA held a public meeting to hear and discuss oral comments presented on various aspects of the proposed rule. The transcript of this meeting is part of the rulemaking record. Most of the discussion at this meeting focussed on whether testing both MCP and commercial hexane is necessary and on data submitted by API relating to the need for testing and the composition of the test substance.

II. Response to Public Comment

Written comments were submitted on behalf of industries and trade associations by the Exxon Co., U.S.A. (Exxon), the American Petroleum Institute (API), and the American Industrial Health Council (AIHC) and on behalf of public interest groups by the National Network to Prevent Birth Defects (NNPBD), the American Psychological Association (APA), and the Center for Science in the Public Interest (CSPI). These comments, as well as oral presentations made at the public meeting, dealt with the regulatory and legal authority of the Agency to make TSCA section 4 findings, the scientific rationale of the proposed testing, and the test methodologies. After the public meeting, the Agency, through its contractor, Syracuse Research Corp. (SRC), conducted a second literature review of commercial hexane. The Agency reevaluated these data and addressed all issues and comments, including additional comments submitted by API and APA after the close of the comment period and the public meeting. These comments have been addressed at length in a document entitled "Response to Public Comment on Methylcyclopentane and Commercial Hexane" and hereinafter called the "technical support document," which is part of the public record for this rulemaking (Ref. 1). Because of the number and the complexity of the comments as well as the length of the Agency's response to them, EPA is providing in this notice an overview of major concerns, a discussion of the issues raised in the proposed rule, and an explanation of changes in the final rule based on an analysis of the comments. The reader is referred to the technical support document (Ref. 1) for a more detailed discussion.

A. Overview of Industry's Major Comments and EPA's Response

1. Comment: *Data on commercial hexane for all endpoints are adequate.* The Agency requested comment on the availability of published and unpublished studies on commercial hexane A which would adequately describe its potential to cause any of the effects for which EPA had proposed testing (refer to the proposal for the definition of commercial hexane A, 51 FR 17864; May 15, 1986). EPA had a specific interest in obtaining data on the proposed test substance, commercial hexane A, because data (Ref. 2) available at the time of the proposal indicated that this type of hexane was responsible for the largest amount of human exposures and contained the largest amount of MCP. API clarified this matter with additional information and addressed all types of commercial hexanes in its comments (Refs. 3, 4 and 5). Therefore, the Agency has been able to evaluate the availability of health effects data related to all types of commercial hexane, rather than a specific type of commercial hexane.

In response to the issue of the availability of studies to characterize commercial hexane's health effects in humans, API (Ref. 3) and Exxon (Ref. 6) contended that there were sufficient data on commercial hexane to characterize all of the effects for which testing was proposed. They contended that existing studies of commercial hexane, mixtures of C_6 hydrocarbons, and individual components of commercial hexane provide adequate data from which to assess the potential health hazards from exposure to commercial hexane products. In support of this contention, API (Ref. 3) provided a review of the scientific data on commercial hexane and submitted a single-generation inhalation reproductive effects study which was completed after publication of the proposal. API (Ref. 3) and Exxon (Ref. 6) further contended that evaluation of these studies indicates that the proposed testing would not provide additional information relevant to assessing the risk from exposure to commercial hexane and that testing commercial hexane under TSCA section 4 is unnecessary.

The Agency reviewed the data provided in response to the proposal as well as those obtained from a literature review and concurs that the data are adequate to predict the acute toxicity of commercial hexane exposure to humans. However, the Agency has concluded that the data are inadequate to assess the risk of commercial hexane exposure to humans for all other health effects endpoints required by this rule.

Concerning the adequacy of health effects studies other than acute toxicity, industry commenters contend that the *n*-hexane component of the commercial hexane mixture is the driving variable in the hazard characterization of the mixture. For instance, Exxon (Ref. 6) stated that commercial hexane produces toxic responses which can be accounted for by its *n*-hexane content. In addition, in its supplemental comments, API (Ref. 4) claimed that EPA failed to consider all available information on commercial hexane and its constituents and that the data provide ample information to assess the adverse effects of exposure to commercial hexane. API, therefore, contended that a finding of data insufficiency could not be sustained.

EPA disagrees with the assumption that *n*-hexane is the only component of the mixture possessing potentially adverse toxicological properties and that commercial hexane will behave similarly to *n*-hexane. While EPA acknowledges the wealth of data on *n*-hexane, it is not willing to rely solely on those data to evaluate the health effects of the mixture at this time. Not only are the effects of the other constituents of commercial hexane unknown, but the interaction of *n*-hexane with the other components of commercial hexane is unknown. Moreover, these data also do not include all health effects endpoints required by this rule due to the widespread exposure to commercial hexane. Consequently, EPA believes that the data are inadequate to characterize the toxicity for health effects of commercial hexane other than for acute toxicity and that testing is necessary for the additional health endpoints. Industry comments on these data have been reviewed at length in the technical support document (Ref. 1). The following discussion is a brief overview of industry comments on data adequacy and modifications to the proposed

health effects testing in response to those comments:

a. *Acute toxicity.* EPA's initial evaluation indicated that there were no adequate acute toxicity data on commercial hexane. Specifically, there is no LC_{50} for commercial hexane. API (Refs. 3 and 4) commented that acute studies of commercial hexane show no mortality at 5 mg/1, the limit test in the TSCA test guidelines, and that testing to determine an LC_{50} is not necessary for chemicals whose acute toxicity is in excess of the limit test.

API (Ref. 3) and Exxon (Ref. 6) cited acute toxicity studies by Hine and Zuidema (Ref. 7) and Lazarew (Ref. 8) which reported exposures in animals between 39,000 and 73,000 ppm. They also cited API's single-generation inhalation reproductive effects study (Ref. 3, Att. I) in which no gross effects were observed at 1,500 ppm in rats exposed to commercial hexane for 6 hours per day, 7 days per week for 100 days. Exxon stated that API's study (Ref. 3, Att. I), although a subchronic study, demonstrated that rats could be exposed repeatedly to levels exceeding the EPA acute inhalation toxicity limit dose of 5 mg/1 without producing morbidity or mortality. Both API and Exxon also pointed out that not only was acute toxicity testing to determine an LC_{50} unnecessary, it was also dangerous because to produce mortality, it would be necessary to exceed commercial hexane's lower explosive limit (LEL) of approximately 11,000 ppm.

Having reviewed these studies along with additional acute studies, the Agency believes that requiring additional acute inhalation toxicity testing to determine an LC_{50} of commercial hexane will provide little additional information which will assist in characterizing the potential health risks to humans for several reasons: (1) While the studies cited by API and Exxon have deficiencies in that the test material was not always fully described, the concentration of the test material was not always determined, and the descriptions of the effects of exposure were minimal, taken together, they provide a strong indication that the LC_{50} for commercial hexane is above 30,000 ppm; and (2) it appears that the LC_{50} for commercial hexane is within its explosive limits (11,000 to 75,000 ppm), which would not only make testing hazardous but would also preclude such high occupational exposures because of the explosive hazard. Consequently, EPA believes that it can make reasonable predictions about the acute toxicity of commercial hexane, has concluded tha the proposed requirement for acute inhalation toxicity testing (section 798.1150) to determine an LC_{50} is unnecessary, and has not included it in the final rule. However, EPA is retaining the requirement for schedule-controlled operant behavior testing (section 798.6500) under acute neurotoxicity testing because of concerns for effects on the rate and pattern of behavioral responses to commercial hexane.

To accommodate API's concerns on the safety of the testing, however, EPA has modified all of the remaining required tests so that the highest dose should not exceed the lower explosive limit of commercial hexane.

b. *Subchronic toxicity.* EPA proposed that a subchronic inhalation toxicity test be conducted on commercial hexane because existing data submitted by Phillips Petroleum (Ref. 9, Att. IV) was considered inadequate to characterize the nephrotoxicity of commercial hexane. API (Refs. 3 and 4) commented that existing data are adequate to predict the subchronic toxicity of commercial hexane. API (Refs. 3 and 4) and Exxon (Ref. 6) maintain that the study submitted by Phillips Petroleum adequately addresses the nephrotoxicity of commercial hexane and cited additional studies that further characterize the subchronic toxicity of commercial hexane or similar products. API (Ref. 3) believes that existing data demonstrate that the components of commercial hexane produce hydrocarbon-induced nephrotoxicity and that it would be a waste of resources to require a 90-day study to demonstrate an adverse effect already known. However, Exxon (Ref. 6) believes that the induction of nephropathy in male rats has no human clinical significance.

EPA disagrees that these data adequately address the potential for commercial hexane to be nephrotoxic. These data are inadequate because each study had experimental limitations, such as short duration, which compromised the interpretation of the findings (Ref. 1). In addition, EPA believes that a comprehensive inhalation subchronic toxicity test for commercial hexane is necessary to determine whether endpoints other than neurotoxicity might be more sensitive indicators of commercial hexane's toxicity at lower doses. Consequently, EPA has retained the proposed requirement for subchronic toxicity teting by inhalation. For consistency with other test rules, the final rule requires that the animals be dosed for 6 hours per day, 5 days per week for 90 days.

c. *Oncogenicity.* API (Refs. 3 and 4) commented that the data are adequate to reasonably predict the oncogenicity of commercial hexane and that a chronic bioassay would not add significant information for a quantitative risk assessment. In support of this contention, API (Ref. 3) cited two negative cancer studies on *n*-hexane.

EPA disagrees with API that the studies conducted by Sice (Ref. 11) and by Ranadive et al. (Ref. 12) fulfill the requirement of an inhalation oncogenicity test on commercial hexane. These studies exposed animals dermally to only one dose level of *n*-hexane, tested only one species and one sex, and contained too few animals. Consequently, EPA has retained the requirement for oncogenicity testing. The Agency believes that existing data are inadequate and that testing is necessary to determine the oncogenic risk of exposure to commercial hexane.

d. *Reproductive toxicity.* API (Refs. 3 and 4) commented that its single-generation inhalation reproductive effects study of commercial hexane (Ref. 2, Att. I) is adequate for substances which do not bioaccumulate. EPA has reviewed this study and believes that it is inadequate to assess the potential reproductive toxicity of commercial hexane (Ref. 13). The highest dose level was too low, and the sample size for histopathological evaluation of male reproductive organs was too small, to assess any adverse effect. In addition, the paper by Christian (Ref. 14) which API used to support its contention that single-generation studies are sufficient to assess a chemical's reproductive toxicity requiring two-generation studies should be altered. EPA believes that a well-conducted, two-generation study is necessary to assess commercial hexane's potential reproductive effects and has retained the proposed requirement for a two-generation reproductive effects study of commercial hexane.

Concerning animal strains, EPA recommends the use of Sprague-Dawley rats in both the developmental and the reproductive toxicity studies for the following reasons: API's single-generation inhalation reproductive effects study (Ref. 3, Att. I) was conducted on commercial hexane in Sprague-Dawley rats; the data base on Sprague-Dawley rats for these two health effects is much greater than for Fischer 344 rats; and, in general, Fischer 344 rats are not good breeders and, therefore, are not a good choice of strain in developmental and reproductive effects testing.

e. *Developmental toxicity.* API (Refs. 3 and 4) commented that its single-generation reproductive effects study of commercial hexane (Ref. 3. Att. I) had a satellite teratology component in rats which was adequate to predict the developmental toxicity of commercial hexane. EPA, however, believes that this study was inadequate to assess the potential developmental toxicity of commercial hexane (Ref. 13). The study was inadequate because the highest dose level failed to elicit significant signs of maternal toxicity. In addition, only animals in the control and highest dose groups were analyzed, and restrictions in sample size of pregnant animals hampered meaningful interpretation of results. EPA believes that a well-conducted developmental toxicity study in two species, such as rats and rabbits, will provide needed data on commercial hexane's potential developmental toxicity and has retained the proposed requirement for a developmental toxicity study of commercial hexane.

f. *Mutagenicity.* API (Refs. 3 and 4) and Exxon (Ref. 6) commented that the data are adequate to evaluate the genotoxicity of the components of commercial hexane and are therefore adequate to predict its potential mutagenicity, and that further testing would provide no further information and would be a waste of resources. They further commented that the weight of available evidence suggests that commercial hexane poses no risk for the induction of heritable genetic effects.

EPA considers the data presented by API (Ref. 3) as suggestive of the effects anticipated for commercial hexane but not adequate to fully characterize its genotoxicity. Because the components of commercial hexane have undergone only limited genotoxicity testing and because the data base is insufficient to extrapolate from the individual components to the commercial hexane mixture, EPA disagrees with industry and has retained the proposed requirement for mutagenicity testing.

API (Ref. 3) requested an additional 4 weeks to conduct the *in vivo* mutagenicity testing because of the difficulty in administering the test substance by inhalation and an additional six months to conduct the pharmacokinetics testing because of its complexity. For upper-tier mutagenicity testing triggered by lower-tier test results in particular, API requested that the deadline for the final reports be based on the test trigger dates rather than on the effective date of the final rule.

Since issuing the proposal, EPA has reviewed the time periods that it will specify for conducting these health effects tests. For consistency with the other TSCA section 4 final test rules recently promulgated and pursuant to API's request, the final reporting requirements have been modified to allow additional time for conducting the following tests: *Salmonella typhimurium* assay—4 additional months; gene mutation in mammalian cells in culture—5 additional months; *in vitro* cytogenetics assay—5 additional months; *in vivo* cytogenetics assay—7 additional months; rodent dominant lethal assay—4 additional months; heritable translocation assay—1 additional month; and schedule-controlled operant behavior, functional observation battery, motor activity, and neuropathology—3 additional months. Although an acute test, the final report of schedule-controlled operant behavior has been increased to 15 months to coincide with the final reports of the 3 subchronic neurotoxicity tests.

EPA proposed a tiered testing approach to evaluate whether commercial hexane elicits heritable gene mutations. Positive results in certain lower-tier tests would trigger the requirement for conducting a mouse visible specific locus (MVSL) test. EPA believes that the MVSL is necessary, when certain lower-tier tests are positive, to establish definitively whether a substance is capable of eliciting heritable gene mutations. Under the approach proposed, EPA would consider the positive results in lower-tier tests in a public program review, together with other relevant information, during which interested persons would be able to give their views to the Agency. If, after the review, EPA determined that the MVSL was still appropriate, EPA would notify the test sponsors by letter or **Federal Register** notice that they must conduct the test. If EPA determined that the test was no longer necessary, EPA would propose to amend the rule to delete the test requirement.

The final test rule for commercial hexane includes requirements to conduct the lower-tier tests for gene mutations. However, EPA is not promulgating the requirement for the MVSL for commercial hexane at this time. EPA had based its proposal to require the MVSL, in part, on information and assumptions about the cost of conducting the test and the availability of laboratories capable of performing the test. The information and assumptions have since proven to be incorrect. Accordingly, EPA is in the process of reexamining the MVSL requirement for this test rule as well as those for other chemical substances. In particular EPA is reviewing whether any laboratories are available to perform the MVSL for industry in accordance with the TSCA Good Laboratory Practice Standards at 40 CFR Part 792 and the cost of such testing. EPA is also reviewing possible alternative tests to the MVSL for which costs may be lower or laboratory availability may be more certain.

Once EPA completes its evaluation of this additional information, EPA will publish a notice in the **Federal Register** concerning the MVSL for commercial hexane and other substances subject to TSCA section 4 test rules. This notice will provide up-to-date information on the cost of MVSL testing, availability of laboratories to perform the MVSL, and possible alternative tests to the MVSL together with their costs and laboratory availability. The notice will also address EPA's intentions about any changes to the MVSL requirements in the various test rules and will provide an opportunity for public comment. If, after this exercise, EPA concludes that the MVSL is still appropriate for commercial hexane, EPA will amend this final test rule for commercial hexane to add the MVSL requirements with any appropriate modifications.

Concerning upper-tier mutagenicity tests triggered by lower-tier test results, EPA agrees with API that the deadlines for the final reports should be based on the trigger dates rather than on the effective date of the final rule. For consistency with other TSCA section 4 final test rules, the heritable translocation assay is triggered from the date of notification that testing is required rather than from the effective date of the final rule. Public participation in this program review will be in the form of written public comments or a public meeting. Before the last tier mutagenicity testing is to begin, EPA will hold a public program review if the results of the previous tier tests are positive. If, after review of public comment, no change in the test sequence is deemed necessary, EPA will provide formal notification to the test sponsor that the final tier tests must be conducted. If, however, EPA believes that additional testing is no longer warranted as a result of review of earlier test results, public comments, scientific judgment, and other appropriate factors, EPA will issue a proposed amendment to rescind these requirements. Refer to the table in Unit IV.B. concerning other reporting requirements for commercial hexane testing.

g. *Neurotoxicity testing.* API (Refs. 3 and 4) and Exxon (Ref. 6) commented

that there are sufficient data on the neurotoxicity of *n*-hexane and other C_6 hydrocarbons to reasonably predict the neurotoxic potential of commercial hexane. They believe that the two API studies submitted by Phillips Petroleum (Ref. 9, Atts. II and III) adequately demonstrate that *n*-hexane is the only neurotoxic C_6 hydrocarbon.

EPA disagrees with API and Exxon that these studies adequately address the potential neurotoxicity of commercial hexane. In addition, EPA believes that these studies do not provide sufficient data to quantitatively predict the risk of human exposure to commercial hexane because it is necessary to test at the maximum tolerated doses (MTD) without exceeding the lower explosive limit of commercial hexane to determine whether C_6 hydrocarbons other than *n*-hexane are neurotoxic or potentiate the toxicity of *n*-hexane.

Consequently, EPA has retained the requirement for neurotoxicity testing. Existing studies neither address the potential neurotoxicity of commercial hexane nor provide sufficient data to predict human risk.

h. *Pharmacokinetics.* API (Refs. 3 and 4) commented that studies of *n*-hexane in animals and in humans have characterized its absorption, distribution, metabolism, and excretion and that *n*-hexane does not alter the pharmacokinetic behavior of the other C_6 constituents. API also stated that it has an ongoing study in rats to evaluate the absorption of hydrocarbon vapors. EPA disagrees with API and believes that neither existing data nor the ongoing API study will be adequate to characterize the absorption, distribution, metabolism, or excretion of commercial hexane.

However, following an internal review of the proposed pharmacokinetics guideline, EPA determined that there were sections which would preclude obtaining meaningful data (e.g., the absence of intravenous dosing). Consequently, EPA will repropose a revised test standard and reporting requirements for inhalation and dermal pharmacokinetics at a later date.

Concerning API's comments on the difficulty of conducting pharmacokinetics testing of the commercial hexane mixture, EPA agrees with API that isotopically labeling all components of commercial hexane would be burdensome. When EPA reproposes new methodology for the pharmacokinetics test standard, it will propose labeling MCP in commercial hexane and separately labeling *n*-hexane in commercial hexane as suggested by API (Ref. 3).

2. Comment: *Inaccurate characterization of production and use led to an undocumented finding of significant human exposure to commercial hexane.* While API (Ref. 3) recognizes the information-gathering function of TSCA section 4, it questioned the accuracy of EPA's characterization of commercial hexane's production and use in the proposal. API believes that the Agency's characterization of commercial hexane neither reflects current manufacturing processes nor accurately describes the composition of the majority of current commercial hexane products.

EPA has evaluated the data submitted by API and has concluded, nevertheless, that there may be widespread exposure to commercial hexane from its production and uses. EPA has made reasonable assumptions based on standard engineering principles that human exposure to commercial hexane will occur during its manufacture, processing, use, and disposal. The Agency's assumptions for exposure to commercial hexane were based upon its high volatility, high production, high number of potentially exposed workers, and potential consumer exposure through paints and solvents. The Agency believes that these assumptions support a finding under TSCA section 4(a)(1)(B) that there may be substantial human exposure to commercial hexane.

3. Comment: *Information on commercial hexane and similar C_6 products, including MCP, makes testing unnecessary.* API (Ref. 3) and Exxon (Ref. 6) believe that EPA failed to identify all relevant data on C_6 isomers. Exxon (Ref. 6) believes that existing data and experience with C_6-containing substances other than commercial hexane, e.g., motor fuels, are relevant to determining the effects of human exposure to C_6 isomers. Exxon further contends that a full analysis of all C_6 exposure data may allow a finding that exposure to C_6 isomers does not present an unreasonable health risk. Exxon also claimed that the data on commercial hexane are sufficient for a quantitative risk assessment and therefore for regulatory action under TSCA section 6. Because Exxon believes that EPA can make at this time a determination that there is no risk to human health or the environment, it believes that further testing under TSCA section 4 is unwarranted and requests that the proposal be withdrawn.

While there may be information on commercial hexane and similar C_6 products, EPA believes that such information is inadequate to evaluate the potential health effects from exposure to commercial hexane or similar C_6 products for all but acute effects, as discussed in Unit II.A.1 above. Other endpoints have not been tested adequately. In addition, the test methodologies specified in this rule are more sensitive and the tests more refined than were those used for existing studies. EPA believes that additional data are necessary to determine whether exposure to commercial hexane does not present an unreasonable risk of injury to human health.

B. Response to Issues Raised in the Proposed Rule

1. Issue: *How should commercial hexane be defined so as to determine who is subject to the rule?* EPA proposed to test a type of commercial hexane with the greatest MCP content to which humans are most likely exposed and at the same time assumed that this material would be representative of commercial hexanes produced by major manufacturers. API (Refs. 3 and 18), however, contended that this characterization neither reflected current manufacturing practices nor applied to a significant portion of currently produced commercial hexanes. Consequently, the Agency granted an additional 60 days for API and its member companies to develop a more representative definition of commercial hexane and to better determine manufacturers and processors subject to the rule. From the results of an API survey indicating that *n*-hexane comprised 40 to 86 liquid volume percent and MCP 5 to 15 liquid volume percent of commercial hexanes, API (Ref. 3) provided an alternative definition of commercial hexane, developed by the American Society for Testing and Materials (ASTM), ASTM D 1836 (Ref. 16).

Accordingly, EPA has revised the definition of commercial hexane to contain a minimum of 40 rather than 50 liquid volume percent *n*-hexane and a minimum of 5 liquid volume percent MCP and otherwise conform to the specifications prescribed in ASTM D 1836. API (Ref. 3) stated that this revised definition includes all identified products manufactured and used as commercial hexane. EPA interprets this to mean that the revised definition includes the products produced by all known manufacturers and processors of commercial hexane, making all of them subject to this test rule.

2. Issue: *Which substance should be tested to characterize the toxicity of commercial hexane: commercial hexane A or n-hexane-free C_6 isomers?* EPA proposed that the test substance consist

of commercial hexane A, or solvent grade, derived from the fractionation of straight-run gasoline, consisting of no more than 64 liquid volume percent *n*-hexane and no less than 19 liquid volume percent MCP. The Agency believed that maximizing the MCP content of commercial hexane would provide more useful test data. Pursuant to comments from API (Ref. 3), EPA has deleted reference to the feedstock origin and the grade of commercial hexane in the final rule and defers to API's analysis that commercial hexane made according to the specifications of ASTM D 1836 is the one to which there is the greatest exposure. However, to assure that the full potential for MCP's toxicity might be expressed, EPA has modified API's recommendation by specifying that not less than 10 liquid volume percent MCP be present in the test substance. The Agency believes that this modification will accommodate API's concerns and yet will represent a worst-case exposure to MCP and C_6 isomers other than *n*-hexane.

3. Issue: *Should the subchronic test standards be modified to follow the 22 hours/day, 7 days/week, 6-month dosing regimen of the API and Egan et al. studies?* When comparing the toxicity of *n*-hexane with and without other C_6 isomers, Egan et al. (Ref. 23) and API (Ref. 9, Atts. II and III) used a dosing regimen of 22 hours/day, 7 days/week for 6 months. When determining the subchronic toxicity of *n*-hexane in rats, Cavender et al. (Ref. 24) of the Chemical Industry Institute of Technology (CIIT) used 6 hours/day, 5 days/week for 6 months. The National Toxicology Program (NTP) currently is using a dosing regimen of 6 hours/day, 5 days/week for 6 months to determine the subchronic toxicity of *n*-hexane in mice. Unless anticipating exposure of humans to a substance is continuous, under TSCA section 4, EPA typically specifies a dosing regimen of 6 hours/day, 5 days/week for a 90-day period in a subchronic toxicity test. Because of the differences in dosing regimens, EPA requested comment on whether the dosing regimen should be increased from 6 hours/day for 5 days/week to 22 hours/day for 7 days/week.

At the public meeting, Bus (Ref. 5), in discussing the importance of duration of daily exposure to study design, stated that for compounds such as *n*-hexane, 22-hour per day rather than 6-hour per day exposure durations give a more rapid onset at lower exposure concentrations.

The Agency has studied these comments but disagrees that the duration of exposure should be increased for subchronic toxicity testing of commercial hexane for several reasons. First, continuous inhalation exposure designs do not approximate conditions of human exposure to commercial hexane and therefore do not adequately define threshold levels of toxicity under expected exposure conditions. Compared to 6-hour per day, 5-day per week exposures, continuous exposure experiments use an exposure scenario not comparable to either workplace or consumer exposures. Second, the protocol required by the Agency is designed to mimic worker exposure, the population most likely to be exposed to commercial hexane. Third, the results from the study would be comparable to those from other subchronic testing required under TSCA section 4 by EPA for chemicals in the workplace. Chemicals primarily found in the home or other institutions in which humans may be continuously exposed would serve as better candidates for the continuous exposure regimen. Finally, continuous exposures do not permit a recovery period, potentially overloading metabolic systems.

An additional comment on the exposure regimen used in existing studies was provided by Wood (Ref. 25). Wood raised concerns that there could have been flaws in the exposure generation methods used by Egan et al. (Ref. 23) resulting in lower actual doses than specified in the experimental design. Wood contends that because of potential variations in exposure concentrations, Egan et al. were probably unsuccessful in maintaining the sustained exposure levels necessary for the identification of neurotoxicity comparable to that produced by *n*-hexane.

Consequently, because the composition of the atmosphere containing the test substance could change, the Agency recommends that there be sufficient monitoring of the concentrations of the test substance and its components to ensure that the composition of the atmosphere containing the test substance and its components do not vary significantly throughout the exposure period of each test.

III. Decision to Terminate Rulemaking for Health Effects Testing of MCP

Under TSCA section 4(a), EPA had proposed to require testing of MCP. Although isolated MCP has not been sold in the U.S. since 1982 (Ref. 9), the proposal noted that MCP is a substantial component of various hexane-containing refinery streams and products whose manufacture, processing, and use result in extensive, albeit indirect, exposure of workers, consumers, and the general population. EPA also recognized that MCP was isolated in the past and could be isolated either at present or in the future. In addition, the Agency's proposed findings for health effects testing of MCP were based upon positive hazard evidence to support a "may present an unreasonable risk" finding under section 4(a)(1)(A) for neurotoxicity (nerve functional deficits) and subchronic toxicity (nephrotoxicity) as well as potential exposure of 38,000 workers to MCP. Furthermore, in an EPA survey, MCP was detected in breast milk samples. However, because at this time MCP is not isolated and because all current exposure results from exposure to mixtures containing MCP, the Agency believes that testing MCP as a discrete substance is unnecessary and is terminating rulemaking under TSCA section 4(a) at this time.

The Agency reached this decision after reevaluating existing data in conjunction with comments from industry in response to the proposed rule. Consequently, the Agency has decided to terminate rulemaking on the health effects testing of MCP for the following reasons:

1. MCP currently is not isolated; it is not manufactured for direct sales; and its production as a discrete substance has not been reported under the TSCA Inventory Update Rule (Ref. 17). Furthermore, from industry's comments on the proposed test rule, the Agency does not anticipate any future isolated production of MCP.

2. There is a naphtha stream consisting of benzene and 60 to 80 percent MCP that is used to make cyclohexane. Although there may be the potential for greater exposure to MCP by virtue of its greater content in the naphtha stream compared to its content in commercial hexane, the process is limited to one manufacturer with only a few potentially exposed workers. Furthermore, this patented process is not expected to proliferate to other manufacturers after expiration of the patent in 12 years.

3. Because exposure to MCP almost always involves exposure to other C_6 isomers, and because the highest MCP concentration to which workers and consumers are typically exposed is in commercial hexane, EPA agrees with industry comments that commercial hexane is a more appropriate test substance than MCP. EPA believes that it is better first to test commercial hexane rather than each of its C_6 components individually. If health effects are positive for commercial

hexane, then EPA may consider testing the C_6 components individually.

IV. Final Test Rule for Commercial Hexane

A. Findings

EPA is basing its final health effects testing requirements for commercial hexane on the authority of section 4(a)(1)(B) of TSCA.

Under section 4(a)(1)(B), EPA finds that commercial hexane is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, distribution in commerce, and use. Approximately 500 million pounds of commercial hexane were produced in 1985 (Ref. 26). In addition, according to the National Occupational Exposure Survey of 1985 (NOES), 83,000 workers are estimated to have actual exposure to hexane solvents. Of these, 12,576 are women (Ref. 19). Commercial hexanes are used as components of lacquers, printing inks, and adhesives, and as seed oil extractants (Ref. 2). Such uses may result in widespread exposure to workers and consumers.

While EPA believes that there may be substantial human exposure to C_6 hydrocarbons in gasoline, EPA is not considering exposure to the C_6 fraction through exposure to gasoline as part of its basis for finding substantial human exposure to commercial hexane. The Agency believes that exposures associated with the manufacture and processing of commercial hexanes and use of solvents containing significant concentrations of C_6 isomers provide sufficient basis for a finding of substantial human exposure for commercial hexane under TSCA section 4(a)(1)(B)(i).

In the proposed rule, the Agency requested comments as to whether there existed studies in the published and unpublished literature that would adequately describe the potential health effects of commercial hexane. EPA's initial evaluation had indicated that there were inadequate data to predict commercial hexane's acute and subchronic toxicities, oncogenicity, reproductive toxicity, developmental toxicity, mutagenicity, neurotoxicity, and pharmacokinetics in humans exposed from its manufacture, processing, distribution in commerce, and use.

To determine the adequacy of health effects data on commercial hexane, EPA reviewed data submitted in response to the proposal by API (Refs. 3 and 4) and by Exxon (Ref. 6) as well as data from the scientific literature. Consequently, EPA finds that there are sufficient data by inhalation exposure to reasonably determine or predict the acute effects of human exposure to commercial hexane resulting from its manufacture, processing, distribution in commerce, and use. Therefore, the Agency has concluded that there is no need to require acute toxicity testing of commercial hexane. However, EPA finds that there are insufficient data to reasonably determine or predict the subchronic toxicity, the oncogenicity, the reproductive toxicity, the developmental toxicity, the mutagenicity, the neurotoxicity, and the pharmacokinetics in humans exposed to commercial hexane from its manufacture, processing, distribution in commerce, and use. EPA believes that the data resulting from these test requirements will be relevant to a determination that the manufacture, processing, distribution in commerce, and use of commercial hexane does or does not present an unreasonable risk of injury to human health. For these reasons, EPA finds that testing is necessary to develop such data.

B. Required Testing, Test Standards, and Reporting Requirements

On the basis of these findings, the Agency is requiring that health effects testing be conducted for commercial hexane in accordance with specific test guidelines set forth in 40 CFR Part 798 as enumerated in the following table.

REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR COMMERCIAL HEXANE

Test	40 CFR citation [1]	Reporting deadline for final report [2]	Number of interim (6-mo) reports required
Subchronic toxicity: Subchronic inhalation toxicity	§ 798.2450	15	2
Chronic toxicity: Oncogenicity	§ 798.3300	53	8
Specific organ/tissue toxicity:			
Reporduction and fertility effects	§ 798.4700	29	4
Inhalation developmental toxicity	§ 798.4350	12	1
Genetic toxicity:			
Gene Mutations:			
Salmonella typhimurium	§ 798.5265	8	0
Mammalian cells in culture	§ 798.5300	17	2
Drosophila sex-linked recessive lethal	§ 798.5275	24	3
Chromosomal Aberrations:			
In vitro cytogenetics	§ 798.5375	9	0
In vivo cytogenetics	§ 798.5385	19	3
Dominant lethal assay	§ 798.5450	28	4
Heritable translocation assay	§ 798.5460	[3] 25	4
Acute neurotoxicity: Schedule-controlled operant behavior	§ 798.6500	15	2
Subchronic neurotoxicity:			
Functional observation battery	§ 798.6050	15	2
Motor activity	§ 798.6200	15	2
Neuropathology	§ 798.6400	15	2

[1] As modified in § 799.2155.
[2] Number of months after the effective date of the final rule, except as indicated.
[3] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing data for commerical hexane, the Agency has determined that the required testing must be performed.

Revisions to these guidelines were proposed in the **Federal Register** of January 14, 1986 (51 FR 1522) and were promulgated in the **Federal Register** of May 20, 1987 (52 FR 19056).

The Agency is requiring that the above-referenced TSCA health effects test guidelines be the test standards for the purposes of the required tests for commercial hexane. The TSCA test guidelines for health effects testing

specify generally accepted minimum conditions for determining the health effects of substances like commercial hexane to which humans are expected to be exposed. The Agency believes that these test methods reflect the current state-of-the-art science and minimum requirements for the conduct of these tests. However, because of the high volatility and explosive properties of commercial hexane and because human exposure occurs primarily by inhalation, EPA is requiring chemical-specific modifications to all of the required test methods that take into account these factors.

All data developed under this rule must be reported in accordance with TSCA Good Laboratory Practice (GLP) Standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days before the initiation of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The rule specifies the reporting requirements for each of the required test standards for commercial hexane. Interim progress reports for certain studies must be provided to the Agency at 6-month intervals as indicated in the rule until the final report has been submitted to EPA.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of commercial hexane must report to EPA the first export or intended export of commercial hexane to a particular country in a calendar year. EPA will notify the foreign country concerning the test rule for the chemical.

C. Test Substance

Concerning the definition of commercial hexane so as to determine who is subject to the rule, the rule defines commercial hexane as containing a minimum of 40 liquid volume percent *n*-hexane, a minimum of 5 liquid volume percent MCP, and otherwise conforming to the specifications prescribed in ASTM D 1836. The requirement that commercial hexane contain at least 5 liquid volume percent MCP remains the same as in the proposed rule because API's survey indicated commercial hexanes currently produced contain at least 5 liquid volume percent MCP. This definition determines which manufacturers and processors are subject to the rule.

Concerning the composition of the actual test substance, EPA is specifying that the test substance contain no more than 40 liquid volume percent *n*-hexane, no less than 10 liquid volume percent MCP, and otherwise conform to the specifications prescribed in ASTM D 1836. EPA believes that the commercial hexane being tested should be defined in this manner to assure that the full potential for MCP toxicity may be expressed. In addition, such a test substance will be similar to the test material used in API's single-generation inhalation reproductive effects study (Ref. 3, Att. I). By specifying a commercial hexane test substance with no more than 40 percent *n*-hexane and no less than 10 percent MCP, EPA believes that the test substance will represent a worst-case exposure to MCP and C_6 isomers other than *n*-hexane and provide a complement to existing data on *n*-hexane.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture and process the chemical are required to test if the exposure giving rise to the potential risk occur during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that manufacturing, processing, distribution in commerce, and use of commercial hexane give rise to exposure that may lead to an unreasonable risk, persons who manufacture or process, or who intend to manufacture or process, commercial hexane, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period are subject to the testing requirements contained in this final rule. The end of the reimbursement period will be 5 years after the last report is submitted or an amount of time equal to that which was required to develop data, if more than 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790. Although EPA has not identified any individuals who manufacture commercial hexane as a byproduct, such persons will be subject to the requirements of this test rule.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for commercial hexane. As noted in Unit II.B., EPA is requiring a specific type of commercial hexane for testing and believes that testing such a substance will allow reasonable prediction of the potential of various commercial hexane

products to cause the effects to be studied. For the purposes of this rule, EPA assumes that all commercial hexanes are equivalent to the commercial hexane test substance.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *" The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for commercial hexane. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Final Rule

To assess the economic impact of this rule, EPA has prepared an economic analysis (Ref. 26) that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of commercial hexane: (1) Price sensitivity of demand; (2) industry cost charactertistics; (3) industry structure; and (4) market expectations. Because there was not any indication of adverse impact, no further economic analysis was performed. However, had the first level of analysis indicated a potential for significant economic impact, a more comprehensive and detailed analysis would have been conducted to more precisely predict the magnitude and distribution of the expected impact.

Testing costs for the final rule for commercial hexane are estimated to range from $2.2 to $2.9 million. To predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 7 percent over a period of 15 years) range from $250,000 to $320,000. Based on 1985 production of 480 million pounds, the unit test costs range from $0.0005 to $0.0007 per pound. In relation to the selling price of $0.20 per pound for commercial hexane, these costs are equivalent to 0.26 to 0.33 percent of price.

Based on these costs and the uses of commercial hexane, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations:

1. The estimated unit test costs are low, 0.33 percent of the current price in the upper-bound case.

2. The overall demand for commercial hexane appears relatively inelastic with respect to price in all of its major uses.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "* * * the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port

Royal Road, Springfield, VA 22161 (PB 82-140773).

AIHC (Ref. 10) commented that the Agency did not adequately address in the proposal the availability of facilities or personnel to conduct the neurotoxicity testing required by this rule. EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 20) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP standards. However, the barriers faced by testing laboratories to gear-up for these barriers are not formidable. Laboratories will have to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C_9 aromatic hydrocarbon fraction test rule (50 FR 20675; May17, 1985). Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP standards.

VII. Rulemaking Record

EPA has established a record for this rulemaking, (docket number OPTS-42084C). This record contains the basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of MCP to the Priority List (50 FR 20930; May 21, 1985).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on MCP (50 FR 20909; May 21, 1985).

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(f) Notice of proposed rule on TSCA test quidelines revisions (51 FR 1522; January 14, 1986).

(g) Notice of final rule revising TSCA test guidelines (52 FR 19056; May 20, 1987).

(h) Notice of EPA's proposed test rule on MCP and commercial hexane (51 FR 17854; May 15, 1986).

(i) Notice of corrections to the proposed rule (51 FR 23440; June 27, 1986).

(j) Notice of extension of comment period on the proposed rule (51 FR 26170; July 21, 1986).

(k) Notice of EPA's final rule on the C_9 aromatic hydrocarbon fraction (50 FR 20662; May 17, 1985).

(2) Support documents consisting of:

(a) Technical support document for proposed rule.

(b) Economic impact analysis of NPRM for MCP and commercial hexane.

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(5) Reports—published and unpublished factual materials, including: Chemical Testing Industry: Profile of Toxicological Testing (October 1981).

B. References

(1) US Environmental Protection Agency (USEPA). "Response to public comment on MCP and commercial hexane" (December 23, 1987).

(2) Grayson, M., ed. *Kirk-Othmer Encyclopedia of Chemical Technology*, 3rd ed., Volume 12, New York: John Wiley & Sons, pp. 926-937 (1980).

(3) American Petroleum Institute (API). Letter from Steven M. Swanson, Director, Health and Environmental Affairs Department, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rules (September 15, 1986).

(4) API. Letter from Steven M. Swanson, Director, Health and Environmental Affairs Department, to Gary E. Timm, Chief, Test Rules Development Branch, USEPA, transmitting supplemental submission in response to issues raised by USEPA at the public meeting (January 9, 1987).

(5) USEPA. Transcript of proceedings of the public meeting on proposed test rules for MCP and commercial hexane (October 7, 1986).

(6) Exxon Company, USA. Letter from Edward DiCorcia, Vice President, Refining Department, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rules (September 11, 1986).

(7) Hine, C.H., and Zuidema, H.H. "Toxicological properties of hydrocarbon solvents." *Industrial Medicine* 39: 39-44 (1970).

(8) Lazarew, N.W. "Effects of *n*-hexane in man and animals." *Archives of Experimental Pathology and Pharmacology* 143: 223-233 (1929).

(9) Phillips Petroleum Company. Letter from John J. Moon, Manager, Environment and Consumer Protection, to the Office of Toxic Substances, USEPA, transmitting comments on the ITC's 16th Report and three toxicity studies (June 26, 1985).

(10) American Industrial Health Council, Inc. (AIHC). Letter from John L. O'Donoghue, Chairman, AIHC Neurotoxicology Subcommittee, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rules (August 13, 1986).

(11) Sice, J. "Tumor-promoting activity of *n*-alkanes an 1-alkanols." *Toxicology and Applied Pharmacology* 9: 70-74 (1966).

(12) Ranadive, K.J., Gothoskar, S.V., and Texabwala, B.U. "Carcinogenicity of contaminants in indigenous edible oils." *International Journal on Cancer* 10: 652-666 (1972).

(13) USEPA. Internal memorandum from Susan Vogt, Acting Director, Health and Environmental Review Division to Gary E. Timm, Chief, Test Rules Development Branch, transmitting a review by Elaine Z. Francis of API's single-generation reproductive effects study of commercial hexane (April 13, 1987).

(14) Christian, M.S. "A critical review of multigenerational studies." *Journal of the American College of Toxicology* 5: 161-180 (1986).

(15) No reference.

(16) American Society for Testing and Materials (ASTM). "Standard specification for commercial hexanes." *1986 Annual Book of ASTM Standards: Petroleum Products and Lubricants*, ASTM D 1936-83, pp. 966-967 (1986).

(17) USEPA. Internal memorandum from Denise Devoe, Chief, Confidential Data Branch, to Gary E. Timm, Chief, Test Rules Development Branch, concerning the Chemical Update System (May 14, 1987).

(18) API. Letter from William F. O'Keefe, Vice President, to Edwin F. Tinsworth, Acting Director, Office of Toxic Substances, USEPA, requesting an extension of the comment period on the MCP and commercial hexane proposed test rules (June 24, 1986).

(19) National Institute for Occupational Safety and Health (NIOSH), National Occupational Exposure Survey Data Base (NOES). Washington, DC. US Department of Health and Human Services Computer Printout (June 1, 1985).

(20) Mathtech Inc. "Evaluation of TSCA guidelines for neurotoxicity testing: Impact of increased testing requirements." Prepared for Regulatory Impacts Branch, USEPA (April 14, 1987).

(21) No reference.

(22) No reference.

(23) Egan, G., Spencer, P., Schaumburg, H., Murray, K.J., Bischoff, M., and Scala, R. "*n*-Hexane-'free' hexane mixture fails to produce nervous system damage." *Neurotoxicology* 2: 515-524 (1980).

(24) Cavender, F.L., Casey, H.W., Salem, H., Graham, D.G., Swenberg, J.A., and Gralla, E.J. "A 13-week vapor inhalation study of *n*-hexane in rats with emphasis on neurotoxic effects." *Fundamental and Applied Toxicology* 4: 191-201 (1984).

(25) American Psychological Association (APA). Letter from Ronald W. Wood, Chairman, Neurobehavioral Toxicity Test Standards Committee, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rules (November 6, 1986).

(26) ICF Inc: "Analysis of economic impacts for a toxicity test of commercial hexane." Prepared for Regulatory Impacts Branch, USEPA (July 1987).

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in costs or prices, and will not have a significant adverse effect on competition or the ability of US enterprises to compete with foreign enterprises. The economic analysis of the testing of commercial hexane is discussed in Unit V.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96-511, December 11, 1980), and has assigned OMB control number 2070-0033.

List of Subjects in 40 CFR Part 799

Chemicals, Environmental protection, Hazardous substances, Incorporation by reference, Laboratories, Recordkeeping and reporting requirements, Testing.

Dated: January 28, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.2155 to read as follows:

§ 799.2155 Commercial hexane.

(a) *Identification of test substance.* (1) "Commercial hexane," for purposes of this section, is a product obtained from crude oil, natural gas liquids, or petroleum refinery processing in accordance with the American Society for Testing and Materials Designation D 1836-83 (ASTM D 1836), consists primarily of six-carbon alkanes or cycloalkanes, and contains at least 40 liquid volume percent *n*-hexane (CAS No. 110-54-3) and at least 5 liquid volume percent methylcyclopentane (MCP; CAS No. 96-37-7). ASTM D 1836, formally entitled "Standard Specification for Commercial Hexanes," is published in *1986 Annual Book of ASTM Standards: Petroleum Products and Lubricants,* ASTM D 1836-83, pp. 966-967, 1986, is incorporated by reference, and is available for public inspection at the Office of the Federal Register, Room. 8301, 1100 L Street NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. This material is incorporated as it exists on the date of approval, and a notice of any change in this material will be published in the **Federal Register**. Copies of the incorporated material may be obtained from the Document Control Officer (TS-793), Office of Toxic Substances, EPA, Room. NE-G004, 401 M Street SW., Washington, DC 20460.

(2) The commercial hexane test substance, for purposes of this section, is a product which conforms to the specifications of ASTM D 1836 and contains no more than 40 liquid volume percent *n*-hexane and no less than 10 liquid volume percent MCP.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process commercial hexane, as defined in paragraph (a)(1) of this section and order than as an impurity, from the effective date of the final rule to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data, or submit exemption applications, as specified in this section, Subpart A of this part, and Part 790 of this chapter for single-phase rulemaking. Persons who manufacture commercial hexane as a byproduct are covered by the requirements of this section.

(c) *Health effects testing*—(1) *Subchronic inhalation toxicity*—(i) *Required testing.* (A) A subchronic inhalation toxicity test shall be conducted with commercial hexane in accordance with § 798.2450 of this chapter except for the provisions in paragraphs (d)(4)(ii) and (5) of § 798.2450.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *High dose level.* The highest concentration should result in toxic effects but neither produce an incidence of fatalities which would prevent a meaningful evaluation nor exceed the lower explosive limit of commercial hexane.

(*2*) *Exposure conditions.* Animals shall be dosed for 6 hours/day, 5 days/week for 90 days.

(ii) *Reporting requirements.* (A) The subchronic inhalation toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA for the subchronic inhalation toxcity test at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(2) *Oncogenicity*—(i) *Required testing.* (A) An oncogenicity test shall be conducted with commercial hexane in accordance with § 798.3300 of this chapter except for the provisions in paragraphs (b)(3)(ii) and (6) of § 798.3300.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *High dose level.* The high dose level should elicit signs of minimal toxicity without substantially altering the normal life span and should not exceed the lower explosive limit of commercial hexane.

(*2*) *Administration of test substance.* Animals shall be exposed to commercial hexane by inhalation.

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and the final report submitted to EPA within 53 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA for the oncogenicity test at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(3) *Reproduction and fertility effects.*—(i) *Required testing.* (A) A reproduction and fertility effects test shall be conducted with commercial hexane in accordance with § 798.4700 of this chapter except for the provisions in paragraphs (c)(3)(ii) and (5) of § 798.4700.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *High dose level.* The highest dose level should induce toxicity but not high levels of mortality in the parental (P) animals. In addition, the highest dose level should not exceed the lower explosive limit of commercial hexane.

(*2*) *Administration of test substance.* Animals shall be exposed to commercial hexane by inhalation.

(ii) *Reporting requirements.* (A) The reproduction and fertility effects test shall be completed and the final report submitted to EPA within 29 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA for the reproduction and fertility effects test at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(4) *Inhalation developmental toxicity*—(i) *Required testing.* (A) An inhalation developmental toxicity test shall be conducted with commercial hexane in accordance with § 795.4350 of this chapter except for the provisions in paragraph (e)(3)(iv) of § 798.4350.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *High dose level.* Unless limited by the physical/chemical nature or biological properties of the test substance, the highest concentration level shall induce some overt maternal toxicity such as reduced body weight or body weight gain, but not more than 10 percent maternal deaths. In addition, the highest dose level should not exceed the lower explosive limit of commercial hexane.

(*2*) [Reserved]

(ii) *Reporting requirements.* (A) The inhalation developmental toxicity test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA for the inhalation developmental toxicity test at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(5) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A)(*1*) A *Salmonella typhimurium* reverse mutation assay shall be conducted with commercial hexane in accordance with § 798.5265 of this chapter except for the provisions in paragraphs (d)(4) and (e) of § 798.5265.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Metabolic activation.* Bacteria shall be exposed to commercial hexane both in the presence and absence of an appropriate metabolic activation system.

(*ii*) *Test performance.* The assay shall be performed using the desiccator method described as follows: The agar overlay plates shall be placed uncovered in a 9-liter desiccator. A volume of the liquid test substance shall be added to the glass Petri dish suspended beneath the porcelain shelf of the desiccator. The highest exposure concentration should not result in a vapor concentration which exceeds the lower explosive limit of commerical hexane. A magnetic stirring bar to serve as a fan to assure rapid and even distribution of the vapor shall be placed on the bottom of the inside of the desiccator. The desiccator shall be placed on a magnetic stirrer within a 37°C room or chamber for 7 to 10 hours. The plates shall then be removed, their lids replaced, followed by incubation for an additional 40 hours at 37°C before counting. An appropriate selective medium with an adequate overlay agar shall be used. All plating should be done in at least triplicate.

(B)(*1*) A gene mutation test in mammalian cells shall be conducted with commercial hexane in accordance with § 798.5300 of this chapter except for the provisions in paragraphs (d)(3)(ii) and (4) of § 798.5300 if the results from the *Salmonella typhimurium* test conducted pursuant to paragraph (c)(5)(i)(A) of this section are negative.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Cell growth and maintenance.* Treatment flasks shall be incubated on a rocker panel to insure maximum contact between the cells and the test agent. Incubation shall be at 37°C for 18 hours for experiments without metabolic activation and for 5 hours for experiments with activation. Each flask shall be closed with a cap with a rubber septum. Headspace samples shall be taken at the beginning and the end of exposure period and analyzed to determine the amount of test substance in each flask. The vapor concentration should not exceed the lower explosive limit of commercial hexane.

(*ii*) [Reserved]

(C) (*1*) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with commercial hexane in accordance with § 798.5275 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii) of § 798.5275, unless the results of both the *Salmonella typhimurium* test conducted pursuant to paragraph (c)(5)(i)(A) of this section and the mammalian cells in the culture gene mutation test conducted pursuant to paragraph (c)(5)(i)(B) of this section, if required, are negative.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* For the initial assessment of mutagenicity, it is sufficient to test a single dose of the test substance for screening purposes. This dose should be the maximum tolerated dose, or that which produces some indication of toxicity or shall be the highest dose attainable and should not exceed the lower explosive limit of commercial hexane. For dose-response purposes, at least three additional dose levels should be used.

(*ii*) *Route of administration.* The route of administration shall be by exposure to commercial hexane vapors.

(D) [Reserved]

(*ii*) *Reporting requirements.* (A) The gene mutation tests shall be completed and final reports submitted to EPA as follows:

(*1*) The *Salmonella typhimurium* reverse mutation assay within 8 months of the effective date of the final rule.

(*2*) The gene mutation in mammalian cells assay within 17 months of the effective date of the final rule.

(*3*) The sex-linked recessive-lethal test in *Drosophila melanogaster* within 24 months of the effective date of the final rule.

(*3*) [Reserved]

(B) Interim progress reports for each test shall be submitted to EPA for the gene mutation in mammalian cells assay and *Drosophila* sex-linked recessive lethal test at 6-month intervals beginning 6 months after the effective date of the final rule, until the applicable final report is submitted to EPA.

(C) [Reserved]

(6) *Mutagenic effects—chromosomal aberrations*— (i) *Required testing.* (A)(*1*) An *in vitro* cytogenetics test shall be conducted with commercial hexane in accordance with § 798.5375 of this chapter except for the provisions in paragraph (e)(3) of § 798.5375.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Treatment with test substance.* The test shall be performed using flasks flushed with commercial hexane vapors, then closed with a cap with a rubber

septum. The highest exposure concentration should not result in a vapor concentration which exceeds the lower explosive limit of commercial hexane.

(*ii*) [Reserved]

(B)(*1*) An *in vivo* cytogenetics test shall be conducted with commercial hexane in accordance with § 798.5385 of this chapter except for the provisions in paragraphs (d)(5) (ii), (iii) and (iv) of § 798.5385, if the *in vitro* test conducted pursuant to paragraph (c)(6)(i)(A) of this section is negative.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* For an initial assessment, one dose level of the test substance may be used, the dose being the maximum tolerated dose (to a maximum of 5,000 mg/kg), or that producing some indication of cytotoxicity (e.g., partial inhibition of mitosis), or shall be the highest dose attainable (to a maximum of 5,000 mg/kg) and should not exceed the lower explosive limit of commercial hexane. Additional dose levels may be used. For determination of dose-response, at least three dose levels should be used.

(*ii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

(*iii*) *Treatment schedule.* The duration of exposure shall be for 6 hours per day for 5 consecutive days.

(C) (*1*) A dominant lethal assay shall be conducted with commercial hexane in accordance with § 798.5450 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii) of § 798.5450, unless both the *in vitro* and *in vivo* cytogenetics tests conducted pursuant to paragraphs (c)(6)(i) (A) and (B) of this section are negative.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* Normally, three dose levels shall be used. The highest dose shall produce signs of toxicity (e.g., slightly reduced fertility and slightly reduced body weight). The highest dose should not exceed the lower explosive limit of commercial hexane. However, in an initial assessment of dominant lethality, a single high dose may be sufficient. Nontoxic substances shall be tested at 5 g/kg or, if this is not practicable, then at the highest dose attainable.

(*ii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

(*iii*) *Treatment schedule.* The duration of exposure shall be for 6 hours per day for 5 consecutive days.

(D)(*1*) A heritable translocation test shall be conducted with commercial hexane in accordance with § 798.5460 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii) of § 798.5460, if the results of the dominant lethal assay conducted pursuant to paragraph (c)(6)(i)(C) of this section are positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* At least two dose levels shall be used. The highest dose level shall result in toxic effects (which shall not produce an incidence of fatalities which would prevent a meaningful evaluation) or shall be the highest dose attainable or 5 g/kg body weight and should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

(*iii*) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The *in vitro* cytogenetics test within 9 months of the effective date of the final rule.

(*2*) The *in vivo* cytogenetics test within 19 months of the effective date of the final rule.

(*3*) The dominant lethal assay within 28 months of the effective date of the final rule.

(*4*) The heritable translocation test within 25 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

(B) Interim progress reports for each test shall be submitted to EPA for the *in vivo* cytogenetics and the dominant lethal assays at 6-month intervals beginning 6 months after the effective date of the final rule, until the applicable final report is submitted to EPA.

(C) Interim progress reports shall be submitted to EPA for the heritable translocation assay at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated, until the final report is submitted to EPA.

(7) *Neutrotoxicity*—(i) *Required testing.* (A)(*1*) A schedule-controlled operant behavior test shall be conducted with commercial hexane in accordance with § 798.6500 of this chapter except for the provisions in paragraphs (d)(5)(i), (6) and (7) of § 798.6500.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *High dose level.* The highest dose shall produce clear behavioral effects or life-threatening toxicity. In addition, the highest dose should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Duration and frequency of exposure.* Animals shall be dosed once for 4 to 6 hours.

(*iii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

(B)(*1*) A functional observation battery shall be conducted with commercial hexane in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(4)(i), (5), and (6) of § 798.6050.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *High dose level.* The highest dose shall produce clear behavioral effects or life-threatening toxicity. In addition, the highest dose should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Duration and frequency of exposure.* Animals shall be dosed for 6 hours/day, 5 days/week for 90 days.

(*iii*) *Route of exposure.* Animals shall be exposed to commercial hexane by inhalation.

(C)(*1*) A motor activity test shall be conducted with commercial hexane in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(4)(i), (5), and (6) of § 798.6200.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *High dose level.* The highest dose shall produce clear effects on motor activity of life-threatening toxicity. In addition, the highest dose should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Duration and frequency of exposure.* Animals shall be dosed for 6 hours/day, 5 days/week for 90 days.

(*iii*) *Route of exposure.* Animals shall be exposed to commercial hexane by inhalation.

(D)(*1*) A neuropathology test shall be conducted with commercial hexane in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(4)(i), (5), and (6) of § 798.6400.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *High dose level.* The highest dose shall produce clear behavior effects or life-threatening toxicity. In addition, the highest dose should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Duration and frequency of exposure.* Animals shall be dosed for 6 hours/day, 5 days/week for 90 days.

(*iii*) *Route of exposure.* Animals shall be exposed to commercial hexane by inhalation.

(ii) *Reporting requirements.* (A) The schedule-controlled operant behavior, functional observation battery, motor activity, and neuropathology tests shall be completed and the final reports submitted to EPA within 15 months of the effective date of the final rule.

(B) Interim progress reports for each test shall be submitted to EPA for the schedule-controlled operant behavior, functional observation battery, motor activity, and neuropathology tests at 6-month intervals beginning 6 months after the effective date of the applicable final rule, until the applicable final report is submitted to EPA.

(8) [Reserved]

(d) *Effective date.* The effective date of the final rule for commercial hexane is March 21, 1988.

(Information collection requirements have been approved by the Office of Managment and Budget under control number 2070-0033)

[FR Doc. 88-2439 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 29

Trans-Alaska Pipeline Liability Fund

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

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for supervision and administration of the Trans-Alaska Pipeline Liability Fund (Fund) provided for by section 204(c) of the Trans-Alaska Pipeline Authorization Act (Act). The final rule eliminates inconsistencies between the existing regulations and the Act, clarifies confusing language and deletes unnecessary provisions.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Office of Environmental Project Review, Room 4256, Department of the Interior, Washington, DC 20240, telephone (202) 343-3891.

SUPPLEMENTARY INFORMATION: On June 29, 1987, the Department of the Interior published for comment in the **Federal Register** a proposed rule that would amend its regulations for supervision and administration of the Fund. This proposed rule was published in response to a petition from the Fund. The petition was published as part of the proposed rule. The petition and the preamble to the proposed rule described the bases for the proposed changes to the current regulations, and the Department's observations on the petition, respectively (52 FR 24181).

The Department of the Interior received three sets of comments from two sources. One commenter was the Environmental Protection Agency, which the Department of the Interior had specifically requested to comment (52 FR 24182). The other was the Fund, which on two separate occasions provided substantive comments and comments concerning typographical errors contained in the proposed rule.

A summary of the comments and the Department's responses to the comments follow.

1. Notification Requirements

EPA commented that the first sentence of proposed § 29.8(a) failed to make clear whether the discovery of an incident must be made by the person in charge of the vessel and whether the incident must involve the vessel. EPA then suggested language to clarify the meaning of the sentence. As the Department intended that the obligations of the person in charge of the vessel would begin as soon as he or she becomes aware of an incident involving his or her vessel, this comment has merit. Accordingly, the Department has revised the first sentence, although the specific language suggested by EPA has not been used.

EPA also suggested, concerning the same sentence, that the regulation specify that the notification of the incident be made to the National Response Center rather than the "Coast Guard." EPA's stated concern was that without the change a person in charge of a vessel might contact a Coast Guard unit rather than the National Response Center. As the Department's intent was that the person in charge of the vessel should contact the National Response Center, the EPA's suggestion is accepted with clarification to assure it is understood that the National Response Center is operated by the Coast Guard.

EPA also suggested that in the last sentence of proposed § 29.8(a) the citation to the Federal Water Pollution Control Act (FWPCA) be clarified, and that a reference be made to EPA's recently promulgated regulations implementing the notification requirements of the FWPCA. The citation clarification has been made. The Department also agrees to make reference to the EPA's notification requirements; the change is consistent with the Department's intent that the § 29.8 notification requirements are in addition to notification requirements under the FWCPA.

Finally, EPA suggested that in proposed § 29.8(b) the term "Coast Guard" be replaced with "National Response Center." This change has been made. To be consistent with the other changes in § 29.8 the reference to "Coast Guard" in § 29.8(c)(1) has also been changed to "National Response Center." A conforming change has also been made to § 29.1(d).

2. Definitions

EPA comments that the use of the term "spill" in proposed § 29.8(c)(1) and (d) could cause confusion as the term "spill" is not defined in proposed § 29.1. EPA suggests that the term "incident", which is defined in proposed § 29.1, be used instead of "spill". The Department agrees that without some reference to "spill" in § 29.1 some confusion could arise. Accordingly, the Department is amending § 29.1(h) to indicate that "incident" and "spill" can be used interchangeably.

EPA also commented that proposed § 29.1(h) (definition of "incident") would limit incidents to instances where there is a "discharge of TAPS oil". The Department recognizes that section 204(c)(1) of the Trans-Alaska Pipeline Authorization Act applies to "discharges of oil" from a vessel carrying TAPS oil, and did not intend to change the statutory application. Accordingly, the Department has amended § 29.1(h) to indicate that an incident "means a discharge of oil from a vessel which is carrying TAPS oil loaded on that vessel. . . ."

The Fund questioned in two respects the basis for the Department's disagreement with the Fund's rationale for the deletion of proposed § 29.1(e)(7) (numbered as § 29.1(d)(7) prior to the promulgation of this final rule), found at 52 FR 24181-82. First, the Fund questions the Department's observation that the current regulation could be read as making loss of tax revenue an element of damages without a showing of proximate cause; the Fund notes that proximate cause must be shown for all damages under the Act. The Fund is correct; under the current regulations and as amended, any claim may be paid only upon a showing that the economic loss arises out of or results directly from an incident. See § 29.1(e).

The Fund also asserts the Department states incorrectly in the preamble to the proposed rule that loss of tax revenues may constitute damages. The Department disagrees with this comment. The Department's intent is only that if a claimant is able to demonstrate that any economic loss arises out of or results directly from an

incident, that claim may be paid under the Act. If a claimant can make this showing for loss of tax revenues, the claim may be paid by the Fund.

3. Typographical and Clarifying Changes

The Department has made a number of minor changes of a typographical nature as the result of comments from the Fund and Departmental staff. The Department has also made several minor clarifying changes based on comments from Departmental staff.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291, because these regulations deal only with the administration of the Fund. Any economic effects should be very small, and any adverse effects on competition, employment, investigation, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets are expected to be insignificant. Because these regulations deal only with the administration of the Fund and it is not anticipated that these regulations will affect any small entities, the Department has certified that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

Paperwork Reduction Act

The information collection requirements contained in amended 43 CFR 29.9 have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq. and assigned approval No. 1084-0026.

Environmental Effects

This rule is categorically excluded from the National Environmental Protection Act (NEPA) process because it is of an administrative, financial, legal, technical and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is required (40 CFR 1508.4; 516 DM 2.3A).

Drafting Information

The primary authors of this document are Robert H. Moll and Timothy S. Elliott of the Office of the Solicitor, in consultation with Bruce Blanchard, Director, Office of Environmental Project Review.

List of Subjects in 43 CFR Part 29

Alaska Oil pollution, Pipelines.

This final rule is issued under the authority of section 204(c) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c)(4), and sections 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(p)(1), (2).

For the reasons set forth in the preamble, Title 43, Part 29 is revised to read as set forth below.

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Sec.
29.1 Definitions.
29.2 Creation of the Fund.
29.3 Fund administration.
29.4 General powers.
29.5 Officers and employees.
29.6 Financing, accounting and audit.
29.7 Imposition of strict liability.
29.8 Notification and advertisement.
29.9 Claims, settlement and adjudication.
29.10 Subrogation.
29.11 Investment.
29.12 Borrowing.
29.13 Termination.
29.14 Information collection.

Authority: Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c); Secs. 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 (p)(1), (2).

§ 29.1 Definitions.

As used in this part:

(a) "Act" means the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C. Secs. 1651, et seq.

(b) "Affiliated" means:

(1) Any person owned or effectively controlled by the vessel Owner or Operators; or

(2) Any person that effectively controls or has the power to effectively control the vessel Owner or Operator by—

(i) Stock interest, or

(ii) Representation on a board of directors or similar body, or

(iii) Contract or other agreement with other stockholders, or

(iv) Otherwise, or;

(3) Any person which is under common ownership or control with the vessel Owner or Operator.

(c) "Claim" means a demand in writing for payment for damage allegedly caused by an incident.

(d) "Contact person" means a person designated by the Owner or Operator and identified to the Fund Administrator and the National Response Center operated by the Coast Guard as the official responsible for coordinating with the Fund the resolution of claims filed as a result of a TAPS oil spill.

(e) "Damage" or "damages" means any economic loss, arising out of or directly resulting from an incident, including but not limited to:

(1) Removal costs;

(2) Injury to, or destruction of, real or personal property;

(3) Loss of use of real or personal property;

(4) Injury to, or destruction of, natural resources;

(5) Loss of use of natural resources; or

(6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, including loss of subsistence hunting, fishing and gathering opportunities.

(f) "Fund" means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act.

(g) "Guarantor" means the person, other than the Owner or Operator who provides evidence of financial responsibility for an Owner or Operator, and includes an underwriter, insurer or surety company.

(h) "Incident" (or "spill") means a discharge of oil from a vessel which is carrying TAPS oil loaded on that vessel at the terminal facilities of the Pipeline and which:

(1) Violates applicable water quality standards, or

(2) Causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(i) "Operator of the Pipeline" means the common agent designated by the Permittees to operate the Pipeline.

(j) "Owner of the oil" means the Owner of TAPS oil at the time that such oil is loaded on a vessel at the terminal facilities of the Pipeline.

(k)(1) "Owner" means, in the case of a vessel, the person owning the vessel carrying TAPS oil at the time of an incident, and

(2) "Operator" means, in the case of a vessel, the person operating, or chartering by demise, the vessel carrying TAPS oil at the time of an incident.

(l) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(m) "Person in Charge of the Vessel" means the individual on board the vessel with the ultimate responsibility for vessel navigation and operations.

(n) "Permittees" means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System.

(o) "Pipeline" means any Pipeline in the Trans-Alaska Pipeline System.

(p) "Secretary" means the Secretary of the Interior or an authorized representative of the Secretary.

(q) "TAPS oil" means oil which was transported through the Trans-Alaska Pipeline and loaded on a vessel at the terminal facilities of the Pipeline.

(r) "Terminal facilities" means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the Pipeline and loaded on vessels or placed in storage for future loading onto vessels.

(s) "Trans-Alaska Pipeline System" or "System" means any Pipeline or terminal facilities constructed by the Permittees under the authority of the Act.

(t) "United States" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(u) "Vessel" means any type of water-craft or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the Pipeline and ports under the jurisdiction of the United States, and which is carrying TAPS oil.

§ 29.2 Creation of the Fund.

(a) The Trans-Alaska Pipeline Liability Fund (Fund) was created by the Act as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary. The vessel Owner and Operator are strickly liable for the first $14 million of claims for any one incident. The vessel Owner and Operator remain liable for claims over that amount whenever the damages involved were caused by the unseaworthiness of the vessel or by negligence and should the Fund pay any claims under those circumstances, the Fund retains the right of subrogation. The Fund's maximum liability for any one incident is the amount of the claims over $14 million but not to exceed $100 million.

(b) The Fund shall be subject to, and shall take all steps necessary to carry out its responsibilities under, the Act and these implementing regulations.

(c) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in paragraph (b) of this section.

(b)(1) The Board of Trustees shall be comprised of one member designated by each Permittee and three members designated by the Secretary. At least one member designated by the Secretary shall be chosen from persons nominated by the Governor of the State of Alaska. Each member shall serve for a period of three years and may succeed himself or herself. Each member shall have the right to vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a trustee, and if any holder of right-of-way sells the interest in such right-of-way, such holder's designated trustee shall resign from the Board. The Board shall elect by a majority vote a Chairman and a Secretary annually.

(2) Where any activity of the Fund creates a conflict of interest, or the appearance of a conflict of interest, on the part of any member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such activity by the Board of Trustees.

(c) The Board of Trustees by a majority vote shall select an Administrator to direct the day-to-day operations of the Fund.

(d) The Board of Trustees shall hold meetings every six months, or more frequently when necessary to consider pressing matters, including pending claims under § 29.9.

(e)(1) Each Board Member and officer of the Fund now or hereafter serving as such, shall be indemnified by the Fund against any and all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as such Board Member or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him or her as such Board Member or officer; and the Fund shall reimburse each such person for all legal expenses reasonably incurred by him or her in connection with any such claim or liability: *Provided,* however, That no such person shall be indemnified against, or be reimbursed for any expenses incurred in connection with, any claim or liability arising out of his or her own willful misconduct or gross negligence.

(2) The amount paid to any officer or Board Member by way of indemnification shall not exceed his or her actual liabilities and actual, reasonable, and necessary expenses incurred in connection with the matter involved. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Fund in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the Board Member or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Fund as authorized herein.

(3) The indemnification provided by this section shall continue as to a person who has ceased to be a Board Member or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Board Member or officer of the Fund may otherwise be entitled by law.

§ 29.4 General powers.

The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(a) By resolution of the Board of Trustees, the fund shall adopt a corporate seal.

(b) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(c) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(d) In any civil action for the recovery of damages resulting from an incident, the Fund shall waive personal jurisdiction upon being furnished with a copy of the summons and complaint in the action.

(e) The Board of Trustees of the Fund, by a majority of those present and voting, shall adopt and may amend and repeal by-laws governing the performance of its statutory duties.

(f) The Fund shall do all things necessary and proper in conducting its activities as Trustee including (1) receipt of fee collections pursuant to section 204(c)(6) of the Act; (2) payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund; (3) investment of all sums not needed for administration and the satisfaction of claims in income-producing securities as hereinafter

provided; and (4) seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in section 204(c)(8) of the Act.

(g) The Fund shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid. The Board of Trustees shall establish an annual budget, subject to the approval of the Secretary.

(h) All costs and expenses reasonably necessary to the administration of the Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

§ 29.5 Officers and employees.

(a) The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administrative functions as authorized by the Board of Trustees in accordance with the Act including the receipt and verification of fees collected from Owners of TAPS oil pursuant to section 29.6(a), the investment of Fund assets in securities according to guidelines approved by the Board of Trustees and consistent with these regulations, and the disbursement of such assets in payment of expenses and approved claims.

(b) The Fund may employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing, accounting, and audit.

(a)(1) The Operator of the Pipeline shall notify each Permittee within a reasonable time as to the date of the tanker loadings and the volumes of TAPS oil loaded. The Permittee will send an invoice for transportation charges for TAPS oil (which includes five cents per barrel for the Fund) to the Owner of the oil. The Permittee will receive the five cents per barrel fee from the Owner of the oil in accordance with the terms of its particular pipeline tariff, filed with the appropriate governmental agency, and shall transfer the fee on or before the next business day to a Fund bank account designated by the Administrator. Collection of fees shall cease at the end of the month following the month in which $100 million has been accumulated in the Fund from any source. Collection of fees shall be resumed when the accumulation falls below $100 million. The Administrator shall notify the Pipeline carriers by the fifteenth of the month if fees are to be collected during the following month.

(2) The value of the Fund shall be the current market value of the Fund on the day at the end of each month or other agreed upon accounting period.

(b) Costs of the administration shall be paid from the money received by the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with section 29.11. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month that fees are payable under the Act, or other agreed upon accounting period, the Operator of the Pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the Operator of the Pipeline and delivered to vessels, the amount of fees charged and collected, and the Owners of TAPS oil from whom such fees were or are due. The Administrator shall provide a copy of the statement to the Owners of the oil, and to the State of Alaska.

(d) The Fund shall undertake an annual accounting.

(e) The Fund shall be subject to an annual audit by the Comptroller General, in coordination with the Administrator and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall have complete access, for purposes of the audit or otherwise, to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and they shall be afforded full facilities for verifying among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, where a vessel is engaged in any segment of transportation between the terminal facilities of the Pipeline and ports under the jurisdiction of the United States, and is carrying TAPS oil, the Owner and Operator (jointly and severally), and the Fund established by section 204(c) of the Act, shall be strictly liable without regard to fault in accordance with that section for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as a result of any discharge of TAPS oil from such vessel. Strict liability under this section shall cease when the TAPS oil has first been brought ashore at a port under the jurisdiction of the United States.

(b) Strict liability shall not be imposed under this part if the Owner or Operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the Act with respect to the claim of a damaged party if the Owner or Operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c)(1) Strict liability for all claims arising out of any one incident shall not exceed $100 million. The Owner and Operator of the vessel shall be jointly and severally liable for the first $14 million of the claims that meet the definition of damages as provided for in these regulations. The Fund shall be liable for the balance of the claims that meet the same definition up to $100 million. If the total of these claims exceeds $100 million, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

(2) The Fund shall establish uniform procedures to determine whether claims from a TAPS oil spill might exceed $14 million and $100 million. These procedures shall provide that when a determination is made that claims may exceed $100 million, payment of claims may be withheld in full or in part for a twenty-four month period so that claims may be proportionately reduced prior to payment.

(d)(1) Each Owner or Operator of a vessel shall obtain from the Federal Maritime Commission a "Certificate of Financial Responsibility (Alaska Pipeline)" demonstrating compliance with the provisions of section 311(p) of the Federal Water Polution Control Act, as amended (33 U.S.C. 1321(p)), and regulations promulgated pursuant to such act (33 CFR Part 131). Notwithstanding inconsistent language in such act, financial responsibility in the amount of $14 million for all such vessels must be established.

(2) The certificate obtained in accordance with this subsection shall be carried on board the vessel. No TAPS oil may be loaded on any vessel which has not been issued a valid certificate which is still in effect at the time of loading.

§ 29.8 Notification and advertisement.

(a) As soon as the person in charge of a vessel has knowledge of an incident in which the vessel is involved, he shall immediately notify the Owner or Operator and the National Response

Center, (800) 424–6802, of the incident. Notification under this section is in addition to any notification requirements under section 311(b)(5) of the Federal Water Pollution Control Act, as amended, and the regulations of the Coast Guard and the Environmental Protection Agency promulgated thereunder (33 CFR 153.203 and 40 CFR 110.10, respectively).

(b) Upon receiving notice of an incident, the National Response Center shall immediately notify the Fund.

(c)(1) At the time of a spill of TAPS oil, the vessel Owner and Operator shall consult with each other and identify a single contact person to both the Fund Administrator and the National Response Center as the official who is responsible for coordinating with the Fund the resolution of claims from a spill of TAPS oil. The National Response Center shall provide the identity of the contact person to appropriate officials of the Coast Guard.

(2) The Fund shall establish procedures for coordination of the handling of claims with the contact person.

(d) Pursuant to its procedures, the Fund shall ascertain if the spill may result in damage claims in excess of $14 million. If it concludes that that level may be reached, the Fund shall commence advertisement no later than 45 days from the date the Fund receives notice of the incident and shall continue advertising for a period of not less than thirty days.

(e) The advertisement must appear in one or more local newspapers of general circulation and the Fund shall establish procedures governing the format and the information to be included in the advertisement of an incident. All advertisements must include:

(1) The date and location of the incident;

(2) The name of the Owner or Operator;

(3) The name and address of the contact person or of the Fund Administrator to whom claims should be sent.

§ 29.9 Claims, settlement and adjudication.

(a)(1) Claims in accordance with this section may be submitted by any damaged party, his or her duly authorized agent, or his or her successor in interest.

(2) Claims submitted in accordance with this section must contain the following information:

(i) A detailed statement of the circumstances, if known, by which the claimed loss occurred.

(ii) A detailed listing of damages incurred, categorized according to the type of damage involved (§ 29.1(e)), and including a monetary claim for each type of damage listed.

(iii) Documentation of all monetary claims asserted.

(b) The contact person must provide copies of all claims filed with the vessel Owner or Operator to the Fund Administrator upon request of the Administrator. Once such claims are paid, the contact person shall notify the Fund and upon request of the Administrator supply any adjuster's reports.

(c) Prior to reaching $14 million in claims filed, the contact person shall notify the Fund whether the vessel Owner or Operator will assume responsibility to pay damages over the $14 million level.

(d)(1) In the event the vessel Owner or Operator refuses to pay claims over the $14 million level, the Fund shall determine if the $14 million in claims already filed meet the definition of damage as established by this section. The Fund shall pay the claims, or portion of claims, over $14 million, which have been determined to meet that definition.

(2) The Fund shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund, including but not limited to procedures for appraising claims made to the vessel Owner or Operator to determine when $14 million of claims meeting the definition of damages has been reached; procedures to determine whether claims over the $14 million level which it receives meet the definition of damages; and procedures for determining when the services of a private insurance and claims adjuster shall be used.

(e) In the event the vessel Owner or Operator refuses payment of any claims up to $14 million, the injured parties have recourse to the district court for the Federal district in which the spill occurred or the appropriate State court for the State in which the spill occurred. The Fund only becomes liable after $14 million in claims meeting the definition of damages have been paid or have been acknowledged as payable by the vessel Owner or Operator.

(f) The Fund may settle or compromise any claim presented to it.

(g) No claim may be presented, nor any action be commenced, for damages recoverable under this part unless that claim is presented to or that action is commenced against the vessel Owner or Operator, or their guarantor, or against the Fund, as to their respective liabilities, within two years from the date of discovery of the damages caused by an incident, or of the date of the incident causing the damages, whichever is earlier.

(h)(1) The Board of Trustees, by a majority vote, shall decide to allow or deny claims or settlements presented to the Fund in accordance with this section. In its discretion the Board may delegate the authority to settle classes of claims to the Administrator.

(2)(i) Where a claim is presented to the Fund by or on behalf of any person having a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of such conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(ii) Where a claim presented to the Fund has previously been presented to the Owner or Operator and such Owner or Operator has a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of a conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(i) Any claimant aggrieved by the Fund's decision on a claim under this section may appeal the decision in the appropriate Federal district court.

§ 29.10 Subrogation.

If the Fund pays compensation to any claimant, the Fund shall be subrogated to all rights, claims, and causes of action which that claimant has to the extent permitted by law.

§ 29.11 Investment.

(a) The monies accumulated in the Fund shall be prudently invested in the following types of income-producing obligations having a high degree of reliability and security, or in such other obligations as the Secretary may approve:

(1) Fixed income securities issued by the United States or any of its agencies, at the same interest rates and terms available to private investors; and

(2) Fixed income securities or obligations issued by a corporation or issued or guaranteed by a State or local government or any political subdivision, agency or instrumentality thereof, provided such obligations have a rating by Standard and Poors, or Moody, of "A" or better, or an equivalent rating, or provided further that the security or obligation is of the same priority as

another security or obligation of the same issuer which has been rated "A" or better, and provided that the portfolio has an overall rating of "AA." *Provided,* however, That no securities or obligations of the permittees or their affiliates or of any investment advisor or custodian to the Fund, or their affiliates may be purchased or held by the Fund.

(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either "A1" or "P1" or both.

(b) No more than two percent of the total principal amount outstanding of fixed income obligations of a single issuer may be held by the Fund at any one time, *Provided,* however, That this restriction shall not apply to obligations of the United States or any of its agencies.

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, or is in need of money with which to initiate the operation of the Fund, the Fund may borrow the money needed from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is $500,000 or less, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds $500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the Pipeline, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all assets remaining in the Fund shall be placed in a temporary trust fund account within the State of Alaska. The terms of the trust arrangement shall be determined by the Secretary. During the next succeeding session of Congress, the Secretary shall request that Congress provide for final disposition of the Fund. If Congress at any time establishes a comprehensive oil pollution liability fund which supersedes or repeals the Fund, the Fund assets and any pending claims shall be disposed of as Congress or the Secretary shall direct.

§ 29.14 Information collection.

The information collection requirements contained in 43 CFR 29.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned approval No. 1084-0026. The information being collected is the information required to substantiate claims submitted to the Fund. The information will be used to determine whether the claims are appropriate for payment by the Fund. Submission of this information is required of claimants before a claim can be considered.

Date: December 31, 1987.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 88-2491 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-RG-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1152

[Ex Parte No. 274 (Sub-No. 12B)]

Rail Abandonments; Environmental and Historic Preservation Conditions

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is delegating to the Director of the Office of Proceedings authority to decide petitions partially to revoke and petitions to reopen abandonment exemptions granted under 49 U.S.C. 10505 and the Commission's class exemption procedures in 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights,* for the purpose of expediting Commission action on requests to impose conditions limiting salvage of the rail properties for environmental and historic preservation purposes. Appeals of these decisions will be acted on by the entire Commission.

EFFECTIVE DATE: March 2, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [Telephone Number for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The text of the rules is set forth below.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect either the quality of the human environment or energy conservation. It may improve both. Since public comment is not required under 5 U.S.C. 553, the Regulatory Flexibility Act does not apply to this proceeding. *See* 5 U.S.C. 603.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations.

49 CFR Part 1152

Abandonments and discontinuances, Investigations, Railroads.

Decided: January 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley and Simmons. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B, Chapter X, Parts 1011 and 1152 of the Code of Federal Regulations are amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for 49 CFR Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.2 is amended by revising paragraph (a)(8) to read as follows:

§ 1011.2 The Commission.

(a) * * *

(8) All appeals of initial decisions determining:

(i) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing);

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d), for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations;

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 and 49 CFR Part 1152 Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes; and

(iv) The applicability and administration of the Trails Act (16 U.S.C. 1247(d)) in abandonment proceedings under 49 U.S.C. 10903-04

(and abandonment exemption proceedings) as set forth in 49 CFR 1011.8(c) (4) and (5).

Appeals on these matters must be filed within 10 days of the date the action is taken, and responses must be filed within 10 days thereafter.

3. Section 1011.8 is amended by revising paragraph (c)(3) to read as follows:

§ 1011.8 Delegation of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

(c) * * *

(3) Whether partially to revoke or to reopen abandonment exemptions authorized under 49 U.S.C. 10505, and 49 CFR Part 1152, Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes.

* * * * *

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

4. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

5. Section 1152.25 is amended by revising paragraph (e)(1) to read as follows:

§ 1152.25 Participation in abandonment or discontinuance proceedings.

* * * * *

(e) *Appellate procedures*—(1) *Scope of rule.* Except as specifically indicated below, these appellate procedures are to be followed in abandonment and discontinuance proceedings in lieu of the general procedures at 49 CFR Part 1115. Appeals of initial decisions of the Director of the Office of Proceedings determining:

(i) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing);

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations;

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 and 49 CFR Part 1152 Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes; and

(iv) The applicability and administration of the Trails Act (16 U.S.C. 1247(d)) in abandonment proceedings under 49 U.S.C. 10903–04 (and abandonment exemption proceedings) as set forth in 49 CFR 1011.8(c) (4) and (5) will be acted on by the entire Commission as set forth at 49 CFR 1011.2(a)(8).

An original and 10 copies of all appeals, and replies to appeals, under this section should be filed with the Commission.

* * * * *

[FR Doc. 88–2402 Filed 2–4–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 71030-7277]

Foreign Fishing; Foreign Fee Schedule; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the preamble for the final rule which amends the fee schedule for foreign vessels fishing in the exclusive economic zone which was published January 5, 1988 (53 FR 134).

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202–673–5319, or telex 467856 U.S. COMM FISH CI.

In rule document 87–30204 on page 134 in the issue of January 5, 1988, under the **"SUMMARY"** heading, column 3, line 10, after "$13.467" insert "million".

Dated: February 2, 1988.

Carmen J. Blondin,

Special Associate for Trade, National Marine Fisheries Service.

[FR Doc. 88–2492 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 70605-7141]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for Spanish mackerel from the Gulf of Mexico migratory group. The Acting Director, Southeast Region, NMFS, has determined that the commercial allocation of 1.42 million pounds will be reached on February 1, 1988. This closure is necessary to protect the overfished Spanish mackerel resource.

EFFECTIVE DATES: Closure is effective at 0001 hours, local time, February 2, 1988, until 2400 hours, local time, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP), as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Amendment 2 to the FMP, which went into effect on June 30, 1987 (52 FR 23836, June 25, 1987), established separate allocations for the Gulf and Atlantic migratory groups of Spanish mackerel. Regulations effective June 30, 1987, implemented catch limits recommended by the Councils for the Gulf migratory group for the fishing year (July 1, 1987, through June 30, 1988). Those regulations set the commercial allocation at 1.42 million pounds (52 FR 25012, July 2, 1987). The management area for the Gulf migratory group of Spanish mackerel extends from the Mexico/United States border east and north to a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4′ N. latitude).

The Secretary is required under § 642.22 to close any segment of the Spanish mackerel fishery when its allocation has been reached or is projected to be reached by publishing a notice in the **Federal Register**. The Acting Regional Director had determined that the allocation of 1.42

million pounds for the Gulf migratory group of Spanish mackerel will be reached on February 1, 1988. Hence, the commercial fishery for Gulf migratory group Spanish mackerel is closed effective 0001 hours, local time, February 2, 1988. The closure will remain in effect through June 30, 1988, the end of the fishing year.

The Acting Regional Director previously determined that the recreational allocation of 1.08 million pounds for the Gulf migratory group of Spanish mackerel was reached on December 15, 1987. The recreational bag limit for this group was reduced to zero on December 16, 1987 (52 FR 47724, December 16, 1987).

With closure of the commercial fishery, all commercial and recreational fisheries in the EEZ for the Gulf migratory group of Spanish mackerel are closed through June 30, 1988. During the closure, Gulf migratory group Spanish mackerel may not be harvested from or possessed in the EEZ and may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

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

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 2, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-2373 Filed 2-2-88; 10:00 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Pickles; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: AMS is correcting errors in references to Tables in § 52.1687(c) and § 52.1689(b) of the proposed U.S. grade standards for pickles which appeared in the **Federal Register** on December 8, 1987 (52 FR 46486). Please note an additional correction is published elsewhere in the CORRECTIONS section of this issue.

DATE: Comments must be received on or before February 8, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, Telephone (202) 447-6247.

SUPPLEMENTARY INFORMATION: AMS has proposed a revision of the U.S. Standards for Grades of Pickles published in the **Federal Register** on December 8, 1987 (52 CFR 46486). Errors in reference to tables are discussed briefly below and are corrected by this notice.

The following corrections are made in FR Doc. 87-28088, the U.S. Standards for Grades of Pickles published in the **Federal Register** on December 8, 1987 (52 FR 46486).

1. Beginning on page 46490, third column, § 52.1687(c) in line 3, reference to "Table III" should be changed to read "Table IV."

2. On page 46491, second column, § 52.1689(b) in line 3, remove the words "Table V and".

Dated: February 2, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-2423 Filed 2-4-88; 8:45am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1102-88]

Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The proposed rule would expand the coverage of the waiver of inadmissibility of mentally retarded aliens seeking entry as nonimmigrants. Present regulations provide a blanket waiver for Canadian nationals and alien residents of Canada having a common nationality with Canadians. The revised regulation would confer this waiver on all nationalities.

DATE: Comments must be submitted on or before April 5, 1988.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW. Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Joanna London, Associate General Counsel, Room 7048, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone: (202) 633-2895.

SUPPLEMENTARY INFORMATION: The proposed revision to 8 CFR 212.4(e) would provide a blanket waiver of inadmissibility for mentally retarded aliens seeking admission as nonimmigrants, if accompanied by a family member or guardian who would be responsible for the individual. Under section 212(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(1), a mentally retarded alien is inadmissible to the United States. This inadmissibility may be waived and the alien admitted by the Attorney General, in the exercise of discretion, under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3).

Presently, a blanket waiver is provided in the case of Canadian nationals and alien residents of Canada having a common nationality with Canadians. It is the Service's view that the same blanket procedure should be made available to all other nationalities. This procedure would facilitate the travel of mentally retarded individuals and their families without harm to the public interest, based on Service experience in administering the present limited Canadian waiver.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities.

This is not a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Discretionary relief, Health.

For the reasons set out in the preamble, Title 8, Chapter I, Subchapter B, of the Code of Federal Regulations is proposed to be amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1252, 48 FR 8039, 8 C.F.R. 2, unless otherwise noted.

2. Section 212.4 is amended by revising paragraph (e) as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d) (3).

* * * * *

(e) *Inadmissibility under section 212(a)(1) or 212(a)(24)*—(1) *Section 212(a)(1).* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of a nonimmigrant visitor is authorized

notwithstanding inadmissibility under section 212(a)(1) of the Act, if such alien is accompanied by a member of his/her family, or a guardian who will be responsible for him/her during the period of admission authorized.

(2) *Section 212(a)(24).* The temporary admission of any nonimmigrant inadmissible solely under section 212(a)(24) of the Act is authorized.

* * * * *

Dated: January 21, 1988.

Richard E. Norton,

Associate Commissioner, Examinations.

[FR Doc. 88-2499 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Change in Composition of Advisory Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the change in composition of the High-Level Waste Licensing Support System Advisory Committee and notice of next meeting.

SUMMARY: The Nuclear Regulatory Commission is changing the composition of the High-Level Waste Licensing Support System Advisory Committee. This advisory committee was established to develop recommendations for revision of the Commission's Rules of Practice (10 CFR Part 2) related to the ajudicatory proceeding for issuance of a license for the disposal of high-level waste (HLW) in a geologic repository. Specifically, the committee is attempting to negotiate a consensus on the procedures for the submission and management of records and documents for the HLW licensing proceeding. Recent amendments to the Nuclear Waste Policy Act have changed the site selection process for a HLW repository, narrowing the parties that may be affected by this rulemaking. Consequently, the Commission has revised the composition of the committee to reflect this change.

DATE: The next meeting of the revised HLW Licensing Support System Advisory Committee will be held on March 22, 23, and 24, 1988, beginning at 9:00 a.m., in Reno, Nevada. The location of this meeting in Reno, Nevada, will be announced at a later date. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

NRC Staff

Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-1623.

Kenneth L. Kalman, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301-492-0428.

Facilitators

Howard S. Bellman
Timothy J. Mealey
Matthew A. Low
Kirk Balcom
Conservation Foundation, 1250 24th Street, Washington, DC 20037, 202-293-4800

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1987 (52 FR 29024), the Commission announced the formation of an advisory committee ("negotiating committee") to develop recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). Specifically, the committee is attempting to negotiate a consensus on the procedures for the submission and management of records and documents for the HLW licensing proceeding. These revisions relate to the development of an information management system (the "Licensing Support System" or "LSS") that would contain all of the data supporting the DOE license application, as well as all of the potentially relevant documents generated by the NRC and other parties to the licensing proceeding. Implementation of this system was intended to accomplish the following objectives—

- To facilitate discovery by providing comprehensive and easy access to potentially relevant licensing information;
- To establish the information base for the licensing proceeding, to the extent practicable, before the DOE license application is submitted and the three year statutory time period begins;
- To facilitate review of the relevant licensing information by all parties and eventually the boards through the provision, to the extent practicable, of full text search capability;
- To reduce the time associated with the physical submission of motions and other documents associated with the licensing proceeding by providing for the electronic transmission of these documents;

As stated in the August 5, 1987 **Federal Register** Notice, the Commission considered parties for membership on the negotiating committee on the basis of: (1) Whether they have a direct, immediate, and substantial stake in the rulemaking, (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. The Commission also noted its concern that the negotiating committee be kept to a manageable size in order to maximize the potential for arriving at a consensus.

Based on the above criteria, the Commission invited the following groups to participate on the negotiating committee—

(1) State of Nevada
(2) State of Washington
(3) State of Texas
(4) Yakima Indian Nation
(5) Nez Perce Indian Tribe
(6) Confederated Tribes of the Umatilla Indian Reservation
(7) Department of Energy
(8) National Congress of American Indians
(9) Utah, Oregon, and Mississippi (jointly)
(10) Minnesota and Wisconsin (jointly)
(11) The Sierra Club, Environmental Defense Fund, and Friends of the Earth (jointly)
(12) Nuclear Waste Task Force, representing a coalition of local Texas nongovernmental groups
(13) Edison Electric Institute and the Utility Nuclear Waste Management Group (jointly)
(14) Nuclear Regulatory Commission
(15) U.S. Council for Energy Awareness
(16) National Conference of State Legislatures
(17) National Association of Regulatory Utility Commissioners
(18) State of Tennessee
(19) Penobscot Indian Nation

A coalition of local governments from the State of Nevada was added at a later date. The negotiating committee has met monthly since September 1987. Considerable progress has been made in defining and prioritizing the relevant rulemaking issues, and in developing a consensus on those issues.

The Nuclear Waste Policy Amendments Act of 1987

On December 22, 1987, the President signed into law a bill amending the Nuclear Waste Policy Act (the Nuclear Waste Policy Amendments Act of 1987, Pub. L. No. 100-203). The new law provides for a phase-out of site-specific

activities at all first round candidate sites other than the Yucca Mountain site in Nevada within ninety days of enactment. If the Yucca Mountain site is found to be unsuitable for a geologic repository, new legislative authority would be needed to begin characterization of any other site. In regard to the second geologic repository, no site-specific activity can be conducted unless specifically authorized by Congress. Such authorization cannot be considered until the Secretary of Energy reports to Congress. This report will not be submitted until January 1, 2007, at the earliest. The legislation nullifies the Department of Energy (DOE) proposal to locate a Monitored Retrievable Storage facility (MRS) on the Clinch River in Oak Ridge, Tennessee, as well as any of the alternative sites in the proposal. The Secretary of Energy is authorized to site, construct, and operate an MRS. However, the Secretary may not select a site for an MRS until after a number of conditions are met, including—

- After the report and recommendation of the independent MRS Review Commission is submitted to Congress on June 1, 1989;
- After the Secretary evaluates potentially suitable MRS sites;
- After the Secretary recommends to the President the approval of a site for the development of a geologic repository.

The primary effect of the legislation is to focus the Department of Energy's site characterization efforts on a single site in Nevada to determine its suitability as a site for a geologic repository. Efforts in regard to other first round sites for a geologic repository, and the search for a second geologic repository, have been terminated. The Commission's selection of the participants for the original negotiating committee was based upon the wide range of first and second round sites that were possible candidates for the location of a geologic repository under the existing statutory framework. With the change in the statutory framework, the Commission now believes it is appropriate to revise the composition of the negotiating committee to reflect the focus on characterizing the Nevada site. The members of the revised committee are—

- State of Nevada;
- a coalition of Nevada local governments;
- Sierra Club, Environmental Defense Fund, and Friends of the Earth (jointly), representing a coalition of nonprofit environmental groups;
- Edison Electric Institute and the Utility Nuclear Waste Management Group (jointly);
- Department of Energy;
- Nuclear Regulatory Commission.

Additional membership on the new committee will be governed by committee protocols. The Commission expresses its appreciation to all former participants for their service on the negotiating committee. Their participation has provided a solid foundation for the continuing work of the new committee. In addition, the Commission would welcome any former committee members to convey any remaining concerns on the rulemaking issues to the committee at future meetings.

Federal Advisory Committee Act

In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1, the Commission has submitted an amended charter for the negotiating committee to the General Services Administration that reflects the change in committee composition. In accordance with the Commission's regulations in 10 CFR Part 7, advance notice of negotiating committee meetings will be provided in the **Federal Register**, the meetings of the full negotiating committee will be open to the public, members of the public will be able to submit written or oral statements to the committee, and detailed minutes of each meeting will be made available for public review and copying.

The next meeting of the negotiating committee is scheduled for March 22, 23, and 24, 1988. The previously scheduled meeting on February 11 and 12, 1988, has been cancelled.

Dated at Bethesda, Maryland, this 1st day of February 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-2429 Filed 2-4-88; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Regulations Under Section 206(b) of the Museum Services Act

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Institute of Museum Services issues proposed regulations under section 206(b) of the Museum Services Act relating to award of contracts and cooperative agreements to professional museum organizations. Language in the fiscal year 1988 appropriation for IMS provides the necessary appropriations act authority under this section.

DATE: Comments will be received until March 7, 1988.

ADDRESS: Comments should be addressed to Rebecca Danvers, Director of Programs, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave. NW., Washington, DC 20506 (202-786-0536).

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Director of Programs, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave. NW., Washington, D.C. 20506 (202-786-0536).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and has been amended and extended.

The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

> It is the purpose of the [the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of nonformal education for all age groups: to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage: and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board (Board) and a Director.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L. 97-100, December 23, 1981; Pub. L. 97-394, December 30, 1982.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public. During Fiscal Year 1988 IMS provides three types of grant assistance to museums: (1) General operating support; (2) conservation assistance; and (3) museum assessment assistance.

2. Purpose and Scope of Proposed Regulations

Section 206(b) of the Museum Services Act, 20 U.S.C. 965(b), provides for

financial assistance to professional museum organizations in the following terms:

(b) *Contracts and cooperative agreements; professional museum organization*

(1) The Director, subject to the policy direction of the National Museum Services Board, is authorized to enter into contracts and cooperative agreements with professional museum organizations to provide financial assistance to such organizations in order to enable such organizations to undertake projects designed to strengthen museum services, except that any contract or cooperative agreements entered into pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in appropriations Acts.

(2)(A) No financial assistance may be provided under this subsection for any project for a period in excess of one year.

(B) No financial assistance may be provided under this subsection for the operational expenses of any professional museum organization.

(3) The aggregate amount of financial assistance made under this subsection to professional museum organizations shall not exceed 5 percent of the amount appropriated under [the Act] for such fiscal year.

(4) For purposes of this subsection, the term "professional museum organization" means a private, nonprofit professional museum-related organization, institution, or association which engages in activities designed to advance the well-being of museums and the museum profession.

Language in the fiscal year 1988 appropriation for IMS provides the necessary appropriations act authority to provide the assistance described in section 206(b) of the Museum Services Act in fiscal year 1988. Because IMS has no regulations or guidelines governing applications for such assistance or post-award conditions, the Institute, after receiving the policy direction of the Board, is issuing proposed regulations for public comment. These regulations, after final publication, are expected to govern the award of contracts or cooperative agreements under section 206(b) for this fiscal year and future fiscal years.

The proposed regulations closely track section 206(b) with respect to those matters for which there is statutory language. Provision is made in the regulations regarding eligibility, applications, activities for which assistance will be made available, and conditions for receipt of funds. It is anticipated that, in view of the limited time frame that is available within fiscal year 1988 for receipt and processing of applications, that applications, for fiscal year 1988 will be invited in light of the proposed regulations. However, applicants will be given additional time to revise proposals *if* the final regulations differ materially from the proposed.

3. Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

4. Regulatory Flexibility Act Certification

The Director certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these proposed regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect certain organizations receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

5. Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 30th day after publication of this document will be considered in developing in the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 510, 1100 Pennsylvania Avenue NW, Washington, DC, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 45 CFR Part 1180

Museums, National boards.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: January 29, 1988.

Lois Burke Shepard,

Director, Institute of Museum Services.

PART 1180—[AMENDED]

1. The authority citation for 45 CFR Part 1180 continues to read as follows.

Authority: 20 U.S.C. 961 et seq.

Part 1180 of Title 45 CFR is amended by adding a new subpart E consisting of § 1180.77 to read as follows:

Subpart E—Assistance To Professional Museum Organizations

§ 1180.77 Contracts and cooperative agreements with professional museum organizations.

(a) *Scope.* The guidelines and standards in this document apply to all aspects of the Institute's program to provide financial assistance, through contracts and cooperative agreements, to professional museum organizations for the carrying out of certain projects pursuant to section 206(b) of the Act.

(b) *Definitions.* For the purposes of this subpart the term "professional museum organization" means a private, nonprofit professional museum services related organization, institution, or association which engages in activities designed to advance the well-being of museums eligible for assistance under this part and the museum profession through such activities as technical assistance, dissemination of information, professional development activities, and professional services.

(c) *Applicability of other regulations.* The following IMS regulations apply to assistance under this subpart:

(1) § 1180.3; § 1180.4; and § 1180.5(e) of Subpart A, and

(2) § 1180.30–1180.33 and § 1180.36–1180.39 of Subpart B; and

(3) § 1180.44 and § 1180.46 and § 1180.51–1180.59 of Subpart C.

(d) *Applicants.* (1) A professional museum organization may apply for assistance under this subpart by contract or cooperative agreement.

(2) A professional museum organization that serves museums or museum professionals at the national, regional, state, or local level may apply.

(e) *Types of projects.* The Institute considers applications under this subpart to carry out projects designed to strengthen museum services such as:

(1) Programs to educate museum professionals in improved or innovative standards of museum operations or other matters relating to museum management;

(2) Research or surveys to determine effective and innovative methods to provide museum services or conduct operations;

(3) Projects to investigate the feasibility of cooperative methods for the carrying out by museums of management, storage, and information gathering and sharing or other museum functions; or

(4) Research projects to help museums and museum associations serve their publics more effectively.

(f) *Limitation.* No financial assistance may be provided under this subpart to pay for the operational expenses of any professional museum organization.

(g) *Amount of contract or cooperative agreement.* A professional museum organization should not expect to receive a contract or cooperative agreement under this subpart in excess of $100,000. It is anticipated that most contracts or cooperative agreements under this subpart will be in an amount smaller than $50,000.

(h) *Matching.* A contract or cooperative agreement under this subpart for any fiscal year may not normally exceed 50 per centum of the cost of the project for which the contract or cooperative agreement is made. In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive this requirement pursuant to section 206(c) of the Act.

(i) *Application requirements.* (1) An applicant under this subpart must submit an application containing the information requested by the Institute.

(2) An applicant must submit with its application its financial statements for the two most recent fiscal years for which information is available. For applications requesting in excess of $20,000, the Institute requests that one of those statements be audited.

(j) *Procedures for review of applications.* To evaluate applications and determine the amount of their awards, the Institute rates competitive applications under the applicable criteria stated in paragraph (k). Normally, these applications are evaluated by field reviewers, panels of experts, or both. The Director may also use technical experts in the review of applications. Final determinations as to the award of contracts are made by the Director after consultation with the Board with respect to policy matters.

(k) *Criteria.* This paragraph sets forth the criteria that the Institute uses in evaluating and reviewing applications for contracts or cooperative agreements under this subpart. Panelists and field reviewers are instructed to use only these criteria in the evaluation and review of these applications:

(1) To what extent is the project likely to strengthen museum services?

(2) To what extent does the project hold promise of exploring or developing effective and innovative solutions to problems affecting the provision of museum services or operations?

(3) Has the need for the project been adequately documented?

(4) What is quality of the project design?

(5) Does the project have an adequate budget to achieve its purpose?

(6) What are the qualifications of the personnel the applicant plans to utilize in the project?

(7) What are the anticipated long-term benefits of the project?

(l) *Duration.* No financial assistance may be provided under this subpart for any project for a period in excess of one year.

(m) *Limitation of Application.* An applicant may submit only one application with respect to each deadline.

[FR Doc. 88-2309 Filed 2-4-88; 8:45 am]

BILLING CODE 7036-01-M

Notices

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Projects in Kentucky, Pennsylvania & California; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of Funds; VISTA Projects.

SUMMARY: ACTION announces the availability of funds for fiscal year 1988 for new VISTA program grants authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113) in the States of Kentucky, Pennsylvania, and California. The deadline for receipt of applications is 5PM local time, April 8, 1988. Applications not approved by ACTION for fiscal year 1988 may at the discretion of the agency be retained for consideration for fiscal year 1989. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation for Kentucky and Pennsylvania are available from: Helen Griffin, ACTION Region 3, U.S. Customs House, 2d and Chestnut Street, Room 108, Philadelphia, PA 19106, 215-597-0741.

Application packages for California are available from Patrick Twohig, ACTION Region 9, 211 Main Street, Room 530, San Francisco, CA 94105, 415-974-0675. Technical Assistance on grant preparation is available in Southern California from Lowell Brinson, ACTION, 11000 Wilshire Boulevard, Room 14218, Los Angeles, CA 90024, 213-209-7421, and in Northern California from Peter Heinau, ACTION, 211 Main Street, Room 534, San Francisco, CA 94105, 415-974-0690.

A. Background and Purpose

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons affected with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunters and for the absorption of the Volunteers' functions by other facets of the community.

B. Objectives

ACTION will be awarding grants for the placement of VISTA volunteers in Kentucky, Pennsylvania, and California in the following emphasis areas:

1. *Unemployment*—Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

2. *Homelessness*—development and/or expansion of short/long term shelters or housing for low-income single adults and families and runaway youth. VISTA activities might include information referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counselling programs for at risk youth; and job-training services for shelter residents.

3. *Drug & Alcohol Abuse*—prevention and education programs directed primarily at low-income youth; and development of low-income parent support groups.

4. *Economic Development*—appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; planning and organization of self-help strategies for low-income residents of "enterprise/job zones"; and entrepreneurial development and management training

for low-income individuals attempting to enter the business sector.

C. Eligible Applicants

Eligible applicants for VISTA program grants are private nonprofit organizations, or Federal, State, or local agencies.

D. Scope of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Volunteer upon completion of his/her service. The average Federal cost of one volunteer service year, i.e., total Federal cost divided by total number of VISTA volunteers, cannot exceed $8,000 nor may the amount of Federal funding for a grant exceed $120,000. Grants of 10–15 volunteers may range from $80,000–$120,000 in Federal funds.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of volunteer transportation, supervision, and/or training. In particular, there should be a 50% non-Federal match for the supervisor's salary and fringe benefits. The supervisor of the VISTA project must serve on a full-time basis. This support can be achieved through cash or allowable in-kind contributions.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria for Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of new VISTA program grants. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies;

2. Comply with applicable financial and fiscal requirements established by ACTION or other relements of the Federal Government;

3. Show that the goals, objectives, and volunteer task are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result;

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project;

5. Have evidence of local public and private sector support in the form of endorsement letters from those organizations, government entities, and institutions that are aware of, and will be involved in supporting, the VISTA project efforts;

6. Be designed to generate private sector resources and encourage local, part-time volunteer service;

7. Provide for frequent and effective supervision of the volunteers;

8. Identify resources needed and make them available to volunteers to perform their tasks;

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization.

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers

(a) Is the number of volunteers being requested appropriate for project goals and objectives as stated?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignments(s)?

(d) Are the volunteer assignments designed to use the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in a number of activities, including, among others:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Region 3 will review and evaluate all eligible applications from Kentucky and Pennsylvania, and ACTION Region 9 will review and evaluate all eligible applications from California, prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications from Kentucky and Pennsylvania must be submitted to Helen Griffin, ACTION Region 3, U.S. Customs House, 2d and Chestnut Streets, Philadelphia, PA 19106, 215–597–0741. One signed original and two copies of all completed applications from California must be submitted to: Patrick Twohig, ACTION, Region 9, 211 Main Street, Room 530, San Francisco, CA 94105, 415–974–0675. The deadline for receipt of applications is 5 P.M. local time, April 8, 1988. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

(a) VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421B) with a detailed budget justification.

(b) CPA certification of accounting capability.

(c) Copy of recent Articles of Incorporation.

(d) Proof of non-profit status or an application for non-profit status, and related documentation.

(e) Current resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

(f) Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

(g) A list of the Board of Director Members which includes their professional affiliations.

Signed at Washington, DC, this 2d day of February, 1988.

Donna M. Alvarado,

Director.

[FR Doc. 88-2540 Filed 2-4-88; 8:45 am]

BILLING CODE 6060-28-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Colorado River Basin Salinity Control Project, Big Sandy River Unit, Wyoming

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of an amended record of decision.

SUMMARY: Frank S. Dickson, responsible Federal official for projects administered under the provisions of Pub. L. 93-320, as amended in 1984, in the State of Wyoming, is hereby providing notification that an amended record of decision to proceed with the installation of the Colorado River Basin Salinity Control Project, Big Sandy River Unit, Wyoming, is available. Single copies of this amended record of decision may be obtained from Frank S. Dickson at the address shown below.

FOR FURTHER INFORMATION CONTACT: Frank S. Dickson, State Conservationist, Soil Conservation Service, Federal Building, Room 3124, 100 East B Street, Casper, Wyoming 82601, telephone 307-261-5201.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.906 River Basin Surveys and Investigations and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Frank S. Dickson,

State Conservationist.

Date: January 28, 1988.

[FR Doc. 88-2424 Filed 2-4-88; 8:45 am]

BILLING CODE 3410-16-M

Skalkaho Highline Wooden Syphon, RC&D Measure Plan, Montana; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursaunt to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Skalkaho Highline Wooden Syphon RC&D Measure Plan, Hamilton, Montana.

FOR FURTHER INFORMATION CONTACT: Glen H. Loomis, State Conservationist, Soil Conservation Service, 10 East Babcock, Bozeman, Montana, 59715, telephone (406) 587-6813.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause signficant local, regional, or national impacts on the environment. As a result of these findings, Glen H. Loomis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the replacement of an existing wooden syphon with another syphon.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Wallace A. Jolly.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials.)

Glen H. Loomis,

State Conservationist.

[FR Doc. 88-2410 Filed 2-4-88; 8:45 am]

BILLING CODE 3410-16-M

ARCTIC RESEARCH COMMISSION

Vacancy Announcement

In accordance with the Arctic Research and Policy Act of 1984 (Title I of Pub. L. 98-373), notification is hereby given of a vacancy on the Arctic Research Commission. This five member Commission is appointed by the President. The vacancy occurs among one of the "... three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences."

FOR FURTHER INFORMATION CONTACT: Mr. W. Timothy Hushen, (213) 743-0970.

Mr. W. Timothy Hushen,

Executive Director, U.S. Arctic Research Commission

[FR Doc. 88-2316 Filed 2-4-88; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Changes in Organization and Functions During Calendar Year 1987

AGENCY: Office of the Secretary, Commerce.

SUMMARY: Following is a summary of Department of Commerce units and officals affected by organizational and functional changes during the past calendar year. Complete information on each change may be obtained by requesting a copy of the appropriate Department Organization Order (DOO) listed below:

Office of the Assistant Secretary for Administration

DOO 10-5, Amendment 4 dated 2/5/87, "Assistant Secretary for Administration."

DOO 10-5, Amendment 5 dated 4/7/87.

DOO 10-5, Amendment 6 dated 9/28/87.

DOO 20-1, Amendment 1 dated 4/4/87, "Office of Real Property Programs."

DOO 20-3, Amendment 1 dated 10/1/87, "Office of Budget."

DOO 20-4, Amendment 1 dated 10/1/87, "Office of Program Planning and Evaluation."
DOO 20-5, Revision dated 5/12/87, "Office of Finance and Federal Assistance."
DOO 20-7, Revision dated 1/18/87, "Office of Management and Organization."
DOO 20-7, Amendment 1 dated 10/1/87.
DOO 20-14,Revision dated 1/18/87, "Office of Information Resources Management."
DOO 20-25, New DOO dated 5/7/87, "Office of Library and Information Services".

Assistant Secretary for Productivity, Technology and Innovation

DOO 10-1, Amendment 2 dated 3/5/87, (title above).

Under Secretary for Economic Affiars

DOO 10-9, Amendment 1 dated 3/5/87, (title above).
DOO 10-9, Amendment 2 dated 6/24/87, (title above).

Bureau of the Census

DOO 35-2B, Revision dated 1/6/87, (title above).
DOO 35-2A, Revision dated 7/22/87, (title above).

Economic Development Administration

DOO 45-1, Amendment 1 dated 12/14/87, (title above).

International Trade Administration

DOO 10-3, Amendment 4 dated 2/5/87, "Under Secretary for International Trade."
DOO 40-1, Amendment 5 dated 2/5/87, (title above).

National Bureau of Standards

DOO 30-2B, Revision dated 4/30/87, (title above).
DOO 30-2B, Amendment 1 dated 6/18/87.

National Oceanic and Atmospheric Administration

DOO 25-5A, Amendment 2 dated 6/18/87, (title above).
DOO 25-5A, Amendment 3 dated 11/2/87.
DOO 25-5B, Amendment 1 dated 5/11/87, (title above).
DOO 25-5B, Amendment 2 dated 6/18/87.

Patent and Trademark Office

DOO 10-14, Amendment 2 dated 9/28/87, "Assistant Secretary and Commissioner of Patents and Trademarks".
DOO 30-3, Revision 1 dated 5/26/87, (title above).
DOO 30-3, Amendment 1 dated 9/15/87.

FOR FURTHER INFORMATION CONTACT: Robert L. Ingram, Office of Management and Organization, Department of Commerce Room 5317,Washington, DC 20230, Telpphone (202) 377-5481.

Stephen C. Browning,

Acting Director, Office of Management and Organization.

[FR Doc. 88-2381 filed 2-4-88; 8:45 am]

BILLING CODE 3510-DK-M

Foreign-Trade Zones Board

[Docket No. 4-88]

Proposed Foreign-Trade Zone, Ponce, PR; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico International Distribution Center and Free Zone, Inc. (PFZ), a non-profit corporation involving the City of Ponce and the Ponce Chamber of Commerce, requesting authority to establish a general-purpose foreign-trade zone in Ponce, Puerto Rico, within the Ponce Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the board (15 CFR Part 400). It was formally filed on January 20, 1988. PFZ is authorized to make the proposal under Joint Resolution 1406 of the Puerto Rico Legislative Assembly (approved 6/2/86).

The proposed zone is located on a 168-acre industrial park site east of Avenida Malecon (State Board No. 14) at the Port of Ponce. The site, owned by the City, is being developed as a trade and distribution center. Plans call for the construction of 180,000 square feet of warehouse to be utilized for general-purpose zone activity.

The application contains evidence of the need for zone services in the Ponce area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of ceramics, food products, wearing apparel and machinery parts. Specific manufacturing approvals are not being sought at this time. Requests will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 409 Brickell Place, Room 7322, Miami, Florida 33130; and Colonel Charles T. Myers III, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232-0019.

As part of its investigation, the examiners committee will hold a public hearing on March 9, 1988, beginning at 9:30 a.m., at the Casa Alcadia, Salon Asamblea on the Plaza Degetau in Ponce.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202) 377-2862 by March 2. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through April 11, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Area/Port Director's Office, U.S. Customs Service, P.O. Box 127, Ponce, Puerto Rico 00731
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: January 27, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-2504 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 32-87]

Foreign-Trade Zone 39, Dallas/Fort Worth, TX; Application for Subzone and Harvey Industries Television Plant, Athens, TX; Amendment of Application

Notice is hereby given that the application submitted to the Foreign-Trade Zones (FTZ) Board by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, for special-purpose subzone status at the television assembly plant of Harvey Industries, Inc., in Athens, Texas (52 FR 44620, 11-20-87) has been amended. The original application indicated that zone procedures would be used for the assembly of television receivers. The company now indicates it plans to include radio receivers in some of the units. Zone procedures would allow the company to elect the duty rate applicable to televisions (5 percent) for

the entire unit, whereas the rate on radio receivers is 6 percent. The application remains otherwise unchanged.

The comments period is reopened until February 26, 1988.

The application and amendment material are available for public inspection at the following locations:

U.S. Department of Commerce, District Office, 1100 Commerce Street, Room 7A5, Dallas, TX 75242

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Ave. NW., Washington, DC 20230.

Dated: January 29, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-2505 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 5-88]

Foreign-Trade Zone 55, Burlington VT; Application for Subzone, Wyeth Nutritionals, Inc., Processing Plant (Food Products/Sugar/Milk), Georgia, VT

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Burlington Industrial Corporation, grantee of FTZ 55, requesting special-purpose subzone status for the food products/sugar/milk processing plant of Wyeth Nutritionals, Inc. (subsidiary of American Home Products Corporation), located in the Town of Georgia, Vermont, adjacent to the St. Albans Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 22, 1988.

The Wyeth plant (16 acres) is located off Town Road 31, within the Georgia Industrial Park, Georgia, Vermont, some 25 miles north of Burlington. The facility employs 220 persons and is used to produce infant milk formula and other children's foods for export. The ingredients, including milk and sugar, are sourced abroad.

The facility currently operates under U.S. Customs Class 6 bonded manufacturing warehouse procedures, which do not allow either the mixing of domestic and foreign ingredients or production for the domestic market. Zone procedures would allow Wyeth to use both domestic and foreign milk and sugar in its export operations. It would also allow the facility to be used for production for the domestic market. The company has agreed to use only domestic ingredients in the products sold in the U.S. market.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Deputy Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, Massachusetts 02110; and Colonel Thomas A. Rhen, District Engineer, U.S. Army Engineer Division New England, 424 Trapelo Road, Waltham, Massachusetts 02254.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 17, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Main and Stebbins Streets, P.O. Box 111, St. Albans, Vermont 05478

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 27, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-2506 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-801]

Initiation of Antidumping Duty Investigation; Fabricated Structural Steel From Canada

AGENCY: Import Administration, International Trade Administration Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of fabricated structural steel from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 25, 1988. If that determination is affirmative, we will make a preliminary determination on or before June 20, 1988.

EFFECTIVE DATE: February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 377-3464 or 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On January 11, 1988, we received a petition in proper form filed by the American Institute of Steel Construction, Inc. (AISC) on behalf of U.S. producers of fabricated structural steel. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of fabricated structural steel from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on the winning bid made by Canadian fabricators. Petitioner deducted, where appropriate, the cost of erection and any extras, U.S. Customs duties, inland freight, city taxes, and erection and port bonds.

Petitioner based foreign market value on the constructed value of Canadian fabricated structural steel which was derived form U.S. fabricated structural steel industry cost experience with adjustments for differences in inputs.

Based upon a comparison of United States price and foreign market value, petitioner alleges dumping margins of between 12.00 percent and 19.2 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on fabricated structural steel from Canada and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of fabricated structural steel from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 20, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is fabricated structural steel curently provided for under TSUSA items numbers 609.8400, 609.8600, 652.9400, 652.9500, 652.9600, and 653.0000. and currently classifiable under HS item numbers 7216.90.0000, 7222.40.6000, 7228.70.6000, 7301.20.1000, 7301.20.5000, 7308.90.3000, 7308.90.6000, 7308.90.9090.

Fabricated structural steel (FSS) consists of steel plates, angles, beams and related steel mill products that have been fabricated into articles suitable for erection or assembly into buildings which include industrial, utility, commercial, office, parking decks, assembly, multi-residential, medical, public and transportation facilities. Types of steel products include, but are not limited to, columns (vertical support), beams (floor support), girders (connect beams), base plates (laid over a concrete foundation to assist in distributing a building's load), and trusses (a series of welded or bolted steel sections used in place of conventional beams to span large areas such as lobbies or atriums). FSS also includes entireties or "kits" of fabricated structural shapes. This investigation does not include FSS that is used in the construction of bridges, fabricated reinforcing bars, bar joists, fabricated metal buildings, steel flooring or roof decks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 25, 1988 whether there is a reasonable indication that imports of FSS from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 1, 1988.

[FR Doc. 88-2507 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-701]

Preliminary Negative Countervailing Duty Determination; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that *de minimis* countervailable benefits are being provided to manufacturers, producers or exporters in Malaysia of carbon steel wire rod (wire rod) as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 0.45 percent *ad valorem*. Since this rate is *de minimis*, our preliminary countervailing duty determination is negative. If this investigation proceeds normally, we will make a final determination on or before April 18, 1988.

EFFECTIVE DATE: February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Ross Cotjanle, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0189, 377-3534, or 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that *de minimis* countervailable benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Malaysia of wire rod. For purposes of this investigation, the program on export credit refinancing is preliminarily found to be countervailable. We preliminarily determine the estimated net bounty or grant to be 0.45 percent *ad valorem*. Although we have determined this program to be countervailable, the respondents received *de minimis* benefits during the review period, calendar year 1986. Therefore, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided to manufacturers, producers or exporters in Malaysia of wire rod.

Case History

Since the **Federal Register** publication pertaining to this investigation [the Notice of Initiation (52 FR 36601, September 30, 1987)], the following events have occurred. On October 15, 1987, we presented a questionnaire to the government of Malaysia in Washington, DC, concerning petitioner's allegations. On November 30, 1987, we received a response from the government of Malaysia and a response from Amalgamated Steel Mills Bhd. (ASM), Perdama Corporation Sdn. Bhd. (Perdama), and Tejana Trading Corporation Sdn. Bhd. (Tejana), the respondents identified by the government of Malaysia. ASM is the sole manufacturer of wire rod in this

investigation; Perdama and Tejana are trading companies.

On December 24, 1987, and January 7, 1988, we delivered supplemental/deficiency questionnaires to the government and the respondent companies, and received responses on January 7, 13, 22, and 25, 1988.

On November 2, 1987, the petitioners filed a request that the preliminary determination be postponed for 49 days. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determination to no later than January 15, 1988 (52 FR 43633, November 13, 1987). On January 4, 1988, petitioners requested that we further postpone the preliminary determination by an additional 16 days. Accordingly, we extended the period for the preliminary determination to February 1, 1988 (53 FR 942, January 14, 1988).

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, not over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classified under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the *Tariff Schedules of the United States Annotated* and under items 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, and 7213.50.00 of the Harmonized System.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Program Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers or exporters in Malaysia of wire rod under the following program:

Export Credit Refinancing

According to the responses, the Bank Negara Malaysia, the central bank of Malaysia, administers programs to provide export credit refinancing through commercial banks. The Export Credit Refinancing (ECR) programs, as revised in January 1986, provide pre- and post-shipment financing of exports for periods of up to 92 days. In December 1986, the maximum periods for financing under these programs was extended to 120 and 180 days, respectively.

The eligibility criteria for financing under these programs require that the product either include 30 percent value added or use 60 percent local materials or employ lesser amounts of value added in combination with fewer local materials. The revised ECR program limits financing to a specific percentage of the value of each purchase order or export bill.

A new pilot program for pre-shipment financing was introduced in October 1986 to co-exist with the revised pre-shipment program. The pilot program was not used by the respondent companies for exports of wire rod to the United States during the review period.

According to the responses, all three respondent companies received short-term financing under the ECR loan programs. Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. As a benchmark for short-term loans, we use the national average short-term commercial rate or the most comparable, predominant commercial rate for short-term financing. According to the government response, the Bankers' Acceptance (BA) is the most comparable and commonly used alternative source of short-term financing for imports and exports. The government response lists the monthly average BA rates for 1986. Based on this comparison, we found that ECR loans are provided on terms more favorable than are available for conventional commercial financing. Therefore, we preliminarily determine that ECR loans are countervailable.

To calculate the benefit from the ECR loans in 1986, we used our short-term loan methodology, as set forth in the Subsidies Appendix. Because the ECR loans were shipment specific, we included only those loans which financed exports of wire rod to the United States. We calculated the amount of interest that would have been paid using the BA benchmark and subtracted the amount of interest that was reported as paid. We cumulated the interest saved by ASM and the respondent trading companies. We divided total interest saved on ECR loans by wire rod exports to the United States. We calculated an estimated net bounty or grant of 0.45 percent *ad valorem*.

II. Program Preliminarily Determined Not to Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers or exporters in Malaysia of wire rod under the following program:

Loans From Malaysian Industrial Development Finance (MIDF)

MIDF was established in 1960 by the Malaysian government and several private investors. The original purpose of MIDF was to provide a source of long-term financing for industrial development in Malaysia. The government of Malaysia originally provided funding and some direction to MIDF, but it currently has no direct ownership in MIDF nor does it provide any funding for MIDF loans. It does, however, indirectly own shares in MIDF through the National Equity Corporation for the Bumiputra (native Malaysians).

MIDF is not a bank; rather, it borrows money from other sources and then lends this money at a fixed rate above its own cost of borrowing. One respondent, ASM, had long-term loans from MIDF that were outstanding during the review period.

According to the government response, MIDF provides long-term loans for purchasing machinery, building factories, and expanding existing manufacturing facilities. The government of Malaysia has provided the Department with a list of industries receiving MIDF loans with the number of enterprises in each industry receiving such loans and the aggregate value of MIDF loans disbursed by industry.

These industries include, among others, the food, steel, non-ferrous metals, machinery, wood products, textile, rubber, chemical and paper industries. Because MIDF loans are available to virtually all Malaysian industries, we preliminarily determine that these loans are not limited to a specific enterprise or industry, or group of enterprises or industries.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by manufacturers, producers or exporters in Malaysia of wire rod during the review period:

A. Export Tax Incentives

1. *Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and of Five Percent of the Value of Indigenous Materials Used in Exports.* Section 36 of the Promotion of Investments Act of 1986, as amended by section 19 of the Promotion of Investments (Amendment) Act of 1986, allows abatement of adjusted income equal to (a) 50 percent of the ratio of export sales to total sales and (b) five percent of the value of indigenous Malaysian materials that are incorporated into the manufacture of the exported product. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

2. *Abatement of Net Taxable Income Under Section 29 of the Investment Incentives Act of 1968.* Section 29 of the Investment Incentives Act of 1968 provided for an export allowance of eight percent of the increase in the gross income derived from the export of products incorporating more than 50 percent local content, or an allowance of five percent if local content was less than 50 percent. This provision applied to income in tax years prior to 1979. Section 29 was amended in 1980 by the Investment Incentives Act of 1980. Section 29, as amended by this Act, allowed for a deduction of two percent of the ex-factory value of exports from taxable income and a deduction of ten percent of the increase in export value from the preceding year. According to the responses, none of the respondent companies claimed benefits under either version of this program on the tax return filed during the period of review. The further evolution of section 29, as amended in 1983, is discussed in the program immediately below.

3. *Abatement of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-made Products.* Effective in 1984, the government of Malaysia again amended section 29 of the Investment Incentives Act of 1968, (*see* section III.A.2. of this notice) to provide a flat deduction of five percent of the f.o.b. value of export revenues from taxable income to most manufacturing companies. This amendment applied to tax returns filed in assessment years 1985 and 1986. The Promotion of Investments Act of 1986 repealed the Investment Incentives Act of 1968, effective January 1, 1986. The Promotion of Investments Act of 1986, as amended, allows the same five percent of export sales as an abatement of taxable income, but limits use in this provision to resident trading companies and agricultural companies. According to the responses, none of the respondent companies claimed benefits under either version of this program on the tax return filed during the review period.

4. *Double Deduction For Export Credit Insurance.* Beginning in 1985, the Income Tax Rules provided for an additional tax deduction of the cost of premiums for export credit insurance in addition to the deduction allowed from the company income statement, *i.e.*, the starting point for determining taxable income. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

5. *Double Deduction For Export Promotion.* The Promotion of Investments Act of 1986 authorizes the Minister of Finance to establish tax rules allowing the deduction of expenses incurred in the promotion of exports for such activities as market research, overseas advertising, participation in foreign trade exhibitions, overseas sales offices, and other specified activities. The Income Tax Rules allow eligible export-related expenses to be deducted twice. According to the responses, none of the respondent companies claimed benefits on the tax return filed during the review period.

6. *Industrial Building Allowance.* The Income Tax Act of 1967 established a depreciation allowance of ten percent initially and two percent annually thereafter, for buildings constructed or purchased for manufacturing. In 1984, the government of Malaysia extended the Industrial Building Allowance to warehouses and bulk storage installations used for storing goods either finished and ready for export or for imported goods to be incorporated into finished goods for export. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

B. Other Export Incentives

Export Insurance Program. The Malaysian Export Credit Insurance Bhd. provides export insurance to cover commercial and political risks at premium rates allegedly inadequate to cover the long-term operating costs and losses of the insurance program. Commercial insurance includes coverage of bankruptcy of the foreign buyer, protracted default of the foreign buyer, and non-acceptance of goods by the foreign buyer after the goods have been shipped. According to the responses, none of the respondent companies used this program during the review period.

C. Government Financial Assistance

1. *Long-Term Loans*—a. *Industrial Development Bank of Malaysia (IDBM).* IDBM provides long-term financing to all sectors of the Malaysian economy, particularly for the expansion of the productive capacity of capital-intensive and high technology industries. According to the responses, none of the respondent companies had IDBM long-term loans on which principal or interest was outstanding during the review period.

b. *Development Bank of Malaysia (DBM).* DBM's purpose is to meet the fiancing needs of Bumiputra entrepreneurs and to promote Bumiputra equity participation in commerce and industry. According to the responses, none of the respondent companies had DMB long-term loans on which principal or interest was outstanding during the review period.

D. Other Tax Incentives

1. *Pioneer Status Under the Promotion of Investments Act of 1986.* According to the government response, there are two pioneer status programs, one under the Investment Incentives Act of 1968 and the other under the Promotion of Investments Act of 1986.

The responses indicate that ASM participated in the pioneer status program of the Investment Incentives Act of 1968 during the period of review (*see* Section V.C. of this notice); no respondent used pioneer status under the 1968 Act.

2. *Investment Tax Credit/Investment Tax Allowance.* The Investment Tax Credit (ITC) program, now rescinded, was provided for under the Investment Incentives Act of 1968. It provided tax benefits, ranging from 25 to 100 percent, for qualifying capital expenditures. In 1986, a new program, the Investment Tax Allowance (ITA), replaced the ITC. The ITA retains many ITC provisions, but does not have supplemental tax

credits allowed by the ITC for location in development areas, for priority products, and for the amount of Malaysian content in the product. According to the responses, none of the companies under investigation have participated in this program.

IV. Programs Determined not to Exist

We preliminarily determine that the following programs do not exist:

A. Abatement of Taxable Income of Five Percent of the Value of Malaysian Made Inputs Incorporated Into Exports

As originally enacted, section 36 of the Promotion of Investments Act of 1986 allowed an abatement equal to a percentage of the value of the Malaysian inputs incorporated into the exported product. The response of the government of Malaysia states that this provision was never implemented and was subsequently eliminated under section 19 of the Promotion of Investments (Amendment) Act of 1986.

B. Abatement of Taxable Income Based on a Percentage of the Value-Added of Exported Products

As originally enacted, section 36 of the Promotion of Investments Act of 1986 allowed an abatement based on a percentage of the value-added of exported products. The response of the government of Malaysia states that this provision was never implemented and was subsequently eliminated under section 19 of the Promotion of Investments (Amendments) Act of 1986.

V. Programs for Which Additional Information is Needed

We preliminarily determine that we need additional information to determine whether the following programs confer bounties or grants on the manufacture, production, or exportation of wire rod from Malaysia:

A. New Investments Fund

According to the responses, the government of Malaysia provides long-term loans under the New Investments Fund (NIF). This program is administered by the Bank Negara Malaysia and has been in effect since September 1985. NIF loans are provided to companies that have qualified for financing from commercial lending institutions. The response states that NIF's purpose is to promote further investment in, and development of, new productive capacity in the manufacturing, agriculture, tourism, and mining sectors. However, the petition included a recent publication of the Malaysian Industrial Development Authority, which states that funds under NIF are also available for working capital for export industries.

ASM has reported in its response that it obtained an NIF loan in 1986. This NIF loan was made by a consortium of banks in connection with several other long-term loans from commercial banks. ASM's response did not indicate the purpose of the NIF loan.

To determine the purpose of the loan under NIF to ASM, we are requesting all loan application documents to the commercial banks, MIDF, and the Bank Negara Malaysia made in connection with the extension of credit from the NIF and the commercial portions of ASM's 1986 long-term loan. Further, to determine if benefits granted under the NIF are limited in any way, it is necessary for use to receive previously requested information including: (1) The eligibility criteria for receiving NIF loans; (2) a translated copy of all provisions of laws and regulations applicable to NIF; and (3) the loan application documents.

B. Duty Drawback and Duty Exemptions

According to the responses, the government of Malaysia allows for duty drawback and duty exemption/waiver on imported materials physically incorporated into exported products, and for duty exemption on certain imported machinery. ASM reported that it did receive duty drawback and duty exemption on imported scrap and billets, but did not receive any duty exemption for machinery ASM imported into Malaysia in 1986.

Duty drawback for imported materials physically incorporated into the exported product is not countervailable under U.S. law if it is not excessive. To determine if excessive duty drawback was given, to determine if the imported materials with duty exemption were physically incorporated into exported products, and to determine whether or not imported materials receiving a duty exemption also received duty drawback upon exporation, the Department is requesting information concerning:

(1) The control system used by the government to assure that duty drawback is not excessive; (2) the control system used by the government to assure that materials with duty exemption are not diverted for domestic use nor receive duty drawback; and (3) machinery and/or raw materials acquired or used by ASM in 1986, which was imported by others, and was exempt from any duty.

C. Pioneer Status Under the Investment Incentives Act of 1968

According to the government response, there are two pioneer status programs, one under the Investment Incentives Act of 1968 and the other under the Promotion of Investments Act of 1986 (*see* Section III.D.1. of this notice). Benefits granted under the pioneer status of 1968 include exemption from the 40 percent company income tax on pioneer status product income, exemption from the five percent development tax on the portion of the net taxable company income derived from pioneer production, exemption from excess profits tax, and exemption to shareholders on dividend income derived from pioneer status profits. Under the 1968 Act, pioneer status may have been granted to increase export capacity.

Pioneer status was granted to ASM for wire rod production for a five year period, July 1, 1979 to June 30, 1984. The response of the government of Malaysia in this investigation states that one-year extensions for pioneer status were available for each of the following criteria met by a company: (1) The production of a "priority product;" (2) the Malaysian content of the product is at least fifty percent; or (3) location in a designated area. The government reported that ASM's initial tax return, filed in April 1986, did not claim pioneer status. However, ASM filed a tax return in 1987 amending the tax return filed in 1986, based on a claim of pioneer status. According to the responses, ASM received a two-year extension based upon the status of wire rod as a priority product and the percentage of Malaysian content in the product. The respones also state that neither of the trading companies received pioneer status under the 1968 Act.

We are not able, with information now available, to conclude whether the original designation of ASM as a pioneer company was granted based on export considerations, or whether extensions of pioneer status are limited to a specific industry or enterprise, or group of industries or enterprises, or are tied to exporting activities.

To determine why ASM received pioneer status in 1979 and priority status in 1986, we are requesting all applications and approvals for these benefits. To determine whether extensions of priority status are limited, we are requesting a breakdown by industry and location of the companies receiving priority status for other than an export purpose. Further, we will request quantitative information on the increase, if any, in deductions carried forward due to ASM's claiming pioneer status on the amended tax return filed in 1987.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on March 18, 1988, at 2:00 p.m. 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 Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the **Federal Register**.

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, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by March 11, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 355.34, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 1, 1988.

[FR Doc. 88-2508 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Program Applications; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Stockton Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-88009-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirement included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105

March 1, 1988 to 10:00 A.M.

Proposals Are to be Mailed to the Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

CLOSING DATE: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1988.

[FR Doc. 88-2390 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council, its standing committees, and its Scientific and Statistical Committee will convene public meetings at the Ala Moana Hotel, 410 Atkinson Drive/ Honolulu, HI, as follows:

Council's Standing Committees—Bottomfish and Executive Committee meetings will convene February 24, 1988, at 9:30 a.m.; Budget, and Precious Corals Committee meetings will convene at 1 p.m.; Ecosystems, Habitat, and Crustaceans Committee meetings at 3 p.m., and Pelagics, and Native Rights Committee meetings at 4 p.m., in the Gardenia and Ilima Rooms, respectively.

Council—Its 61st public meeting will convene February 25, 1988, at 9 a.m., and will adjourn February 26 at 1 p.m., in the Hibiscus Room II, to discuss routine fisheries reports from State, Territorial, and Federal Government Council representatives, as well as reports from private sector Council members from Hawaii, Guam, American Samoa, and the observer from the Commonwealth of the Northern Mariana Islands. The status of crustaceans, bottomfish, precious corals, and pelagics fishery management plans (FMPs) will also be discussed. Council action is anticipated to approve an amendment to the Bottomfish FMP which will be discussed beginning February 25, at 1:30 p.m.;

immediately following, Council action is anticipated to approve an amendment to the Precious Corals FMP. On February 26 the Council will discuss program planning, administrative matters, meetings, conferences, and other appropriate business.

Scientific and Statistical Committee (SSC)—Its 42nd public meeting will convene February 18, 1988, at 9 a.m., in the Anthurium Room, to begin work on the Council's 1989–90 data and research needs document; review amendment #2 limiting access to the bottomfish fishery of the NWHI, to the Bottomfish FMP, and make recommendations to the Council; review amendment #1, including the U.S. Possessions and establishing an experimental permit system to the Precious Corals FMP, and make recommendations to the Council; hear a report from SSC representatives on the National Marine Fisheries Service/Regional Fishery Management Councils' joint meeting (February 5, 1988), regarding proposed revisions to the Code of Federal Regulations, Guidelines for FMPs, as well as discuss other SSC business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368 or FTS 541–1974.

Date: February 1, 1988.

Ann D. Terbush,

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

[FR Doc. 88–2436 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish Plan Monitoring Team and its Bottomfish Advisory Panel (Hawaii members only) will convene separate public meetings, February 10, 1988, and February 15, 1988, respectively, both at 1:30 p.m., at the Council's office (address below), to discuss access management for the Bottomfish Fishery Management Plan.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: February 1, 1988.

Ann D. Terbush,

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

[FR Doc. 88–2437 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Marine Animal Productions (P108I)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Marine Animal Productions, P.O. Box 4078, Gulfport, Mississippi 39502
2. Type of Permit: Public Display
3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*)—6
4. Type of Take: Capture/maintain
5. Location of Activity: Mobile Bay and Mississippi Management area
6. Period of Activity: 3 years

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2493 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification, Dr. Hermann Gucinski (P362); Modification No. 1 to Permit No. 534

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (2) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 220.24 of the regulations governing endangered species (50 CFR Parts 217–222), Scientific Research Permit No. 534 issued to Dr. Hermann Gucinski, Professor of Physics, Anne Arundel Community College, Arnold, Maryland 21012, on April 11, 1986 (51 FR 13548) is modified in the following manner:

Section B.7. is replaced with

7. This Permit is valid with respect to the taking authorized herein until December 31, 1988.

This modification became effective on December 31, 1987.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations

governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-2431 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal; Permit Modification; James T. Harvey (P368); Modification No. 1 to Permit 531

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 531 issued to James T. Harvey, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115-0070, December 9, 1985 (50 FR 51281), is modified as follows:

Section B.5 is replaced by:

5. The take authority of this permit is valid with respect to the taking authorized herein until December 31, 1988.

The effective date of this modification is December 31, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115-0070

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-2432 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal; Permit Modification; Northwest and Alaska Fisheries Center (P77#9); Modification No. 4 to Permit 464

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 464 issued to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115, on April 19, 1984 (49 FR 17795) as modified on April 18, 1985 (50 FR 18283), May 2, 1986 (51 FR 17506), and December 31, 1986 (FR 3691) is further modified as follows:

Section B.7 is replaced by:

7. The permit is valid with respect to the activities authorized herein until December 31, 1988.

The effective date of this modification is December 31, 1987.

The Permit, as modified, is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115-0070.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-2433 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Southwest Fisheries Center, National Marine Fisheries Service (P77Y); Modification No. 2 to Permit No. 372

Notice is hereby given that pursuant to the provisions of 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR Part 222), Permit No. 372 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on March 12, 1982 (47 FR 11755) as modified on December 31, 1986 (52 FR 2251) is further modified as follows:

Section B.6 is replaced by:

6. This permit is valid with respect to the activities authorized herein until December 31, 1988.

This modification became effective on December 31, 1987.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-2434 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Southwest Fisheries Center, National Marine Fisheries Service (P77#17); Modification No. 540

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR Part 222), Permit No. 540 issued to the Southwest Fisheries Center, National Marine Fisheries Services, P.O. Box 271, La Jolla, California 92038, on February 13, 1986 (51 FR 7485) is modified as follows:

Section B.5 is replaced with:

5. This permit is valid with respect to the activities authorized herein until December 31, 1988.

This modification became effective on December 31, 1987.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2435 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 18 February 1988 at 10:00 AM in the Commission's offices at 708 Jackson Place NW., Washington, DC 2006, to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, January 27, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88–2425 Filed 2–4–88; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh; Correction

February 2, 1988.

In footnote 2 of the letter to the Commissioner of Customs published in the **Federal Register** on January 12, 1988 (53 FR 752), TSUSA number 384.4787 should be corrected to 384.4788 for Category 341 pt.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2500 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Polish People's Republic, Correction

February 2, 1988.

In the table in the letter to the Commissioner of Customs published in the **Federal Register** on January 4, 1988 (53 FR 59), the TSUSA numbers for Category 634pt. (knit) should be changed from 381.1902, 381.1906 and 381.1911 to 384.1902, 384.1906, 384.1911. TSUSA number 384.8217 should also be added to this part category.

The sublevel for Category 634pt. (not knit) should be 57,888 dozen instead of 75,888 dozen. The TSUSA numbers for Category 634pt. (not knit) should be changed from 381.2321 and 381.9132 to 384.2321 and 384.9132.

The TSUSA numbers for Category 647 should be changed from 381.2341, 381.2351, 381.9168 and 381.9174 to 384.2341, 384.2351, 384.9168 and 384.9174.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2501 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey; Correction

February 2, 1988.

In footnote 3 of the letter to the Commissioner of Customs published in the **Federal Register** on January 5, 1988 (53 FR 165), add TSUSA numbers 384.0262, 384.0266, 384.0614, 384.0726, 384.0734, 384.3026, 384.3042, 384.4648, 384.4740, 384.4755 and 384.4770 to the TSUSA's for Category 347–T.

In footnote 4, delete TSUSA numbers 384. 0262, 384.0266, 384.0614, 384.0726, 384.0734, 384.3026, 384.3042, 384.4648, 384.4740, 384.4755 and 384.4770 from the TSUSA's for Category 348–T.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2502 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–DR–M

Change in Officials of the Government of Pakistan Authorized To Issue Export Visas From Pakistan

February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, the Government of Pakistan has notified the Government of the United States that Messrs. Mansoor Alam, Research Officer, and Ali Ahmad, Research Officer, Export Promotion Bureau, are now authorized to issue export visas for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products exported to the United States from Pakistan.

The purpose of this notice is to advise the public of this change.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2503 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa 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 Coffee, Sugar & Cocoa Exchange ("CSCE") for designation as a futures contract market in the International Market Index. 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 March 7, 1988.

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 CSCE International Market Index futures contract.

FOR FUTHER INFORMATION CONTRACT: Naomi Jaffee, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 200581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: On October 22, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CSCE's proposed terms and conditions for the International Market Index futures contract (52 FR 39555). In a January 27, 1988 letter to the Commission, the CSCE requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have the opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, as 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 CSCE 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 CSCE 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 the specified date.

Issued in Washington, DC, on February 1, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-2417 filed 2-4-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 27, 1988.

The USAF Scientific Advisory Board Study on Integrated Avionics will meet on 22-26 February 1988, from 8:00 a.m. to 5:00 p.m., at the Pentagon, Room 5D982, Washington, DC.

The purpose of this meeting is to discuss the program plan for conducting the study and to obtain orientation briefings.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-2387 Filed 2-4-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

January 22, 1988.

The USAF Scientific Advisory Board Foreign Technology Division Advisory Group will meet on February 25, 1988, from 8:00 A.M. to 5:00 P.M. and on February 26, 1988, from 8:00 A.M. to 3:30 P.M. at Headquarters, Foreign Technology Division (FTD), Building 856, Wright Patterson Air Force Base, Ohio.

The purpose of this meeting is to receive briefings on and to advise the Commander, FTD, on selected topics involving directed energy weapons.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-2388 Filed 2-4-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

February 1, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Future Undergraduate Pilot Training will meet at Air Training Command Headquarters, Randolph Air Force Base, Texas, on February 23 and 24, 1988.

The purpose of this meeting is to indoctrinate the committee on current and planned pilot training programs and methodology, pilot production rates, and pilot qualification requirements for futute weapon systems.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-2389 Filed 2-4-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Agency Information Collection Activities Under Review by the Office of Management and Budget

Reasons for this Notice: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Lock Performance Monitoring System (PMS) Waterway Traffic Report; ENG Forms 3102C and 3102d; and OMB No. 0702-0001.

Type Of Request: Revision.

Annual Burden Hours: 34,010.

Annual Responses: 753,600.

Needs and Uses: Title 33, Code of Federal Regulations, Part 207, (26 Stat 766) requires that statistics be gathered from users of navigable waters.

Statistics gathered relate to vessels, passengers, freight and tonnage. The data are used to conduct system-wide planning and management of navigable waterways.

Affected Public: Business or other for profit.

Frequency: On Occasion and at Selected Vessel Lockages.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 2, 1988.

[FR Doc. 88-2516 Filed 2-4-88; 8:45 am]

BILLING CODE 3810-01-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 23 and 24 February 1988

Time: 0930-1600 hours, both days

Place: Menlo Park, California

Agenda: The Army Science Board's Ad Hoc Subgroup on Competition in Contracting will meet to gather facts for the study. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administative Officer, Army Science Board.

[FR Doc. 88-2459 Filed 2-4-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 22 February 1988

Time: 1200-1600 hours

Place: Aberdeen Proving Ground, Aberdeen, Maryland

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet to provide a classified briefing to an Army Materiel Command seminar. Following the briefing there will be a discussion period. Due to the classification of the report and ensuing discussions, this meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administative Officer, Army Science Board.

[FR Doc. 88-2458 Filed 2-4-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Mine Warfare Capabilities Task Force will meet February 17-18, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Viriginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine capabilities and potential U.S. vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretarly of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: February 2, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-2475 Filed 2-4-88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Cancellation of Meeting

Notice was published January 21, 1988, at 53 FR 1659 that the Naval Research Advisory Committee Panel on Laser Weapons will meet on February 2-3, 1988. The meeting has been cancelled.

Date: February 2, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-2474 Filed 2-4-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-IA-147, for the sale of 0.02 grams of plutonium, and 74.975 grams of uranium enriched to 93.12 percent in the isotope uranium-235, for use as standard reference materials at the IAEA Safeguards Analytical Laboratory, Vienna, Austria.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be

inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: February 1, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-2415 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above-mentioned agreements, for the transfer of special nuclear material of United States origin from Japan to France or to the United Kingdom for the purpose of reprocessing.

The proposed transfers are as follows:

(1) 1,058 irradiated fuel assemblies containing 194,700 kilograms or uranium, enriched to 0.93 percent in U-235 and 1,511 kilograms of plutonium from the Fukushima No. 1, Units 2, 3, 5 and 6, and Fukushima No. 2, Units 1, 2 and 3 of the Tokyo Electric Power Co., Inc., to France;

(2) 120 irradiated fuel assemblies containing 47,085 kilograms of uranium, enriched to 1.15 percent in U-235 and 457 kilograms of plutonium from Genkai Units 1 and 2 of the Kyushu Electric Power Co., Inc., to France;

(3) 187 irradiated fuel assemblies containing 37,000 kilograms of uranium, enriched to 1.11 percent in U-235 and 370 kilograms of plutonium from Tokai No. 2 of the Japan Atomic Power Co., to France;

(4) 68 irradiated fuel assemblies containing 12,163 kilograms of uranium, enriched to 0.96 percent in U-235 and 108 kilograms of plutonium from Shimane Unit 1 of the Chugoku Electric Power Co., Inc., to France;

(5) 323 irradiated fuel assemblies containing 59,270 kilograms of uranium, enriched to 1.47 percent in U-235 and 549 kilograms of plutonium from Hamaoka Units 1 and 2 of the Chubu Electric Power Co., Inc., to France;

(6) 216 irradiated fuel assemblies containing 96,000 kilograms of uranium, enriched to 1.10 percent in U-235 and 895 kilograms of plutonium from Mihama Units 1, 2 and 3, Ohi Units 1 and 2, and Takahama Units 1, 2 and 3 of the Kansai Electric Power Co., Inc., to France;

(7) 896 irradiated fuel assemblies containing 161,800 kilograms of uranium, enriched to 1.07 percent in U-235 and 1,376 kilograms of plutonium from Fukushima Units 1, 2, 3, 4, 5 and 6 of the Tokyo Electric Power Co., to the United Kingdom;

(8) 147 irradiated fuel assemblies containing 57,676 kilograms of uranium, enriched to 1.23 percent in U-235 and 508 kilograms of plutonium from Genkai Units 1 and 2 of the Kyushu Electric Power Co., Inc., to the United Kingdom;

(9) 70 irradiated fuel assemblies containing 14,000 kilograms of uranium, enriched to 1.36 percent in U-235 and 130 kilograms of plutonium from Tsuruga Unit 1 of the Japan Atomic Power Co., to the United Kingdom;

(10) 212 irradiated fuel elements containing 2,440 kilograms of uranium, containing 0.49 percent U-235 and 8 kilograms of plutonium from the Tokai Unit of the Japan Atomic Power Co., to the United Kingdom;

(11) 140 irradiated fuel assemblies containing 25,690 kilograms of uranium, enriched to 1.47 percent in U-235 and 238 kilograms of plutonium from the Hamaoka Units 1 and 2 of the Chubu Electric Power Co., Inc., to the United Kingdom;

(12) 84 irradiated fuel assemblies containing 15,524 kilograms of uranium, enriched to 0.99 percent in U-235 and 129 kilograms of Plutonium from Shimane Unit 1 of the Chugoku Electric Power Co., Inc., to the United Kingdom;

(13) 273 irradiated fuel assemblies containing 120,600 kilograms of uranium, enriched to 1.04 percent in U-235 and 987 kilograms of plutonium from Mihama Units 1, 2 and 3 Ohi Units 1 and 2 and Takahama Units 1, 2 and 3 of the Kansai Electric Power Co., Inc., to the United Kingdom; and

(14) 70 irradiated fuel assemblies containing 27,240 kilograms of uranium, enriched to 1.25 percent in U-235 and 260 kilograms of plutonium from Ikata Unit 1 of the Shikoku Electric Power Co., Inc., to the United Kingdom.

The foregoing proposed transfers are designated as RTD/EU(JA) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, and 109 respectively.

The Department of Energy has received a letter of assurance from the Government of Japan that the recovered uranium and plutonium will not be transferred from the reprocessing sites, nor put to any use, without the prior approval of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen (15) days after the date of publication of this notice, and after fifteen (15) days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

For the Department of Energy.

Date: February 1, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-2416 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Inventories and Storage Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Inventories & Storage Task Group of the Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council

Date and Time: Wednesday, February 24, 1988, 10 a.m.

Place: The New York Helmsley Hotel, Murray Hill Room, 212 East 42nd Street New York, New York

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of

Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss surveys and progress on assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman.
—Discuss surveys of inventories and storage capacity.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Inventories & Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-2413 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate or the number of respondents per report period; (10) An estimate of the number of respondents annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before March 7, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

For Further Information and Copies of Relevant Materials Contact: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-580
3. 1902-0137
4. Fuel Purchase Practices
5. Revision
6. Biennially
7. Mandatory
8. Businesses or other for profit
9. 67 respondents
10. 67 responses
11. 6,030 hours
12. The information requested is needed to comply with the requirements of Section 205(f)(2) of the Federal Power Act for a review "not less frequently that every two years" of "practices * * * to ensure efficient use of resources."

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-505
3. 1902-0115
4. Application for License, Projects 5 Megawatts or less
5. Extension
6. On Occasion
7. Mandatory
8. Businesses or other for profit; State or local governments; Non-profit institutions; Small businesses or organizations; Individuals or households
9. 37 respondents
10. 37 responses
11. 4,833 hours
12. The FERC 505 is used to carry out the requirements of section 4(e) and 9 of the Federal Power Act. These sections direct the Commission to issue licenses for the purpose of constructing, operating and maintaining hydropower projects as defined in the Act.

The third energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-541
3. 1902-0066
4. Gas Pipeline Certificate: Curtailment Plan
5. Extension
6. On occasion; Annual
7. Mandatory
8. Businesses or other for profit
9. 65 respondents
10. 65 responses
11. 63,600 hours
12. The filings are required by section 4(d) of the NGA for changes in service occasioned by a pipeline company's inability to meet its existing certificates or contact obligation, and to meet the requirements of Title IV of the NGPA.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974 (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, January 31, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-2414 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-197-000 et al.]

PennEast Gas Services Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. PennEast Gas Services Company

[Docket No. CP88-197-000]

January 27, 1988.

Take notice that on January 15, 1988, PennEast Gas Services Company (PennEast), a general partnership, PennEast, applied in abbreviated form to the Federal Energy Regulatory Commission (Commission) pursuant to section 7(c) of the Natural Gas Act, as amended (15 U.S.C. 717f), and the Rules and Regulations of the Commission issued thereunder for Certificates of Public Convenience and Necessity authorizing PennEast to provide long-term firm storage and firm transportation services for Northeast Energy Associates, A Limited Partnership (North Jersey), (hereinafter together referred to as Buyers) all as herein more fully set forth. In support of its application PennEast filed with the FERC at Docket No. CP87-312-000 an application to render a firm storage and transportation service under a new Rate Schedule PSS.

In an application in Docket No. CP87-92-002 filed concurrently on January 15, 1988, PennEast requested the FERC approve implementation of such PSS service commencing November of 1989, as more fully discussed in the application.

Buyers have requested storage service from PennEast under PennEast's proposed Rate Schedule PSS, it is stated. Each Buyer has indicated a desire to execute separate precedent agreements with PennEast with the Maximum Daily Withdrawal Quantity for both agreements totalling 24,508 dth, the storage capacity currently available. The storage service will be used by Northeast to provide gas to a cogeneration plant to be constructed for Northeast in Bellingham, Massachusetts and by North Jersey for a cogeneration plant to be constructed for North Jersey in Sayreville, New Jersey, it is stated.

In addition to the firm storage service contracted for by the Buyers as outlined above, it is stated that PennEast will offer and proposes to render to Buyers the opportunity to contract for long-term firm transportation service. This firm transportation service will be rendered in accordance with PennEast's firm transportation Rate Schedule T-1, it is further stated. Under Rate Schedule T-1, PennEast states that it will transport natural gas for the Buyers on a daily basis to Contract Demand Quality of 24,148 dth commencing November 15, 1989.

It is further stated that a copy of PennEast's Pro Forma FERC Gas Tariff including Rate Schedules PSS and T-1 is set forth in Exhibit P of PennEast's application in Docket No. CP87-312-000.

PennEast states that it will charge Buyers pursuant to Rate Schedules PSS and T-1 such rates to be derived and charged as proposed in Docket No. CP87-312-000.

Comment date: February 17, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. MIGC, Inc.

[Docket No. CP88-166-000]

January 27, 1988.

Take notice that on January 14, 1988, MIGC, Inc. (MIGC), 10701 Melody Drive, Denver, Colorado 80234, filed in Docket No. CP88-166-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon 4,000 horsepower of compression facilities located at MISC's Hilight Compressor Station (Hilight Station) in Campbell County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MIGC states that it had been brought to its attention that certain certificated compressor facilities at the Hilight Station had physically deteriorated to the point of being inoperable by 1984, and that certain other compressor facilities at the same location were destroyed by fire in May, 1985, yet authorization to abandon these facilities had not been previously sought (MIGC states that it was acquired by its present owners in November, 1985). Accordingly, MIGC states that it is hereby seeking authorization to abandon these facilities, retroactively, to the times such facilities were taken out of service in 1984 and 1985. MIGC further states that the proposed abandonment would have no impact on its system capacity or rendition of system services due to the fact that replacement compression has previously been installed and is operable.

Comment date: February 17, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP86-631-001]

January 28, 1988.

Take notice that on January 4, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-631-001 [1] an application pursuant to section 7(c) of the Natural Gas Act so as to revise an earlier proposal to become an open-access pipeline under Order No. 436 which was filed in Docket No. CP86-631-000, all as more fully set forth in the application which is no file with the Commission and open to public inspection.

Williams states that its proposal in Docket No. CP86-631-000 was filed in conjunction with and predicated on a proposed Stipulation and Agreement filed in Docket No. RP86-32-000. Williams further states that it has now filed a revised Stipulation and Agreement in Docket No. RP86-32-000 *et al.* which would involve a number of changes in the manner in which it would restructure its services to enable it to become an open access transporter. Consistent with the revised settlement proposal, Williams explains, it has filed the instant application to revise its certificate proposal.

Specifically, Williams requests (1)(a) certificate authorization under section7 of the NGA to provide partial requirements sales service under new Rate Schedule PR(A); (b) certificate authorization under Section 7 of the NGA to modify its requirements service obligations under existing Rate Schedules F, G and I to provide revised requirements service under a new Rate Schedule F in conjunction with partial requirements service to certain former C and I Rate Schedule consumers under new Rate Schedule PR(B); (c) certificate authorization under section 7 of the NGA for a new, experimental interruptible deferred delivery service under Rate Schedule IDDS for shippers under Rate Schedules FTS and ITS; (d) blanket authorization under section 7 of the NGA, with pre-granted abandonment, for shippers under Rate Schedules FTS and ITS to utilize such service under Rate Schedule IDDS; (e) blanket authorization under Section 7 of the NGA for all existing sales customers from time to time to elect or convert to service under new Rate Schedule PR(A) or new Rate Schedules F and PR(B), as appropriate, and to convert and/or

[1] On January 21, 1988, the Commission erroneously issued a Notice of Amendment in the subject docket wherein a due date of February 11 1988, was provided.

reduce the level of service under those rate schedules, as provided under the new sales service agreements executed under those rate schedules; and (f) pregranted abandonment of its presently authorized service levels under the NGA to the extent of such conversions and/or reductions under Rate Schedules PR(A), F, or PR(B); and (g) authority to abandon service under Rate Schedule P to the level of any reduced contract demand under any new sales service agreement under Rate Schedule P; and (2) blanket certificate authorization for the transportation of gas on behalf of others with pre-granted abandonment authorization, pursuant to Section 7 of the NGA and Order Nos. 436 and 500 under new Rate Schedules FTS and ITS.

Williams states that it would provide blanket transportation for others in compliance with the conditions in § 284.221(c) of the Commission's Regulations on the basis of its Order Nos. 436 and 500 transportation proposal as described in the amended application and in Article II and Appendix C of the Revised Stipulation in Docket Nos. RP86-32, *et al.* Williams further states that it would provide firm and interruptible transportation under proposed Rate Schedules FTS and ITS as set forth in the tariff sheets in Appendix C of such Revised Stipulation and that the rates for such service would be in full compliance with the provisions of § 284.7 of the Commission's Regulations.

Comment date: February 18, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP88-180-000]

January 29, 1988.

Take notice that on January 15, 1988, Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252 (Applicant), filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant, among other things, to render a firm sales and firm transportation service to PennEast Gas Services Company (PennEast); to render a compression and metering service to PennEast; and to render a new firm sales and firm transportation service to CNG Transmission Corporation (CNG) and Columbia Gas Transmission Corporation (Columbia) in lieu of Applicant's existing firm sales obligations to CNG and Columbia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to:

(1) Restructure its contract obligations with CNG and Columbia pursuant to Rate Schedule DCQ [2] to render firm sales and firm transportation pursuant to Applicant's proposed Rate Schedules PLD and FTS-3 commencing November 1, 1989, for a primary term of ten years;

(2) Render firm sales and firm transportation to PennEast pursuant to proposed Rate Schedules PLD and FTS-3 commencing November 1, 1989, for a primary term of ten years;

(3) Sell to PennEast pursuant to Rate Schedule PLD, pending completion of facilities by PennEast, up to 75,000 dth of natural gas per day (dth/d) to be released by Columbia;

(4) Render a compression and metering service to PennEast; and

(5) Render a firm transportation service to three customers of PennEast (Cairo, Illinois; Huntingburg, Indiana; and Smyrna, Tennessee) of gas purchased from or transported by PennEast and delivered to Applicant by displacement by PennEast.

Applicant indicates that deliveries of natural gas would be made to CNG and Columbia at the existing points specified in Applicant's currently effective service agreements under Rate Schedule DCQ and that deliveries would be made to PennEast at Applicant's Compressor Station No. 21-A in Fayette County, Pennsylvana.

Applicant states that a buyer under proposed Rate Schedule PLD would have the right to convert, on a permanent basis, from firm sales under Rate Schedule PLD to firm transportation under Rate Schedule FTS-3. Applicant requests abandonment authorization to implement the proposed conversion, as well as waiver of the Commission filing fee regulations with respect to filings made to implement the agreements for which authorization is requested herein. Applicant avers that firm standby service on a daily basis in a contract year would be available under proposed Rate Schedule PLD.

With regard to the proposed transportation for PennEast of the 75,000 dth/d to be released by Columbia, Applicant states that Applicant and Columbia would amend the exchange agreement under Applicant's Rate Schedule X-128 to increase the maximum daily obligation to 155,000 dth in order to implement the release of such volumes.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88-173-000]

January 29, 1988

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-173-000 an application pursuant to Section 7(c) of the Natural Gas Act and the rules and regulations of the Federal Energy Regulatory Commission for a certificate of public convenience and necessity authorizing Tennessee: (1) To provide firm natural gas transportation to eight cogeneration plants and three local distribution companies in Connecticut, Massachusetts, Rhode Island and New York in an aggregate daily maximum quantity of 146,943 Dth; and (2) to construct and operate the facilities necessary to transport and deliver the proposed quantities. Tennessee further requests authorization pursuant to Executive Order No. 10485 (18 FR 5397 (1953)) and Section 153.10 of the Commission's Regulations for an amended Presidential permit to construct and operate pipeline facilities at the international boundary between the United States and Canada; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The project proposed in Docket No. CP88-173-000 is referred to as the "NORTRAN Project". The specific shippers, quantities and delivery points for which firm transportation authorization is sought are listed below.

[2] Or pursuant to Rate Schedule CD-1 in the event that, prior to the approval of this application, Texas Eastern enters into new service agreements under Rate Schedule CD-1 as currently proposed in Docket No. RP85-177, *et al.*

	Transportation quantity (Dth/day)	Delivery point
Shipper:		
Pepperell Power Associates	9,795	Tewksbury, MA
Pawtucket Power Associates	12,696	Pawtucket, RI
Gas Alternative Systems, Inc	24,000	Syracuse, NY
ANR Venture Management, Inc./Capital District Energy Cogeneration Associates	13,900	New Britain/Bloomfield, CT
ANR Venture Management, Inc./Flagg Energy Development Corp	3,900	New Britain/Bloomfield, CT
Cogen Energy Technology Inc	11,626	Brookview, NY
O'Brien Cogeneration (Hartford) Inc	12,800	New Britain/Bloomfield, CT
The Dexter Corporation	13,800	E. Granby, CT
Connecticut Light & Power Company	1,000	Stamford, CT
	5,000	Wallingford, CT
	3,000	E. Granby, CT
Central Hudson Gas & Electric Corporation	10,000	Cedar Hill, NY
Southern Connecticut Gas Co	25,426	North Haven, CT

In order to effectuate the proposed transporation services Tennessee proposes to construct and operate (1) 82.2 miles of 30" mainline loop, including a 0.5 mile section looping Tennessee's existing Niagara River crossing; (2) 6.5 miles of 12" lateral line consisting of 4.5 miles of loop and 2.0 miles of replacement pipeline; (3) 11.5 miles of 16" pipeline extension from Tennessee's milepost 344 + 8.5 to Southern Connecticut Gas' North Haven Gate Station in New Haven County, Connecticut; (4) three high pressure gas filtration facilities; (5) 18,800 HP of compression, including 1650 HP of replacement compression; and (6) four measurement stations. The total project cost, Tennessee states, is estimated to be $131,611,000.

Tennessee proposes to render the firm transportation service pursuant to two new proposed incremental rate schedules, NET-EU and NET-LD which were filed for service proposed under Tennessee's "open season" gas transportation projects. Rate Schedule NET-EU would apply to all cogeneration and electric power end users and Rate Schedule NET-LD would apply to all local distribution companies.

It is noted that Tennessee filed this application within the time frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Champlain Pipeline Company

[Docket No. CP88-168-000]

January 29, 1988

Take notice that on January 15, 1988, Champlain Pipeline Company (Applicant), 69 Swift Street, South Burlington, Vermont 05403, filed in Docket No. CP88-168-000 an application pursuant to §§ 153.10 and 153.11 of the Commission's Regulations and Executive Order No. 10485, as amended by Executive Order No. 12038, for a Presidential Permit to authorize the construction, operation and maintenance of facilities at the International Border between the United States and Canada near Highgate Springs, Vermont and Phillipsburg, Quebec, for the importation of natural gas from Canada into the United States, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that it requires such facilities to transport natural gas for its shippers in the United States who have entered, or will enter into, gas purchase contracts with suppliers of natural gas located in Western Canada. Such natural gas, Applicant continues, will be transported in Canada through the system of TransCanada Pipelines Limited for delivery to Applicant at the International Border near Phillipsburg, Quebec and Highgate Springs, Vermont. Applicant further states that its shippers have or will obtain, Economic Regulatory Administration authorization required to import natural gas from Canada pursuant to section 3 of the Natural Gas Act.

Concurrently with the filing of the above-described application for a Presidential Permit, Applicant has filed with the Commission an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, (Docket No. CP88-169-000), for authority to construct and operate natural gas pipeline facilities to enable Applicant to transport natural gas purchased by its shippers in Canada and to deliver to such shippers in the States of Vermont, New Hampshire and Massachusetts.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Algonquin Gas Transmission Company

[Docket No. CP88-167-000]

January 29, 1988

Take notice that on January 15, 1988, Algonquin Gas Transmission company ("Algonquin"), a Delaware corporation with its principal place of business in Boston, Massachusetts, filed, pursuant to section 7 of the Natural Gas Act and the rules and regulations of the Federal Energy Regulatory Commission ("Commission"), an application for a certificate of public convenience and necessity authorizing Algonquin to provide a firm transportation service for the Town of Braintree, Massachusetts, Electric Light Department ("Braintree"), which will be designated as Rate Schedule X-34 and contained in Algonquin's FERC Gas Tariff Original Volume No. 2. Such transportation service would be available for a primary term of twenty years starting upon the commencement date which is contemplated to be December 1, 1988. Algonquin's proposal is described more fully in its application which is on file with the Commission and open to public inspection.

Algonquin states the proposed service would involve receipt, firm tranportation and delivery of up to 21,660 MMBtu per day of natural gas. Algonquin stated that such deliveries would be subject to fuel reimbursement in accordance with the provisions of section 29 of the General Terms and Conditions of Algonquin's FERC Gas Tariff Second Revised Volume No. 1. It is further stated that the gas would be received from Connecticut Natural Gas Corporation at Glastonbury, Mansfield, Cromwell and Farmington, Connecticut; transported through the Algonquin

system, and redelivered at a new point of delivery between Algonquin and Braintree located in East Braintree, Norfolk County, Massachusetts, referred to as the Potter Station. To render such service, Algonquin proposes to construct and operate certain facilities including 2.2 miles of 16-inch pipeline connecting its existing 10-inches mainline located in Braintree, Norfolk County, Massachusetts to the new Potter Station delivery point in East Braintree, Massachusets. Algonquin's proposal would also include two lateral system loops consisting of 3.6 miles of 16-inch pipeline looping Algonguin's I-3 system in Norfolk County, Massachusetts, and 0.6 miles of 16-inch pipeline looping Algonquin's G-5 system in Seekonk, Bristol County, Rhode Island.

It is noted that Algonquin (applicant) filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Champlain Pipeline Company

[Docket No. CP88-169-000]

January 29, 1988

Take notice that on January 15, 1988, Champlain Pipeline Company (Applicant), 69 Swift Street, Burlington, Vermont 05403, filed in Docket No. CP88-169-000 an application pursuant to section 7(c) of the Natural Gas Act and the Commission's "Notice Inviting Applications to provide new gas service to the Northeast U.S.", issued July 24, 1987, as amended September 25, 1987, in Docket No. CP88-451-000, for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities and the transportation in interstate commerce of up to 325,000 Mcf of natural gas per day on behalf of contract shippers in New England for use in serving incremental distribution company load and electric generation load, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it is a general partnership organized under the laws of the State of Vermont, and is made up of the following partners: Northern New England Investment Company, Inc., Noverco, Inc., CV Champlain Investments, Inc. and Resource Monitors, Inc.

Applicant requests authorization to render a transportation service for shippers to serve what it terms an urgent need for natural gas in the New England region. Applicant states it would provide that service less expensively than alternative routes, while affording long-term benefits to the region in the form of new competition for gas transportation services. Applicant explains that its proposed pipeline, which would serve as an eastern link between the major gas transportation facilities in the U.S. and Canada, would increase supply options to customers in the New England area, including previously unserved areas, and would afford substantial transportation efficiencies for service throughout the Northeast U.S. and Canada. Applicant states that it is applying to serve a market area in Vermont, New Hampshire, Massachusetts and Rhode Island, but that it stands ready to serve Connecticut, New York and New Jersey if, as its preliminary studies indicate, Applicant can do so for a smaller incremental cost than competing projects.

Applicant proposes to construct and operate pipeline facilities consisting of: (1) a 24-inch mainline pipeline, extending approximately 249 miles from the U.S.-Canadian border in Vermont through New Hampshire to a point southwest of Boston, Massachusetts, (2) a 14-inch branch pipeline, extending approximately 36 miles from a point on the mainline in northeast Massachusetts to a point in southeast New Hampshire, and (3) necessary appurtenant facilities. It is stated that the estimated cost of the completed project is approximately $268.6 million. The planned in-service date is November 1990, or earlier.

Applicant states that its proposed facilities are designed to transport initially up to 325,000 Mcf of gas per day, without compression. Applicant further states that the pipeline would provide an opportunity for economic expansion of throughput capability, should that prove necessary in the future.

Applicant explains that it would perform a transportation service only; it would not own any of the gas it transports. Applicant further explains that arrangements for gas supplies would be the responsibility of the shippers. Applicant expressed its belief that sufficient Canadian gas supplies exist to meet the needs of prospective shippers, and that applicant is prepared to provide gas purchasing assistance if so requested by a shipper.

Applicant proposes to provide firm and interruptible transportation service on an open-access, non-discriminatory basis in two service zones. Firm service is proposed by Applicant to be sold under a two-part (reservation charge and commodity charge) rate, based on the Commission's modified fixed-variable formula. Interruptible service is proposed to be sold under a one-part (commodity) rate, based on the firm rate at 100 percent load factor. Applicant states that, based on an illustrative cost-of-service outlined in its application, the 100 percent load factor unit throughput cost for transportation the length of Applicant's system is 54 cents per Mcf.

Applicant states that, although precise financing for its project has not been determined, for purposes of this application such financing is based upon a capitalization of approximately 25 percent equity contribution by the partners and 75 percent limited or non-recourse debt. Applicant proposes that its initial rate provide a return on equity investment of 16.5 percent.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Indiana Ohio Pipeline Company

[Docket No. CP88-178-000]

January 29, 1988

Take notice that on January 15, 1988, Indiana Ohio Pipeline Company (Indiana Ohio), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP88-178-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity under the Optional Expedited Procedures authorizing Indiana Ohio to render 200 MMcf per day (MMcf/d) firm transportation service for others, and to construct and operate the necessary facilities to provide this service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Indiana Ohio is a newly formed, wholly owned subsidiary of Panhandle Eastern Corporation. Indiana Ohio will become a natural gas company, as defined in the NGA, incorporated under the laws of the State of Delaware.

Specifically, Indiana Ohio proposes to construct, own and operate approximately 110 miles of 20-inch pipeline, a 6,000 horsepower compressor, and appurtenant facilities necessary to transport natural gas from a point on the Panhandle Eastern Pipe Line Company (Panhandle) mainline located in Grant County, Indiana, to interconnect at a point on Texas Eastern

Gas Pipeline Company's (TETCO) facilities in Warren County, Ohio, at a cost of approximately $50,000,000. Indiana Ohio proposes to transport for others a quantity of gas up to its maximum daily capacity of 200 MMcf. Indiana Ohio states that this proposed system will transport gas from Panhandle mainline to the TETCO system.

Indiana Ohio proposes in its *Pro-Forma* Tariff new Rate Schedule FTS for firm transportation service and Rate Schedule ITS for interruptible transporation service as follows:

Transportation rates		Maximum rate	Minimum rate
FTS Reservation Charge per Dth per Month	$3.29		0
FTS Commodity Charge per Dth Transported	$0.0591		$0.0036
ITS Commodity Charge per Dth Transported	$0.1673		$0.0036
Fuel Reimbursement		0.5%	

It is noted that Indiana Ohio in filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

10. Northeastern Gas Transmission Company

[Docket No. CP88-175-000]

January 29, 1988

Take notice that on January 15, 1988, Northeastern Gas Transmission Company, (Northeastern) a wholly-owned subsidiary of Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-175-000, an application pursuant to section 7(c) of the Natural Gas Act to transport gas on behalf of New England Power Company (NEPCO) and to construct facilities necessary to perform such transporation service all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Specifically, Northeastern requests authorization to transport for NEPCO, on a firm basis, 120,000 Mcf of natural gas per day from a receipt point (proposed currently in Docket No. CP88-174-000) with the facilities of Tennessee Gas Pipeline Company (Tennessee) downstream of Tennessee's Station No. 267 near Hopkinton, Massachusetts (Hopkinton), to a delivery point with NEPCO at its Brayton Point Plant in Somerset, Massachusetts (Somerset). In order to perform this transporation service, Northeastern also requests authorization to construct and operate a 45.9 mile, 36-inch pipeline from Hopkinton to Somerset. In addition, Northeastern proposes to construct a 2,000 hp compression facility at Hopkinton, a measuring station at Somereset and other appurtenant facilities. The gas transporated by Northeastern for NEPCO will be used to substitute for the residual fuel oil presently being used in Unit No. 4 of NEPCO's Brayton Point Plant. According to the filing, this will enable NEPCO to comply with the Massachusetts Acid Rain Law requiring, *inter alia*, the reduction of sulphur dioxide emissions. The estimated projected cost is $86.8 million. Northeastern states that it intends to charge a one-part demand rate based upon the total cost of service of the new facility.

It is noted that Northeastern filed this application within the time frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard paragraph F at the end of this notice.

11. PennEast Gas Services Company CNG Transmission Corporation

[Docket No. CP88-183-000]

January 29, 1988.

Take notice that on January 15, 1988, PennEast Gas Services Company (PennEast), P.O. Box 2521, Houston, Texas 77252, and CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, West Virginia 26301, herein referred to as "Applicants," filed in Docket No. CP88-183-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities to render a firm transportation service on behalf of Transcontinental Gas Pipe Line Corporation (Transco) and National Fuel Gas Supply Corporation (National Fuel); CNG Transmission to render related gas compression and related metering services for PennEast; and a single blanket certificate of public convenience and necessity pursuant to 18 CFR 284.221 authorizing open-access nondiscriminatory transportation of natural gas, all as more fully set forth in the application on file with the Commission and open for public inspection.

Specifically, PennEast seeks authorization to construct and operate the facilities described below to provide long-term firm transportation service of up to 225,000 Mcf per day of natural gas (Mcfd) from Ellisburg to Leidy, Pennsylvania, under proposed Rate Schedule T-6 for the Canadian gas service project. PennEast further seeks a single blanket certificate of public convenience and necessity pursuant to 18 CFR 284.221 authorizing open-access non-discriminatory transportation of natural gas. Lastly, CNG Transmission seeks authorization to render related gas compression and metering services which would enable PennEast to perform the requested transportation service. Applicants state that the proposed transportation service would eliminate the need for a 40-mile pipeline segment proposed for construction by National Fuel under Docket No. CP88-194-000.

PennEast states that it would render the long-term firm transportation service for Transco and National Fuel of up to 225,000 Mcfd under the terms and conditions of Rate Schedule T-6 and a separate service agreement. Rate Schedule T-6 would also provide, that to the extent additional capacity exists on the proposed facilities, PennEast would render open-access non-discriminatory firm and interruptible transportation services to any party requesting such service. Under its requested blanket certificate, PennEast proposes to provide firm transportation pursuant to Rate Schedule T-6 and interruptible transportation pursuant to Rate Schedule T-2.

PennEast states that it would receive the gas from National Fuel at an interconnection to be established between the facilities of National Fuel and CNG Transmission at the Ellisburg Storage Pool in Potter County, Pennsylvania, and redeliver the gas to Transco at the existing interconnection between the facilities of Transco and CNG Transmission at the Leidy Storage Pool in Clinton County, Pennsylvania. PennEast proposes to construct and operate 27 miles of 24-inch-diameter pipeline in Potter County, Pennsylvania,

and Stueben County, New York. Additionally, PennEast proposes to add 4,000 horsepower of compression to CNG Transmission's Greenlick Compressor Station and associated metering and regulating facilities at the Leidy Compressor Station in Clinton County, Pennsylvania. The total estimated cost of the proposed facilities is $21,900,000.

PennEast states that although the facilities would be operated in conjunction with CNG Transmission's existing facilities to render the proposed services, no existing capacity on CNG Transmission's existing facilities would be committed to this project, nor would anyone other than PennEast or its customers bear any costs associated with the proposed facilities. PennEast states that it would own the proposed facilities which would be constructed and operated pursuant to a compression and metering agreement between PennEast and CNG Transmission. It is indicated that the agreement provides that CNG Transmission would be responsible for gas compression and metering services at these facilities. CNG Transmission has requested authorization to render such services and to charge PennEast to cost-based rate for the incremental operation and maintenance expenses incurred. CNG Transmission has also requested that the rate set forth in the agreement be accepted as an initial rate for such services as of the date indicated in the agreement.

It is noted that Applicants filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP88-172-000]

January 29, 1988.

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee), filed in Docket No. CP88-172-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for (1) authority to abandon 15,000 dekatherms per day (Dth/d) of firm sales service to North Penn Gas Company (North Penn); and (2) a certificate of public convenience and necessity authorizing (a) the sale for resale of up to 40,000 Dth/d, on a firm basis, to Public Service Electric and Gas Company (Public Service); (b) the replacement of Public Service's July 1, 1970, storage service agreement under Tennessee's SS-E Rate Schedule with a new one extending the term of service and adding a proposed new delivery point to Public service; (c) the amendment of Public Service's November 1, 1968, sales service agreement under Tennessee's CD-5 Rate Schedule to add a proposed new delivery point; and (d) the construction and operation of facilities necessary to effectuate the sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it requests authority to abandon 15,000 Dth/d of firm sales service to North Penn, at North Penn's request. Tennessee asserts that the proposed abandonment would be subject to authorization of the proposed new sales to Public Service with the effective date of the proposed abandonment to be the same as the commencement of new service to Public Service.

Tennessee further states that due to the need to more efficiently integrate the northern portion of Public Service's service area, as well as to serve projected increases in market demand in its service area, Public Service requested Tennessee to enter into a new gas sales contract for the purchase of up to 40,000 Dth/d, over and above deliveries under existing contracts, and (2) to construct necessary facilities to effectuate the proposed new deliveries, as well as portions of existing contractual entitlements at a new delivery point near Northvale, New Jersey.

Tennessee proposes to construct 20.1 miles of 30-inch O.D. mainline looping in the counties of Wyoming and Livingston, New York and Susquehanna, Pennsylvania, install 3,165 horse power of additional compression at the existing Bradford County, Pennsylvania compressor station, 8.6 miles of 24-inch O.D. sales lateral and related metering facilities in Bergen County, New Jersey. Tennessee estimates the total cost of these facilities at $38,698,000.

Additionally, Tennessee notes that it would upgrade the maximum allowable operating pressures (MAOP) of portions of its existing mainline system from the existing level of 975 psig to 1170 psig, a process that requires hydrostatic testing of existing facilities and potentially the replacement of two to three miles of existing pipeline. Tennessee alleges that these procedures may be performed under § 2.55 of the Commission's Regulations without Commission authority.

Tennessee would amend Public Service's existing CD-5 Rate Schedule service agreement, dated November 1, 1968, to add the new delivery point near Northvale, New Jersey. Further Tennessee would replace the existing SS-E Rate Schedule service agreement, dated July 1, 1970, with Public Service to extend the term of service and to add the new delivery point. The new SS-E service agreement would commence on November 1, 1988, with a primary term lasting until November 1, 2000, and then from year to year thereafter.

Tennessee proposes to charge Public Service under the new gas sales contract which provides for delivery of an additional 40,000 Dth/d at the effective CD-5 rate. However, Tennessee states that Public Service has agreed to pay an annual incremental facilities charge, if the revenues received by Tennessee under the new sales agreement fails to recover the cost of service associated with the Bergen County, New Jersey sales lateral. Under these provisions, Tennessee asserts, Public Service has agreed to assume the risk of any underrecovery of revenues attributable to the costs of the new sales lateral Tennessee might experience, while Tennessee assumes the risk of underrecovery attributable to the mainline expansion.

Tennessee also states that, while the new Rate Schedule CD-5 service agreement will not be an "eligible firm sales service agreement" as that term is defined in § 284.10 of the Commission's Regulations, it has agreed to include provisions which give Public Service the option, in any year, to convert up to 20 percent of the original maximum daily quantity and annual quantity to firm transportation. This conversion option is said to be subject to Tennessee's receipt of the appropriate abandonment and certificate authority in a separate proceeding, and to the availability of receipt point capacity and comparable rates.

Tennessee requests that its application be considered under the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

13. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-174-000]

January 29, 1988.

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-174-000, an application pursuant to section 7(c) of

the Natural Gas Act seeking a certificate of public convenience and necessity to transport gas on behalf of New England Power Company (NEPCO), to construct facilities necessary to perform such transportation service and establish, in conjunction with other concurrently filed Tennessee applications, a new Rate Schedule NET-EU, all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Specifically, Tennessee requests authorization to transport for NEPCO, on a firm basis, 95,556 Mcf of natural gas per day from receipt points on its system at the Canadian border and south of its Station 87 near Kinder, Louisiana to a delivery point at Station 267 on its system near Hopkinton, Massachusetts. In order to provide this service, Tennessee requests authorization to construct and operate 55.2 miles of 30-inch and 36-inch pipeline looping on its system in Allen County, Kentucky; Berkshire, Hampden and Worcester Counties, Massachusetts; Columbia, Erie and Wyoming Counties, New York; and Forest and Mercer Counties, Pennsylvania. Also, Tennessee requests authorization to install an additional 29,500 hp of compression on its system in Greenup County, Kentucky; Columbia, Herkimer, Onadaga, Ontario and Schoharie Counties, New York; Buernsey County, Ohio; Mercer County, Pennsylvania; and Sumner County, Tennessee. Other appurtenant facilities are also proposed to be installed. Further, Tennessee requests authorization to establish a new delivery point to Northeastern Gas Transmission Company (Northeastern) downstream of Tennessee's Station 267. Northeastern will receive NEPCO's volumes at this proposed delivery point for ultimate delivery to NEPCO at its Brayton Point Plant in Somerset, Massachusetts. The gas transported by Tennessee for NEPCO will be used to substitute for the residual fuel oil presently being used in Unit No. 4 of NEPCO's Brayton Point Plant. According to the filing, this will enable NEPCO to comply with the Massachusetts Acid Rain Law requiring, *inter alia*, the reduction of sulphur dioxide emissions. The total estimated project cost is $149.2 million.

Tennessee states that it intends to charge NEPCO under its proposed Rate Schedule NET-EU. This rate schedule, according to Tennessee, has been developed for service to NEPCO and all cogeneration and electric end users in the aforementioned concurrently-filed projects. Tennessee proposes to charge a one-part monthly demand rate under Rate Schedule NET-EU based upon the incremental cost of service.

It is noted that Tennessee filed this application within the time frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, 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 will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2407 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-33-001]

El Paso Natural Gas Co.; Tariff Filing

February 1, 1988.

Take notice that on January 25, 1988, El Paso Natural Gas Company ("El Paso"), filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in accordance with ordering paragraphs (B) and (C) of the Commission's Opinion No. 283 issued September 29, 1987 at *Gas Research Institute*, Docket No. RP87-71-000, the following revised tariff sheets to its FERC Gas Tariff to be effective January 1, 1988:

Tariff volume	Tariff sheet
First Revised Volume No. 1.	Sixteenth Revised Sheet No. 100
	Fourth Revised Sheet No. 100-A.
Original Volume No. 1-A...	Fifth Revised Sheet No. 20.
Third Revised Volume No. 2.	Fortieth Revised Sheet No. 1-D.
	Twentieth Revised Sheet No. 1-D.2.
Original Volume No. 2A.....	Forty-second Revised Sheet No. 1-C.

El Paso states that on December 1, 1987, it filed revised tariff sheets reflecting the decrease in the Gas Research Institute's ("GRI") funding unit, as approved by said Opinion No. 283, along with a change in the base tariff rates made pursuant to El Paso's June 30, 1987 filing at Docket No. RP85-58-000, *et al.*,[1] both to be effective January 1, 1988. Subsequently, by order issued December 16, 1987 at Docket No. RP85-58-000, *et al.*, which issued in response to El Paso's June 30, 1987 filing regarding the impact of said Federal tax legislation on its rates, the Commission directed El Paso to file revised tariff sheets to be effective July 1, 1987. Further, by letter order dated January 7, 1988 issued by the Director of the Office of Pipeline and Producer Regulation at Docket Nos. TA88-2-33-000 and RP85-58-000, *et al.*, the Commission rejected the revised tariff sheets filed on December 1, 1987 for non-compliance with the Commission's December 16, 1987 order.

[1] El Paso's filing of June 30, 1987 at Docket No. RP85-58-000, *et al.*, set forth, *inter alia*, the workpapers, explanation and *pro forma* tariff sheets reflecting the impact of the 1986 Tax Reform Act as required by Article XII, *Tracking of Changes in Federal Taxes*, of the "Stipulation and Agreement in Settlement of Rate Proceedings" approved by Commission letter order dated August 14, 1985 at said docket.

El Paso further states that such rejection was issued without prejudice to El Paso filing, *inter alia*, revised tariff sheets to be effective January 1, 1988 to reflect the new GRI surcharge in compliance with Opinion No. 283. Accordingly, the tendered revised tariff sheets, when accepted for filing and permitted to become effective, will decrease the GRI funding unit adjustment component of El Paso's rates for certain sales and transportation services from the currently effective 1.44 cents per dth (1.52 cents per Mcf) to the 1.43 cents per dth (1.51 cents per Mcf) approved by the Commission in Opinion No. 283.

El Paso requested, pursuant to § 154.51 of the Commission's Regulations, waiver of the notice requirements of § 154.22 of the Commission's Regulations and any other of the Commission's applicable rules, regulations and orders as may be necessary to permit the tendered tariff sheets to become effective on January 1, 1988.

El Paso states that copies of the filing have been served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2460 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-100-001]

Mountain Fuel Resources, Inc.; Proposed Changes in FERC Gas Tariff

February 1, 1988.

Take notice that Mountain Fuel Resources, Inc. (MFR) on January 26, 1988, pursuant to 18 CFR 154.63(a)(1) and as directed by the Commission's September 29, 1987, Order issued to Algonquin Gas Transmission Company, et al. in Docket No. RP87-109-000, et al., tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff as follows:

First Revised Volume No. 1

Substitute Orignial Sheet No. 70-A

Orignial Volume No. 1-A

Substitute First Revised Sheet No. 111

MFR explains that the purpose of this filing is to incorporate language into its FERC Gas Tariff that complies with specific Annual Charge Adjustment (ACA) tariff provisions, 18 CFR 154.38(d)(ii)(a), as established by Order No. 472-B issued by the Commission September 16, 1987, in Docket Nos. RM87-3-002, et al. In addition, MFR addresses its contract storage service as it relates to the ACA mechanism.

MFR requests waiver of 18 CFR 154.22 and special permission under 18 CFR 154.51 so that the tendered tariff sheets may become effective October 1, 1987, as proposed.

Copies of this filing were served upon MFR's jurisdictional customers and the Utah and Wyoming Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2461 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-101-001]

Overthrust Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 1, 1988.

Take notice that Overthrust Pipeline Company (Overthrust) on January 26, 1988, pursuant to 18 CFR 154.63(a)(1) and as directed by the Commission's September 29, 1987, Order issued to Algonquin Gas Transmission Company, et al. in Docket Nos. RP87-109-000, et al., tendered for filing and acceptance Substitute Original Sheet No. 54-A to Original Volume No. 1 of its FERC Gas Tariff.

Overthrust explains that the purpose of this filing is to incorporate language into its FERC Gas Tariff that complies with specific Annual Charge Adjustment (ACA) tariff provisions, 18 CFR 154.38(d)(ii)(a), as established by Order No. 472-B issued by the Commission September 16, 1987, in Docket Nos. RM87-3-002, et al.

Overthrust requests waiver of 18 CFR 154.22 and special permission under 18 CFR 154.51 so that the tendered tariff sheet may become effective October 1, 1987, as proposed.

Copies of this filing were served upon Overthrust's jurisdiction 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 February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2408 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-296-014]

Tennessee Gas Pipeline Co.; Tariff Filing

February 1, 1988.

Take notice that on January 26, 1988, Tennessee Gas Pipeline Company (Tennessee), tendered for filing ten copies of the following tariff sheets to its FERC Gas Tariff to be effective January 15, 1988:

Second Revised Volume No. 1

Substitute First Revised Sheet No. 22A

Original Volume No. 2

Substitute Fifth Revised Sheet No. 8

Tennessee states that the purpose of the filing is to revise the rate for its transportation of Boundary Phase II volumes under Rate Schedules CGT-NY, CGT-NE and T-143 in compliance with

the Commission's approval for Tennessee to use year-one rate base per its December 31, 1987 "Order Partially Granting and Partially Denying Rehearing and Amending Prior Order" in Docket Nos. CP81-296-010 *et al.*

Tennessee states that copies of the filing have been mailed to all of its affected parties.

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 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2409 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-29-001]

Tarpon Transmission Co.; Filing of Revised Tariff Sheets

February 1, 1988.

Take Notice that on January 22, 1988, Tarpon Transmission Company ("Tarpon") tendered for filing, pursuant to Section 311 of the Natural Gas Policy Act of 1978 and section 4 of the Natural Gas Act, the revised tariff sheets to its FERC Gas Tariff Original Volume No. 1, identified on Appendix A, with a proposed effective date of December 1, 1987.

Tarpon states that the substitute original tariff sheets, consisting of revised tariff sheets in Rate Schedules FTS and ITS and related service agreements, are intended to comply with the Commission's December 23, 1987 Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, and Convening Technical Conference" in Docket No. RP88-29-000. In addition, Tarpon states that the alternate and revised alternate substitute original tariff sheets are being filed to make revisions necessary to correct typographical errors and to clarify the intent of Tarpon relative to various provisions which may not have been specifically addressed by the Commission in its December 23, 1987 order, all as more fully discussed in the application. Tarpon requests the Commission's waiver of such Regulations as may be applicable to permit the revised tariff sheets identified with an asterisk on Appendix A to become effective on December 1, 1987. Acceptance of these revised tariff sheets will render the other tariff sheets submitted by Tarpon as moot.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, 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). Such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must fule a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Substitute Original Sheets

*Substitute Original Sheet No. 30
Substitute Original Sheet No. 31
Substitute Original Sheet No. 32
Substitute Original Sheet No. 33
Substitute Original Sheet No. 34
*Substitute Original Sheet No. 35
*Substitute Original Sheet No. 36
*Substitute Original Sheet No. 37
Substitute Original Sheet No. 38
Substitute Original Sheet No. 40
*Substitute Original Sheet No. 41
*Substitute Original Sheet No. 42
*Substitute Original Sheet No. 43
*Substitute Original Sheet No. 45
Substitute Original Sheet No. 46
Substitute Original Sheet No. 47
Substitute Original Sheet No. 48
Substitute Original Sheet No. 49
*Substitute Original Sheet No. 50
*Substitute Original Sheet No. 51
*Substitute Original Sheet No. 52
Substitute Original Sheet No. 53
Substitute Original Sheet No. 55
*Substitute Original Sheet No. 56
*Substitute Original Sheet No. 57
*Substitute Original Sheet No. 58
Substitute Original Sheet No. 80
*Substitute Original Sheet No. 82
Substitute Original Sheet No. 89
*Substitute Original Sheet No. 91

Alternate Substitute Original Sheets

*Alternate Substitute Original Sheet No. 31
*Alternate Substitute Original Sheet No. 32
*Alternate Substitute Original Sheet No. 33
*Alternate Substitute Original Sheet No. 34
Alternate Substitute Original Sheet No. 38
*Alternate Substitute Original Sheet No. 40
*Alternate Substitute Original Sheet No. 46
*Alternate Substitute Original Sheet No. 47
*Alternate Substitute Original Sheet No. 48
*Alternate Substitute Original Sheet No. 49
Alternate Substitute Original Sheet No. 53
*Alternate Substitute Original Sheet No. 55
*Alternate Substitute Original Sheet No. 80
*Alternate Substitute Original Sheet No. 89

Alternate Original Sheets

*Alternate Original Sheet No. 39
*Alternate Original Sheet No. 54
*Alternate Original Sheet No. 81
*Alternate Original Sheet No. 90

Revised Alternate Substitute Original Sheets

*Revised Alternate Substitute Original Sheet No. 38
*Revised Alternate Substitute Original sheet No. 53

[FR Doc. 88-2472 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

* Tariff Sheets requested to be effective on December 1, 1987.

[Docket No. CP87-188-002]

Transcontinental Gas Pipe Line, Corp.; Corrected Tariff Sheet in FERC Gas Tariff

February 1, 1988.

Take notice that on January 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a revised Second Substitute Sixth Revised Sheet No. 41-A, Superseding Revised Fifth Revised Sheet No. 41-A to its FERC Gas Tariff, Original Volume No. 2.

Transco states that on November 13, 1987, it submitted tariff sheets revising its Rate Schedule X-11 to reflect the reduction in the firm demand quantity in

such rate schedule as authorized by the Commission's September 17, 1987 order in Docket No. CP87-188-000. 40 FERC 61,264. Transco further states that by letter order issued December 15, 1987, the Commission accepted those certain tariff sheets for filing.

Transco states that as a result of the Commission's rejection of Transco's November 3, 1987 compliance tariff filing in Docket No. RP82-55-030, the rates reflected on Second Substitute Sixth Revised Sheet No. 41-A accepted by the Commission's December 15, 1987 letter order in Docket No. CP87-188-000 are not Transco's currently effective rates. Transco submits the revised Second Substitute Sixth Revised Sheet No. 41-A proposed to become effective October 1, 1987, to correct this error. The revised Second Substitute Sixth Revised Sheet No. 41-A reflects rates based on Transco's August 31, 1987 Annual Charge Adjustment filing in Docket No. RP87-117-000 accepted by the Commission to become effective October 1, 1987 by order issued on September 29, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2463 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket NO. RP88-8-004]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

February 1, 1988

Take notice that on January 22, 1988, United Gas Pipe Line Company (United) tendered for filing, pursuant to Section 4 of the Natural Gas Act, the following substitute revised tariff sheets to its FERC Gas Tariff First Revised Volume No. 1 with a proposed effective date of November 1, 1987.

Rate Schedule FTS

Substitute Revised Substitute First Revised Sheet No. 48-C1
Revised Substitute First Revised Sheet No. 48-C3
Revised Substitute First Revised Sheet No. 48-C9
Substitute Original Sheet No. 48-C14
Substitute Second Revised Sheet No. 98-A
Substitute Second Revised Sheet No. 98-B

Rate Schedule ITS

Revised Substitute Original Sheet No. 48-E3
Substitute First Revised Sheet No. 98-L

General Terms and Conditions

Substitute First Revised Sheet No. 74-Y9

United states that while the Commission has already accepted for filing certain revised tariff sheets filed by United in compliance with the October 29, 1987 order in this proceeding, the substitute revised tariff sheets filed on January 22, 1988 are intended to accommodate certain concerns raised by parties at the Technical Conference held in this proceeding on December 11, 1987.

Any person desiring to be heard or to protest this filing should file a Motion to Intervene or Protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commision's Rules of Practice and Procedure. 18 CFR 385.211 and 385.214 (1987). Such motions or protests should be filed on or before Feb. 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2464 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of December 7 Through December 11, 1987

During the week of December 7 through December 11, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Coalition for Safe Power, 12/11/87, KFA-0141

The Coalition for Safe Power (Coalition) filed an Appeal from a denial of a Request for Information submitted by the Coalition under the Freedom of Information Act (FOIA). The Coalition had sought a copy of a report from Battelle Pacific Northwest Laboratories regarding the feasibility of converting a partially completed commercial nuclear reactor to a federally owned reactor which would produce weapons grade nuclear material. The Assistant Manager for Information of the Richland Operations Office withheld the report in its entirety as a deliberative document under Exemption 5 of the FOIA. In considering the Appeal, the DOE found that the report was part of the deliberative process, even though it had been prepared by attorneys outside the government. The DOE also found that sharing the document with Congressmen and state officials, or possible limited unauthorized dissemination did not extinguish the privilege of withholding under Exemption 5. Finally, the DOE found that the report contained segregable factual material which the Assistant Manager had improperly failed to release. Accordingly, the Appeal was granted in part and remanded to the Assistant Manager to release any segregable factual material.

Judith M. Gibbs, 12/8/87, KFA-0139

Judith M. Gibbs filed an Appeal from a denial by the Assistant Manager for Administration, Richland Operations Office (Authorizing Official) of a Request for Information which she had submitted under the Freedom of Information Act (FOIA). Ms. Gibbs sought sections of a policy guide prepared by a DOE contractor (Battelle Memorial Institute) dealing with the termination of employees. The DOE found that the Authorizing Official had properly determined that the materials sought were not "agency records" subject to the FOIA and that Ms. Gibbs' Appeal accordingly should be denied. Important issues considered in the Decision and Order were whether the Battelle Memorial Institute is an "agency" for purposes of the FOIA and whether the requested materials had been acquired by the DOE and thereby had become "agency records."

Refund Applications

B.A. Mehmert, et al., 12/10/87, RF272-1031, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 47 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each of the applicants used the products for various agricultural activities, and each determined its claim by consulting purchase records or by estimating its consumption based on the acres it farmed. Each was an end-user of the products it claimed, and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $854.

Charles G. Fowler, et al., 12/10/87, RF272-657, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 49 applicants who claimed a total of 12,117,124 gallons of refined petroleum product consumption. Each of the applicants determined its claim by consulting purchase records or by estimating its consumption. Since all the applicants were end-users of the products, their claims were granted without proof of injury. The total amount of refunds granted in this Decision and Order was $2,419.

Conoco Inc./Morris Oil Co. et al., 12/7/87, RF220-151, et al.

The DOE issued a Decision and Order granting Applications for Refund from the Conoco Inc. consent order fund. In considering the Applications, the DOE found that each of the applicants, resellers or retailers of Conoco refined products, had submitted sufficient information to support its refund claim. The DOE granted refunds to the five claimants totalling $6,121, including $4,406 in principal and $1,715 in interest.

Frank C. McCready, et al., 12/10/87, RF272-2017, et al.

The DOE issued a Decision and Order approving thirty Applications for Refund from crude oil overcharge funds. The thirty claimants were farmers who used the USDA formula to derive the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $349 was approved in this Decision and Order.

George Whipple, et al., 12/10/87, RF272-1391, et al.

The DOE issued a Decision and Order approving the Applications for Refund submitted by 26 claimants from crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their agricultural activities. The DOE granted the claimants a total refund amount of $1,474 based on purchases of 7,374,919 gallons of refined petroleum products from August 19, 1973 through January 27, 1981.

Getty Oil Company/Davidson Oil Company, et al., 12/8/87, RF265-370, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In seven of these cases, the applicants elected to received refunds on the basis of the applicable percentage presumptions of injury and were eligible for a claim below the $50,000 maximum. In the remaining case, the applicant elected to limit its claim to $50,000, in accordance with the $50,000 limitation on refunds based on the percentage presumption of injury. The sum of refunds approved in this Decision is $231,436, representing $114,890 in principal and $116,546 in accrued interest.

Getty Oil Company/Mayetta Oil Company and Girton Propane Service, Inc., 12/11/87, RF265-1095, RF265-1097.

The DOE issued a Decision and Order concerning two Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In both of these cases, the applicants elected to limit their claims on the basis of the level-of-distribution presumption of injury for propane. The sum of refunds approved in this Decision is $29,159, representing $14,475 in principal and $14,684 in accrued interest.

Getty Oil Company/The Farmer's Exchange, 12/11/87, RF265-714, RF265-715, RF265-716.

The DOE issued a Decision and Order concering three Applications for Refund filed by an end-user of products covered by a consent order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of Getty products that were purchased. As an end-user, the applicant was entitled to receive the full volumetric refund. The sum of the refunds approved in this Decision is $6,770, representing $3,354 in principal and $3,416 in accrued interest.

Getty Oil Company/Wade Sales & Service, Inc., et al., 12/10/87, RF265-1, et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. All of the applicants elected to limit their claims on the basis of the percentage presumptions of injury methodology and were eligible for a claim below the $50,000 maximum. The sum of refunds approved in this Decision is $299,831, representing $148,553 in principal and $151,278 in accrued interest.

Goldfawn Farms and Dairy, et al., 12/10/87 RF272-1325, et al.

The DOE issued a Decision and Order approving the Applications for Refund submitted by 50 claimants from crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their agricultural activities. The DOE granted the claimants a total refund amount of $2,081 based on purchases of 10,418,048 gallons of refined petroleum products from August 19, 1973 through January 27, 1981.

Good Hope Refineries/Tenneco Oil Company, 12/7/87, RF189-10

The DOE issued a Decision and Order granting a refund from the Good Hope Refineries consent order fund to Tenneco Oil Company. The DOE stated that since Tenneco was a spot purchaser of Good Hope petroluem products, the firm was required to overcome the presumption that it was not injured by those Good Hope spot purchases. For a majority of its purchases, Tenneco failed to rebut that presumption. In fact, the DOE found that Tenneco sold at a profit a majority of the motor gasoline which it purchased from Good Hope. However, the DOE found that during two months of the consent order period, Tenneco sold Good Hope motor gasoline at less

than its purchase price. The DOE also found that during those same two months, Tenneco had imposed allocation fractions of less than 100 percent. Based on those findings, the DOE concluded that Tenneco had overcome the spot purchaser presumption for its purchases of Good Hope motor gasoline during those two months. Accordingly, the firm was granted a refund of its full allocable share of the Good Hope refund pool for those purchases. The refund equals $3,420, representing $2,082 in principal and $1,338 in interest.

Kenneth O. Dickey, et al. 12/8/87, RF272-3067 et al.

The DOE issued a Decision and Order granting 30 Applications for Refund filed in connection with the crude oil refund proceeding. Each applicant purchased refined petroleum products during the period Agusut 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases by using the USDA estimate of the average annual petroleum product consumption per acre among the nation's farmers. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $647.

Marathon Petroleum Company/Leonard A. Marshand, 12/9/87, RF 250-2739

The DOE issued a decision and Order concerning the Application for Refund filed by Leonard A. Marshand (Marshand), an indirect purchaser and retailer of products covered by a consent order that the agency entered into with Marathon Petroleum Company. In a previous Decision, Sines & Sons, Inc., Marshand's supplier, was granted a refund under the small claims presumption of injury. Under these circumstances, the DOE determined that it would be most equitable to presume that Marshand, a small claims applicant, was overcharged by its full volumetric amount. Accordingly, Marshand was granted a refund of $399, representing $352 in principal, and $47 in accrued interest.

McCleary Oil Company, Inc./ Greencastle-Antrim School District and Shippensburg Area School District, 12/7/87, RF297-5, RF297-6

The DOE issued a Decision and Order granting two Applications for Refund filed in the McCleary Oil Company, Inc. special refund proceeding. *McCleary Oil Company*, 16 DOE ¶ 85,128 (1987). Each applicant was an end user of McCleary covered products that was assigned a specific share of the McCleary consent order funds by the Economic Regulatory Administration. As end users, each applicant was presumed to have been injured by McCleary's alleged overcharges. Based upon the applicants' submissions, the DOE granted total refunds of $1,155, representing $573 in principal and $582 in accrued interest.

Melton Truck Lines, Inc., 12/7/87, RF270-2501

The DOE issued a Decision and Order revising a previous Decision which granted refunds to several applicants in the Surface Transporters refund proceeding. *J.C. Trucking, Inc.*, 16 DOE ¶ 85,356 (1987) (*J.C.*). Subsequently, one of the applicants, Melton Truck Lines, Inc. (Melton) (Case No. RF270-635), informed the DOE that the purchase volume approved for it in the *J.C.* Decision was incorrect. Specifically, Melton informed the DOE that it had included in its claimed purchase volumes petroleum product purchased by owner-operators hired by the firm during the Settlement Period. Since Melton did not actually purchase the fuel used by its owner-operators, it is ineligible to receive a refund based upon these volumes. *See Aero Trucking Inc.*, 16 DOE ¶ 85,239, *reconsideration denied*, 16 DOE ¶ 85,418 (1987). The DOE therefore modified *J.C.* to reduce the volume approved for Melton.

Mobile Oil Corporation/Terminal Freight Handling Company, 12/11/87, RF225-3496

The DOE issued a Decision and Order concerning an Application filed by Terminal Freight Handling (Terminal) for a refund from the Mobil Oil Corporation consent order refund. Terminal applied for a refund as an end-user of diesel fuel which it purchased directly from Mobil during the Mobil consent order period. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Terminal was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. After adjusting the firm's gallonage claim to exclude gallons purchased in January and February 1973 the DOE approved a refund of $1,531, representing $1,236 in principal and $295 in interest.

Sububran Propane Gas Corporation and W.S. Carpenter & Sons, Inc., 12/11/87, RF299-1

The DOE issued a Decision and Order granting an Application for Refund from the Suburban Propane Gas Corporation escrow account filed by W.S Carpenter & Sons, Inc., A reseller/retailer of Suburban propane during the period November 1, 1973 through October 31, 1978. Carpenter applied for a refund based upon the small claims presumption set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987). The DOE granted Carpenter a refund of $1,849, representing $1,668 in principal and $181 in interest.

The Youngstown Cartage Co., 12/11/87, RF270-1553, RF270-1558

The DOE issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption litigation. The DOE first determined that, for equity reasons, the application filed by a representative of a court receiver on behalf of Youngstown, Case No. RF270-1553, be recognized as the properly authorized claim. Therefore, the claim filed by another party, Case No. RF270-1558, was dismissed. Next, the DOE approved the application filed under Case No. RF270-1553 after deducting gallonage attributable to miles travelled by owner-operators. The DOE will determine a per gallon refund amount and establish the amount of Youngstown's refund after it completes its analysis of all Surface Transporter claims. The number of gallons approved in this Decision is 32,939,462.

Tood Cornwell, et al., 12/10/87, RF272-811, et al.

The DOE issued a Decision and Order granting 50 Applications for Refund filed in connection with the Subpart V crude oil refund proceeding. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases by using the USDA estimated of the average annual petroleum product consumption per acre among the nation's farmers. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $1,820.

Vern E. Wedeking, et al., 12/8/87, RF272-3437, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 39 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products

for various agricultural activities, and each determined its claim by consulting actual purchase records. Since each applicant was an end-user of the products, each was presumed injured. The sum of the refunds granted in this Decision is $680.

William H. Wyatt, et al., 12/9/87, RF272-600, et al.

The DOE issued a Decision and Order granting Applications for Refund involving a total of 38,564,838 gallons of petroleum product consumption. Since all the applicants were end-users of the products, their claims were granted without proof of injury. The total amount of refund granted in this Decision and Order was $7,707.

Dismissals

The following submissions were dismissed:

Name:
Ball Marketing, Inc.
Case No.:
HRO-0268
KRD-0026
KRH-0026
KRD-0027
KRD-0027

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 29, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88-2452 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $475,000 (plus accrued interest) obtained as a result of a settlement agreement which the DOE entered into with Plaquemines Oil Sales Corporation of Belle Chasse, Louisiana (Case No. KEF-0039). The fund will be available to customers who purchased No. 2 diesel fuel from Plaquemines during the settlement period.

DATE AND ADDRESS: Applications for Refund of a portion of the settlement fund must be filed no later than 90 days after publication of this notice in the **Federal Register** and should be addressed to: Plaquemines Oil Sales Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0039.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.202(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a settlement agreement entered into by the DOE and Plaquemines Oil Sales Corporation of Belle Chasse, Louisiana. The settlement agreement settled possible pricing violations with respect to the firm's sales of No. 2 diesel fuel to customers during the period November 1, 1973 through August 31, 1975.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the settlement fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on April 24, 1987. 52 FR 16436 (May 5, 1987).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the **Federal Register.** Applications will be accepted from customers who purchased No. 2 diesel fuel from Plaquemines during the Settlement Agreement period. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: January 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 28, 1988.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Plaquemines Oil Sales Corporation

Date of Filing: May 21, 1986

Case Number: KEF-0039

In accordance with the procedural regulations for the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on May 21, 1986. In the Petition, the ERA requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a final settlement between the DOE and Plaquemines Oil Sales Corporation (POSC).

I. Background

POSC was a "reseller-retailer" of No. 2 diesel fuel as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an audit of the firm's pricing practices during the period November 1, 1973 through August 31, 1975 (the audit period), the Federal Energy Administration (FEA), a predecessor of the DOE, determined that POSC had violated the price regulations in sales of No. 2 diesel fuel.[1]

[1] The underlying enforcement proceeding began on June 7, 1976, when the FEA had issued a Remedial Order to POSC which found that the firm overcharged certain No. 2 diesel fuel customers in the amount of $344,559.62. POSC's appeal of the Remedial Order was denied by FEA Region VI on January 20, 1977. Subsequently, the United States District Court for the Eastern District of Louisiana remanded the order to the DOE for consideration of several issues. *Plaquemines Oil Sales Corp. v. FEA*, 461 F. Supp. 276 (E.D. La. 1978).

On September 19, 1980, the ERA issued a Proposed Remedial Order (PRO) in response to the court's remand order, affirming the essential allegations of the original Remedial Order but reducing the amount of the alleged overcharges to $331,572.44. POSC contested the changes, and OHA affirmed and issued a Remedial Order on February 16, 1982. OHA finalized the 1980 PRO, but reduced the overcharge amount to $331,473.44. *Plaquemines Oil Sales Corp.*, 9 DOE ¶ 83,017 (1982). On April 16, 1982 POSC filed a petition for judicial review of the final order, and the DOE counterclaimed seeking enforcement of the order.

Subsequently, the DOE and POSC agreed to settle all claims and disputes between the agency and the firm regarding the latter's pricing practices during the audit period, and signed a Joint Motion to Dismiss the pending civil action (*see* n. 1). The settlement was approved by the court on October 31, 1983. *Plaquemines Oil Sales Corp. v. DOE*, No. 82-1541 (E.D. La.). As part of the settlement, POSC remitted $475,000 (the settlement fund) to the DOE for deposit in an interest bearing escrow account maintained by the Department of the Treasury. This amount consists of the $331,473.44 of overcharges found in the 1982 Remedial Order plus $143,526.56 in accrued interest on those overcharges.

On April 24, 1987, the OHA issued a Proposed Decision and Order (PDO) setting forth a tentative plan for the distribution of the settlement fund. In the PDO we proposed to establish a claims procedure whereby Applications for Refund would be accepted from No. 2 diesel fuel customers of Plaquemines who could show that they were injured as a result of POSC's pricing practices during the audit period. We noted that the Attachment to the PRO issued to the firm on September 19, 1980 includes a schedule of 29 identified customers together with the amount of POSC's alleged overcharges to each of those customers. In addition, the PRO Attachment refers to "Other End-users," unidentified end-user customers of POSC who were subject to the alleged overcharges. Although we have determined from the ERA audit papers that there were five members of this class, we have been unable to identify them. We stated that we would accept refund applications from any applicant who could demonstrate that it was a member of one of these two groups.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. 52 FR 16436 (May 5, 1987). In addition, copies of the PDO were mailed to potential claimants identified in the PRO attachment whose addresses were available. We received comments from two firms identified in the PRO Attachment, Mobil Oil Corporation (Mobil) and Penrod Drilling Company (Penrod). These comments will be addressed in our discussion of the final refund procedures to be adopted in this proceeding.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PDO, we have reviewed the record in the present case, and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the POSC settlement fund. We will therefore grant the ERA's Petition and assume jurisdiction over this fund.

III. Refund Procedures

The settlement fund will be distributed to customers of POSC who were injured by the firm's alleged overcharges. As noted above, 29 firms were identified in the PRO Attachment as being subject to the alleged overcharges. These firms and their maximum potential refunds based upon the alleged overcharge amounts attributable to them are listed in the Appendix to this Decision.[2] In addition, a firm which establishes that it is one of the five "Other End-users" referenced in the PRO Attachment is eligible for a refund in this proceeding.[3]

A. *Showing of Injury.* As an initial matter, each claimant will be required to document that it purchased No. 2 diesel fuel from POSC on a regular basis during the settlement period. Secondly, as stated in the PDO, resellers (including retailers and refiners) of POSC No. 2 diesel fuel must demonstrate that they obsorbed the alleged overcharges rather than passing them on to their own customers. This showing generally consists of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed. *See* 10 CFR 212.83(e) (refiners) and 212.93(e) (resellers and retailers). Second, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges.[4] *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985) (Atlantic Richfield). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from POSC.

In its comments, Mobil contends that a reseller should not be required to show that the prices at which it purchased POSC No. 2 diesel fuel exceeded average market prices, as would normally be required in a showing that the firm suffered a competitive disadvantage as a result of its purchases from POSC. Mobil argues that because such purchase price data may be unavailable, a showing of banks alone should be sufficient to establish injury. We are unpersuaded by this argument. We have stated on numerous occasions that a showing of banked costs along is not sufficient to establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.* 10 DOE ¶ 85,014 (1982). Our position on this matter was upheld by the Court in the *Atlantic Richfield* case. Furthermore, while the competitive disadvantage showing is the most common method of demonstrating that market conditions rendered a firm unable to increase its prices in order to pass through the alleged overcharges, it is by no means the only such showing. For instance, in order to show that it was unable to pass through the alleged overcharges, a claimant may also provide evidence that the alleged overcharges forced it to lose customers or experience a decline in market share. *See Inland U.S.A., Inc./Site Oil Co.*, 14 DOE ¶ 85,257 at 88,487 (1986). We have also stated that an applicant is always free to suggest reasonable alternative methods for establishing injury and provide appropriate data for the application of its methodology. *See Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,512 (1986) (*Marathon*).

1. *Small Claims Presumption.* As we stated in the PDO, we recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small

[2] The calculation of these maximum potential refund amounts is described below in the section entitled "Calculation of Refund Amounts."

[3] In the PDO, we stated that we would accept refund applications from other unidentified POSC customers who were injured as a result of the alleged overcharges. However, in view of the specificity of the information in the PRO Attachment and supporting workpapers and its correlation with the amount of the settlement fund, we have determined that the 34 customers referred to in the PRO Attachment are the only direct purchasers of POSC diesel fuel eligible for refunds in this proceeding.

[4] According to the record of this proceeding, one identified POSC customer, Shell Oil Company (Shell), purchased all of its POSC diesel fuel under a contract in which Shell supplied POSC with the product and bought back a portion at a mark-up. In its Application, Shell should provide a detailed explanation of this arrangement and explain why it was injured as a result of it.

amounts of diesel fuel from POSC. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove the existence of banked costs, or that they did not pass through the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In past proceedings we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marion Corp.*, 12 DOE ¶85, 014 (1984) (*Marion*). We will adopt such a presumption in this case. Therefore, as in other Subpart V proceedings, any reseller claiming a refund of $5,000 or less need only document its purchase volumes in order to be eligible to receive a refund.[5]

2. *End-users.* As in many other refund proceedings, we adopt the presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges covered by the POSC settlement. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion; Office of Enforcement*, 10 DOE ¶85,072 (1983). We will therefore adopt our proposal in the PDO that end-users of POSC products need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

3. *Spot Purchasers.* We also adopt the rebuttable presumption that resellers which made only spot purchases of POSC diesel fuel, even those claiming refunds below the small claims threshold, were not injured by the alleged overcharges. Spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot purchases of POSC products at increased prices unless they were able to pass through the full amount of the overcharges to their own customers. *See Vickers*, 8 DOE at 88,396–7. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured by the spot purchase(s).

4. *$15 Minimum.* We will also establish a minimum refund amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims of $15 or less outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9 DOE ¶82,541 at 85,225 (1982).

B. *Calculation of Refund Amounts.* In the PDO we discussed the appropriate methods for effecting restitution to POSC diesel fuel customers whose claims are meritorious. For those 29 customers listed in the Appendix to this Decision, we proposed to rely upon the "Schedule of Refunds Due Purchasers" in the Attachment to the September 19, 1980 PRO in order to calculate potential refunds.[6] We therefore proposed that the maximum potential refund for each identified POSC purchaser would be that firm's percentage of the total alleged overcharge amount multiplied by the total settlement amount.[7] In addition, we stated that successful applicants will receive a pro-rata share of the interest which has accrued since the deposit of the funds into the escrow account. We have decided to adopt this proposed allocation of the settlement funds to identified purchasers.

As proposed in the PDO, we will adopt a volumetric refund presumption for the five unidentified firms referenced in the PRO Attachment as "Other End-Users." [8] Under this volumetric approach, each claimant in this category will be eligible to receive a refund equal to the number of gallons of No. 2 diesel fuel purchased from POSC between November 1, 1973 and August 31, 1975, times the volumetric factor of $0.023772 per gallon.[9] In addition, successful claimants from this refund pool will receive a proportionate share of the interest which has accrued since the deposit of the funds into the escrow account.

In its comments, Penrod, one of the identified purchasers, argues that its refund should be calculated using the volumetric refund amount adopted for the unidentified POSC customers. Penrod misunderstands the function of the volumetric approach. In those cases where we use the volumetric methodology we assume that the overcharges were spread equally over all gallons of product marketed by the firm. *See, e.g., Marathon*, 14 DOE at 88,057. In this case, with respect to Penrod and the other identified purchasers, we need not rely upon this assumption because we possess detailed information which sets forth the specific amounts by which Penrod and the other identified purchasers were allegedly overcharged. The use of this detailed information ensures that Penrod's pro-rata share of the settlement fund corresponds closely to the amount of the overcharges it likely experienced plus interest on those overcharges from the date of violation. We will employ the volumetric approach in determining the potential refunds of unidentified end-users only because we do not possess similar detailed information for those customers.

C. *Application for Refund Procedures.* We have determined that the procedures described in the PDO are the most equitable and efficacious means of distributing the POSC settlement fund. Accordingly, we will now accept Applications for Refund from eligible customers who purchased No. 2 diesel fuel from POSC during the period November 1, 1973 through August 31, 1975. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationary. The following information should be included in all Applications for Refund:

1. The name of the settlement agreement firm, Plaquemines Oil Sales

[5] As in prior special refund proceedings, reseller applicants whose potential refund is for a larger amount any choose to limit their claims to $5,000 in lieu of making a detailed showing of injury.

[6] The total overcharge amount alleged in the PRO was $331,572.44. However, as indicated above, the settlement amount was $475,000, consisting of $331,473.44 of overcharges plus accrued interest of $143,526.56. The potential refunds have therefore been adjusted proportionally to account for the larger settlement amount. *See* n.7, *infra*.

[7] In its comments, Mobil requests clarification of manner in which the potential refunds of identified purchasers were calculated. We cannot identify the reason for Mobil's confusion. As stated above, Mobil's potential refund, like those of the other identified purchasers, is derived from the alleged overcharge amounts specified in the PRO Attachment. The amount assigned to Mobil in that Attachment, $18,920.41, is approximately 5.7 percent of POSC's total alleged overcharges. Mobil's potential refund is therefore $27,105.46, approximately 5.7 percent of the $475,000 total settlement amount.

[8] A claimant which believes that it suffered a disproportionate share of the alleged overcharges attributable to POSC's sales to unidentified end-users may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶85,054 at 88,164 (1984).

[9] As stated in the PDO, the $0.023772 volumetric factor was derived by dividing the proportionate share of the settlement fund attributable to "Other End-Users" ($39,921.44) by 1,679,311, the total number of gallons of No. 2 diesel fuel sold by POSC to the unidentified end-user purchasers during the audit period.

Corporation, the case number, KEF-0039, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the POSC No. 2 diesel fuel, i.e., whether it was a reseller (including refiner or retailer), end-user, or public utility.

4. The volume of POSC No. 2 diesel fuel that the applicant purchased in each month of the settlement period (November 1, 1973–August 31, 1975) in which it claims that it was injured by the alleged overcharges. If the applicant is one of the 29 firms listed in the Appendix to this Decision and is either an end-user or a reseller claiming less than $5,000, it may instead submit a certification that it purchased POSC No. 2 diesel fuel from POSC on a regular basis during the settlement period.

5. If the applicant is a reseller claiming a refund in excess of $5,000, it should also:

(a) state whether it maintained banks of unrecouped increased product costs and furnish the OHA with monthly bank calculations, and

(b) submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may compare the prices it paid for POSC No. 2 diesel fuel with average prices in the firm's market area for each month for which it seeks a refund. (In the absence of an accurate market survey provided by the applicant, the OHA will use the market price information contained in *Platt's Oil Price Handbook and Oilmanac.*)

6. If the applicant is a regulated firm, e.g., a public utility, it must:

(a) certify that it will pass through any refund received to its customers, and provide the OHA with a full explanation of how it plans to accomplish this restitution, and

(b) certify that it will notify the appropriate regulatory authority of the receipt of the refund money.

7. A statement of whether the applicant was in any way affiliated with POSC. If so, the applicant should explain the nature of the affiliation.

8. A statement of whether there has been any change in ownership of the entity that purchased the POSC No. 2 diesel fuel since the settlement period. If so, the name and address of the current (or former) owner should be provided.

9. A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. *See* 10 CFR 205.9(d).

10. The following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed *in duplicate* and must be filed within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the informatin is alleged to be privileged or confidential.

All Applications should be sent to: Plaquemines Oil Sales Corporation Special Refund Proceeding, Case No. KEF-0039, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

D. *Distribution of Funds Remaining after First Stage.* Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99-509, Title III. *See Fed. Energy Guidelines* ¶ 11.702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODA section 3003(c) and (d). The Secretary has deleted these responsibilities to the OHA, and any funds in the POSC settlement escrow account that the OHA determines will not be needed to effect direct restitution to injured POSC customers will be distributed in accordance with the provisions of PODRA.

It is Therefore Ordered That: (1) Applications for Refund from the funds remitted to the Department of Energy by Plaquemines Oil Sales Corporation pursuant to the Joint Motion to Dismiss approved by the United States District Court for the Eastern District of Louisiana on October 31, 1973 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: January 28, 1988.

APPENDIX

Identified purchasers	Potential refund
Ayers Company	$32,684.80
Brown & Root	5,963.63
Canal Workover	402.33
Celotex Corporation	13,523.25
Coastal Tugs	2,026.83
De Felice Marine	3,467.03
Dockside Floating Elevator	9,885.23
Dowell Div. of the Dow Chemical Co	656.93
Exxon, USA	2,308.03
Harris Well Service	3,668.90
Latex Drilling	1,499.10
J. Ray McDermott	4,140.58
Mobil Oil Corporation	27,105.46
Nicklos Drilling	1,517.63
ODECO	1,510.03
Pennzoil Producing	484.50
Penrod Drilling Company	9,847.70
Sanders Drilling Company	1,669.63
Shell Oil Company	133,015.26
Storm Drilling Company	2,997.73
Strachan Shipping	21,329.40
Corps of Enegineers	5,415.95
Gulf Coast Service Stations	5,736.58
Buras Fuel Dock	52,473.30
Crais Oil Company	42,648.40
Delta Marina	32,225.95
Gulf Seafood	1,611.68
Little Lake Oyster	13,397.38
Peppo Oil Works	1,865.33
Other End-Users [1]	39,921.44
Total	$475,000.00

[1] Volumetric refund amount of $0.023772 per gallon.

[FR Doc. 88-2411 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in

disbursing $7,104,217.29 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Murphy Oil Corporation. The funds are being held in escrow following the settlement of claims and disputes arising from an Economic Regulatory Administration audit of Murphy, a major integrated refiner marketing crude oil and refined petroleum products throughout the United States.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Comments should be filed in duplicate and display a conspicuous reference to Case Number KEF-0095.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director or Jonathan Rees, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2094 [Mann], (202) 586-2383 [Rees].

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $7,104,217.29, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Murphy Oil Corporation on February 9, 1987. The funds were paid by Murphy towards the settlement of possible violations of the DOE price and allocation regulations relating to transactions by Murphy involving the marketing of refined petroleum products during the period January 1, 1973 through January 27, 1981 (the consent order period).

We propose to distribute these funds in two stages. In the first stage, we will accept claims from identifiable purchasers of Murphy refined petroleum products who may have been injured by Murphy's pricing practices during the consent order period. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of refined petroleum products which they purchased from Murphy. Applications for Refund should *not* be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. If any funds remain after meritorious claims are paid in the first stage, they may be used for indirect restitution in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99-509, 1 Fed. Energy Guidelines ¶ 11,702.

Any member of the public may submit written comments regardig the proposed refund procedures. Commenting parties are requested to submit two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Date: January 26, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 26, 1988.

Name of Firm: Murphy Oil Corporation.

Date of Filing: June 10, 1987.

Case Number: KEF-0095.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's enforcement of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on June 10, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Murphy Oil Corporation (Murphy) under the terms of a February 9, 1987 consent order with Murphy. In its Petition, the ERA requests that the OHA establish special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the Murphy Consent Order.

I. Background

Murphy is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, 212. During the course of controls, the ERA conducted an extensive audit of Murphy's operations and, as a result of the audit, alleged that Murphy had violated certain applicable DOE price and allocation regulations in its sales of crude oil and refined petroleum products. Settlement discussions were held, and on February 9, 1987, the ERA and Murphy finalized a consent order (Consent Order No. RMUH01983Z) that resolved issues pertaining to Murphy's refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (the consent order period). Pursuant to the terms of the consent order, Murphy remitted a total of $7,104,217.9 (the consent order fund) [1] to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution. With interest, the amount in the Murphy consent order escrow account had grown to $7,438,602.94 as of December 31, 1987.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of enforcement proceedings. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶82,508 (1981), and *Office of Enforcement*, 8 DOE ¶82,597 (1981).

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the Murphy consent order fund and have determined that such a proceeding is appropriate. We will grant the ERA's request. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

III. Proposed Refund Procedures

We propose to implement a two-stage refund process by which firms and individuals who purchased Murphy

[1] This amount consists of the principal consent order amount of $7,000,000 plus $104,217.29 in interest which accrued prior to Murphy's payment to the DOE. For accounting purposes, the interest remitted by Murphy shall be considered as additional principal.

refined petroleum products during the consent order period may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants will fall into the following categories of Murphy refined product purchasers: (i) end-users, i.e. ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) retailers, resellers, and refiners that resold Murphy products.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Murphy refined petroleum products during the consent order period. If the product was not purchased directly from Murphy, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with Murphy.

In addition, a refiner, reseller, or retailer claimant, except those who choose to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[2] Second, because a showing of banks alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶85,257 (1984), *aff'd sub nom Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199, (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Murphy. *Id.; see also Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Shupbach and Streitmatter Gas Company*, 14 DOE ¶85,186 (1986).

1. *Presumptions for Claims Based Upon Refined Product Purchases.* Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense, and ensures that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Company*, 14 DOE ¶85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable DOE procedural regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Murphy's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund approach is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's allocable share of the refined product pool is equal to the number of gallons purchased times the per gallon refund amount (plus an appropriate share of the interest which has accrued on the Murphy consent order fund).[3] In the present case, the per gallon refund amount is $0.000817. We derived this figure by dividing the consent order funds ($7,104,217.29) by the approximate number of gallons of refined products subject to price and allocation controls sold by Murphy during the consent order period (8,695,987,648 gallons). As in previous cases, we will establish a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15.00 are sought outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶85,339 (1985).

In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below.

a. *End-users.* In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Murphy petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *Id.* We therefore propose that end-users of Murphy refined petroleum products need only document their purchase volumes from Murphy during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, need only submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members.[4] However, a regulated firm or cooperative will also be required to certify that it will pass through any refund received to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,515; *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). This latter requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refunds received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreements which control prices would ensure that the alleged overcharges and, similarly, refunds would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.

c. *Refiners, Resellers, and Retailers Seeking Refunds of $5,000 or Less.* We propose to adopt a presumption that a firm who resold Murphy products and requests a small refund was injured by the alleged regulatory violations. Under the small claims presumption, a refiner,

[2] Claimants who have previously relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶85,090 at 88,179 (1987).

[3] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that an allocation on the basis of a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶85,015 (1984).

[4] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See Marathon*, 14 DOE at 88,515.

reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest (i.e. who purchased less than 6,119,951 gallons of Murphy refined petroleum products during the consent order period), will not be required to submit evidence of injury beyond documentation of the volume of Murphy covered products it purchased during the consent order period. *See TOGCO.* As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.[5]

d. *Medium-Range Refiner, Reseller and Retailer Claimants.* In lieu of making a detailed showing of injury, a refiner, reseller, or retailer claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000.[6] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon,* 14 DOE at 88,515. In a number of prior special refund proceedings, we performed detailed economic analysis in order to determine product-specific levels of injury. *See, e.g., Mobil Oil Corp.,* 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.,* 16 DOE ¶ 85,381 (1987) we determined that it was most efficient to adopt a single general presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined products they purchased, based upon the results of our analyses in prior proceedings. We therefore propose to adopt the 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Murphy refined petroleum products during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share.[7]

e. *Spot Purchasers.* We propose to adopt a rebuttable presumption that a refiner, reseller or retailer that made only spot purchases from Murphy did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers tend to have considerable discretion as to the timing and market in which to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as result of its spot purchases from Murphy.[8]

f. *Consignees.* A consignee agent is a firm that distributed covered products pursuant to a contractural agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). As in previous decisions, we propose to adopt the rebuttable presumption that consignees of Murphy refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Company,* 16 DOE ¶ 85,147 (1987). However, we also propose that a consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices. *See Gulf Oil Corp./C.F. Canter Oil Co.,* 13 DOE ¶ 85,388 at 88,962 (1986).

2. *Allocation Claims.* We also recognize that we may receive claims based upon Murphy's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. We will evaluate refund applications based upon allocation claims by referring to the standards set forth in Decisions such as *Amoco,* 10 DOE at 88,220, and *OKC Corp./Town & Country Markets, Inc.,* 12 DOE ¶ 85,094 (1984). Under those standards an allocation claimant first must demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. Secondly, it should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, it must establish that it was injured and document the extent of the injury.

3. *Distribution of Product Funds Remaining After First Stage.* We propose that any refined product funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99–509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA, Sections 3003 (c) and (d). The Secretary has delegated these responsibilities to the OHA, and any refined product pool funds in the Murphy consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Murphy customers will be distributed in accordance with the provisions of PODRA.

IV. Applications for Refund

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before

[5] Claimants who attempt to make a detailed showing of injury in order to support a large refund claim but, instead, provide evidence that leads us to conclude that they passed through all of the alleged overcharges or are eligible for a refund of less than $5,000, will not be entitled to a $5,000 small claims threshold refund. *See Union Texas Petroleum Corp./Arrow Enterprises, Inc.,* 15 DOE ¶ 85,087 (1986); *Quaker State Oil Refining Corp./Campbell Oil Co.,* 15 DOE ¶ 85,089 (1986).

[6] That is, claimants who purchased between 6,119,951 gallons and 152,998,776 gallons of Murphy refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumption. Claimants who purchased more than 152,998,776 gallons may elect to limit their claim to $50,000.

[7] A medium-range claimant may elect not to receive a refund based upon this presumption and may instead attempt to show that it is eligible for a refund equal to its full allocable share by making a detailed showing of injury using the general criteria set forth above. However, as with the small claims presumption, the 40 percent presumption will not be available to medium-range claimants who submit a detailed injury showing which leads us to conclude that they are eligible for a refund of less than 40 percent of their volumetric share. *See n.5 infra.*

[8] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See Quaker State Oil Refining Corp./Certified Gasoline Co.,* 14 DOE ¶ 85,465 (1986).

disposing of any of the funds received as a result of the Murphy consent order, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the **Federal Register.**

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Murphy Oil Company pursuant to Consent Order No. RMUH01983Z, finalized on February 9, 1987, will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-2412 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3324-1]

Agency Paperwork Reduction Act (PRA) Requests Completed by OMB

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the PRA (44 U.S.C. 3501 et. seq.), this notice announces that the Information Collection Requests (ICRs) listed below have been approved/not approved by OMB.

EPA ICR #1232; Information Requirements for Importation of Non-conforming Vehicles; OMB action: approved 12/15/87 (OMB #2060-0095; expires 05/31/88).

EPA ICR #1434; Section 114 Information Collection for Protection of Stratospheric Ozone; OMB action: approved 12/1/87 (OMB #2060-0158; expires 05/31/88).

EPA ICR #1430; Community Right to Know—Emergency System Review Sec. 305(b); OMB action: approved 11/2/87 (OMB #2050-0079 expires 04/30/88).

EPA ICR #1428; Community Right to Know—Trade Secret Claims; OMB action: approved 12/7/87 (OMB #2050-0078; expires 10/31/90).

EPA ICR #1425; Application for Reimbursement to Local Government; OMB action: approved 12/7/87 (OMB #2050-0077; expires 12/31/90).

EPA ICR #1422; Hazardous Waste Generator Survey; OMB action: approved 10/6/87 (OMB #2050-0075; expires 11/30/89).

EPA ICR #1383; National Tapwater Consumption Survey (Pilot Study); OMB action: approved 12/14/87 OMB #2040-0108; expires 12/31/88).

EPA ICR #1363; Community Right to Know—Toxic Chemical Release Inventory Form; OMB action: approved 8/3/87 (OMB #2070-0093; expires 6/30/90).

EPA ICR #1352; Community Right to Know—Emergency and Hazardous Chemical Inventory Forms—Reporting Requirements; OMB action: approved 11/20/87 (OMB #2050-0072; expires 10/31/90).

EPA ICR #1303; Miscellaneous Hazardous Waste Management Units; OMB action: approved 9/2/87 (OMB #2050-0074; expires 9/30/90).

EPA ICR #1200; Household Survey of Chemical Product Usage; OMB action: approved 9/15/87 (OMB #2070-0068; expires 9/30/90).

EPA ICR #1191; National Survey of Pesticides in Drinking Water Wells (Pilot Study—extension); OMB action: approved 12/10/87 (OMB #2040-0107; expires 3/31/88).

EPA ICR #1167; NSPS for Lime Manufacturing Plants (Subpart HH); OMB action: approved 10/6/87 (OMB #2060-0063; expires 10/31/90).

EPA ICR #1161; NSPS Opacity Reporting and Recordkeeping Requirements; OMB action: approved 9/1/87 (OMB #2060-0153; expires 3/31/90).

EPA ICR #1158; NSPS for Rubber Tire Manufacturing Industry—Reporting and Recordkeeping; OMB action: approved 9/9/87 (OMB #2060-0156; expires 9/30/90).

EPA ICR #1157; NSPS for Flexible Vinyl and Urethane Coating and Printing—Reporting and Recordkeeping (Subpart FFF); OMB action: approved 10/2/87 (OMB #2060-0073; expires 10/31/90).

EPA ICR #1156; NSPS for Synthetic Fiber Production Facilities—Reporting and Recordkeeping; OMB action: approved 10/28/87 (OMB #2060-0050; expires 10/31/90).

EPA ICR #1153; NESHAP for Benzene Fugitive Emissions; OMB action: approved 9/16/87 (OMB #2060-0068; expires 9/30/89).

EPA ICR #1150; NSPS for Polymer Manufacturing Industry; OMB action: approved 6/22/87 (OMB #2060-0145; expires 6/30/90).

EPA ICR #1129; NSPS Recordkeeping and Reporting Requirements for Secondary Brass and Bronze Ingot Production Plants (Subpart M); OMB action: approved 12/15/87 (OMB #2060-0110; expires 12/31/90).

EPA ICR #1064; NSPS for Automobile and Light Duty Truck Surface Coating (Subpart MM): Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0034; expires 10/31/90).

EPA ICR #1060; NSPS for Steel Plants: Electric Air Furnaces and Argon-Oxygen Decarburization Vessels (Subparts AA and AAA) Information Requirements; OMB action: approved 10/13/87 (OMB #2060-0038; expires 11/30/88).

EPA ICR #1001; PCB Exclusions, Exemptions and Use Authorization; OMB action: approved 9/11/87 (OMB #2070-0008; expires 9/30/90).

EPA ICR #0997; NSPS for Petroleum Dry Cleaners—Reporting and Recordkeeping; OMB action: approved 10/6/87 (OMB #2060-0079; expires 10/31/90).

EPA ICR #0995; Land Disposal Permitting Standards; OMB action: approved 10/13/87 (OMB #2050-0007; expires 9/30/88).

EPA ICR #0994; Survey Report on Great Lakes Beach Closing; OMB action: approved 10/14/87 (OMB #2090-0003; expires 10/31/90).

EPA ICR #0959; Reporting, Recordkeeping and Planning Requirements for Ground-Water Monitoring; OMB action: approved 11/4/87 (OMB #2050-0033; expires 10/31/88).

EPA ICR #0940; Ambient Air Quality Networks—Monitoring and Quality/Precision Data; OMB action: approved 8/12/87 (OMB #2060-0084; expires 8/31/90).

EPA ICR #0874; Application for Federal Assistance (Construction); OMB action: approved 10/7/87 (OMB #2030-0018; expires 9/30/90).

EPA ICR #0801; Uniform Hazardous Waste Manifest for Generators and Transporters; OMB action: approved 9/2/87 (OMB #2050-0039; expires 9/30/88).

EPA ICR #0663; NSPS for Beverage Can Surface Coating (Subpart WW)—Information Requirements; OMB action: approved 11/10/87 (OMB #2060-0001; expires 10/31/90).

EPA ICR #0660; NSPS for Metal Coil Surface Coating (Subpart TT) Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0107; expires 10/31/90).

EPA ICR #0659; NSPS for Industrial Surface Coating of Large Appliances (Subpart SS)—Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0108; expires 10/30/90).

EPA ICR #0658; NSPS for Pressure Sensitive Tape and Label Surface Coating (Subpart RR)—Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0004; expires 10/31/90).

EPA ICR #0649; NSPS for Metal Furniture Surface Coating (Subpart EE)—Information Requirements; OMB

action: approved 10/28/87 (OMB #2060-0106; expires 10/31/90).

EPA ICR #0613; Trade Secrets Clearance Justification for Pesticides; OMB action: approved 9/11/87 OMB #2070-0053; expires 6/30/90).

EPA ICR #0612; Affirmation of Non-Multinational Status for Pesticide Information; OMB action: approved 9/29/87 (OMB #2070-0047; expires 2/29/90).

EPA ICR #0601; FIFRA Annual Report on Conditional Registrations; OMB action: approved 11/13/87 (OMB #2070-0026; expires 12/31/89).

EPA ICR #0559; Application for Reference and Equivalent Method Determinations; OMB action: approved 12/8/87 (OMB #2080-0005; expires 1/31/89).

EPA ICR #0370; Underground Injection Control Program Information (renewal of existing requirements); OMB action: approved 8/12/87 (OMB #2040-0042; expires 7/3/88).

EPA ICR #0318; Estimate of Municipal Wastewater Treatment Facility Requirements—Needs Survey; OMB action: approved 10/9/87 (OMB #2040-0050; expires 2/29/89).

EPA ICR #0277; Application for New or Amended Pesticide Registration; OMB action: approved 10/23/87 (OMB #2070-0060; expires 9/30/90).

EPA ICR #0270; Public Water System Program Information (Public Notification/Final Rule); OMB action: approved 10/9/87 (OMB #2040-0090; expires 9/30/90).

EPA ICR #0270; Public Water System Program Information (renewal of existing requirements); OMB action: approved 9/9/87 (OMB #2040-0090; expires 9/30/90).

EPA ICR #0011; Selective Enforcement Auditing Reporting Requirements—Light Duty Trucks and Heavy-Duty Engines; OMB action: approved 11/3/87 (OMB #2060-0064; expires 11/30/88).

Not Approved

EPA ICR #0370; Underground Injection Control Program Information (Hazardous Waste Injection Disposal Restrictions/Proposed Rule); OMB action: not approved 12/22/87.

Approved Expired

EPA ICR #1408; Information Request for Conference on Continuous Emission Monitoring; OMB action: approved 8/11/87 (OMB #2060-0155; expired 10/31/87).

FOR FURTHER INFORMATION CONTACT: Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460, Telephone No. (202) 382-2740

and

Marcus Peacock, Tim Hunt, Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503, Telephone No. (202) 395-3084

Date: January 29, 1988.

Daniel Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 88-2442 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL-3324-6]

Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a study.

SUMMARY: As part of the efforts of the President's Task Force on Regulatory Relief, EPA is releasing a report entitled "Guidance on Estimating Motor Vehicle Emission Reductions from the Use of Alternative Fuels and Fuel Blends."

This report concludes that substantial reductions in ozone-forming precursor emissions are possible with the use of pure methanol or natural gas as motor vehicle fuels in place of gasoline. These fuels cannot be used in current technology gasoline-fueled vehicles without some degree of mechanical modification to the vehicles. Therefore, these fuels would more likely be used initially in fleet applications with new vehicles rather than in area-wide applications with typical current vehicles. A vehicle which incorporates engine design features optimized to take full advantage of pure methanol's excellent combustion characteristics may achieve ozone reduction credits of over 80 percent compared to a comparable gasoline-fueled vehicle. A vehicle designed and built to operate on compressed natural gas may achieve ozone reduction credits of 40 percent compared to a gasoline-fueled vehicle.

The report concludes that there are also substantial carbon monoxide (CO) benefits with the use of gasoline-oxygenate blends, such as gasoline blended with ethanol (a mixture commonly referred as gasohol), methanol or methyl tertiary butyl ether (MTBE). These blends result in CO reductions of up to 35 percent compared to use of straight gasoline (no oxygen). The report also provides data on potential increase in evaporative hydrocarbon emissions which can occur with blends, specifically those that raise the volatility of the blended fuel.

This report provides estimates of the per-vehicle emission effects of various alternative fuels. These estimates are based on a compilation of low and high altitude test data for hydrocarbons, carbon monoxide, and nitrogen oxides. These per-vehicle effects are then used to project fleetwide effects for each model year from 1975 and earlier vehicles to 1990 and later vehicles. Instructions are given on how to use these projections in conjunction with MOBILE3 (or MOBILE4) and calculate fleet average emissions by calendar year. This procedure allows states to estimate the State Implementation Plan credits expected from any likely alternative fuels program they may wish to implement.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, U.S. EPA, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4321. Copies of the study may be requested at this number.

Dated: January 29, 1988.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 88-2443 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3324-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed January 25, 1988 Through January 29, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880027, Draft, FHW, LA, I-10 at College Drive Interchange Modifications and College Drive Widening, just north of Bawell Drive to just north of Concord Avenue, Funding, Baton Rouge, East Baton Rouge Parish, LA, Due: March 21, 1988, Contact: Kenneth A Perret (504) 389-0466.

EIS No. 880028, Final, FHW, WI, North Corridor Arterial and Chippewa River Crossing, Construction, US 12 to US 53, Funding and 404 Permit, Eau Claire County, WI, Due: March 7, 1988, Contact: James Wenning (608) 264-5966.

EIS No. 880029, DSuppl, DOI, LEG, ME, RI, CT, MA, NY, MS, VA, AL, NC, TX, SC, LA, GA, DE, FL, Undeveloped Coastal Barriers, Coastal Barrier

Resources System Proposed Changes, Implementation, ME, MA, RI, CT, NY, MS, AL, TX, LA, DE, VA, NC, SC, GA and FL, Due: March 21, 1988, Contact: Audrey L. Dixon (202) 343-8115.

EIS No. 880030, Final, SFW, AK, Yukon Delta National Wildlife Refuge, Long Term Management Plan and Wilderness Review, Implementation, Due: March 7, 1988, Contact: William Knauer (907) 786-3399.

EIS No. 880031, Final, FHW, AR, US 65 Bypass Construction, US 65/US 270 Interchange and Bryant Street Intersection to US 65/US 65B Interchange, Funding and 404 Permit, Pine Bluff, Jefferson County, AR, Due: March 7, 1988, Contact: Edward C. Lydick (501) 378-5625.

Amended Notices

EIS No. 870106, Draft, COE, Shorelands Commercial/Industrial Park Development and Construction, Section 10 and 404 Permits, Hayward City, Alameda County, CA, Due: May 18, 1987, Contact: Scott Miner (415) 974-0446.

Published FR 4-3-87—The COE has Officially Withdrawn this draft EIS.

Dated: February 2, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-2476 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3324-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 18, 1988 through January 22, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-BLM-K61088-00, Rating LO, Arizona Mohave Wilderness Study Areas, Wilderness Recommendations, Designation, Greenlee, Maricopa, Mohave, Pinal, Pima, and Yavapal Counties, AZ and Grant County, NM. SUMMARY: EPA expressed a lack of objections to this project, but requested that BLM coordinate nonpoint source water pollution planning with the State of Arizona.

ERP No. D-FHW-H40137-NB, Rating LO2, Van Dorn Street Connection, NB-2/10th Street to US-77/West Bypass, Construction, Funding, City of Lincoln, Lancaster County, NB. SUMMARY: EPA has no objections to the project as proposed, but believes that insufficient information is presented on which to adequately assess indirect impacts. Accordingly, EPA requests that additional information on indirect impacts be presented in the final EIS.

Final EISs

ERP No. F-FHW-H40108-IA. Central Business District Loop Arterial Construction, Harding Road and I-235 to US 65 at Scott Avenue, Funding and 404 Permit, Polk County, IA. SUMMARY: EPA's comments on the draft EIS was generally responded to concerning air quality, noise and water quality in this project.

Dated: Februrary 2, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-2477 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[SWH-FRL-3324-2]

Petition for Case-By-Case Extension of the Effective Date of the Land Disposal Restrictions on Certain Corrosive Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of petition.

SUMMARY: EPA is proposing to grant the Department of Energy's (DOE) Savannah River Plant's request for an extension of the July 8, 1987, effective date of the land disposal restrictions applicable to liquid hazardous wastes having a pH of less than or equal to two. This action responds to a petition submitted under 40 CFR 268.5 which allows any person to request the Administrator to grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the person's control and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity. If this proposed action is finalized, DOE can continue to dispose its corrosive hazardous waste at the Savannah River Plant until July 8, 1988, without being subject to the restrictions applicable to such wastes.

DATE: Comments on this notice must be received on or before March 7, 1988.

ADDRESSES: The original and two copies of any comments must be sent to EPA RCRA Docket (S-212), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number F-87-LDPP-FFFFF on all copies of the comments. The public docket is in Room S-212 at the above address and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For general information contact RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 toll-free or (202) 382-3000 in the Washington, DC, metropolitan area.

For information on specific aspects of this notice contact Lisa E. Faeth or Stephen R. Weil, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Mandate

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA). HSWA imposes additional responsibilities on persons managing hazardous wastes. Sections 3004(d) through (g) prohibit the land disposal of certain untreated hazardous wastes by specified dates in order to protect both human health and the environment for as long as the wastes remain hazardous. In particular, section 3004(d) prohibits the land disposal of liquid hazardous wastes having a pH of less than or equal to two effective 32 months after the enactment of HSWA. These wastes can be land disposed after this date if the treatment residual does not exhibit a pH of two or less. Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment may not be available by the applicable statutory effective dates and authorized EPA to set effective date variances based on the earliest dates that such capacity will be available. Under section 3004(h)(3), EPA can grant case-by-case extensions of the statutory deadlines for up to one year beyond the applicable deadlines. These extensions are renewable once for up to one additional year. On November 7, 1986, EPA published a final rule (51 FR 40572)

establishing the regulatory framework to implement the land disposal restrictions program, including the framework for the petition process, and promulgated regulations enacting the first phase of the program as well as the procedures for submitting case-by-case extension petitions.

B. Demonstrations Evaluated During Petition Review

Case-by-case extension petitions must satisfy the requirements outlined in 40 CFR 268.5. The applicant must demonstrate that adequate alternative treatment, recovery, or disposal capacity will not be available by the applicable effective date of the land disposal restrictions by showing that he has made a good-faith effort to locate and contract with facilities nationwide to manage his waste. This demonstration also requires that the petitioner investigate the availability of adequate alternative on-site capacity for his waste (40 CFR 268.5(a)(1)). Case-by-case extension petitions must show that the applicant has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for all his waste, but due to circumstances beyond the applicant's control this capacity cannot reasonably be made available by the applicable effective date of the land disposal restrictions (40 CFR 268.5(a)(2), (3), and (4)). The petitioner must submit a schedule showing the progress which will be made towards completing the project to provide adequate alternative capacity by including dates for obtaining required operating and construction permits and dates for completing key phases of the project (40 CFR 268.5(a)(5)). The applicant also is required to show that he has arranged for sufficient capacity to manage the entire quantity of waste which is the subject of his petition during the requested extension period and to document in his application the location of all sites at which the waste will be managed (40 CFR 268.5(a)(6)). During an extension period the restricted waste can be managed in a surface impoundment or landfill provided that each new surface impoundment or landfill unit, each replacement of an existing surface impoundment or landfill unit, and each lateral expansion of an existing surface impoundment or landfill unit at the facility meets the applicable requirements of 40 CFR 268.5(h)(2) which pertain to ground water monitoring and the installation of two or more liners and leachate collection systems (40 CFR 268.5(a)(7)).

After an applicant has been granted a case-by-case extension, EPA is kept informed of the progress being made towards obtaining adequate alternative treatment, recovery, or disposal capacity. Any change in the demonstrations made in the petition must be immediately reported to the Agency (40 CFR 268.5(f)). Progress reports also have to be submitted which describe the progress being made towards obtaining adequate alternative capacity, identify any delay or possible delay in developing the capacity, and describe the mitigating actions being taken in response to the event (40 CFR 268.5(g)).

II. Petition

DOE has petitioned EPA to grant an extension of the July 8, 1987, effective date of the land disposal restrictions applicable to certain corrosive hazardous wastes generated and managed at its Savannah River Plant near Aiken, South Carolina. The Department is presently constructing an Effluent Treatment Facility (ETF) consisting of wastewater treatment tanks to treat the radioactively contaminated wastewater currently disposed of in the surface impoundments. EPA is proposing to grant a one-year extension of the effective date of the restrictions to July 8, 1988, for the wastewater having a pH of less than or equal to two. DOE's petition request and supporting documentation are available in the public docket for this rulemaking. Interested persons are invited to submit written data, criticisms, or opinions on the petition. All comments will be considered by EPA and addressed in a Federal Register notice stating the Agency's final decision to grant or deny the petition. A summary of the DOE petition, Petition Number 003, follows below.

A. Petition Summary

The DOE facility reprocesses nuclear fuels to be used for national defense. The recovery and purification of transuranic products and unburned fissionable material from spent reactor fuel elements generate radioactive liquid waste. Its chemical separations process and waste volume reduction program generate low-level radioactively contaminated wastewater consisting of evaporator overheads and high-level radioactively contaminated hazardous waste consisting of evaporator bottoms. The wastewater can be a hazardous waste when the pH is two or less and/or the concentrations of mercury and chromium exceed the concentrations for the characteristic of EP toxicity. The concentrations of these metals never exceed the land disposal prohibition levels specified by Congress in RCRA section 3004(d). This wastewater is being disposed in six surface impoundments, all of which currently operate under interim status. The surface impoundments are unlined; monitoring wells are used to detect any radioactive and chemical constituent migration to ground water. As wastewater passes through the underlying soils, most of the radionuclides are held in the soil by natural filtration, adsorption, and ion exchange while radioactive decay takes place. Waste with a pH of 2.0 to 4.0 seeps optimally, and seepage efficiency decreases as the pH rises until no seepage is possible for waste in a pH range of 10 to 12 due to peptizing of the clay. If the pH rises to this level, the impoundments are permanently plugged. Occasional diversions of low-level radioactively contaminated cooling water and stormwater runoff, which are not hazardous wastes, are collected in two 4 million gallon earthen retention basins having a single synthetic liner. This wastewater is being pumped to the surface impoundments for disposal. In 1986 the impoundments received approximately 250,000 gallons per day of wastewater consisting of evaporator overheads and contaminated cooling water and stormwater. Uncontaminated cooling water and stormwater is discharged to surface water. The high-level radioactively contaminated hazardous waste is being stored in tank farms until the waste can be treated at the Defense Waste Processing Facility (DWPF) which is under construction and expected to be operational within the next seven years. The waste will be mixed with borosilicate glass and fill stainless steel canisters for ultimate disposal in a repository or mixed with cement and set in concrete vaults.

DOE is currently constructing the ETF to replace the surface impoundments and to treat the process wastewater and the low-level radioactively contaminated cooling water and stormwater runoff. These wastewaters will flow to two lift stations, each consisting of a corrosion resistant in-ground tank and having secondary containment capable of holding more than the entire contents of the tank. The tank system will be equipped with leak detection systems. The lift station tanks are sized to provide volume for surge, normal operation, and alarm conditions. Waste will be pumped to the aboveground, corrosion resistant wastewater feed tanks in a dike capable of containing one full tank volume and

rainfall. The tanks are sized to provide capacity for normal operation plus the greatest predicted flow surge. Wastewater leaving the feed tanks will be sent to the treatment facility for pH adjustment (which minimizes the solubility of certain constituents in the acidic and basic overheads), submicron filtration (which removes suspended solids), treatment by reverse osmosis (which eliminates dissolved ionic nonradioactive species), and polishing using ion exchange (which removes dissolved ionic radioactive species). Filter backwash, reject from reverse osmosis, and regeneration waste from ion exchange will be sent to evaporators for further volume reduction. Until start-up of the DWPF, there is sufficient capacity in the tank farms to store the concentrate from the evaporators. Evaporator overheads and effluent from the ion exchange system will be pumped to aboveground treated effluent hold tanks for analysis. Contaminated effluent, indicating a process upset in the treatment plant, will be sent to the wastewater feed tanks for recycling. Treated effluent will be discharged to a new outfall. DOE will also construct two 2.0 million gallon, below and above grade, earthen collection basins having a double synthetic liner with interstitial leak detection to accomodate diversions of low-level radioactively contaminated cooling water from the ETF. The existing retention basins will continue to be used to hold low-level radioactively contaminated cooling water and stormwater. Contaminated wastewater from the new and existing basins will be pumped to the lift station tanks for treatment. Uncontaminated cooling water and stormwater will continue to be discharged to the existing outfalls. Once the ETF is operational, the surface impoundments will be closed in accordance with relevant RCRA Subtitle C regulatory standards.

B. Petitioner's Demonstrations

DOE's application for an extension of the effective date of the land disposal restrictions applicable to its corrosive hazardous waste must include a showing that it has made a good-faith effort to locate and contract for adequate alternative nationwide treatment, recovery, or disposal capacity off-site, or to establish such capacity on-site, by the effective date of the restrictions. In determining the availability of off-site capacity to manage the waste, the Department contacted wastewater treatment facilities. To accommodate a worst case situation, DOE specified that 250,000 to 400,000 gallons per day of its radioactively contaminated corrosive waste requires treatment. The Department asked nine privately owned wastewater treatment facilities and one publicly owned treatment facility which are located throughout the nation to treat, though not necessarily neutralize, the waste. All privately owned facilities did not have the technology to treat radioactively contaminated waste. The publicly owned facility, DOE's plant in Oak Ridge, Tennessee, could treat the waste but did not have sufficient capacity for the large volume which is generated. Hence, EPA is presently of the opinion that the Department is correct in stating that adequate alternative treatment, recovery, or disposal capacity off-site throughout the nation did not exist by the effective date of the land disposal restrictions.

DOE has investigated the feasibility of two alternatives which could provide on-site treatment capacity that would enable the pH of the wastewater to be adjusted to greater than two and yet stay within the optimal seepage range of 2.0 to 4.0. The treated wastewater, which would no longer be prohibited from land disposal, could then be disposed in the surface impoundments. However, it appears that neither of these alternatives could be implemented by the effective date of the land disposal restrictions. One alternative would be constructing a large tank for neutralization of the wastewater to a pH greater than 2.0 and less than or equal to 4.0 prior to land disposal. The tank would need to be of sufficient size to accommodate and mix the large volume of wastewater being rapidly discharged and the neutralizing reagents. DOE found that it could not obtain or design and construct such a tank—which would require a pH monitoring system, secondary containment, a leak detection system, piping, and other additions — prior to the effective date. Hence, the Department does not consider this alternative a means for providing on-site treatment capacity.

The other alternative for providing on-site treatment capacity evaluated by DOE would involve raising the pH of the wastewater so that it would no longer be a restricted hazardous waste before placing it into any of the facility's surface impoundment units for further treatment and disposal. First, sufficient base would be added to the corrosive wastewater while the waste would be in the pipes in order to raise the pH above two. The wastewater would then not be prohibited from placement on the land and could flow into the treatment surface impoundment. A continuous pH monitoring system at the tap would assure that the prohibition would not be violated. DOE would then use one of its six surface impoundments for further treatment of the wastewater. Acid would be added to the wastewater in this imoundment to adjust the pH to within the optimal seepage range of 2.0 to 4.0 and yet exceed the prohibition level of two. Finally, this treated wastewater would be disposed in the remaining five impoundments. DOE, however, was unable to obtain and install a continuous pH monitoring system before the land disposal restrictions became effective. Furthermore, the large volume of acid and wastewater in the treatment surface impoundment would prevent complete mixing of the constituents, and therefore the pH of the treated wastewater would not be uniform. Thus, wastewater taken from the treatment impoundment for disposal in the other surface impoundments might have a pH less than or equal to two, and then DOE would be operating in violation of the land disposal prohibition. In addition, South Carolina recuires a permit to treat the wastewater in the surface impoundment, and such a permit could not be issued until after the effective date of the land disposal restrictions. Therefore, EPA is tentatively of the view that DOE was legitimately unable to establish on-site treatment capacity by the effective date of the land disposal restrictions.

In addition to demonstrating that a good-faith effort has been made to establish or locate and contract for adequate alternative capacity to manage its waste by the effective date, DOE must show that it has entered into a binding contractual commitment to construct or otherwise provide such capacity. Construction of the ETF began in early 1987. DOE's petition includes three contracts signed by the operator of the facility and the builders of the lift stations, wastewater feed tanks, treatment plant, cooling water collection basins, and miscellaneous buildings needed to operate the treatment facility. These units constitute the entire facility. It is highly likely that all the contracts will be satisfied. The funds for constructing the ETF, which is expected to cost $45 to $50 million, have already been appropriated to this project. In addition, section 3005(j) of RCRA, which requires surface impoundments to have two or more liners, leachate collection systems, and ground water monitoring by November 8, 1988, creates an inflexible deadline for completion of the treatment facility and closure of its impoundments which do not meet these requirements. Hence, the three contracts which will most likely cover

construction of the ETF over the duration of the extension period appear to show that DOE has entered into a binding contractual commitment to build the facility.

DOE is required to prove that adequate alternative treatment, recovery, or disposal capacity, which is either off-site or on-site, could not reasonably be made available by the effective date of the land disposal restrictions due to circumstances beyond the Department's control. Assuming that adequate alternative off-site capacity does exist (which appears doubtful, as explained above), DOE considers transport of the large volume of corrosive waste generated daily impractical if not impossible. To support its assertion, DOE claims that it generates an average daily volume of 261,100 gallons of wastewater (consisting of evaporator overheads and contaminated cooling water and stormwater runoff). Contaminated cooling water and stormwater is generated only intermittently, and therefore need not be considered in determining the volume of restricted waste for shipment. In a worst case situation where the evaporator overheads are always a restricted corrosive waste, approximately 261,100 gallons of restricted waste would have to be shipped daily to an off-site facility. Since an average size truck can hold 5,000 gallons of waste, approximately 52 trucks would be needed to haul wastewater from the site each day. DOE claims that using a large number of trucks is logistically difficult and, hence, off-site management of the waste cannot reasonably be made available by the effective date of the land disposal restrictions. In addition, there can be state regulatory activities which can delay the packaging and transportation of radioactively contaminated waste off-site.

DOE maintains there were circumstances, which were beyond its control, that prove the on-site capacity under construction could not reasonably be made available by the effective date of the land disposal restrictions. The Department's consideration of draft legislation leading to the passage of HSWA was a contributing factor in the decision to construct a treatment facility to replace the surface impoundments. After completing research and development the initial budget estimate for the project was prepared and sent to DOE headquarters in August, 1983. DOE then submitted the budget request to Congress on May 4, 1984, prior to passage of HSWA in November, 1984. Therefore, the Department initiated activities which would phase out dependence on land disposal in anticipation of the passage of future regulations restricting the land disposal of hazardous wastes by the earliest possible date, the date HSWA was enacted. Despite quickly acting to obtain the necessary funding to begin construction of the ETF, DOE found that the enormous facility needed to treat the large volume of wastewater could not be constructed prior to the effective date. Furthermore, the radioactivity of the wastewater has caused front-end engineering design of the ETF to take considerably more time than a conventional wastewater treatment facility.

DOE supports its claim that the capacity of the ETF will be sufficient to manage all the waste which is the subject of its application by comparing the volume of wastewater the Department expects to generate with the design requirements of the facility. DOE states in its petition that the ETF is sized to treat up to 237,600 gallons per day of process wastewater. There is additional capacity to allow treatment on a nonroutine basis of 100,800 gallons per day of radioactively contaminated cooling water and stormwater runoff. Therefore, the facility can treat up to 338,400 gallons per day of wastewater which is generated at an average rate of 261,100 gallons per day. DOE acknowledges that process wastewater flow can exceed 237,600 gallons per day to peak at 1,440,000 gallons per day since the wastewater is usually generated on a batch discharge basis. The two 50,000 gallon lift station tanks and the two 450,000 gallon feed tanks provide surge capacity for equalizing the incoming flow. The tanks are sized to hold more than the sum of all the individual batch discharges which could be sent simultaneously to the ETF and to give plant personnel time to react to the surge condition and to allow cooling time for the pump motors. Thus, the ETF apparently has sufficient capacity to treat the entire quantity of waste currently being disposed in the surface impoundments.

The ETF construction schedule submitted with the application spans a 22-month period from January, 1987, to November, 1988. The schedule shows two construction permits covering the entire facility were issued by the South Carolina Department of Health and Environmental Control. Milestone dates for completion of the various items that make up the ETF are also given.

DOE states in its application that there is adequate capacity to manage its waste during the extension period in the surface impoundments and that these impoundments meet the requirements of 40 CFR 268.5(h)(2). The Department included in its application a map documenting the location of the surface impoundments. The entire quantity of waste generated over the extension period can be disposed in the impoundments provided the units continue to seep optimally. The surface impoundments have insufficient freeboard to accommodate both rainwater and wastewater which would accumulate in plugged units. The impoundments will seep optimally if only the corrosive hazardous waste which is the subject of this petition is disposed in the units or if other waste codisposed with the corrosive waste has a pH greater than 2.0 and less than or equal to 4.0. The facility is in compliance with the provisions of 40 CFR 268.5(h)(2), stipulating that each new, replaced, and laterally expanded surface impoundment or landfill at the disposal facility meet requirements relating to ground water monitoring and the installation of two or more liners and leachate collection systems. DOE states in its petition that all surface impoundments or landfills at the facility were constructed, replaced, and laterally expanded prior to November 19, 1980, the date hazardous waste managers had to begin complying with the first regulations to establish a Federal hazardous waste management system under 40 CFR Parts 260 through 265. Hence, these units are not new, replaced, and laterally expanded surface impoundments or landfills that must meet the ground water monitoring, liner, and leachate collection requirements.

C. EPA's Proposed Action

For the reasons discussed above it appears that DOE's demonstrations have satisfied all the requirements for a case-by-case extension of the effective date of the land disposal restrictions on a designated group of hazardous wastes. Therefore, EPA is proposing to grant an extension of the July 8, 1987, effective date of the restrictions on certain corrosive hazardous wastes to DOE's Savannah River Plant for the radioactively contaminated wastewater having a pH of less than or equal to two which is the subject of its petition. If the extension is granted, the wastewater, which would not be prohibited from land disposal, could be disposed in the surface impoundments over a one-year period ending July 8, 1988, the maximum allowable extension period under HSWA. Since DOE expects the ETF to be in operation by November 8, 1988, the

petitioner will probably request a renewal of the extension which will allow additional time to complete construction of the facility.

If DOE obtains a case-by-case extension, it would have to submit a progress report six months after the date the extension is granted. The Agency must also be notified of any change in the conditions specified in the petition. The extension would remain in effect unless DOE failed to make a good-faith effort to meet the schedule for completion, the Agency denied or revoked any required permit, conditions certified in the application changed, or DOE violated any laws promulgated by EPA.

(Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924))

Dated: January 28, 1988.

J. Winston Porter,

Assistant Administrator.

[FR Doc. 88-2444 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3325-4]

Science Advisory Board; Radiation Advisory Committee, Radon Measurement Proficiency Program Subcommittee; Two Open Meetings—February 16-17, 1988 and February 25, 1988

Under Pub. L. 92-463, notice is hereby given that a meeting of the Radon Measurement Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S. Environmental Protection Agency, Region I Headquarters in Boston, Massachusetts on February 16-17, 1988. The meeting will be held in Room 1507 of the John F. Kennedy Building at Government Center. The meeting will begin at 10:00 a.m. Tuesday and adjourn no later than 4:00 p.m. Wednesday.

The purpose of the meeting is to continue the review of the *Radon Measurement Proficiency Program* for the Office of Radiation Programs. Copies of the documents being reviewed may be obtained by calling or writing Michael Mardis of the Office of Radiation Programs at (202) 475-9605, ANR-464, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The Science Advisory Board's Radiation Advisory Committee will meet Thursday, February 25, 1988 in the South Conference Area, Room #2, Washington Information Center, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9:00 a.m. and adjourn no later than 1:00 p.m.

The Committee will hear the report of the Radon Measurements Subcommittee and discuss other radiation related topics.

Both meetings are open to the public; however, seating is limited. Any member of the public wishing to attend, obtain further information, or submit written comments to the Subcommittee, should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on February 10, 1988 for the meeting in Boston and by February 20, 1988 for the Committee meeting in Washington, DC. The telephone number is (202) 382-2552.

Date: February 1, 1988.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 88-2557 Filed 2-4-88; 12:49 pm]

BILLING CODE 6560-50-M

[OPTS-59255; FRL-3324-9]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacture notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption. Written comments will be received until February 21, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-59255)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, RM. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays

T 88-3

Close of Review Period. February 21, 1988.

Importer. Confidential.

Chemical. C.B.I.

Use/Import. Confidential. Import Range: Confidential

Date: January 28, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-2446 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3324-4]

Proposed Administrative Penalty Assessment and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a

Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's "Guidance on Class I Clean Water Act Administrative Penalty Procedures". The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the "Guidance on Class I Water Act Administrative Penalty Procedures". The deadline for submitting public comment on a proposed Class I order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Wickenburg Concrete Sand and Gravel, Wickenburg, Arizona; EPA Docket No. IX-FY88-13; filed on January 28, 1988, with Barbara Dimanlig, Acting Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-0718; proposed penalty up to $25,000 for discharging without a permit as detected during an Arizona Department of Environmental Quality inspection on June 10, 1987.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to February 29, 1988.

Dated: January 28, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88-2447 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3324-5]

Sole Source Aquifer Designation for the Aquifer System of Martha's Vineyard, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In response to a petition from the Martha's Vineyard Commission, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Martha's Vineyard Regional Aquifer satisfies all determination criteria for designation as a Sole Source Aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. Satisfying the designation criteria resulted in the following findings: the Martha's Vineyard Regional Aquifer is the sole source of drinking water for the Island's residents and visitors; there are no viable alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the Island's residents. As a result of this action, all Federal financially assisted projects proposed for construction on Martha's Vineyard will be subject to EPA review to ensure that these projects are designed and constructed such that they do not bring about, or in any way contribute to, conditions creating a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time two weeks after the date of publication in the **Federal Register.**

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Water Management Division, WGP-2113, Boston, MA 02203. The designation petition submitted may also be inspected during normal business hours at the Martha's Vineyard Commission office in Oak Bluffs or at the Public Library in Edgartown, MA 02557.

FOR FURTHER INFORMATION CONTACT: Robert E. Adler, Groundwater Management Section, EPA Region I, John F. Kennedy Federal Building, WGP-2113, Boston MA 02203, (617) 565-3601.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h-3(e), Pub. L. 93-523) states:

If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, shall publish notice of that determination in the **Federal Register.** After publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On June 16, 1987, EPA received a petition from Martha's Vineyard Commission (MVC) requesting designation of the Martha's Vineyard Regional Aquifer as a sole source aquifer. EPA determined that the petition, after receipt and review of additional requested information from the MVC on August 28, 1987, fully satisfied the Completeness Determination Checklist. A public hearing was then scheduled and held on September 23, 1987, on Martha's Vineyard, in accordance with all applicable notification and procedural requirements. Unanimously favorable comments were received during the 30-day public comment period.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were: (1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defined aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer; (2) whether contamination of the aquifer would create a significant hazard to public health; and (3) whether the boundaries of the aquifer, its recharge area and streamflow source area(s), the project designation area, and the project review area are appropriate. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating Marth's Vineyard as a sole source aquifer:

1. The Martha's Vineyard Regional Aquifer is the sole source of drinking water to all of the residents of, and visitors to, the Island of Martha's Vineyard.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area, nor is there any cost-effective future source or combination of future sources available to serve Martha's Vineyard due to its physical separation from the mainland.

3. EPA has found that the MVC has appropriately delineated the boundaries of the aquifer recharge area, project designation area and project review area.

4. Although the quality of the Island's ground water is rated as good to excellent (refer to Appendix D of Petition), it is highly vulnerable to contamination due to the Island's geological characteristics and land-use patterns. The silica sands of the outwash plain, comprising the dominant medium through which percolating precipitation infiltrates in the primary recharge area, are of particular concern due to their low cation exchange capacity, low organic content and high permeability. For these reasons, contaminants can be rapidly introduced into the aquifer system from a number of sources with minimal assimilation. This may include contamination from chemical spills, highway, urban and rural runoff, septic systems, leaking storage tanks, both above and underground, road salting operations, saltwater intrusion, and landfill leachate. Already in the past four years, there have been three separate instances of contamination of sources of drinking water on Martha's Vineyard: the Up-Island Gasoline Station spill in Tisbury; the Barnes Road leak from an abandoned underground storage tank in Oak Bluffs; and the precautionary closing of the Machaket well due to a leak from an above-ground heating fuel tank at the Edgartown Water Company. Since all Island residents and visitor trade are dependent upon the aquifer for their drinking water, a serious contamination incident could pose a significant public health hazard and place a severe financial burden on the Island's residents.

III. Description of the Martha's Vineyard Regional Aquifer System, Designated Area and Project Review Area

Due to its geologic characteristics and the fact that it is an oceanic island, the entire land area of Martha's Vineyard constitutes the recharge area to the island's aquifer system. The island consists of two distinct geologic deposits: the terminal moraines (Gay Head Moraine and Martha's Vineyard Moraine), and the outwash plain. The terminal moraines occupy approximately 40% of the Island's land area and are composed of a variety of soils with perched water tables, springs and brooks. The outwash plain comprises the primary recharge area and consists of layered sands and silts in one continuous, unconfined aquifer and it encompasses the remaining 60% of the Island. Thus, the designated area is coterminous with the entire land area of the Island (including Chappaquiddick) landward of mean low tide. This area is also fully coincident with the proposed project review area, in which federal financially assisted projects will be subject to review to determine if, by contaminating the aquifer, they pose a significant hazard to public health.

IV. Information Utilized in Determination

The information utilized in this determination included the Martha's Vineyard Commission's petition, which included field analyses and technical hydrogeologic maps in the petition's appendices, U.S. Geological Survey's hydrologic map, and written and verbal comments submitted by the public. These materials are available to the public and may be inspected during normal business hours at the addresses listed previously.

V. Project Review

EPA Region I is working with the Federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the Martha's Vineyard Regional Aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection mechanisms. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control mechanisms to protect the quality of ground water in the Martha's Vineyard Regional Aquifer.

VI. Summary and Discussion of Public Comments

None of the issues expressed during the public comment period developed into controversial issues. All of the mail received during the public comment period was unanimously in favor of the Island's designation as a sole source aquifer. The comments and questions raised at the public hearing were primarily attributable to unfamiliarity among Island residents with the implications of such a designation. Information was sought concerning the following general questions: (1) What types of land development projects would fall under Federal review, (2) would FHA-supported mortgages for private homes be subject to review, and (3) would Federal review jurisdiction be applied to state financed or constructed projects? In general, all the comments favored designation.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-2448 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 540

FMC requests an extension of clearance for 46 CFR Part 540 which implements sections 2 and 3 of Pub. L. 89-777 (46 U.S.C. 817 (d) and (e)). That law requires vessel owners, charterers, and operators of American and foreign passenger vessels having 50 or more berth or stateroom accommodations and embarking passengers at United States ports, to establish their financial responsibility to meet liability incurred for death or injury and to indemnify passengers in the event of nonperformance of a voyage or cruise. The Commission estimates an annual respondent universe of 60 reporting steamship operators who possess approximately 110 certificates. Total estimated respondent burden is 939 manhours: 639 manhours for complying with the regulation and 300 manhours for completion of the form. Total cost to the Federal Government is estimated at $60,000; total cost to respondents is estimated at $70,000.

46 CFR Part 572

FMC requests an extension of clearance for 46 CFR Part 572 which implements the Shipping Act of 1984 agreement provisions. The Act specifies the mandatory content of certain kinds of agreements, sets forth procedures governing the Commission's disposition of such agreements, and defines the Commission's authorities and responsibilities. The Commission estimates a respondent universe of 1310, which is comprised of 60 conferences, 800 carriers, and 450 terminal operators. Annual respondent burden for complying with the regulation is 21,814 manhours; annual recordkeeping requirement is estimated at 6786 manhours. Estimated annual cost to the Federal Government is $300,000; estimated annual cost to respondents is $997,000.

Joseph C. Polking,

Secretary.

[FR Doc. 88-2453 Filed 2-4-88; 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.: 001-000081-003
Title: ILWU-PMA Program Fund
Parties: International Longshoremen's and Warehousemen's Union Pacific Maritime Association
Synopsis: The agreement amends the CFS Program Fund Agreement to reflect incorporation of walking bosses' and foremen's fringe benefit costs into the cost allocation method.

Agreement No.: 224-200087
Title: Port of Oakland Terminal Agreement
Parties: Port of Oakland (Port) Maersk Line Pacific, Ltd. (Maersk)
Synopsis: The proposed agreement provides for a nonexclusive preferential assignment whereby Maersk will use certain Port premises including two container cranes (Port of Oakland Cranes Nos. X-409 and X-410) situated in the Outer Harbor Terminal area, Port of Oakland.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 2, 1988.

[FR Doc. 88-2454 Filed 2-4-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; Mendoza International et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2103R
Name: Hermilo Mendoza dba Mendoza International
Address: 4825 N. Scott St., Suite 77-2, Schiller Park, Illinois 60176
Date Revoked: November 4, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2888
Name: First Union Export Trading Company
Address: First Union Plaza, Corp-18, Charlotte, NC 28288
Date Revoked: December 14, 1987
Reason: Surrendered license voluntarily

License Number: 2839R
Name: Dominicana Freight Forwarders
Address: 1257 Saint Nicholas Avenue, New York, NY 10032
Date Revoked: December 19, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1249
Name: W. Mercer & Co., Inc.
Address: P.O. Box 885, J.F.K. International Airport Jamaica, New York 11430-0885
Date Revoked: December 23, 1987
Reason: Surrendered license voluntarily

License Number: 2486
Name: Fabius & Co. Customs Brokers Inc. dba Atlantic Forwarding Co.
Address: 90 West Street, Rm. 2017, New York, NY 10006
Date Revoked: December 26, 1987
Reason: Voluntarily requested revocation

License Number: 1584
Name: Winair Freight Inc.
Address: 7700 NW., 54th Street, Miami, FL 33166
Date Revoked: December 29, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2500
Name: Ohio Midwest Exports, Inc.
Address: 7026 Corporate Way, Suite 207, Centerville, OH 45459
Date Revoked: December 29, 1987
Reason: Failed to maintain a valid surety bond

License Number: 32R
Name: Severin Goldstein, Inc.
Address: 1818 Ramona Ave., #307 So. Pasadena, CA 91030
Date Revoked: January 4, 1988
Reason: Voluntarily requested revocation

License Number: 2026R
Name: ACM International, Inc.
Address: 12866 Reeveston, Houston, TX 77039
Date Revoked: January 8, 1988
Reason: Surrendered license voluntarily

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88-2456 Filed 2-4-88; 8:45 am]

BILLING CODE 6730-01-M

Cancellation of Inactive Tariffs

By notice served November 2, 1987, and published in the **Federal Register** on

November 9, 1987, the Federal Maritime Commission notified 100 carriers of its intent to cancel their individual tariffs 30 days thereafter, in the absence of a showing of good cause why such tariffs should not be cancelled.

Thirteen carriers replied to the notice, requesting that their tariffs remain active. Accordingly, the tariffs of these 13 carriers, as listed in Attachment A, will be retained in the Commission's active files.

The remaining 87 carriers did not respond to the notice. It is misleading to the public, potentially unfair to competing carriers, and an unreasonable administrative burden on the Commission's staff for inactive tariffs to remain on file. Accordingly, the tariffs of these 87 carriers, or listed in Attachment B to this notice, will be cancelled. It should be noted that certain information items on the attached lists may not apply to a particular carrier and are, therefore, designated not applicable (NA).

Now Therefore, It Is Ordered, That the tariffs of the 87 carriers listed on Attachment B be cancelled.

It Is Further Ordered, That a copy of this Order be sent by certified mail to the last known address of the carriers listed in Attachment B to this Order.

It Is Further Ordered, That this notice be published in the **Federal Register.**

This Order is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation, by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Attachment A—Federal Maritime Commission, Bureau of Domestic Regulation, Offie of Carrier Tariffs and Servcie Contract Operations

[Carriers that responded to the notice of intent to cancel inactive tariffs]

AFI Worldwide Forwarders	000148
American Vanpac Carriers, Inc.	000245
Arrowpac, Inc.	000274
Aurora International Forwarding, Inc.	000317
Bekins International Lines, Inc	000358
Crescent City Marine Ways & Dry Dock Co., Inc	000839
Monti Moving & Storage, Inc	001735
Movers' & Warehousemen's Assoc. of AM., Inc	003014
Pan American Express, Inc	000985
Perfect Pak Company	001006
Sause Bros. Ocean Towing Co., Inc	001076
Trans-Caribbean Moving & Shipping, Inc	002233
Tucor Services, Inc	000630

Attachment B—Federal Maritime Commission Bureau of Domestic Regulation Office of Carrier Tariffs and Service Contract Operations

[Carriers that failed to respond to the notice of intent to cancel inactive tariffs]

American Kings, Inc	006768
American Marine Lines Co., Inc	000232
Americargo International, Inc	000244
Bekins Wide World	000359
Bestway Ocean Express Transport, Inc	000374
Calif., Hawaii & Samoa Trans. Company, Inc	000665
California Manufacturers Freight Association	000668
Cambridge International Incorporated	001810
Cargomatic Express, Inc	006825
Caribbean Bulk Services, Inc	000704
Caribbean Express Inc	002604
Caribbean Trailer Transport Corporation	000713
Central Alaska Marine Lines, Inc	000732
Centurion Consolidation Company	000733
Century Marine, Inc	000742
Combined Hawaiian Express	000773
Container Marine Transport Inc	000814
Container Moving International, Inc	000815
Continental Forwarders, Inc	000818
Coral Freight Consolidators of Guam	002605
Crossroads Freight Systems, Inc	000843
Dansk Steamship Lines	000912
Dean Forwarding Company, Inc	000920
Dewitt Freight Forwarding	000932
Durion Freight Lines, Inc	005701
Eastern Forwarding International, Inc	001223
Express Forwarding and Storage Co., Inc	001270
General Transpac Systems	006831
Global Marine, Inc	002606
Hawaiian-Pacific Freight Forwarding	002600
Higa Fast Pac, Inc	001441
Home-Pack Transport, Inc	001446
Imperal Van Lines International, Inc	001325
Imperal Van Lines, Inc. of California	006838
Inter-American Moving Services, Inc	002770
International Export Packers, Inc	001361
Island Freight Lines	006839
Ivaran Lines	005940
Ivory Forwarding, Inc	001394
Jensen Associates Inc	001411
Karevan, Inc	001464
Kingpak, Inc	006843
La Rosta Del Monte Express, Inc	001588
Maritime Company of the Pacific	001671
Medina Shipping Co., Inc	001698
Mercantile Freight Service, Inc	001703
Merchants International, Inc	001704
Mercury International Forwarders Inc	001816
Merit Container Express, Inc	001707
Meteoro Express, Inc	001716
Mighal International Inc	001723
Milne International, Inc	001725

Attachment B—Federal Maritime Commission Bureau of Domestic Regulation Office of Carrier Tariffs and Service Contract Operations—Continued

[Carriers that failed to respond to the notice of intent to cancel inactive tariffs]

Mudanza Boulevard & Storage, Inc	001742
Mundanzas Sierra Inc	001743
Nauru Pacific Line	001503
Negron Moving Express	001534
P.R.V.I. Consolidators Corp.	000962
Pacific Marine Lines, Inc	006854
Poppy Food Company	001028
Puerto Rico Express, Inc	002599
Puget Sound Freight Lines	001044
Pyramid International Forwarding, Inc	001045
Rainbow Express Inc	000856
Reliance Forwarding Corporation	000867
Republic Shipping Line	000869
Richardson Forwarding Co	000874
Rivergate Shipping, Inc	006857
Robert Harbin	001574
Royal Hawaiian Forwarding	000885
Sail Puerto Rico	001049
San Lorenzo Express Corporation	001069
Sea Fast Shipping, Inc	001092
Sea Trailers Express, Inc	001137
Seafreight Inc	001106
Security Forwarders, Inc	001126
Senko Container Line	001129
Star Freight	001181
Star Line, Inc	001183
Storage & Consolidators, Inc	001192
Thru-Container International, Inc	006862
Towne International Forwarding, Inc	000544
Transcaribbean Consolidated Transport, Inc	000574
Transconex, Inc	006861
West India Industries, Inc	000098
World Wide Forwarding, Inc	000128
Worldwide Transport Inc	000129
Y. Higa Enterprises, Ltd	000133

[FR Doc. 88-2455 Filed 2-4-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First City Acquisition Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2) for the Board's approval under section 4(c)(8) of the Bank

Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immdediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of the fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First City Acquisition Corporation,* Houston, Texas; to become a bank holding company by acqiring at least 80 percent of the voting shares of First City Bancorporation of Texas, Inc., Houston, Texas, and thereby indirectly acquire First City Bank-Sioux Falls, N.A., Sioux Falls, South Dakota; First City Bank of Alice, Alice, Texas; First City Aransas Pass, Aransas Pass, Texas; First City Bank-Central Arlington, N.A., Arlington, Texas; First City National Bank of Arlington, Arlington, Texas; First City Bank-Northwest Hills, N.A., Austin, Texas; First City National Bank of Austin, Austin, Texas; First City Bank-Central, Beaumont, Texas; First City National Bank of Beaumont, Beaumont, Texas; First City Bank-Gateway, N.A., Beaumont, Texas; First City Bank-Bellaire, N.A., Bellaire, Texas; First City National Bank of Bryan, Bryan, Texas; First City National Bank of Colleyville, Colleyville, Texas; First City Bank-Corpus Christi, Corpus Christi, Texas; First City Bank-East Dallas, Dallas, Texas; First City Bank of Dallas, Dallas, Texas; First City Bank-Market Center, N.A., Dallas, Texas; First City Bank-Valley View, Dallas, Texas; First City National Bank of El Paso, El Paso, Texas; First City Bank-Farmers Branch, Farmers Branch, Texas; First City Bank-Forest Hill, Fort Worth, Texas; First City National Bank of Fort Worth, Fort Worth, Texas; First City Bank of Garland, N.A., Garland, Texas; The Graham National Bank, Graham, Texas; First City National Bank in Grand Prairie, Grand Prairie, Texas; First City Bank-Westheimer, N.A., Houston, Texas; First City Bank-Bear Creek, Houston, Texas; First City Bank-Almeda Genoa, Houston, Texas; First City Bank-Inwood Forest, N.A., Houston, Texas; First City National Bank of Houston, Houston, Texas; First City Bank-Medical Center, N.A., Houston Texas; First City Bank-Gulfgate, Houston, Texas; First City Bank of Highland Vallage, Houston, Texas; First City Bank of Northline, Houston, Texas; First City Bank-Fondren South, Houston, Texas; First City Bank of Clear Lake, Houston, Texas; First City Bank-Northeast, N.A., Houston, Texas; First City Bank-North Belt, N.A., Houston, Texas; First City Bank-Northcase, N.A., Houston, Texas; First City Bank-Wetheimer Plaza, N.A., Houston, Texas; First City Bank-Westwood, N.A., Houston, Texas; First City Bank of Humble, Humble, Texas; First City Bank of Kountze, Kountze, Texas; First City Bank-Lake Jackson, Lake Jackson, Texas; First City Bank of Lancaster, Lancaster, Texas; First City Bank of Lewisville, Lewisville, Texas; First City National Bank of Lufkin, Lufkin, Texas; Mc Allen State Bank, Mc Allen, Texas; First City National Bank of Madisonville, Madisonville, Texas; First City National Bank of Midland, Midland, Texas; First City National Bank of Orange, Orange, Texas; First City Bank of Plano, N.A., Plano, Texas; First City Bank of Richardson, Richardson, Texas; First City National Bank of Richmond, Richmond, Texas; First City National Bank of San Angelo, San Angelo, Texas; First City Bank-Central Park, San Antonio, Texas; First City Bank-Forum, N.A., San Antonio, Texas; First City Bank-Windson Park, San Antonio, Texas; Citizens State Bank, Sealy, Texas; First City Bank of Sour Lake, Sour Lake, Texas; and First City National Bank of Tyler, Tyler, Texas.

In connection with this application, Applicant also proposes to acquire First City Life Insurance Company, Houston, Texas, and thereby engage in underwriting credit life and credit accident and health insurance directly related to extensions of credit by its credit-granting subsidiaries pursuant to § 225.25(b)(8)(i); First City Financial Corporation, Houston, Texas, a currently inactive corporation, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) and leasing personal or real property pursuant to § 225.25(b)(5); Central Texas Insurance Agency, Houston, Texas, and thereby engage in acting as managing general agent with respect to insurance for Applicant's banking subsidiaries pursuant to § 225.25(b)(8)(v) and acting as managing agent with repsect to credit-related life, health, property and casualty insurance pursuant to § 225.25(b)(8)(iv); and First City Energy Finance Company, Houston, Texas, and thereby engage in making loans to oil and gas concerns pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2383 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

First Potomac Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 26, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond Virginia 23261:

1. *First Potomac Bancorp, Inc.*, McLean, Virginia; to become a bank holding company by acquiring 43.9 percent of the voting shares of Sailors & Merchants Bank and Trust, Vienna, Virginia.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Community Bankers, Inc.*, Granbury, Texas; to acquire 100 percent of the voting shares of Farmers & Merchants State Bank, Burleson, Texas.

2. *Cooper Lake Financial Corporation*, Cooper, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of the First National Bank in Cooper, Copper, Texas.

3. *First McAllen International Bancshares, Inc.*, McAllen, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Inter National Bank of McAllen, McAllen, Texas.

Board of Governors of the Federal Reserve System, February 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2384 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc., et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to engage *de novo* through its subsidiary, Fleet Mezzanine Capital, Inc., Providence, Rhode Island, in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *WM Bancorp*, Cumberland, Maryland; to engage *de novo* through its subsidiary WM Data Center Inc., Cumberland, Maryland, in providing data processing services to non-subsidiary financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *County Bancorporation, Inc.*, Jackson, Missiouri; to engage *de novo* in real estate banking and providing student loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Jackson, Sikeston, Perryville, and Cape Girardeau, Missouri, and adjoining geographic areas.

Board of Governors of the Federal Reserve System, February 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2385 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

Trustmark National Bank Profit Sharing Plan; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Trustmark National Bank Profit Sharing Plan*, Jackson, Mississippi, and Trustmark National Trust Department, Jackson, Mississippi; to acquire up to 24.99 percent of the voting shares of First Capital Corporation, Jackson, Mississippi, and thereby indirectly acquire Trustmark National Bank, Jackson, Mississippi.

Board of Governors of the Federal Reserve System, February 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2386 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 15, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Marital Relationship Questionnaire—NEW—The information collected by use of form SSA-4178 is needed to determine whether correct payment is being made to SSI individuals of the opposite sex who live together and are unrelated. The affected public is comprised of applicants for and recipients of SSI benefits.

Respondents: Individuals or households.
Number of Respondents: 5,100;
Frequency of Response: Occasionally;
Estimated Annual Burden: 425 hours.

2. Application for Special Age 72 or over Payments—0960-0096—The information collected by this form is used by the Social Security Administration to determine if an individual (and spouse) is entitled to special age 72 payments.

Respondents: Individuals or households.
Number of Respondents: 1,200;
Frequency of Response: Occasionally;
Estimated Annual Burden: 200 hours.
OMB Desk Officer: Elana Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Information Collection Requirements in the System Performance Review—NEW—The System Performance Review (SPR) is a vehicle used to evaluate State Medicaid Management Information System (MMIS) to determine whether or not a State system complies with the functional requirements and statistical levels of output.

Respondents: State or local governments.
Number of Respondents: 22;
Frequency of Response: Occasionally;
Estimated Annual Burden: 44,000 hours.

2. Medicare Program Carrier Performance Report—0938-0399—This form summarizes Medicare carrier performance in processing claims under Supplemental Security Insurance. Information provides HCFA with a current assessment or key aspects of carrier claims processing activities.

Respondents: Businesses or other for-profit.
Number of Respondents: 61;
Frequency of Response: Monthly;
Estimated Annual Burden: 1,464 hours.

3. Information Collection Requirements in HSQ-127-F; 42 CFR 442.114, 442.115, and 442.116—NEW—This information collection provides options to the State Medicaid agency to either written plans to correct deficiencies or to reduce the number of beds in certified units rather than be excluded from the Medicaid program.

Respondents: State or local governments.
Number of Respondents: 15;
Frequency of Response: One-time;
Estimated Annual Burden: 263 hours.
OMB Desk Officer:
Allison Herron

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. OHDS Program Instruction: Children Justice Act—NEW—To assist States in developing, establishing, and operating program designed to improve (1) the handling of child abuse in a manner which limits additional trauma to the child victim and (2) the investigation and prosecution of cases of child abuse particularly child sexual abuse.

Respondents: State or local government.
Number of Respondents: 157;
Frequency of Response: One-time;
Estimated Annual Burden: 4,560 hours.
OMB Desk Officer: Allison Herron

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers for Disease Control

1. National Occupational Health Survey of Mining—0920-0143—This data collection is a survey of mining industries to measure potential health and safety exposures of mine workers to chemical and physical agents. The data will be used to prioritize research to minimize mining health and safety risks.

Respondents: Businesses or other for-profit.
Number of Respondents: 84;
Frequency of Response: One-time;
Estimated Annual Burden: 525 hours.

Office of the Assistant Secretary for Health

1. 1987 National Medical Expenditure Survey (NMES) (Round 5 of Household Survey of American Indians and Alaska Natives; Phase III of Institutional Population Component)—0937-0179—NMES will survey the civilian noninstitutionalized population and population in nursing homes and facilities for the mentally retarded, providing national estimates of use and expenditures for health care and health insurance coverage to evaluate current and proposed health policy decisions.

Respondents: Individuals or households.
Number of Respondents: 14,800;
Frequency of Response: Occasionally;
Estimated Annual Burden: 3,770 hours.
OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
SSA: 301-965-4149
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Buiding, Room 3208, Washington, DC 20503. ATTN: (name of OMB Desk Officer).

Date: February 2, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-2478 Filed 2-4-88; 8:45 am]

BILLING CODE 4150-04-M

Delegation Authority

Notice is hereby given that on January 20, 1988, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health the following authorities:

A. Pursuant to the authority of Sections 1 and 4 of Executive Order 11140 of January 30, 1964, I hereby delegate to the Assistant Secretary for Health the authorities to:

1. Appoint individuals in the Reserve Corps of the PHS Commissioned Corps pursuant to 42 U.S.C. 204;

2. Terminate commissions of Reserve Corps officers without the consent of the officers concerned pursuant to 42 U.S.C. 209 (a)(2);

3. Make or terminate temporary promotions of regular and Reserve Corps officers pursuant to 42 U.S.C. 211(a), (k), and (1); and

4. Prescribe titles, appropriate to the several grades, for PHS commissioned officers, other than medical officers, pursuant to 42 U.S.C. 207(b).

These authorities may be exercised by and redelegated to only those officials of the Public Health Service who are required to be appointed by the President, by and with the advice and consent of the Senate.

B. With the exception of the authority to issue regulations pertaining to the PHS Commissioned Corps, I also delegate to the Assistant Secretary for Health, with authority to redelegate except as noted below, those authorities vested in the Secretary which are

necessary to administer the PHS Commissioned Corps Personnel System, including, but not limited to, authorities contained in Titles 5, 10, 37, and 42 of the United States Code; regulations issued pursuant thereto; and Reorganization Plan 3 of 1966. Special conditions apply to the exercise of the following authorities:

1. The authority to create special temporary positions in the grade of Assistant Surgeon General may not be redelegated. Further, I retain the authority to approve the selection of persons to all such positions.

2. The authority to determine the numerical requirements of the Commissioned Corps must be made within the available funding and any FTE ceiling which may be established for the Public Health Service.

3. The authority to request the Office of Personnel Management to initiate investigations of commissioned officers in the interest of national security must be exercised in accordance with the provisions of Federal Personnel Manual Chapter 736. I retain the authority to suspend or separate any employee on grounds of disloyalty or subversion; restore to duty an employee who has been suspended on such grounds; or reemploy any person who has been separated from any Federal position on such grounds.

Authorities B-2 and B-3 may be redelegated only to the Surgeon General or officials who report to the Surgeon General.

All delegations heretofore issued by the Secretary for Health and Human Services pertaining to the PHS Commissioned Corps are hereby superseded. However, redelegations of these authorities may continue until new delegations are made.

These delegations of authority were effective on Janaury 20, 1988.

Date: February 1, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88-2479 Filed 2-4-88; 8:45 am]

BILLING CODE 4160-17-M

Alcohol, Drug Abuse, and Mental Health Administration

Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, Section 501 (j), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, on January 31, 1988, of the following committees:

Criminal and Violent Behavior Research Review Committee, NIMH
Mental Health Behavioral Sciences Research Review Committee, NIMH

The duration of these committees is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Date: February 1, 1988

Donald Ian Macdonald,

Administrator Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-2472 Filed 2-4-88; 8:45 am]

BILLING CODE 4160-20-M

Cancellation of Meeting

The following meeting announced in the **Federal Register** Volume #53, Number 12, published January 20, 1988, page 1518, has been cancelled: Basic Behavioral Processes Research Review Committee, NIMH.

Date: February 1, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-2473 Filed 2-4-88; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Investigation of Spontaneous Abortions in Louisiana; Availability of Funds for Fiscal Year 1988 To Provide Support by Grant to the Louisiana Department of Health and Human Resources

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 to support the Louisiana Department of Health and Human Resources (DHHR) in an investigation of spontaneous abortions potentially related to toxic chemicals in the St. Gabriel vicinity.

Assistance will be provided only to the State of Louisiana Department of Health and Human Resources; no other applications are solicited or will be accepted.

Authority: The authority for this project is section 301 of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 13.283.

Background for Grant

Residents of St. Gabriel, Iberville Parish, Louisiana, have expressed concern over the number of miscarriages and stillbirths that have occurred in their community. Many residents believe that the miscarriages and stillbirths are linked to the release of airborne toxic contaminants from industrial sources in the area. This community is located in the industrial corridor along the Mississippi River south of Baton Rouge, Louisiana.

A large number of chemical plants, hazardous waste disposal sites, and chemical storage facilities exist in the area, which heightens the residents' apprehension of possible health effects from chemical agents. Both the Secretaries of the Louisiana Department of Environmental Quality (DEQ) and the DHHR have made investigation of the issue a priority. Representatives of DHHR have contacted the DEQ, the Agency for Toxic Substances and Disease Registry, and the Centers for Disease Control for assistance in handling the problem. On August 21, 1987, DHHR asked the Tulane School of Public Health and Tropical Medicine to assist with an investigation of the possibility of an increased rate of miscarriages in the east Iberville Parish. Although preliminary reviews of vital health records have been initiated, a formal study is needed to ascertain whether the incidence of miscarriages and stillbirths in east Iberville Parish is elevated.

Reasons for Proposing the State of Louisiana Department of Health and Human Resources as the Recipient of This Grant Award

This grant award to the State of Louisiana Department of Health and Human Resources is proposed for the following reasons:

A. The Louisiana Department of Health and Human Resources has the ultimate responsibility for protecting the public health in the State of Louisiana and, therefore, has a vested interest in determining the impact of the environment on the health of residents of the St. Gabriel area. The DHHR has approached CDC about assistance and support to undertake this project.

B. The Louisiana Department of Health and Human Resources has unique access to vital records and the population statistics data which are important components of the proposed project.

C. The Louisiana Department of Health and Human Resources has ongoing working relationships with numerous local health care providers, and extensive medical research community, and the Tulane School of Public Health and Tropical Medicine, who will most likely be involved with the project.

D. The Louisiana Department of Health and Human Resources has qualified personnel experienced in environmental health, in conducting epidemiologic investigations, and in relating this scientific expertise to the local city and county levels of government.

Availability of Funds

Approximately $100,000 will be available in Fiscal Year 1988 to fund this grant award. The grant is expected be begin on or about March 1, 1988, and it will be funded in 12-month budget periods within a 2-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives, the availability of funds, and the need for further study. The funding estimate outlined above may vary and is subject to change.

Other Submissions and Review Requirements

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Karen Reeves, Grants Management Specialist, Procurement and Grants Office, Centers For Disease Control, 255 East Paces Ferry Road, NE. Room 321, Atlanta, Georgia 30305, telephone (404) 842-6575. Technical information may be obtained from Cynthia J. Berg, Project Officer, Perinatal Environmental Epidemiology Branch, Division of Birth Defects and Developmental Disabilities, Center for Environmental Health and Injury Control, Centers for Disease Control, MS-F37, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 488-4751.

Dated: February 1, 1988

Glenda S. Cowart,

Director, Office of Program Support Centers for Disease Control.

[FR Doc. 88-2392 Filed 2-4-88; 8:45 am]

BILLING CODE 4160-18-M

Grant With Morehouse School of Medicine; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for a grant to support the Morehouse School of Medicine for the Second Annual Symposium on Career Opportunities in the Biomedical Sciences, Atlanta, Georgia. This is not a formal request for applications. Assistance will be provided only to Morehouse School of Medicine for the support of this project. No other applications are solicited or will be acccepted.

Authority: This grant is authorized under section 301(a)[42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Background

Minorities are strikingly underrepresented in the biomedical sciences. The annual summary of data on Graduate Record Exam-takers published by the Educational Testing Services revealed that in 1985, the number of black Graduate Record Exam-takers planning graduate study in the biosciences was 327, up by only 14 from the previous year. The October 1986 and December 1986 rosters of Educational Testing Services Minority Graduate Student Locator Service revealed that only 12 blacks indicated interest in starting graduate study in Biochemistry in the Fall of 1987.

The goal of the Symposium is to encourage minority undergraduate students to pursue careers in the biomedical sciences. The objectives of the Symposium are to:

- Provide information to students and science advisors concerning science careers in government, academia, and industry.
- Provide information to students and science advisors about training activities necessary to pursue a science career and the fiscal support which one can obtain for such training.
- Discuss the structure and mechanics of science advisement of minority colleges and universities.
- Provide opportunities for scientists to interact with students.

Reasons for Single Source Award

The Morehouse School of Medicine is a part of the Atlanta University Center (AUC), a cluster of four undergraduate colleges, two graduate schools, and medical school, which is the largest association of private historically black colleges and universities in the United States. Morehouse is thus a unique organization to conduct the conference since the Symposium is designed to impact minority students and faculty on a national basis. The impetus of the conference is to encourage more minorities into careers in biomedial sciences as teachers, researchers and administrators. This Symposium is being held in association with the Association of Miniority Health Professions Schools. Morehouse has been designated as the School to host the conference in 1988.

Review Requirements

This program is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Availability of Funds

A total of $59,000 will be available in FY 1988 to implement this project. It is estimated that this grant will begin on or before March 1, 1988, for a period not to exceed 12 months.

Information

Information on the program may be obtained from Terry C. Maricle, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305.

Dated: February 1, 1988.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-2393 Filed 2-4-88; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

Council on Graduate Medical Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-400, 330 Independence Avenue SW., Washington, DC, telephone (202) 245-6792. Copies may be obtained from: Mr. Paul Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-5796.

Date: February 1, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-2471 Filed 2-4-88; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

General Clinical Research Centers Committee, Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), February 24-25, 1988, Montrose and Great Falls Room, Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

The meeting will be open to the public on February 25 from 1:00 p.m. to 2:30 p.m., during which time there will be comments by the Director, DRR; and an update on the GCRC Program. Attendance by the public will be limited to space.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 24, from 9:00 a.m. to 5:00 p.m. and from 8:30 a.m. February 25 to 12:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and any personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the Committee members upon request. Dr. Stanley L. Slater, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B-51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6595, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: January 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2494 Filed 2-4-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, February 18-19, 1988, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20892.

This meeting will be open to the public on February 18 from 8:30 a.m. to approximately 5:30 p.m., and again on February 19 from 9:00 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 19 from 8:00 a.m. until 9:00 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A-06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A-52, National Institutes of Health, Bethesda, Maryland 20892 (301-496-4291) will furnish substantive program information.

Dated: January 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2495 Filed 2-4-88; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Allergy and Infectious Diseases; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on May 23, 24, and 25. The meeting will be held in Conference Room 427, Building 5, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on May 23 from 9 a.m. until 12 noon and on May 24 from 8 a.m. until 9:30 a.m. During this open session, the permanent staff of the Laboratory of Parasitic Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Board will be closed to the public on May 23 from 8:30 a.m. until 9 a.m. and from 12 noon until recess, on May 24 from 9:30 a.m. until recess and on May 25 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301-496-3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health)

Dated: January 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2496 Filed 2-4-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DBRA, March 9-10, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 5 p.m. on March 9, for the purpose of presenting an overview of the organization and conduct of the Statistics and Biomathematics Branch.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6) of Title 5 U.S. Code and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 10 from approximately 9 a.m. to adjournment, for the evaluation of the programs of the Statistics and Biomathematics Branch, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David G. Hoel, Director, Division of Biometry and Risk Assessment, NIEHS, Research Triangle Park, NC 27709, telephone (919) 541-3441, FTS 629-3441 will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: January 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2497 Filed 2-4-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-88-1772]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Office, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 28, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for Approval as Direct Endorsement Mortgagee Underwriter/Mortgagee Certification.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: The HUD/FHA single family Direct Endorsement program permits mortgage lenders to underwrite applications for mortgage insurance and close mortgage loans without prior HUD review. The forms are used by the mortgagees certifying that the mortgage complies with statutory and regulatory requirements.
Form Number: HUD-54112 and 54113.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 301,900.
Status: Revision.
Contact: Dorothy L. Kelley, HUD, (202) 755-5676; John Allison, OMB, (202) 395-6880.
Date: January 21, 1988.

Proposal: Application for Approval as a 232 Coinsuring Lender—Category A Documentation.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This information is submitted to HUD by lenders so that they can be approved as a coinsuring lender. HUD reviews their financial, technical, and organizational capacity to carry out the programs to avoid fraud, waste, and mismanagement.
Form Number: Various.
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 3,200.
Status: New.
Contact: James L. Hamernick, HUD, (202) 755-6500; John Allison, OMB, (202) 395-6880.
Date: January 15, 1988.

Proposal: Project Applications and Review of Applications; Closing Documents, 232 Coinsurance Category B Documentation.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This information will be used by HUD to review the approved coinsuring lender's processing of project applications. It is needed to see if approved coinsuring lenders are adhering to the underwriting and processing guidelines and also to monitor their compliance with program standards.
Form Number: Various.
Respondents: Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 132,000.
Status: Revision.
Contact: James L. Hamernick, HUD, (202) 755-6500; John Allison, OMB, (202) 395-6880.
Date: January 15, 1988.

Proposal: Increase in the Single Person Occupancy Limitation—Administrative Controls.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: Section 3(b)(3) of the U.S. Housing Act of 1937, as amended, increases the 15 percent single person occupancy limitation to a total of not more than 30 percent. Public housing agencies/Indian housing authorities (PHAs/IHAs) are required to notify HUD when a particular project does exceed the 15 percent limitation, and they can request HUD's approval to exceed the 15 percent limitation. This can be done so the units will be made available to single persons and not be vacant for long periods of time.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Respondents: Single-Time.
Estimated Burden Hours: 19,800.
Status: New.

Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880.

Date: January 15, 1988.

Proposal: Increase in the Single Person Occupancy Limitation—PHA Certification.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Section 3(b)(3) of the U.S. Housing Act of 1937, as amended, increases the 15 percent single person occupancy limitation to a total of not more than 30 percent. Public housing agencies/Indian housing authorities (PHAs/IHAs) are required to notify HUD when a particular project does exceed the 15 percent limitation, and they can request HUD's approval to exceed the 15 percent limitation. This can be done so the units will be made available to single persons and not be vacant for long periods of time.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Respondents: Single-Time.

Estimated Burden Hours: 247.

Status: New.

Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880.

Date: January 15, 1988.

Proposal: Increase in the Single Person Occupancy Limitation—Notification.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Section 3(b)(3) of the U.S. Housing Act of 1937, as amended, increases the 15 percent single person occupancy limitation to a total of not more than 30 percent. Public housing agencies/Indian housing authorities (PHAs/IHAs) are required to notify HUD when a particular project does exceed the 15 percent limitation, and they can request HUD's approval to exceed the 15 percent limitation. This can be done so the units will be made available to single persons and not be vacant for long periods of time.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Respondents: Single-Time.

Estimated Burden Hours: 1,000.

Status: New.

Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880.

Date: January 15, 1988.

Proposal: Preference Rule.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This information will be used by PHAs to determine whether prospective tenants are eligible for preference in obtaining housing because they are occupying substandard housing, involuntarily displaced, or paying more than 50 percent of family income for rent. The information is needed by HUD to determine if PHAs are properly administering the program.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 431,318.

Status: New.

Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880.

Date: January 12, 1988.

Proposal: Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Section 227 of the Housing and Urban-Rural Recovery Act of 1983 provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may prohibit a tenant from having common household pets in the tentant's dwelling unit, or discriminate against any person regarding admission to such housing because of ownership or presence of a pet in the person's dwelling unit.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 14,916.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880.

Date: January 22, 1988.

Proposal: Wood Destroying Insect Information—Existing Construction.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This form is used and needed by HUD as evidence that a property to be financed with FHA insurance is free of wood destroying insects. A mortgage will not be insured until HUD is satisified that the property has been inspected and found free of infestation.

Form Number: HUD–92053.

Respondents: Businesses or Other For-Profit.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 1.

Status: Extension.

Contact: Robert J. Rankin, HUD, (202) 755–6720; John Allison, OMB, (202) 395–6880.

Date: January 22, 1988.

Proposal: Tenant Participation in Multifamily Housing Projects.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This rule provides an opportunity for tenants in certain types of subsidized multifamily housing projects to comment on requests by project owners for HUD approval of certain specified actions, including the continuation of the requirement for tenants' participation in project rent increases. These comments must be taken into consideration by HUD when making approval decisions.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, and Businesses or Other For-Profit.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 14,880.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 426–3970; John Allison, OMB, (202) 395–6880.

Date: January 26, 1988.

Proposal: Notice of Job Change and Changes in Family Composition.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This form is submitted by mortgagors, under section 235(f) of the National Housing Act, to notify the mortgagee job changes and changes in adult family income and composition. This information is used by HUD in determining the amount of assistance a mortgagor is entitled.

Form Number: HUD–93115.

Respondents: Individuals or Households.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 16,406.

Status: Extension.

Contact: Florence B. Brooks, HUD, (202) 755–7330; John Allison, OMB, (202) 395–6880.

Date: January 25, 1988.

[FR Doc. 88–2486 Filed 2–4–88; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D-88-873]

Minneapolis-St. Paul Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Order of Succession, Minneapolis-St. Paul Office.

SUMMARY: The Manager is designating officials who may serve as the Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective as of February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis M. Nixon, Regional Counsel, Chicago Regional Office, Department of Housing and Urban Development, 300 South Wacker Drive, Chicago, Illinois 60606-6765, 312-353-4681 (This is not a toll-free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all employees whose titles precede his/hers in this designation are unavailable to act by reason of absence.

1. Deputy Manager
2. Director, Housing Development Division
3. Director, Housing Management Division
4. Chief Counsel
5. Director, Community Planning and Development Division
6. Deputy Director, Housing Development Division
7. Director, Administrative Division

This designation supersedes the designation published at Docket No. D-84-757, **Federal Register**, Vol. 49, No. 95, dated May 15, 1984.

Authority: Delegation of Authority, by the Secretary, 50 FR 18742, May 2, 1985.

Thomas T. Feeney,

Manager, Minneapolis/St. Paul Office.

Gertrude W. Jordan,

Regional Administrator, Regional Housing Commissioner, Region V, Chicago.

[FR Doc. 88-2487 Filed 2-4-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-08-4333-02]

Closure Order North Fork American Wild River

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure of all public lands administered by the Bureau of Land Management within the boundaries of the North Fork of the American River Wild and Scenic River Corridor to the operation of motorized vehicles and equipment.

SUMMARY: Use of motorized vehicles and equipment within the Wild and Scenic River Corridor is prohibited, indefinitely, to insure management of public lands consistent with the rivers "wild" classification in accordance with the Wild and Scenic River Act as amended (Pub. L. 95-625, November 10, 1978) and in accordance with the North Fork American Wild River Management Plan of October 3, 1979.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Folsom Resource Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630. Telephone: 916-985-4474.

SUPPLEMENTARY INFORMATION: Authority for this closure order is contained in CFR Title 43, Chapter II, Part 8350, Subpart 8351.2-1. Any person who fails to comply with a closure order may be subject to a fine not to exceed $500 and/or imprisonment not to exceed six months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0-7.

Date: January 29, 1988.

D.K. Swickard,

Area Manager.

[FR Doc. 88-2426 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-40-M

[ID-930-88-4332-08]

Availability of Draft Environmental Impact Statement; Idaho Wilderness Study Areas

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of a draft Environmental Impact Statement (EIS) for wilderness proposals for nine Wilderness Study Areas (WSAs) in southern and central Idaho.

SUMMARY: This EIS documents the expected effects of managing nine WSAs as wilderness or nonwilderness. These WSAs range in size from 40 acres to 4,265 acres. They were deleted from the wilderness study process in 1982 by Secretary of the Interior James Watt, along with all other WSAs under 5,000 acres identifed under section 603 of the Federal Land Policy and Management Act. In 1985, a U.S. District Court decision reinstated these small units as WSAs.

This EIS assesses the environmental consequences of managing each of the nine WSAs as wilderness or nonwilderness, of managing one WSA as part wilderness and part nonwilderness, and of managing one WSA as wilderness including additional acreage outside the WSA boundary. The alternatives assessed include: (1) A "no wilderness" alternative for each WSA; (2) an "all wilderness" alternative for each WSA; (3) a partial wilderness alternative for the Henry's Lake WSA; and (4) an "all wilderness plus additional acreage" alternative for the Borah Peak WSA. The names of the WSAs, the total acreage of each, and the proposed action for each are as follows:

Box Creek WSA: 440 acres; recommended nonsuitable for designation as wilderness.

Lower Salmon Falls Creek WSA: 3,500 acres; recommended nonsuitable for designation as wilderness.

Henry's Lake WSA: 350 acres; 340 acres recommended suitable for designation as wilderness in conjunction with the adjacent U.S. Forest Service's Lion's Head Roadless Area; 10 acres recommended nonsuitable for wilderness designation.

Worm Creek WSA: 40 acres; recommended suitable for designation as wilderness in conjunction with the adjacent U.S. Forest Service's Worm Creek Roadless Area.

Goldberg WSA: 3,290 acres; recommended nonsuitable for designation as wilderness.

Boulder Creek WSA: 1,930 acres; recommended nonsuitable for designation as wilderness.

Borah Peak WSA: 3,100 acres; recommended suitable for designation as wilderness in conjunction with the adjacent U.S. Forest Service's Borah Peak proposed wilderness.

Little Wood River WSA: 4,265 acres; recommended suitable for designation as wilderness in conjunction with the adjacent U.S. Forest Service's Pioneer Mountains Roadless Area.

Black Butte WSA: 4,068 acres; recommended nonsuitable for designation as wilderness.

Bureau of Land Management wilderness proposals ultimately will be forwarded by the Secretary of Interior and President to Congress. The decision

on wilderness designation rests with Congress.

SUPPLEMENTARY INFORMATION: A limited number of copies of this EIS may be obtained from the Project Manager, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, 83706. Copies are available for inspection at the following location: Department of the Interior, Bureau of Land Management, 18th & "C" Streets, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Wyke, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706, Telephone: (208) 334-1952.

Date: February 1, 1988.

Delmar Vail,

State Director, Bureau of Land Management.

[FR Doc. 88-2418 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-GG-M

[CA-010-08-4333-02]

Supplementary Rules for The Merced River Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplemental rules for the management of public lands along the Merced River of the Folsom Resource Area, Bakersfield District, California.

SUMMARY: On public lands along the Merced River the following special regulations apply:

1. Parking upon any portion of the traffic lanes of the Merced River access road is prohibited.
2. Overnight parking between Briceburg, California and McCabe Flat campground upon the road bed and associated pull out areas of the Merced River access road is prohibited.
3. Overnight camping upon the road bed, associated pullout areas, and on the upslope side of the Merced River access road is prohibited.
4. Motor vehicles not licensed for highway use are prohibited unless authorized by special permit.

DATE: These supplemental rules to take effect on May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Folsom Resource Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. Telephone: (916) 985-4474.

SUPPLEMENTARY INFORMATION: The purpose of these supplemental rules is to eliminate camping and illegal parking and to control the usage of all terrain vehicles (ATV) on the Merced River access road below, or downstream, from Briceburg, California on public lands. The rules are designed to control and reduce congestion along the road in order to protect persons and property and to provide for maximum usage by the visiting public without jeopardizing the natural values to be protected.

Authority for these supplemental rules is contained in Title 43 of the CFR, Chapter II, Part 8365, Subpart 8365.1-6.

Any person who fails to comply with these supplemental rules may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0-7.

Dated: January 29, 1988.

D.K. Swickard,

Area Manager.

[FR Doc. 88-2430 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Innoko National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review (Plan) for the Innoko National Wildlife Refuge (Refuge), Alaska, pursuant to section 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative A, with certain changes, for implementation. Alternative A is the current situation and the alternative preferred by the Service. The alternative does not contain a wilderness proposal.

Alternative A provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Dated: February 1, 1988.

David L. Olsen,

Deputy Regional Director.

[FR Doc. 88-2394 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan for the Selawik National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Selawik National Wildlife Refuge (Refuge), Alaska, pursuant to sections 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildflife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative A, with certain changes, for implementation. Alternative A is the current situation and the alternative preferred by the Service. The alternative does not contain a wilderness proposal. Furthermore, Appendix O is dropped from the Plan, and discussion of Oil and Gas Leasing is revised to state that the Service will obtain additional information from the Bureau of Land

Management about the hydrocarbon potential. Following receipt of a national interest determination from the Department of Energy, the Service will consider revising the Plan if a need is identified.

Alternative A, with this modification, provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

David L. Olsen,

Deputy Regional Director.

Date: February 1, 1988.

[FR Doc. 88-2395 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Yukon Flats National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Yukon Flats National Wildlife Refuge (Refuge), Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative D, the preferred alternative, for implementation. As a result, the Service is recommending that approximately 650,000 acres in the White-Crazy Mountains of the Refuge be added to the National Wilderness Preservation System.

Alternative D provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: February 1, 1988.

David L. Olsen,

Deputy Regional Director.

[FR Doc. 88-2396 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Diamond Shamrock Offshore Partners Limited Partnership has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5286, Block 178, West Cameron 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 existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 29, 1988.

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: Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 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: January 29, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-2427 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Environmental Assessment of the Servicewide Integrated Pest Management Program

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given, in accordance with 40 CFR 1506.6, that the National Park Service (NPS) is planning to prepare an environmental assessment (EA) on the Servicewide Integrated Pest Management (IPM) program. Public comments are solicited regarding the scope of the EA.

DATE: Written comments must be received up to and including March 21, 1988.

ADDRESSES: Submit written comments by mail to: Department of the Interior, National Park Service, Science Support Staff (473), P.O. Box 37127, Washington, DC 20013-7127, Attn: Assistant IPM Coordinator. In person, bring comments to: Room 3317-D, 1100 "L" St. NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Johnston, Integrated Pest Management Coordinator, at the above address, telephone (202) 343-8130, or Mr. Gerald McCrea, Assistant Integrated Pest Management Coordinator, at the above address, telephone (202) 343-8127.

SUPPLEMENTARY INFORMATION: The NPS conducts an IPM program to ensure that its management of pest species of plants and animals uses techniques that are least disruptive to the environment. Management methods are selected on a case-by-case basis, after consideration of available technology. Techniques are selected from physical, mechanical, cultural, biological and chemical methods.

The Service last published an EA on this subject in 1977. New data and changes in regulations and techniques concerning NPS pesticide uses necessitate a program reassessment. Four alternatives are being considered. They are: (1) Continue the existing Integrated Pest Management program, (2) conduct no pest management, (3) conduct pest management with complete avoidance of pesticides, or (4) conduct

pest management with total reliance on pesticides.

The planned scope of the EA includes, but is not limited to: (1) Description of the current program by management zone, (2) environmental consequences of the alterantives, (3) risks to human health from the alternatives and (4) mitigating measures. (Item four will include guidelines, organizational structure, and program management.)

William Penn Mott, Jr.,

Director.

[FR Doc. 88-2379 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: February 2, 1988.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and coorespondence should be addressed (4), are publsihed here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A.

(1) Dairylea Cooperative Inc.,
(2) 831 James Street,
Syracuse, NY 13203
(3) P.O. Box 395,
Seneca Street,
Vernon, NY 13476
(4) Ron Shuster,
P.O. Box 395, Seneca Street,
Vernon, NY 13476.

B.

(1) Dairymen, Inc.,
(2) 10140 Linn Station Road,
Louisville, KY 40223
(3) Dairymen, Inc.—Kyana Division,
P.O. Box 18610, 3941 Buechel Bank Road,
Louisville, KY 40218
(4) Beverly L. Williams,
10140 Linn Station Road,
Louisville, KY 40223.

C.

(1) FLAV-O-RICH, INC.,
(2) 10140 Linn Station Road,
Louisville, KY 40223.
(3) P.O. Box 18610, 3941 Buechel Bank Road,
Louisville, KY 40218.
(4) Beverly L. Williams,
10140 Linn Station Road,
Louisville, KY 40223.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2403 Filed 2-4-88; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Getty Petroleum Corp., a Delaware corporation, 125 Jericho Turnpike, Jericho, New York 11753.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: (i) PT Petro Corp., a New York corporation.

B. 1. Parent corporation and address of principal office: Great Lakes Chemical Corporation, P.O. Box 1878, El Dorado, AR 71730.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Subsidiary	State of incorporation
E/M Corporation, P.O. Box 2200, West Lafayette, IN 47906.	Delaware
Enzyme Technology Corporation, 783 U.S. 250 East, Route 2, Ashland, OH 44805.	Illinois
Hydrotech Chemical Corporation, 1850 Airport Industrial Park Drive, Marietta, GA 30062.	Georgia
Inland Specialty Chemical Corporation, 3151 Airway Ave., Suite J3, Costa Mesa, CA 92626.	Indiana
Oilfield Service Corporation of America, P.O. Box 53095, OCS, Lafayette, LA 70505.	Delaware
Pentech Chemicals, Inc., 823 Commerce Drive, Oak Brook, IL 60521.	Delaware
QO Chemicals, Inc., 823 Commerce Drive, Oak Brook, IL 60521.	Delaware
Wil Research Laboratories, Inc., 1407 Montgomery Township Road 805, Ashland, OH 44805.	Indiana

C. 1. Parent corporation and address of principal office: Interco Incorporated, 101 South Hanley Rd., St. Louis, Missouri 63105.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation:

Subsidiary	State of incorporation
Delmar Sportswear, Inc	Maryland
Big Yank Corporation	Delaware
Patriot Investment Company	Missouri
Fine's Men's Shops, Inc	Virginia
Converse Inc	Delaware
Converse Star I, Inc	Massachusetts
Converse Star II, Inc	Massachusetts
United Shirt Distributors, Inc	Delaware
Golde's Department Stores, Inc	Missouri
QCS, Inc	Missouri
Stuffed Shirt, Inc	Delaware
Queen Casuals, Inc	Delaware
Northeast Factory Outlet	Pennsylvania
Londontown Corporation	Delaware
Matthew Manufacturing Company	Maryland
Star Sportswear Manufacturing Corp	Delaware
The Scranton Outlet Corporation	Delaware
Washington Holding Company	Georgia
Milford Sportswear, Inc	Delaware
Sky City Stores, Inc	Delaware
Broyhill Furniture Industries, Inc	North Carolina
Highland House, Inc	North Carolina
Highland Transport, Inc	North Carolina
The Lane Company, Incorporated	Virginia
Action Industries, Inc	Virginia
Lane Advertising, Inc	Virginia
Grand Entry Hat Corp	New York
Central Hardware Company	Missouri
Witte Hardware Corporation	Missouri
INTERCO Export, Ltd	Missouri
Lease Management, Inc	Missouri
America's Tradesman, Inc	Missouri
Abe Schrader Corporation	Delaware
SS Advertising Associates, Inc	New York
The Biltwell Company, Inc	Missouri
Ace Sweater Mills, Inc	South Carolina
Campus Sweater & Sportswear Export Company.	Ohio
Carolina Sportswear Company	North Carolina
Central Sportswear Company	North Carolina
Chester Sportswear Company	South Carolina
Creedmoor Sportswear Company	South Carolina
Ellwood Knitting Mills, Inc	Pennsylvania
Warren Shirt Company	Pennsylvania
St. Paul Sportswear Company	Virginia
Label Corp	South Carolina
Kenbridge Sportswear Company	Virginia
H & H Manufacturing Corp	Georgia
Nationwide-Penncraft, Inc	Georgia

Subsidiary	State of incorporation
Rogin, Inc	Georgia
LaCrosse Sportswear Corporation	Virginia
Factory Outlet Company	Delaware
Lexington Sportswear Company	South Carolina
Louisburg Sportswear Company	North Carolina
Morgan Sportswear Company	Georgia
Olympic Sweater & Sportswear Company.	Ohio
Southampton Sportswear Corporation.	Ohio
Swainsboro Sportswear Company	Georgia
Campus Far East Company	Ohio
Flat Rock Manufacturing Company	Georgia
The Florsheim Shoe Store Company—Midwest.	Delaware
The Florsheim Shoe Store Company—West.	Delaware
The Florsheim Shoe Store Company—Northeast.	Delaware
The Florsheim Shoe Store Company—South.	Delaware
L. J. O'Neill Shoe Company	Missouri
Thompson, Boland & Lee, Inc	Delaware
The Florsheim Shoe Store Company of Hawaii.	Delaware
Senack Shoes, Inc	Missouri
Keith O'Brien Investment Company	Idaho
Ethan Allen, Inc	Delaware
Andover Wood Products, Inc	Maine
EA Enterprises, Inc	Florida
Ethan Allen Adco, Inc	New York
Lake Avenue Associates, Inc	Connecticut
Northeast Consolidated, Inc	Vermont
Riverside Water Works, Inc	Vermont
KEA International, Inc	New York

Noreta R. McGee,

Secretary.

[FR Doc. 88-2404 Filed 2-4-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31208]

Railroad Operation; Abbeville-Grimes Railway Co.—Acquisition and Operation Exemption; CSX Transporation, Inc.

Abbeville-Grimes Railway Company has filed a notice of exemption to purchaser and operate certain properties of CSX Transportation, Inc. (CSXT). The properties consist of the CSXT rail line between milepost ANF 789.00 at Grimes, AL and milepost ANF 816.00 at Abbeville, AL, a distance of approximately 27 miles; and 6 miles of trackage rights over CSXT's track from Grimes to Dothan, AL. The transaction is expected to be consummated on or about January 15, 1988. Any comments must be filed with the Commission and served on Ronald S. Flagg, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 15, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1919 Filed 2-4-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31212]

Railroad Operation; Housatonic Railroad Co., Inc., Operation Exemption; Lines of The State of Connecticut

Housatonic Railroad Company, Inc., filed a notice of exemption to operate approximately 34.16 miles of rail line (known as USRA Line 60) owned by the State of Connecticut, extending from milepost 13.65 near New Milford, CT, to milepost 47.81 near North Canaan, CT, in Litchfield County, CT. Consummation of the transaction is to occur on or before February 7, 1988. Comments must be filed with the Commission and served on Edward J. Rodriguez, P.O. Box 537, Old Saybrook, CT 06475.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void under *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secertary.

[FR Doc. 88-1921 Filed 2-4-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-97]

22nd Avenue Drugs, Inc., t/a Acosta Pharmacy; Revocation of Registration

On December 8, 1986, the Administrator of the Drug Enforcement Administration issued an Order To Show Cause to 22nd Avenue Drugs, Inc., t/a Acosta Pharmacy (Respondent), of 1131 NW. 22nd Avenue, Miami, Florida 33125, proposing to revoke DEA Certificate of Registration A90103692, and deny any pending applications for renewal of that registration as a retail pharmacy under 21 U.S.C. 823(f). Additionally, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration A90103692 during the pending of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and, following the completion of prehearing procedures, the hearing in this matter was held in Miami, Florida on February 11 and 12, 1987. On November 10, 1987, Administrative Law Judge Francis L. Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. On December 15, 1987, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that Carlos Acosta, Jr. was the president of Respondent pharmacy. In April 1984, law enforcement agents followed a large shipment of ether, a substance used by clandestine laboratory operators in the illicit manufacture of controlled substances, from a chemical company to a marina located directly behind Respondent pharmacy. There, Carlos Acosta was observed unloading containers of ether into a warehouse. On the tailgate of the truck transporting the ether, a radio frequency detector was found.

The warehouse into which Carlos Acosta was observed unloading the shipment of ether was subsequently raided. Officers found hydrochloric acid, acetone, garbage pails and filter papers of a size that fits such garbage pails. These chemicles, although they have legitimate uses, are used in the clandestine manufacture of cocaine. The chemicals and equipment found in the warehouse were all that was required to process cocaine; only the cocaine base itself was lacking.

Following the seizure of ether and other materials at the marina, the investigators began to focus their attention on Carlos Acosta and the two owners of the marina. The preliminary investigation revealed that all three individuals had prior criminal histories.

The investigation revealed that Carlos Acosta, operating out of Respondent pharmacy, purchased chemicals, including ether, acetone and hydrochloric acid, from legitimate

chemical industry sources. These materials were stored in either Respondent pharmacy or a storage facility belonging to the marina. Persons engaged in the clandestine manufacture of cocaine purchased ether, acetone, hydrochloric acid and other chemicals or items used in the cocaine manufacturing process from Carlos Acosta. Between March 1979 and December 1986, Carlos Acosta received amounts of money in excess of six million dollars for these chemicals and other supplies. During this period of time, Carlos Acosta utilized Respondent pharmacy as a location to negotiate the sale of these chemicals to clandestine laboratory operators; used the pharmacy's ongoing business as a means to order large amounts of chemicals and other items from chemical industry suppliers; used the premises of Acosta Pharmacy for storage of the chemicals and other supplies; distributed the chemicals and other items from the pharmacy; and, used the premises to receive payment for the chemicals and other supplies.

The Administrator also finds, as did the Administrative Law Judge, that although Carlos Acosta was at one time an informant for DEA and its predecessor agency, Mr. Acosta was never directed or authorized to sell chemicals to clandestine laboratories, nor was he authorized to violate the law in any manner.

As a result of the above-described investigation, Carlos Acosta was arrested on December 10, 1986. On that date, the Order to Show Cause/ Immediate Suspension Order was served on the Respondent pharmacy. In conjunction with the service of the Order, all controlled substances possessed by the Respondent were inventoried. The DEA Diversion Investigator conducting the inventory found that a very large percentage of the drugs on hand at the pharmacy were outdated, having expiration dates of 1976, 1977 and 1978.

Having considered the foregoing facts, the Administrator concludes that there are lawful grounds for the revocation of the Respondent's registration and for the denial of any pending application for renewal of such registration. 21 U.S.C. 823(f) and 824(a)(4).

Pharmacy is a profession dedicated to promoting the public health. A pharmacist has knowledge of the terrible consequences of drug abuse. For a pharmacy owner to participate in a scheme to facilitate the illicit manufacture of drugs is unconscionable. The evidence clearly shows that Carlos Acosta used the Respondent pharmacy to further a large scale effort to supply clandestine laboratory operators with essential chemicals and other supplies necessary for the conversion of cocaine. While this activity had nothing to do with legitimate pharmaceuticals or medicines dispensed by the pharmacy, and while no diversion of such substances has shown, the Administrator has consistently revoked the registrations of registrants whose criminal activities relating to controlled substances did not involve diversion or misuse of their registrations. See, *Aaron Moss, D.D.S.*, Docket No. 80-2, 45 FR 72850 (1980), a dentist smuggling cocaine; *Reymond H. Wood, D.D.S.*, Docket No. 82-32, 48 FR 48727 (1983), a dentist engaged in marijuana trafficking; *Tilman J. Bently, D.O.*, Docket No. 82-22, 49 FR 35049 (1984), a physician engaged in counterfeiting Quaalude (methaqualone); and, *Preston McCown, D.D.S.*, Docket No. 82-28, 49 FR 45818 (1984), a dentist selling street cocaine.

Based on the foregoing, the Administrator concludes that the continued registration of 22nd Avenue Drugs, Inc., t/a Acosta Pharmacy would be contrary to the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration A90103692, previously issued to Respondent pharmacy be, and it hereby is, revoked. It is further ordered that any pending applications for renewal be, and they hereby are, denied.

This order is effective March 7, 1988.

Dated: February 1, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-2378 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-28]

Vernon D. Clausing, D.O.; Denial of Application

On March 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause proposing to deny an application for registration as a practitioner under 21 U.S.C. 823(f) submitted by Vernon D. Clausing, D.O. (Respondent), 13624 1st South, Seattle, Washington 98168. The statutory bases for the proposed action were that: (1) On March 7, 1981, the State of Washington Board of Osteopathic Medicine & Surgery suspended Respondent's authority to possess, prescribe and dispense controlled substances, said suspension being abated as to certain Schedule IV and all Schedule V controlled substances on August 8, 1985; and, (2) Respondent prescribed excessive quantities of controlled substances to individuals he knew, or should have known, were addicted to such controlled substances and whom Respondent knew, or should have known, were diverting controlled substances into illegitimate channels.

By letter dated April 8, 1986, Respondent requested a hearing on the issues raised in the Order to Show Cause. On August 26, 27, 28 and September 16, 1986, a hearing was held in Seattle, Washington. By January 9, 1987, all post-hearing pleadings were filed by Respondent and Government Counsel. On October 16, 1987, Administrative Law Judge Francis L. Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, and on December 3, 1987, transmitted the record of these proceedings to the Administrator.

The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that the Washington Board of Pharmacy began an investigation into Respondent's prescribing practices in the Fall of 1978 when a pharmacist complained that Respondent appeared at his pharmacy and wrote prescriptions for Dexedrine and Percodan, Schedule II controlled substances, on the spot, for an individual.

In 1979, the Washington State Division Investigation Unit (DIU) also investigated Respondent's prescribing practices. The DIU investigators found 825 prescriptions written by Respondent for Schedule II controlled substances between January and May 1979. This investigation also revealed that between May 1978 and April 1979, Respondent issued the following: 24 prescriptions for Demerol, Valium and Percodan, totalling 1,536 dosage units, to one individual; 25 prescriptions for Demerol and Dexedrine, totalling 1,312 dosage units, to another individual; and, 27 prescriptions for Demerol and Perodan, totalling 2,074 dosage units, to a third individual. Additionally, the DIU investigators found 47 prescriptions written by Respondent for one individual between March 1977 and January 1979, totalling 2,690 dosage units. The prescriptions were for Demerol, Percodan, Quaalude and Dexedrine. With the exception of

Valium, each of the above-named drugs are brand names for Schedule II controlled substances.

The Administrator further finds that in November 1979, a hospital with which Respondent was once affiliated, barred Respondent from prescribing Schedule II and III controlled substances and also required Respondent to submit to psychiatric counselling. Respondent subsequently lost his admitting privileges and was under admonition not to enter the hospital.

On July 9, 1980, the Medical Director of a hospital pain clinic in Seattle, Washington, wrote to the Washington Board of Pharmacy to complain about Respondent's overprescribing of controlled substances for one of his patients. This hospital has a national reputation for excellence in medical care and in the treatment of pain.

In December 1980, the Washington Board of Osteopathic Medicine and Surgery brought charges against Respondent for overprescribing of controlled substances. A hearing was held by the Board in January 1981. In an order dated March 7, 1981, the Board revoked Respondent's license to practice osteopathic medicine and surgery. The Board's action was based on its finding that Respondent ignored the extensive potential for harm inherent in the course of treatment he pursued, which involved prescribing large quantities of narcotic drugs on a recurring basis over extended periods of time. The Board found that by his prescribing practices Respondent exhibited total disregard for the substantial harm likely to be caused individual patients by such large amounts of dependency-producing narcotics. The Board further found that Respondent's conduct in continuing to prescribe large amounts of addictive and dependency-producing drugs showed a disregard on his part for the serious adverse consequences caused to individuals who are addicted to narcotics by increasing the availability of drugs to them.

With respect to one of Respondent's patients, the Board found that Respondent prescribed at least 443 Percodan and 1,100 Valium 10 mg. to this patient in the eight months preceding the birth of the patient's child. The Board found that by ignoring her pregnancy, and by continuing to prescribe large amounts of addictive and dependency-producing drugs, Respondent totally ignored the potential adverse harmful effects on the health of the patient and her unborn baby. During May 1980, the two physicians who delivered the child of this patient, told Washington Board of Pharmacy investigators that this child was born depressed and exhibited signs of controlled substances dependency.

The March 7, 1981, order issued by the Washington Board of Osteopathic Medicine and Surgery revoking Respondent's license was subsequently stayed on certain conditions. The conditions included that Respondent undergo a psychiatric examination; that he not prescribe, administer, dispense or possess any controlled substances; that he surrender for cancellation his Drug Enforcement Administration registration; that he be prohibited from the practice of osteopathic medicine and surgery until he provided documentary proof of that surrender to the Board; and that he not reapply for a DEA registration until he received written permission to do so from the Board.

In October 1982, Respondent applied for permission to reapply for his DEA registration. The Board declined to give its permission.

The Administrator further finds that since 1981 and his becoming unable to prescribe controlled substances, Respondent has often prescribed Nubian (nalbuphine), a non-controlled analgesic substance, in such quantities and under such conditions as to provoke criticism from another Seattle physician.

The Administrator also notes that the Washington State Department of Labor and Industries barred Respondent from participation in the workers' compensation program in 1984. Following a hearing, the Board of Industrial Appeals found, *inter alia*, that Respondent repeatedly treated injured workers in a manner detrimental to their recovery and overprescribed and administered dependency-inducing drugs and medications to workers in quantities excessive for therapeutic purposes.

The Administrator finds that on October 20, 1983, Respondent was convicted in the Superior Court of the State of Washington for the County of King for violating the Washington State Mandatory Reporting Law which mandates the reporting of suspected child abuse or neglect cases by physicians who have reasonable cause to believe such child abuse or neglect is taking place. During the trial for this violation, it was established that a 22 month old infant died on December 13, 1982, from injuries inflicted by her mother's boyfriend. An autopsy revealed that the child had suffered seven broken bones at various ages and had more than 20 bruises on various parts of her body. Such evidence of abuse should have been clear to Respondent who saw the child in his office on October 25, 1982, November 1, 1982, and December 10, 1982. Respondent was fined $1,500 for his offense of failing to report. Following this conviction, the Osteopathic Board agains suspended Respondent's license to practice. The suspension was stayed provided that Respondent comply with certain restrictions, principally that he not treat any patients under ten years of age.

The Administrator also finds that Respondent was hospitalized in 1962 for psychiatric treatment following his ingestion of LSD and was treated by a psychiatrist for four years thereafter. In 1981, a psychiatrist testified before the Osteopathic Board that Respondent was then suffering from a paranoid personality disorder.

In an order dated August 8, 1985, the Washington State Board of Osteopathic Medicine and Surgery granted Respondent permission to apply for a DEA registration as a practitioner with respect to Schedules IV and V, except for substances in the benzodiazepine drug class. Respondent applied for such registration on September 25, 1985.

Based on the foregoing, the Administrator concludes that the registration of Respondent, in any Schedule, would be inconsistent with the public interest. Respondent's prescribing practices led to a child being born in a drug dependent state. Another child died after Respondent failed to report clear evidence of child abuse to the proper authorities. Respondent's dangerous prescribing practices have been condemned by his profession's licensing board in Washington State and by other members of the medical and osteopathic professions. The Board refused to permit Respondent to reapply for a DEA registration in 1982, although they did agree to allow him to apply for a restricted registration in 1985. Respondent has made absolutely no showing that his unacceptable professional judgment, well-established in this record and previously condemned by the State Board, has improved one iota since 1981. Additionally, while Respondent was diagnosed in 1981 as suffering from a paranoid personality disorder, he has produced no evidence in this record that his conditions has improved.

The instances of wrongdoing, diversion and professional dereliction set forth above are but a small part of a voluminous record. Similar instances contained in the entire record are too numerous to recount in this order. After considering Respondent's past conduct in light of the factors set forth in 21 U.S.C. 823(f), the Administrator concludes that the public interest cannot be served by granting this individual

access to controlled substances. Indeed, the Administrator's responsibility for protecting the public from individuals who abuse their registrations and place their patients and the public in jeopardy mandates that he deny this application. The Administrative Law Judge recommended that Respondent's application should be denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration, executed by Respondent on September 25, 1985, be, and it hereby is, denied. This order is effective March 7, 1988.

Dated: February 1, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-2467 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Investigation

Advisory Policy Board, National Crime Information Center: Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on March 1, 1988 from 9 a.m. until 5 p.m. at The Monteleone Hotel, 214 Rue Royale, New Orleans, Louisiana 70140.

The major topics to be discussed will be the evaluation of the test for noncriminal justice use of the Interstate Identification Index (III) and access to III by agencies covered under the Security Clearance Information Act of 1985, Pub. L. 99-169.

The meeting will be open to the public with approximately 25 seats available for the seating on a first-come, first-serve basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-342-2606.

Date: February 2, 1988.

William S. Sessions,

Director.

[FR Doc. 88-2401 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total numbers of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331.

Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration

Nonmonentary Determination Report
1205-0150; ETA 207
Quarterly
State and local governments
53 respondents; 896 hours; 1 form

Data are used to monitor the impact of disqualification provisions, to measure workload, and to appraise adequacy and effectiveness of State and Federal nonmonetary determination procedures.

Occupational Safety and Health Administration

Initial and renewal New Directions application for training and education grants, OSHA-177
#1218-0020
Annually
Non-Profit Institutions
76 respondents; 4,811 burden hours; 1 form

The application is submitted by nonprofit organizations interested in participating or continuing in the New Directions grant program. It is used by OSHA staff to select organzations which can effectively carry out the objectives of the program. The application becomes part of the grant award, document for successful applicants.

Extension

Mine Safety and Health Administration

Examinations and Test of Electrical Equipment 1219-0067
Weekly, monthly; semi-annually
Business and other for profit; small businesses or organizations

5,115 respondents; 1,966,190 hours
Requires coal mine operators to keep records of the results or required test and examinations of electrical equipment.

Mine Safety and Health Administration

Record of Preshift and Onshift Inspections of Slope and Shaft Areas
1219-0082
Preshift and onshift
Businesses and other for profit; small businesses or organizations
40 respondents; 18,040 hours
Requires coal mine operators to keep records of the results of required examinations for hazardous conditions, including tests for methane and oxygen deficiency, of slope and shaft areas during development.

Extension

Mine Safety and Health Administration

Escapeways and Escape Facilities
1219-0052
Weekly
Businesses or other for profit; small businesses or organizations
2,046 respondents; 153,041 hours
Requires that underground coal mine operators keep records of results of weekly examinations of emergency escapeways.

Mine Safety and Health Administration

Permissible Equipment Testing
1219-0066
On occasion
Businesses and other for profit; small businesses or organizations
3,175 respondents; 191,176 hours
Contains procedures by which manufacturers of mining equipment and components, material, instruments, and explosives may apply for, and have their products approved as permissible for use in mines.

Signed at Washington, DC, this 2nd day of February, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-2397 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-43-M

Employment and Training Administration

Babcock and Wilcox Co.; Affirmed Determination Regarding Application for Reconsideration

In the matter of Babcock and Wilcox Company at the following locations:

TA-W-20,111
Beaver Falls, Pennsylvania
TA-W-20,112
Ambridge, Pennsylvania
TA-W-20,113
Koppel, Pennsylvania

By an application dated January 8, 1988, the United Steelworkers of America (USWA) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of the Babcock and Wilcox Company at the subject locations. The determination was published in the **Federal Register** on December 15, 1987 (52 FR 47645).

The union claims, among other things, that the U.S. aggregate import test was too general and that the Department should have considered imports of mechanical pipe, structural pipe, pressure tubing and stainless steel pipe and tube. A significant portion of Babcock and Wilcox production was mechanical pipe.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted. Signed at Washington, DC, this 29th day of January 1988.

Robert of Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-2398 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,234]

True Form Foundations Corp., Darby, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 7, 1987 in response to a worker petition received on December 7, 1987 which was filed on behalf of workers at the Darby, Pennsylvania plant of True Form Foundations Corp.

All workers were separated from the subject plant more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of January 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-2399 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to the prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page numbers(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL88-26 (Jan. 8, 1988)—p. 53
Kentucky:
KY88-2 (Jan. 8, 1988)—p. 291
KY88-4 (Jan. 8, 1988)—p. 298
Massachusetts:
MA88-3 (Jan. 8, 1988)—p. 406
Mississippi:
MS88-21 (Jan. 8, 1988)—p. 514
MS88-23 (Jan. 8, 1988)—p. 518
MS88-24 (Jan. 8, 1988)—p. 520
New Jersey:
NJ88-3 (Jan. 8, 1988)—pp. 634-635, p. 640
New Jersey:
NJ88-4 (Jan. 8, 1988)—p. 658
Tennessee:
TN88-16 (Jan. 8, 1988)—p. 1114
Virginia:
VA88-15 (Jan. 8, 1988)—pp. 1154-1155

Volume II

Michigan:
MI88-2 (Jan. 8, 1988)—p. 426
MI88-3 (Jan. 8, 1988)—p. 450
MI88-4 (Jan. 8, 1988)—pp. 457, 459
MI88-5 (Jan. 8, 1988)—pp. 464-465, p. 472
New Mexico:
NM88-1 (Jan. 8, 1988)—pp. 699-700
Texas:
TX88-10 (Jan. 8, 1988)—pp. 960

Volume III

Alaska:
AK88-1 (Jan. 8, 1988)—p. 3
Idaho:
ID88-1 (Jan. 8, 1988)—p. 143
Montana:
MT88-1 (Jan. 8, 1988)—p. 169
MT88-2 (Jan. 8, 1988)—pp. 186-187
Oregon:
OR88-1 (Jan. 8, 1988)—pp. 302-304
Utah:
UT88-3 (Jan. 8, 1988)—p. 348
Washington:
WA88-1 (Jan. 8, 1988)—pp. 362-363
WA88-2 (Jan. 8, 1988)—pp. 387-388
WA88-6 (Jan. 8, 1988)—p. 412
WA88-7 (Jan. 8, 1988)—p. 414
WA88-8 (Jan. 8, 1988)—p. 420

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th Day of January 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-2252 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-296-C]

M & F Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

M & F Coal Company, Route 5, Box 234, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-16078), and its Mine No. 4 (I.D. No. 15-16191) both located in Whitley County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this peition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the petition are available for inspection at that address.

Dete: February 1, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-2509 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-42-M]

Riverside Cement Co.; Petition for Modification of Application of Mandatory Safety Standard

Riverside Cement Company, P.O. Box L, Oro Grande, California 92368 has filed a petition to modify the application of 30 CFR 56.13020 (use of compressed air) to its Oro Grande Plant (I.D. No. 04-04348), its Oro Grande Quarry (I.D. No. 04-00011), both located in San Bernardino County, California; and its Crestmore Cement Plant (I.D. No. 04-00010) located in Riverside County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that compressed air not be directed towards a person.

2. Petitioner states that the raw products mined are milled and processed to a fine consistency which clings to employees' clothing and is difficult to remove. The semi-refined material contains various amounts of alkaline and potash. If the right conditions exist, e.g. sensitivity of skin and/or wetness, it will cause mild to severe burns to the skin.

3. As an alternate method, petitioner proposes to establish blow-off stations at various places in the plant where employees can clean their clothing with compressed air that has an OSHA approved nozzle that will not have pressure greater than 2-6 PSI at normal average line pressure. Tamper proof airline regulators will be installed at each station to ensure consistent primary operating air pressure.

4. There will be sign with specific rules and guidelines posted at each blow-off station.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the petition are available for inspection at that address.

Date: January 28, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-2510 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-14]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by March 7, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: STS Request for Flight Assignment.

OMB Number: 2700-0040.

Type of Request: Reinstatement.

Frequency of Report: As Required.

Type of Respondent: State and local governments, businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.

Annual Responses: 20.

Annual Burden Hours: 10.

Abstract-Need/Uses: The NASA Form 1628 details the users Shuttle launch request. This information incudes: Payload Title, Principal Contact, Requested Launch Date, Payload Weight and Length, and Orbital requirements.

January 28, 1988.

John F. Duggan,

Director, General Management Division.

[FR Doc. 88-2375 Filed 2-4-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-21)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub.

L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATE AND TIME: March 16, 1988, 2:30 p.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue SW., Room 7002, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Roth, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–8971).

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of manned flight. The major subjects covered will be the National Space Transportation System, Space Station, and Aeronautical Operations. The Aerospace Safety Advisory Panel is chaired by Joseph F. Sutter and composed of 8 members and 5 consultants. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including members of the Panel).

Type of Meeting: Open.

Agenda

Wednesday, March 16, 1988

2:30 p.m.—Presentation of findings and recommendations of the Aerospace Safety Advisory Panel.

4 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

January 29, 1988.

[FR Doc. 88–2376 Filed 2–4–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice (88–13)]

Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration anounces a forthcomming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE AND TIME: February 23, 1988, 8:30 a.m. to 5:30 p.m., February 24, 1988, 9:30 a.m. to 5:30 p.m., and February 25, 1988, 8 a.m. to 3 p.m.

ADDRESS: As listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1656).

SUPPLEMENTARY INFORMATION: The Space Applications Advisory Committee consults with and advises the Council and NASA on plans for work in progress on, and accomplishments for NASA's Space Applictions programs. The Committee will meet to discuss the Office of Space Science and Applictions (OSSA) FY 1988 and FY 1989 budgets, Ossa strategic planning, and future committee activities. The group is chaired by Mr. Leonard Jaffe and is composed of 32 members. The Committee operates both through a number of informal subcommittees and as a whole. The agenda which follows includes all Committee and subcommittee sessions. The meetings will be open to the public up to the seating capacity of the rooms. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

February 23, 1988

Communications Subcommittee, National Council on the Aging, 600 Maryland Avenue, SW., West Wing, Suite 100, Conference Room C, Washington, DC 20024:

8:30 a.m.—Review Communication and Information Systems Division goals, organization, programs and activities.

1 p.m.—Review strategic plan, and new thrust areas.

5:30 p.m.—Adjourn.

Information Systems Subcommittee, NASA Headquarters Building, Room 226B, 600 Independence Avenue, SW., Washington, DC 20546:

8:30 a.m.—Discussion of the Communication and Information Systems Division draft five year plan.

1 p.m.—Committe planning for 1988.

5:30 p.m.—Adjourn.

Microgravity Subcommittee, National Council on the Aging, Conference Room B:

9 a.m.—Chairman's Remarks.

9:30 a.m.—NASA update on microgravity programs and plans, including discipline strategic plans, space station facilities, United States Microgravity Laboratory and Industrial Space Facility plans.

5 p.m.—Adjourn.

Remote Sensing Subcommittee, National Council on the Aging, Conference Room A:

1 p.m.—Briefing on the Earth Observing System (EOS) Announcement of Opportunity (AO) status, current launch status, platform configuration, and proposals for investigation.

2:30 p.m.—Review of long range plan within Earth Science and Applications Division.

3:30 p.m.—Update on Land Remote-Sensing Satellite (LANDSAT) Program status.

4 p.m.—Status of NASA Research Announcements (NRA).

5 p.m.—Adjourn.

February 24, 1988.

Full Committee, National Council on the Aging, Suite 100 9:30 a.m.—Remarks by the Committee Chairman.

OSSA Program Update:

10 a.m.—Overview of FY 1988 and FY 1989 Budgets.

10:30 a.m.—OSSA Program Status.

11:30 a.m.—Advisory Committee Restructuring.

1:30 p.m.—OSSA Strategic Plan.

3:30 p.m.—Adjourn Full Committee.

Reconvene Subcommittee Meetings

Communications Subcommittee, SAIC, 400 Virginia Avenue, SW., Suite 810, Washington, DC 20024; *Information Systems Subcommittee, Microgravity Subcommittee, Remote Sensing Subcommittee,* same location as February 23, 1988:

5:30 p.m.—Adjourn.

February 25, 1988

Communications Subcommittee, same location as February 23, 1988:

8:30 a.m.—Subcommittee continued discussion.

Information Systems Subcommittee, same location as February 23, 1988:

8:30 a.m.—Subcommittee discussion on Committee recommendations.

Microgravity Subcommittee, same location as February 23, 1988 8:30 a.m.—Subcommittee discussion and workshop planninmg.

Remote Sensing Subcommittee, same location as February 1988 8 a.m.—Preparation of draft recommendations for SAAC.

Reconvene Full Committee, National Council on the Aging, Suite 100:

11 a.m.- -Recent activities in the Office of Commercial Programs.
11:30 a.m.—SAAC Subcommittee Reports.
1:15 p.m.—SAAC discussion: Recommendations and position statements.
3 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

February 1, 1988.

[FR Doc. 88-2377 Filed 2-4-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Diablo Canyon; Meeting

The ACRS Subcommittee on Diablo Canyon will hold a meeting on February 23 and 24, 1988, at the Sheraton International (5 minutes from the San Francisco airport), 1177 Airport Boulevard, Burlingam, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 23, 1988—8:30 a.m. until the conclusion of business
Wednesday, February 24, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

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 why may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpido Igne (telephone 202/634-1414) 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: February 2, 1988.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 88-2515 Filed 2-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440-OLA; ASLBP No. 88-562-02-LA]

The Cleveland Electric Illuminating Co., et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

The Cleveland Electric Illuminating Company, et al.; Perry Nuclear Power Plant, Unit No. 1, Facility Operating License No. NPF-58

This Board is being established pursuant to a notice published by the Commission on December 11, 1987, in the **Federal Register** (52 FR 47064-65) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing." The proposed amendment would delete the provisions in the Technical Specifications relating to the Main Steam Isolation Valve (MSIV) Leakage Control System (LCS), and also revise the leakage criteria for primary containment allowable leakage through the main steam lines.

The Board is comprised of the following Administrative Judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

James H. Carpenter, Atomic safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Gustave H. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Bethesda, Maryland, this 28th day of January 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-2513 Filed 2-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219-OM; ASLBP No. 88-563-01-M]

General Public Utilities Nuclear Corp.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

General Public Utilities Nuclear Corporation; Oyster Creek Nuclear Generating Station; Facility Operating License No. DPR-16

This Licensing Board is being established pursuant to a request for a hearing by Frank Aller regarding an order issued by the Deputy Executive Director for Regional Operations, dated November 5, 1987, entitled "Confirmatory Order (Effective Immediately)," 52 FR 43813 (November 16, 1987).

The Board is comprised of the following administrative judges:

Helen F. Hoyt, Chairperson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Frank F. Hooper, 4155 Clark Road, Ann Arbor, Michigan 48104

Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830

Issued at Bethesda, Maryland, this 29th day of January 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-2514 Filed 2-4-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice 1049]

Extension of the Restriction on the Use of United States Passport for Travel To, In, or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), all United States passports with the exception of two categories, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was required because the situation in Lebanon, and in West Beirut in particular, was so chaotic that I did not believe that any American citizen could be considered safe from terrorist acts.

Review of the situation in Lebanon has led me to conclude that conditions there have not improved by any measurable degree.

Therefore, in light of these circumstances, I have determined that Lebanon continues to be an area "* * * where there is imminent danger to the public health and physical safety of United States travelers" within the meaning of § 51.72(a)(3) of Title 22, Code of Federal Regulations.

Accordingly, all United States passports, except for those passport holders who are immediate family members of hostages in Lebanon, shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless extended or sooner revoked by Public Notice.

Date: February 1, 1988.

George P. Shultz,

Secretary of State.

[FR Doc. 88-2528 Filed 2-4-88; 8:45 am]

BILLING CODE 4710-06-M

[Public Notice CM-8/1162]

Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission, Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that an open meeting of the Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission will be held on February 23, 1988 from 9:30 a.m. to 12:30 p.m. in the auditorium of the Southwest Fisheries Center of the National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California.

The meeting will be open to the public and the public may participate in the discussions subject to the instructions of the Committee Chairman. Subjects to be discussed include an evaluation of the 1987 fishery experience, a preliminary outlook for the 1988 fishery, U.S. views on the overall quota, and other aspect of the management program.

Requests for further information on the meeting should be directed to Brian Hallman, OES/OFA, Room 5806, Department of State, Washington, DC 20520. Mr. Hallman may be reached by telephone on (202) 647-2335.

Date: January 25, 1988.

B.S. Hallman,

Deputy Director for Oceans and Fisheries Affairs.

[FR Doc. 88-2344 Filed 2-4-88; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1163]

Secretary of State's Advisory Committee on Private International Law, Study Group on Electronic Funds Transfers, Meeting

The first meeting of the Study Group will be held on Friday, February 26, 1988 at 10 a.m. at the United States Mission to the United Nations, 12th floor conference room, located at 799 United Nations Plaza, New York City, NY. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chair.

The purpose of the meeting is to review the progress of the United Nations Commission on International trade Law (UNCITRAL project to develop model rules on electronic funds transfers. The Study Group will formulate guidance for United States representatives to UNCITRAL's Working Group on International Payments. The Study Group's report will be considered by the Advisory Committee on Private International Law.

The agenda of the Study Group will include the following issues: Whether any proposed UNCITRAL rules should apply only to international transactions or should include domestic transactions as well; whether they should apply to electronic transactions only or also to paper-based transactions; whether they should cover all financial institutions; whether they should cover both debit and credit transfers; whether they should avoid or be based upon particular technologies or particular national financial systems; whether consumer electronic transfers should be excluded; whether the rules should cover conflicts of laws; what definitions should be applied; whether particular forms and authentication should be required; what would be the obligations, rights and liabilities of the various parties involved; and how should finality of a transaction be determined? The Study Groupp will also consider whether model rules, if adopted by UNCITRAL, would be appropriate for subsequent adoption in an international treaty.

Additional information on the meeting may be obtained by contacting the Office of the Assistant Legal Adviser for Private International Law, L/PIL, Room 6417, Department of State, Washington, DC 20520, or by calling Harold S. Burman at (202) 653-9852. Further information on the UNCITRAL project may be obtained by contacting the Sales Section, United Nations, New York, NY (212) 963-8302 and ordering the "UNCITRAL Legal Guide on Electronic Funds Transfers" (refer to document no. A/CN.9/SER.B/1 or to Sale no. E.87.V.9), and related reports of the UNCITRAL Secretariat and Working Group on International Law.

Access to the United States Mission is controlled. Members of the general public planning to attend should notify

the above office in advance of their name, affilation, address and telephone number. Persons interested but unable to attend the meeting request information from and submit comments or proposals to the Office of the Department of State indicated above.

Perter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 88-2380 filed 2-4-88; 8:45 am]

BILLING CODE 4710-08-M

Office of the Secretary

[Public Notice 1048]

Determination Pursuant to Section 6(j) of the Export Administration Act of 1979; North Korea

In accordance with Section 6(j) of the Export Administration Act (50 U.S.C. App. 2405(j)), I hereby determine that North Korea is a country which has repeatedly provided support for acts of international terrorism.

George P. Shultz,

Secretary of State.

[FR Doc. 88-2428 Filed 2-4-88; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB On January 29, 1988

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on January 29, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annettee Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on January 29, 1988.

DOT No: 3011.

OMB No: 2127-0518.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR 571.218, Motorcycle Helmets (labeling).

Need for Information: To identify the manufacturers in case of defects.

Proposed Use of Information: The DOT symbol label signifies the manufacturer's certification that the helmet meets the minimum requirements.

Frequency: On occasion.

Burden Estimate: 5,940.

Respondents: Businesses.

Form(s): None.

DOT No: 3012.

OMB No: 2125-0092.

Administration: Federal Highway Administration.

Title: The 1989 Estimate of the Cost of Completing the Interstate System.

Need for Information: To provide Congress with a detailed estimate of the cost of completing the Interstate system.

Proposed Use of Information: The information is used by the Congress in evaluating system and route cost and in establishing authorization levels to assure completion of the Interstate System.

Frequency: Biennially.

Burden Estimate: 39,950.

Respondents: State highway agencies.

Form(s): None.

DOT No: 3013.

OMB No: New.

Administration: U.S. Coast Guard.

Title: Delegation of Authority to Measure Vessels.

Need for Information: This information collection requirement is necessary to determine, as required by law, that delegates are qualified to perform tonnage measurement services on behalf of the U.S. Government.

Proposed Use of Information: Coast Guard will use this information to delegate the authority for measuring vessels to qualified classification societies.

Frequency: One time per applicant.

Burden Estimate: 160.

Respondents: International classification societies.

Form(s): None.

DOT No: 3014.

OMB No: 2115-0039.

Administration: U.S. Coast Guard.

Title: Application for Port Security Card.

Need for Information: This information collection requirement is needed to ensure that individuals who require access to waterfront facilities or vessels do not pose a threat to national security. This requirement is particularly applicable to those ports that are vital to the military defense or that support military operations or where explosive cargo is loaded and unloaded.

Proposed Use of Information: Coast Guard uses the information to do a national agency check for criminal history of civilians requiring access to certain areas by virtue of their employment as longshoremen, dock workers, construction workers, etc. It is an integral part of the Security Program which provides protection and security of vessels, harbors, etc., from sabotage and subversive activities.

Frequency: On occasion.

Burden Estimate: 1,000.

Respondents: Civilian workers requiring access to vessels/ports facilities.

Form(s): CG-3825, CG-2685.

DOT No.: 3015.

OMB No.: 2115–0544.
Administration: U.S. Coast Guard.
Title: Advance Notice of Need for Reception Facilities.
Need for Information: This information collection requirement is needed to ensure that the Coast Guard establishes regulations for determining the adequacy of reception facilities at ports and terminals. It is also used to establish procedures whereby persons in charge of ports and terminals may request the Secretary to certify the adequacy of facilities. The reception facilities are needed to receive waste not discharged at sea.
Proposed Use of Information: The information will be used to determine when ships require reception facilities.
Frequency: On occasion.
Burden Estimate: 5012.5.
Respondents: Oceangoing ships requiring oil or NLS facilities at U.S. ports.
Form(s): None.

DOT No.: 3016.
OMB No.: 2138–0009.
Administration: Research and Special Programs.
Title: Form 298–C Report of Financial and Operating Statistics for Small Aircraft Operations.
Need for Information: Establish Essential Air Service (EAS) Levels, EAS Subsidy rates, Alaskan mail rate, allocate funds for airport development and monitor carriers fitness.
Proposed Use of Information: To help manage the EAS program, the Mail Rate Program and allocate funds for airport development.
Frequency: Quarterly.
Burden Estimate: 6,808 hours.
Respondents: Small certificated and commuter air carriers.
Form(s): RSPA Form 298–C.

DOT No: 3017.
OMB No: 2115–0036.
Administration: U.S. Coast Guard.
Title: Applications for Enlistment (CG–2520).
Need for Information: This information collection requirement is needed to allow interested persons an opportunity to apply for enlistment in the Coast Guard.
Proposed Use of Information: The Coast Guard uses the information to conduct required personal and character reference checks and to determine the applicant's eligibility for enlistment.
Frequency: Once per applicant.
Burden Estimate: 10,500.
Respondents: Individuals.
Form(s): CG–2520.

DOT No.: 3018.
OMB No.: 2120–0008
Administration: Federal Aviation Administration.
Title: Certification and Operations: Air Carriers and Commercial Operators of Large Aircraft—FAR 121.
Need for Information: Any air carrier wishing to obtain an air carrier operating certificate must comply with the requirements of FAR Part 121. The FAA needs and uses the information it collects to verify compliance and issue operating certificates.
Proposed Use of Information: The FAA needs and uses the information it collects to verify compliance and issue operating certificates.
Frequency: On occasion.
Burden Estimate: 3,158,949.
Respondents: Air carriers.
Form(s): FAA Forms 8400–6, and 8070–1.

DOT No.: 3019.
OMB No.: 2127–0541.
Administration: National Highway Traffic Safety Administration.
Title: Owner's Manual Requirements—Motor Vehicles and Motor Vehicle Equipment, 49 CFR 571.126, .205, .208, .210, 575.102 and .105.
Need for Information: To inform vehicle owners and passengers about proper use of the vehicle or equipment.
Proposed Use of Information: Certain safety information which could benefit the vehicle owner or operator by reducing the risk of harm must be included in the vehicle owner's manual to provide for safe operation by users.
Frequency: On occasion.
Burden Estimate: 696 hours.
Respondents: Businesses/small businesses.
Form(s): None.

DOT No.: 3020.
OMB No.: 2120–0026.
Administration: Federal Aviation Administration.
Title: Flight Plans (Domestic/International).
Need/Use of Information: The information is needed by air traffic control personnel so they are aware of specific flight activity and can initiate timely search and rescue actions whenever an aircraft is determined to be overdue at the filed destination.
Frequency: On occasion.
Burden Estimate: 563,112.
Respondents: Pilots.
Form(s): FAA Forms 7233–1, 7233–4.

DOT No.: 3021.
OMB No.: 2125–0080.
Administration: Federal Highway Administration.
Title: Medical Qualification Requirements.
Need for Information: To assure the compliance in 49 CFR Part 391 and 398 that only those persons who are physically and mentally fit may drive in interstate and foreign commerce.
Proposed Use of Information: To meet FHWA's requirement that a driver employed by a motor carrier have in his or her possession, while driving, a physician's medical certificate or a waiver issued by FHWA.
Frequency: Recordkeeping/3 years.
Burden Estimate: 14,340.
Respondents: Motor Carriers.
Form(s): None.

Issued in Washington, DC on January 29, 1988.

Robert J. Woods,
Director of Information Resource Management.

[FR Doc. 88–2449 Filed 2–4–88; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 29, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45410

Date Filed: January 27, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 24, 1988.
Description: Application of Air Ontario Inc. pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to authorize it to engage in foreign scheduled air transportation of persons, property and mail between Toronto, Ontario and Syracuse and Albany, New York.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 88–2450 Filed 2–4–88; 8:45 am]
BILLING CODE 4910–62–M

Office of Commercial Space Transportation

Finding of No Significant Impact; Vandenberg Air Force Base, CA

AGENCY: Office of Commercial Space Transportation, Department of Transportation.

ACTION: DOT Notice of Finding of No Significant Impact (FONSI).

SUMMARY: DOT is issuing this notice to advise the public that a FONSI has been made on the expendable launch vehicle program at Vandenberg Air Force Base (VAFB), California.

SUPPLEMENTARY INFORMATION: In February 1986, the Office of Commercial Space Transportation published the Programmatic Environmental Assessment for Commercial Expendable Launch Vehicle Programs (51 FR 6870) February 26, 1986). In cooperation with the U.S. Air Force, the Office has completed an environmental assessment of the commercial space transportation program at VAFB. DOT licenses commercial space launches from the National Ranges, one of which is VAFB. This programmatic assessment addresses the impact of commercial launches from VAFB, California.

The FONSI is based on an environmental assessment of the commercial space transportation program at VAFB. This programmatic assessment identified the impacts that the conduct of commercial launch activities would have on the environment. None of these were significant. However, certain factors associated with individual launch proposals were not addressed in the assessment and may require further review when a company proposes to conduct a new activity at VAFB. These include use of new launch vehicles, new propellants, new site development, or environmental effects associated with some payloads in the events of a launch accident.

Copies of the FONSI and assessment may be requested from Office of Commercial Space Transportation, S-52, 400 Seventh Street, SW., Room 10330, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Norman Bowles, Associate Director for Licensing Programs, Office of Commercial Space Transportation, (202) 366-2929 or Gerald Musarra, Office of the General Counsel, (202) 366-3905, Department of Transportation, Washington, DC 20590.

Dated: February 1, 1988.

Courtney A. Stadd,

Director, Office of Commercial Space Transportation.

[FR Doc. 88-2451 Filed 2-4-88; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 79-17; Notice 36]

New Car Assessment Program; Optional Testing by Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Amendment to Optional New Car Assessment Program (Optional NCAP).

SUMMARY: This notice amends the vehicle eligibility criteria for the Optional NCAP test program for motor vehicle manufacturers. Before this notice, vehicles were eligible to be tested under Optional NCAP if production design changes were made to the vehicles at some time after the original NCAP results for the vehicle were publicly released. By this amendment, vehicles are eligible to be tested under Optional NCAP if production design changes were made at any date after the production date of the vehicle that was tested in NCAP.

EFFECTIVE DATE: This amendment becomes effective February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Charles L. Gauthier, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4805).

SUPPLEMENTARY INFORMATION: On August 21, 1987, the agency published criteria for an Optional NCAP test program for motor vehicle manufacturers (52 FR 31691). The program was instituted to provide manufacturers with an opportunity to retest any of their vehicles that have been tested in the NCAP program and subsequently modified with production changes to improve occupant protection. The testing was designed to be conducted at the manufacturers' expense, but under criteria established by NHTSA. These criteria require that the testing be conducted at the same test facilities and according to the same controls and procedures used for the agency's NCAP testing. The Optional NCAP test results would be published by the agency in its NCAP press releases.

In the November 19, 1986, **Federal Register** notice seeking comment on the proposed criteria for Optional NCAP (51 FR 41888), and in the August 21, 1987, **Federal Register** notice announcing the final Optional NCAP criteria, the agency described the rationale for the program. Specifically, "the agency [has] concluded that it would be helpful to both consumers and the vehicle manufacturers if the information about improved NCAP test results for the modified vehicles were made public as soon as possible."

The intent of the program was that, as vehicles changed from the ones originally tested in NCAP, manufacturers could request retesting under Optional NCAP. It was assumed that the changes would be made after the NCAP results were announced. However, based on information received from Volkswagen of America, Inc., (Volkswagen), it is clear that limiting eligibility for Optional NCAP to only those vehicles that have had a change made after the NCAP results are anounced is not consistent with the intent of the program.

As previously discussed, Optional NCAP was designed to give information to consumers on vehicles that have had changes made to improve their NCAP crash test performance, and, therefore, are different from the vehicles originally tested in NCAP. That is the case with the Volkswagen Fox. Volkswagen Fox vehicles currently available in dealer showrooms are different from the one tested by NHTSA. Thus, the agency believes that the current NCAP test data available to the public on some vehicles may not be indicative of the crash test performance of the vehicle a consumer may actually be considering for purchase.

In order to correct this type of situation, the agency published a notice on December 10, 1987, seeking comments on proposed changes to the Optional NCAP eligibility Criteria Nos. 1.a. and 1.b. (52 FR 46880).

The eligibility criteria were proposed to be changed to allow vehicles to be tested in Optional NCAP as long as the production design changes were made after the production date of the vehicle tested in NCAP.

The agency received comments to the notice from Chrysler Corporation (Chrysler), Ford Motor Company, General Motors Corporation, and Volkswagen of America, Inc. (Volkswagen). All commenters concurred with the agency's proposed changes to the test vehicle eligibility criteria for Optional NCAP as presented. Chrysler and Volkswagen also provided comments which concerned NCAP in general and the need for several of the Optional NCAP criteria. However, those

were unrelated to the proposed amendment to Optional NCAP. These comments are discussed below.

The NCAP Program in General

Chrysler comented that NCAP is misleading to consumers and that the results do not provide useful, real-world comparative ratings of the crashworthiness of passenger cars and light-duty vehicles. These comments are not relevant to the agency's notice requesting comments on an amendment to Optional NCAP. However, the agency's position on NCAP and its usefulness to consumers can be found in the August 21, 1987, notice establishing the criteria for the Optional NCAP test program for motor vehicle manufacturers (52 FR 31691).

Vehicles Eligible To Be Included in the Optional NCAP

Volkswagen stated that the agency should allow manufacturers to retest any vehicles they wish under Optional NCAP, without the need to demonstrate to the agency that an improvement has been made. This argument is based on Volkswagen's belief that a manufacturer is unlikely to underwrite the expense of Optional NCAP testing unless it is confident that the results will demonstrate improvement. The need for Optional NCAP requirements specifying vehicle eligibility and supporting data criteria (Criteria No. 1 and No. 2) were discussed at length in the August 21, 1987, notice establishing the Optional NCAP test program for motor vehicle manufacturers (52 FR 31691). To briefly reiterate, the agency is not going to use Optional NCAP to disseminate information about essentially repetitive testing of unchanged vehicle models. Without the controls established by the Optional NCAP criteria, a manufacturer could use this program to publish different crash test results for unchanged vehicles. Such actions would not benefit consumers or further any purpose of NCAP. Accordingly, the agency is not persuaded by the Volkswagen comment.

Amendment to the Criteria for Optional NCAP Testing

After considering all comments, NHTSA is amending the vehicle eligibility criteria in Optional NCAP for the reasons set forth in the proposal and repeated above. Therefore, Optional NCAP Criteria Nos. 1.a. and 1.b. are amended as follows:

1. The following vehicles are eligible for testing under this program:

a. Any model that has previously been tested under the NCAP program, and at some time after the production date of the vehicle tested in NCAP, the manufacturer has made production design changes to the models that are likely to significantly improve its NCAP test results.

b. A model selected by NHTSA that is in the same line as a model that was previously tested under the NCAP program, but the tested model is no longer in production, and, at some time after the production date of the vehicle tested in NCAP, the manufacturer has made production design changes to the line of vehicles that are likely to significantly improve the NCAP test results.

The agency will implement these amended criteria for Optional NCAP testing on the day this notice is published in the **Federal Register**. Thus, any manufacturer requests for optional testing that are received on or after that date will be evaluated under these amended criteria.

Issued on February 2, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-2419 Filed 2-4-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circular—Public Debt Series—No. 4-88]

8-3/4 Percent Treasury Bonds of 2017

Washington, January 28, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated 8-3/4% Treasury Bonds of 2017 (CUSIP No. 912810 DY 1), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Bonds will be issued February 16, 1988, and are offered as a additional amount of 8-3/4% Treasury Bonds of 2017 (CUSIP No. 912810 DY 1) dated May 15, 1987. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1987, to February 16, 1988. Interest on the Bonds offered as an additional issue is payable on a semiannual basis on May 15, 1988, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature may 15, 2017, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1 through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.6. The Department of The Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches

and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, February 4, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 3, 1988, and received no later than Tuesday, February 16, 1988.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 9.48% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 92.750. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from November 15, 1987, to February 16, 1988, in the amount of $22.35577 per $1,000 of Bonds allotted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 16, 1988. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying

designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum par amount required to obtain the separate components for this offering is $160,000. Par amounts greater than the minimum amount must be in multiples of that amount.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this offering circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of 8¾% Treasury Bonds of May 15, 2017, CUSIP No. 912810 DY 1

The Principal Component is designated 8¾% Treasury Principal (TPRN) 2017 due May 15, 2017, CUSIP No. 912803 AL 7

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) due		Treasury Interest (TINT) due	
May 15, 1988	EL 0	May 15, 2003	FS 4
Nov. 15, 1988	EM 8	Nov. 15, 2003	FT 2
May 15, 1989	EN 6	May 15, 2004	FU 9
Nov. 15, 1989	EP 1	Nov. 15, 2004	FV 7
May 15, 1990	EQ 9	May 15, 2005	FW 5
Nov. 15, 1990	ER 7	Nov. 15, 2005	FX 3
May 15, 1991	ES 5	May 15, 2006	FY 1
Nov. 15, 1991	ET 3	Nov. 15, 2006	FZ 8
May 15, 1992	EU 0	May 15, 2007	GA 2
Nov. 15, 1992	EV 8	Nov. 15, 2007	GB 0
May 15, 1993	EW 6	May 15, 2008	GC 8
Nov. 15, 1993	EX 4	Nov. 15, 2008	GD 6
May 15, 1994	EY 2	May 15, 2009	GE 4
Nov. 15, 1994	EZ 9	Nov. 15, 2009	GF 1
May 15, 1995	FA 3	May 15, 2010	JU 5
Nov. 15, 1995	FB 1	Nov. 15, 2010	JV 3
May 15, 1996	FC 9	May 15, 2011	JW 1
Nov. 15, 1996	FD 7	Nov. 15, 2011	JX 9
May 15, 1997	FE 5	May 15, 2012	JY 7
Nov. 15, 1997	FF 2	Nov. 15, 2012	JZ 4
May 15, 1998	FG 0	May 15, 2013	KA 7
Nov. 15, 1998	FH 8	Nov. 15, 2013	KB 5
May 15, 1999	FJ 4	May 15, 2014	KC 3

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Nov. 15, 1999	FK 1	Nov. 15, 2014	KD 1
May 15, 2000	FL 9	May 15, 2015	KE 9
Nov. 15, 2000	FM 7	Nov. 15, 2015	KF 6
May 15, 2001	FN 5	May 15, 2016	KH 2
Nov. 15, 2001	FP 0	Nov. 15, 2016	KK 5
May 15, 2002	FQ 8	May 15, 2017	KM 1
Nov. 15, 2002	FR 6		

[FR Doc. 88-2535 Filed 2-3-88; 10:23 am]

BILLING CODE 4810-40-M

[Dept. Circular—Public Debt Series—No. 3-88]

Treasury Notes of February 15, 1998, Series A-1998

Washington, January 28, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of February 15, 1998, Series A-1998 (CUSIP No. 912827 VW 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 15, 1988, and issued February 16, 1988. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from February 15, 1988, to February 16, 1988. Interest on the Notes is payable on a semiannual basis on August 15, 1988, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due

will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 3, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 2, 1988, and received no later than Tuesday, February 16, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the dealine for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interst rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from February 15, 1988, to February 16, 1988. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in

cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 16, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3 The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4 Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of February 15, 1998, Series A-1998, CUSIP No. 912827 VW 9

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series A-1998 due February 15, 1998, CUSIP No. 912820 AM 9.

INTEREST COMPONENTS

DESIGNATION	CUSIP No. 912833	DESIGNATION	CUSIP No. 912833
Treasury Interest (TINT) due		Treasury Interest (TINT) due	
Aug. 15, 1988	BC 3	Aug. 15, 1993	BN 9
Feb. 15, 1989	BD 1	Feb. 15, 1994	BP 4
Aug. 15, 1989	BE 9	Aug. 15, 1994	BQ 2
Feb. 15, 1990	BF 6	Feb. 15, 1995	BR 0
Aug. 15, 1990	BG 4	Aug. 15, 1995	BS 8
Feb. 15, 1991	BH 2	Feb. 15, 1996	BT 6
Aug. 15, 1991	BJ 8	Aug. 15, 1996	BU 3
Feb. 15, 1992	BK 5	Feb. 15, 1997	BV 1
Aug. 15, 1992	BL 3	Aug. 15, 1997	BW 9
Feb. 15, 1993	BM 1	Feb. 15, 1998	BX 7

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 88-2534 Filed 2-3-88; 10:22 am]
BILLING CODE 4810-40-C

[Department Circular—Public Debt Series—No. 2-88]

Treasury Notes of February 15, 1991, Series R-1991

Washington, January 28, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of February 15, 1991, Series R-1991 (CUSIP No. 912827 VV 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 16, 1988, and will accrue interest from that date, payable on a semiannual basis on August 15, 1988, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sales Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 2, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 1, 1988, and received no later than Tuesday, February 16, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primarly dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations.

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5 must be made or completed on or before Tuesday, February 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 16, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-2533 Filed 2-3-88; 10:22 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Agency Survey of Disabled Veterans Under OMB Review; Correction

AGENCY: Veterans Administration.

ACTION: Notice; Correction.

SUMMARY: On page 1977 of the **Federal Register** of January 25, 1988, (53 FR 1977), the Veterans Administration (VA) published a notice entitled Agency Survey of Disabled Veterans Under OMB Review. Inadvertently, two separate documents under review at OMB were combined and published as one survey. This notice corrects that error by publishing a document entitled Agency Surveys Under OMB Review which contains information about both new collections, Survey of Disabled Veterans and Survey of VA Medical System Users, as set forth below.

FOR FURTHER INFORMATION CONTACT: Petti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20240, (202) 233-2146.

Dated: February 1, 1988.

Priscilla B. Carey,

Chief, Directives Management Division.

The Veterans Administration has submitted to OMB for review the following surveys for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). These documents lists the following information: (1) the department sponsoring the survey, (2) survey title, (3) the agency form number, (4) a description of the need and its use, (5) frequency of survey, (6) who will be required or asked to respond, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to complete the survey and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the surveys and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-2146. Comments and quetions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 18, 1988.

By direction of the Administrator:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Survey of Disabled Veterans

New collection

1. Office of Information Management and Statistics.
2. Survey of Disabled Veterans (SDV).
3. VA Form SDV-1.
4. This survey will assist VA in policy and planning decisions concerning disabled veterans.
5. One time.
6. Individuals or households
7. 11,000 responses.
8. 11,000 hours.
9. Not applicable.

Survey of VA Medical Systems Users

New Collection

1. Office of Information Management and Statistics.
2. Survey of VA Medical System Users.
3. VA Form SMSU-1.
4. This survey will assist VA in policy and planning for VA medical facilities, programs, and services.
5. One time.
6. Individuals or households.
7. 3,000 responses.
8. 3,500 hours.
9. Not applicable.

[FR Doc. 88-2374 Filed 2-4-88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

February 3, 1988.

PLACE: 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, February 12, 1988, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSOLIDATED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Panel Presentation: Innovative Approaches to Integration and Education
IV. SAC Report: "Collecting Data on Bias-Related Incidents in Connecticut"
V. SAC Recharters
VI. Report on Indian Subcommittee Hearing
VII. Discussion: Recent Media Reports on Bias-Related Incidents

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8105.

William H. Gillers,
Solicitor, 376–8514.

[FR Doc. 88–2519 Filed 2–3–88; 9:46 am]

BILLING CODE 6335-01-M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 29, 1988, 53 FR 2668.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: February 3, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The Commission meeting scheduled for February 3, 1988 at 10:00 a.m. has been canceled.

Joseph C. Polking,
Secretary.

[FR Doc. 88–2520 Filed 2–3–88; 9:48 am]

BILLING CODE 6730-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 2, 1988

TIME AND DATE: 10:00 a.m., Thursday, February 11, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Rushton Mining Company,* Docket No. PENN 86–44–R, etc. (Issues include whether Rushton violated 30 C.F.R. § 75.1434.(a)(2), and, if so, whether the violation was the result of Rushton's unwarrantable failure.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 C.F.R. § 2706.150(a)(2) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Rushton Mining Company,* Docket No. PENN 86–44–R, etc. (see oral argument listing).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88–2593 Filed 2–3–88; 4:00 p.m.]

BILLING CODE 6735-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 10, 1988.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED:

Commission Consideration of Proposed Ophthalmic Practices Rule ("Eyeglasses II")

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

Emily H. Rock,
Secretary.

[FR Doc. 88–2542 Filed 2–3–88; 10:54 am]

BILLING CODE 6750-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10:30 a.m., Wednesday, February 10, 1988.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Revision of NCUA's Procurement Policy. Closed pursuant to exemption (2).
3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

RECESS: 11:15 a.m.

TIME AND DATE: 1:30 p.m., Wednesday, February 10, 1988.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Final Amendment of Part 703 of NCUA Rules and Regulations, Investments and Deposits: Authority for FCUs to Invest in Mortgage Related Securities.
6. Semi-Annual Agenda of Regulations.
7. Review of NCUA's Regulations:
   a. Repeal of § 701.10, Establishment of a Cash Fund.
   b. Proposed Amendment of sections 790 and 791, Rules of NCUA Board Procedure.
   c. Proposed Amendment of § 701.33, Compensation of Officials.
   d. Proposed Repeal of Part 761, Operational Procedures for Share Draft Programs.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,
Secretary of the Board.

[FR Doc. 88–2554 Filed 2–3–88; 2:05 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Pickles

Correction

In proposed rule document 87-28088 beginning on page 46486 in the issue of Tuesday, December 8, 1987, make the following corrections:

1. On page 46486, in the first column, under **SUMMARY**, in the sixth line, "proposed" should read "proposes".

2. On the same page, in the third column, in the third complete paragraph, in the 14th line, "to" should read "of".

§ 52.1685 [Corrected]

3. On page 46490, in the second column, in § 52.1685(n), in the first line, "pickle" was misspelled.

§ 52.1687 [Corrected]

4. On the same page, in the third column, in § 52.1687(a), in the first line, "recommendation" should read "recommended".

§ 52.1690 [Corrected]

5. On page 46493, in § 52.1690, in Table X, the table headings should read the same as those in Table IX.

For an Agricultural Marketing Service correction to this document, see the Proposed Rules section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71268-7268]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Computers

Correction

In rule document 88-1648 beginning on page 2582 in the issue of Friday, January 29, 1988, make the following corrections:

§ 399.1 Supplement No.1 [Corrected]

1. On page 2588, in Advisory Note 12, in the second column, paragraph (c)(3)(i), in the first line, "proceeding" should read "processing".

2. On page 2592, in Advisory Note 16, in the third column, in paragraph (b) of the definition of "total transfer rate"(which begins in the second column of the same page), in the second line, "R_{ttto}" should read "R_{tttot}".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Open Meeting

Correction

In notice document 88-1186 appearing on page 1816 in the issue of Friday, January 22, 1988, make the following correction:

In the first column, in the 11th line from the bottom, the date should read "February 26, 1988".

BILLING CODE 1505-01-D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Mediterranean Fruitfly Eradication Program in Guatemala; Public Meeting

Correction

In notice document 88-2164 appearing on page 2892 in the issue of Tuesday, February 2, 1988, make the following correction:

In the third column, in the sixth line, "February 26, 1988" should read "February 16, 1988".

BILLING CODE 1505-01-D

federal register

Friday
February 5, 1988

Part II

Supplement to the Guide to Record Retention Requirements in the CFR

Revised as of January 1, 1988

SUPPLEMENT TO THE GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR

Published by the Office of the Federal Register, this Supplement updates the 1986 Guide and the 1987 Supplement.

The Guide to Record Retention Requirements in the CFR is a guide in digest form to the provisions of Federal regulations relating to the keeping of records by the public. It provides information on (1) what records must be kept (2) who must keep them, (3) how long they must be kept, and (4) where the full provisions can be found in the Code of Federal Regulations.

The Guide published in 1986 was revised as of January 1, 1986. This Supplement updates the Guide as of January 1, 1988, and contains all changes to the Guide that have occurred since January 1, 1986. The changes indicated in brackets occurred in 1987, unless otherwise noted.

The Supplement is derived from the regulations published by the various agencies in the **Federal Register** from January 1, 1986 through December 31, 1987. It was prepared under the direction of Richard L. Claypoole. Gladys Queen Ramey was chief editor. Inquiries, telephone 202-523-3187. Suggestions concerning this publication may be sent to John E. Byrne, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

Coverage

In preparing both the Guide and the Supplement it was necessary to establish boundaries in order to stay within the intended purpose. The records covered are those that address categories of activities conducted by individuals, businesses, and organizations for which retention requirements are expressly stated in Federal regulations.

In many regulations there is an implied responsibility to keep copies of reports and other papers furnished to Federal agencies. Such implied requirements have not been included in the Guide and the Supplement.

The following types of requirements also have been excluded:

(1) Requirements involving the furnishing of reports to Government agencies, the filing of tax returns, or the submission of supporting evidence with applications or claims.

(2) Requirements involving the display of posters, notices, or other signs in places of business.

(3) Requirements contained in individual Government contracts, unless the contract provisions are incorporated in the Code of Federal Regulations.

Arrangement

The arrangement and numbering system in the Supplement follows the numbering system established for the Guide. The numbering in the Guide corresponds to the numbering in the CFR.

For example, a record retention requirement relating to agriculture will be found in the Guide under Title 7, Agriculture, and, further, under the agency which administers and enforces the regulation in which the record retention requirement appears. The number to the left of the item is the part and section number in Title 7 of the CFR in which the text of the regulation is printed. Because not all sections of the CFR contain record retention requirements, the numbering in the Guide has gaps in the numerical sequence.

Citation: Citations to the Guide and to the CFR are the same. An example is 7 CFR 17.17. The record retention requirement involved can be checked in digest form in the Guide and in full text in the CFR.

Notice

The Guide to Record Retention Requirements and this Supplement do not have the effect of law, regulation, or ruling. They comprise a guide to legal requirements that appear to be in effect as of January 1, 1988.

LIST OF AGENCIES AND CFR TITLES APPEARING IN THIS SUPPLEMENT [1]

Agency	CFR Title
Agriculture Department	7, 9, 36
Commerce Department	15, 48, 50
Commodity Futures Trading Commission.	17
Defense Department	48
Education Department	34
Energy Department	10, 18, 48
Environmental Protection Agency.	40
Farm Credit Administration	12
Federal Communications Commission.	47
Federal Emergency Management Agency.	44
Federal Home Loan Bank Board.	12
Federal Reserve System	12
Federal Trade Commission	16
General Services Administration.	48
Health and Human Services Department.	21, 42, 45
Housing and Urban Development Department.	24
Interior Department	30, 43
Interstate Commerce Commission.	49
Justice Department	8
Labor Department	20, 29
National Aeronautics and Space Administration.	14, 48
National Archives and Records Administration.	36
Nuclear Regulatory Commission.	10
Postal Service	39
Small Business Administration	13
Transportation Department	14, 49
Treasury Department	19, 26, 27 31
Veterans Administration	38

[1] Agencies appear in this Supplement in CFR title numerical order.

AGRICULTURE DEPARTMENT

Office of the Secretary

7 CFR

17.6 Importers and suppliers involved in sales of agricultural commodities.

To maintain a record of all offers received from suppliers as a result of public tenders or negotiation.

Retention period: Until expiration of 3 years after final payment under the purchase authorization.

17.22 Importers and suppliers involved in sales of agricultural commodities.

See 17.6.

Food and Nutrition Service

7 CFR

210.9 Cooperating State agencies, school food authorities, and food service management companies participating in the National School Lunch Program.

To maintain (a) records and accounts pertaining to its school food service; (b) files of currently approved and denied, free and reduced price applications; and (c) individual applications for free and reduced price lunches submitted by families.

Retention period: (a) 3 years after date of final Claim for Reimbursement for the fiscal year to which they pertain, or beyond 3 years until, resolution of any, audit questions; (b) not specified; and (c) 3 years after end of the fiscal year to which they pertain or beyond 3 years until resolution of any audit questions.

210.10 School food authorities participating in the National School Lunch Program.

To maintain production and participation records to demonstrate positive action toward providing one reimbursable lunch per child per day.

Retention period: 3 years after submission of final Claim for Reimbursement for the fiscal year, or beyond 3 years period until resolution of any audit issues.

210.14 School food authorities participating in the National School Lunch Program.

To maintain records of revenues and expenditures to demonstrate that the food service is being operated on a nonprofit basis including net cash resources, or the information necessary for the State to compute net cash resources through a review or audit.

Retention period: 3 years after submission of the final Claim for Reimbursement for the fiscal year or beyond 3 years until resolution of any audit issues.

210.15 School food authorities participating in the National School Lunch Program.

See 210.10 and 210.14.

210.16 Food service management companies participating in the National School Lunch Program.

To maintain such records as the school food authorities will need to support Claims for Reimbursements.

Retention period: 3 years after date of submission of the final Financial Status for fiscal year or until resolution of any audit issues.

210.18 State agencies participating in the National School Lunch Program. [Amended]

To maintain records which document the details of all Assessment, Improvement and Monitoring System (AIMS) review or audits and which demonstrate the degree of compliance with AIMS performance standards. When necessary, the records must include a corrective action plan as described in section cited.

Retention period: 3 years after the date of the exit conference or after the year in which problems have been resolved, whichever is later.

210.19 State agencies participating in the National School Lunch Program.

To maintain all records pertaining to fiscal actions against school food authorities for Claims for Reimbursement that are not properly payable under 7 CFR Part 210.

Retention period: 3 years.

210.20 State agencies participating in the National School Lunch Program.

To maintain records to demonstrate compliance with Program requirements.

Retention period: 3 years after date of submission of final Financial Status Report for fiscal year or beyond 3 years until resolution of any audit issues.

210.23 State agencies and food authorities participating in the National School Lunch Program.

To keep necessary records as specified in 7 CFR 210.18 through 210.20.

Retention period: State agencies records—3 years after date of submission of final Financial Status Report for the fiscal year. School food authorities records—3 years after submission of the final Claim for Reimbursement for the fiscal year. In either case, records shall be retained until resolution of any audit issues.

210.27 State educational agencies participating in the National School Lunch Program.

To maintain records concerning the survey of school food authorities including, at a minimum, a description of survey methods and a copy of the format used to obtain food preferences; the name and address of each school food authority included in the survey; and a record of the data obtained from each school food authority.

Retention period: 3 years.

225.10 State agencies participating in the Summer Food Service Program.

(a) To maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs,

(b) To maintain record for each review or audit conducted.

(c) To maintain complete record of each review or appeal.

Retention period: (a) 3 years after date of the submission of the final Program Operations and Financial Status Report or until resolution of any audit or appeal questions; (b) 3 years.

250.4 Distributing agencies and state agencies participating in the Temporary Food Assistance Program. [Added]

To maintain documentation of the transfers of donated food between emergency feeding organizations and recipient agencies.

Retention period: In accordance with 7 CFR 250.6(r) and 251.10(a).

250.6 Distributing, subdistributing, and recipient agencies to which food commodities are donated for use in school lunch programs, for training students in home economics, in summer camps for children, by needy Indians on reservations, in charitable institutions, and management companies pertaining to the feeding operations of the institutions, in State correctional institutions for minors, in nutrition programs for the elderly, and in assistance of other needy persons.

(a) To maintain records relating to receipt, disposal, and inventory of donated foods including records with respect to the receipt, and disbursement of funds arising from, or federally disbursed for, operation of the distributing program; (b) also, to maintain records with respect to (1) the receipt and disbursement of cash received in lieu of donated foods for nutrition programs for elderly, and (2) refusal of commodities by school food authorities.

Retention period: 3 years from the close of the Federal fiscal year to which the records pertain.

251.4 Distributing agencies and state agencies responsible for administering Temporary Emergency Food Assistance Program. [Added]

To maintain documentation of the transfers of any donated commodities between emergency feeding organizations and recipient agencies.

Retention period: In accordance with 7 CFR 250.6(r) and 251.10(a).

251.9 State agencies and emergency feeding organizations. [Redesignated as 251.10 and amended]

(a) See 250.6.

(b) Each distribution site shall keep accurate and complete records showing the date and method used to determine the number of eligible households served at the site.

Retention period: 3 years from the close of the Federal fiscal year to which they pertain.

252.4 Food processors participating in the National Commodity Processing Program.

To maintain complete and accurate records of the receipt, disposal and inventory of donated food including end products processed from donated food. To also keep production records, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated food and the subsequent redelivery to an eligible recipient agency.

Retention period: 3 years from the close of the Federal fiscal year to which they pertain.

252.5 Recipient agencies participating in the National Commodity Processing Program.

To maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any foods which arise from the operation of the distribution program.

Retention period: Not specified.

Federal Crop Insurance Corporation

7 CFR

401.8 Insured under FCIC. [Added]

To keep records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit, and separate records including the same information for production of the crop from any uninsured acreage.

Retention period: 3 years from the end of the crop year to which they pertain.

401.11 Insured under FCIC. [Removed]

401.101 Insured under FCIC (Wheat). [Added]

To maintain written verifiabe records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.103 Insured under FCIC (Barley). [Added]

To maintain written verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.105 Insured under FCIC (Oat). [Added]

To maintain written verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.106 Insured under FCIC (Rye). [Added]

To maintain written verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.109 Insured under FCIC (hybrid sorghum seed). [Added]

To maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.110 Insured under FCIC (Almond). [Added]

To maintain written verifiable records of acreage and harvested production.

Retention period: For at least the previous crop year.

401.111 Insured under FCIC (Corn). [Added]

To maintain for each proposed unit, written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.113 Insured under FCIC (Grain sorghum). [Added]

To maintain for each proposed unit, written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.114 Insured under FCIC (Canning and processing tomato). [Added]

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.117 Insured under FCIC (Soybean). [Added]

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.123 Insured under FCIC (Safflower seed crop). [Added]

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.124 Insured under FCIC (Sunflower seed crop). [Added]

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.135 Insured under FCIC (Malting barley). [Added]

To maintain records of acreage and production by type or variety for the last three years in which malting barley was produced.

417.7 Insured under FCIC (Sugarcane).

To keep records of the harvesting, storage, shipment, sale or other disposition of all sugarcane produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

430.7 Insured under FCIC (Sugar beet).

To keep records of the harvesting, storage, shipment, sale or other disposition of all sugar beets produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

436.7 Insured under FCIC (Tobacco-guaranteed production plan).

To keep records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

440.7 Insured under FCIC (Texas citrus tree).

To keep records of the trees destroyed and damaged on each unit including separate records showing the same information for any uninsured acreage.

Retention period: 2 years after the time of loss.

441.7 Insured under FCIC (Table grape).

To keep records of the harvesting, storage, shipment, sale or other disposition of all grapes produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

443.7 Insured under FCIC (Hybrid seed).

To keep records of the harvesting, storage, shipment, sale or other disposition of all the crop production on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

444.7 Insured under FCIC (Fresh tomato).

To keep records of the harvesting, storage, shipment, sale or other disposition of all tomatoes produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

445.7 Insured under FCIC (Pepper).

To keep records of the harvesting, storage, shipment, sale or other disposition of all peppers produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

447.7 Insured under FCIC (Popcorn).

To keep records of the harvesting, storage, shipment, sale or other disposition of all popcorn produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

449.7 Insured under FCIC (Fresh market sweet corn).

To keep records of the harvesting, storage, shipment, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

451.7 Insured under FCIC (Canning and processing peach).

To keep records of the harvesting, storage, shipment, sale or other disposition of all peaches produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

452.7 Insured under FCIC (Safflower). [Added]

To maintain records of the harvesting, storage, shipment, sale, or other disposition of all safflowers produced on each unit, including separate records showing the same information for production from any uninsured acreage.

Retention period: For three years after the time of loss.

453.7 Insured under FCIC (Cranberry). [Added]

To maintain records of the harvesting, storage, shipment, sale or other disposition of all the insured crop produced on each unit, including the same information for production of the crop from any uninsured acreage.

Retention period: For three years from the end of the crop year to which they pertain.

454.7 Insured under FCIC (Fresh market tomato-guaranteed production plan). [Added]

To maintain records of the harvesting, storage, shipment, sale, or other disposition of all tomatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage.

Retention period: 3 years after the time of loss.

Agricultural Stabilization and Conservation Service

7 CFR

729.426 Persons engaged in more than one business of shelling or crushing peanuts.

See 729.198.

729.429 Persons engaged in more than one business of shelling or crushing peanuts.

See 729.198.

Federal Grain Inspection Service

7 CFR

800.25 Grain elevator owners and merchandisers.

To keep such accounts, records, and memoranda that fully and correctly disclosed all transactions concerning the lots of grain for which the elevator or merchandiser received official services.

Retention period: 3 years from date of the official services; 3-year period may be extended if notified by the Administrator that specific records should be retained for a longer period.

Agricultural Marketing Service

7 CFR

907.173 Orange handlers.

See 907.73.

908.73 Orange handlers.

See 907.73.

908.173 Orange handlers.

See 907.73.

930.63 Cherry handlers. [Removed, 1986]

991.61 Hops handlers.

To maintain such records of all hops handled as will substantiate the required reports.

Retention period: At least 2 years after end of marketing year.

1230.58 Contracting parties under the pork promotion, research and consumer information order.

To keep accurate records of all relevant transactions.

Retention period: At least 2 years beyond the fiscal period of their applicability.

1230.81 Persons subject to the pork promotion, research, and consumer information order.

To maintain such books and records as are necessary to carry out the provisions of the regulations including such records as are necessary to verify any required reports.

Retention period: At least 2 years beyond the fiscal period of their applicability.

1240.114 First handlers under the Honey Research, Promotion, and Consumer Information Order. [Added]

To maintain records showing the exemptee's name and address along with their certificate numbers assigned by the Honey Board.

Retention period: 2 years beyond the marketing year of their applicability.

1240.120 First handlers, producer-packers, and importers under the Honey, Research Promotion, and Consumer Information Order. [Added]

To maintain one copy of each report made to the Board; records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of each exempt producer, producer-packer, and importer and such records as are necessary to verify such reports.

Retention period: 2 years beyond the marketing year of their applicability.

1280.161 Wheat and wheat food manufacturers. [Removed, 1986]

1280.330 Wheat and wheat food manufacturers. [Removed, 1986]

Commodity Credit Corporation

7 CFR

1425.17 Cooperative marketing associations participating in the price support program. [Revised, 1986; new amendment contained no record retention requirements]

1425.18 Cooperative marketing associations participating in the price support program. [Revised, 1986; new amendment contained no record retention requirements]

1425.20 Approved cooperative marketing associations participating in the price support program.

To maintain records showing quantity of commodity received from members and nonmembers, the date received, the eligibility status for price support of each quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable factor applies.

Retention period: 5 years.

1425.21 Approved cooperative marketing association participating in the price support program.

See 1425.20.

1430.344 Responsible persons or producers of milk produced in the US that is marketed for commercial use beginning Apr. 1, 1986 and ending Sept. 30, 1987.

To maintain such records pertaining to operations that are necessary to determine compliance with regulations.

Retention period: 3 years or for such longer periods as Dairy Division or CCC may require.

1430.468 Participating producers or knowing purchasers of dairy cattles sold pursuant to a DIP contract.

To maintain all records which CCC may require to enforce provisions of the contract, as well as any records necessary to establish compliance with the terms and conditions of the contract.

Retention period: 3 years from date of the nonproduction period under the contract.

1435.12 Sugar processors. [Removed, 1986]

1435.24 Sugar processors. [Removed, 1986]

1435.33 Sugar producers. [Removed, 1986]

1435.43 Sugar processors. [Removed, 1986]

1435.85 Sugar processors.

To maintain books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with price support purchase program requirements.

Retention period: Not less than 3 years.

1435.106 Sugar processors.

See 1435.85.

1435.121 Sugar processors.

See 1435.85.

1435.205 Sugar producers.

To maintain the books and records pertaining to the benefit payments and the applicable contracts with the processors.

Retention period: 3 years following the producer's demand for payment.

1446.83 Peanut handlers.

To maintain marketing, sales and disposal records.

Retention period: 3 years following end of the marketing year in which peanuts were produced.

1446.84 Peanut handlers.

To keep records on inspected and noninspected peanuts; peanuts shelled or milled for a producer; peanuts from which LSKs or pods were removed for a producer; and green peanuts purchased from producer.

Retention period: 3 years following end of marketing year in which peanuts were produced.

1446.86 Peanut handlers.

See 1446.83 and 1446.84.

1446.93 Peanut handlers.

To keep records for each lot of quota and/or additional peanuts commingled in storage.

Retention period: 3 years following the end of the marketing year in which the peanuts were produced. Records relating to contract additional peanuts for which penalties or liquidated damages have been assessed shall be retained for 5 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later. Records shall be kept for such longer periods of time as may be requested in writing by the Executive Vice President of CCC.

1446.114 Peanut handlers.

To keep such records on the disposition for all contract additional peanuts.

Retention period: 3 years following the end of the marketing year in which the peanuts were produced. Records relating to contract additional peanuts for which penalties or liquidated damages have been assessed shall be retained for 5 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later. Records shall be kept for such longer periods of time as may be requested in writing by the Executive Vice President of CCC.

1446.146 Peanut area marketing associates.

To maintain a debt record for all handlers indicating the amounts due from each handler.

Retention period: 3 years following end of the marketing year in which peanuts were produced.

Farmers Home Administration

7 CFR

Part 1944, Exhibit A Grantees conducting housing preservation programs benefiting very-low- and low-income rural residents.

To maintain financial records, supporting documents, statistical records, and all other records pertinent to the grant.

Retention period: 3 years after submission of the final Project Performance report or until all litigations, claims, audit or investigation findings involving records have been resolved.

1948.98 Rural development grantees-growth management and housing planning for approved designated energy impacted areas.

To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant.

Retention period: 3 years after grant closing or until audit findings have been resolved.

1980.646 Grantees under the Nonprofit Corporations Loan and Grant Program.

To maintain records to substantiate certification stating that all technical services have been completed.

Retention period: 3 years after grant closing or beyond 3 years until resolution of any audit questions.

1980.647 Grantees under the Nonprofit Corporations Loan and Grant Program. [Added]

To maintain financial records in accordance with standards prescribed in OMB Circular 102, Attachments P, G, and C, or OMB Circular A-110, Attachments F and C, as appropriate, in accordance with terms and conditions of the grant.

Retention period: 3 years after grant closing or beyond 3 years period until resolution of any audit questions.

Office of Transportation

7 CFR

3300.19 Agreement on the International Carriage Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP) testing stations.

To maintain records of basic data developed in each testing of equipment.

Retention period: 3 years.

3300.43 Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP) testing laboratories.

To maintain records of basic data in each testing of mechanical refrigerating appliances.

Retention period: 3 years.

JUSTICE DEPARTMENT

Immigration and Naturalization Service

8 CFR

274a.2 Employers or recruiters or referrers for a fee of workers in the U.S. [Added]

To retain Form I-9.

Retention period: (a) In the case of an employer—3 years after the date of the hire or one year after the individual's employment is terminated, whichever is later. (b) In the case of a recruiter or referrer for a fee—3 years after the date of the referral. (c) In the case of hiring an individual who was previously employed—3 years commencing from the date of the initial execution of the Form I-9 or one year after the individual's employment is terminated, whichever is later. (d) In the case of recruiting or referring for a fee an individual who was previously recruited or referred—for a period of 3 years commencing from the date of the initial execution of the Form I-9.

274a.6 State employment agencies. [Added]

(a) To retain the certification verifying identity and employment eligibility of individuals referred for employment by the agencies in the same manner prescribed for Form I-9 in 8 CFR 274a.2(b)(2).

Retention period: 3 years after the date of the hire or one year after the date the individual's employment is terminated, whichever is later.

(b) To retain the Form I-9 used to verify the identity and employment eligibility of an individual pursuant to 8 CFR 274a.2(b).

Retention period: For a period of 3 years from the date the individual was last referred by the agency and hired by an employer. A state employment agency may retain a Form I-9 either in its original form, or on microfilm or microfiche.

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

9 CFR

107.1 Veterinary practitioners and animal owners. [Added]

To maintain records as are necessary to establish that a valid veterinarian-client-patient relationship exists and that there is a valid basis for the exemption from preparation pursuant to an unsuspended and unrevoked license.

Retention period: Not specified.

166.9 Licensees of treatment facility for garbage that is to be treated and fed to swine. [Amended]

To keep record of the destination and date of removal of all treated or untreated garbage removed from licensee's premise.

Retention period: 1 year from date made.

Food Safety and Inspection Service

9 CFR

318.21 Owners or operators of a non-Federal analytical chemical laboratories accredited to analyze official meat and poultry samples. [Added]

To maintain (a) laboratory quality control records; (b) complete records of the receipt, analysis and disposition of official samples; and (c) a standard book containing all readings and calculations for standardization of solution, determination of recoveries, and calibration of instruments.

Retention period: 3 years that samples have been analyzed under the Meat and Poultry Inspection Accredited Laboratory Program.

318.302 Producers of canned meat and poultry products.

To maintain complete records concerning all aspects of the development or determination of a process schedule, including any associated incubation tests and letters or other written communications from a processing authority recommending all thermal process schedules.

Retention period: Not specified.

318.305 Producers of canned meat and poultry products.

To maintain records on equipment and procedures for heat processing systems.

Retention period: Not specified.

318.307 Producers of canned meat and poultry products.

To maintain processing, production, container closure and distribution of product records.

Retention period: Not less than 1 year at the establishment and for an additional 2 years at the establishment or other location from which records can be made available to Program employees within 3 working days.

318.308 Producers of canned meat and poultry products.

To maintain full records regarding the handling of each deviation in processing.

Retention period: See 318.307.

320.1 Meatbrokers, renderers, and other persons dealing in animal carcasses for use as human or animal food.

To keep records as specified in section cited or by the Administrator.

Retention period: 2 years after end of year in which the transaction occurred, or longer if directed by the Administrator.

320.3 Meatbrokers, renderers, and other persons dealing in animal carcasses for use as human or animal food.

See 320.1.

381.153 Owners or operators of non-Federal analytical chemical laboratories accredited to analyze official meat and poultry samples. [Added]

See 318.21.

381.175 Persons processing, transporting, shipping, or receiving poultry slaughtered for human consumption or poultry products in commerce, or holding such products.

To maintain detailed records of such transactions as specified in the regulations.

Retention period: 2 years.

381.177 Persons processing, transporting, shipping, or receiving poultry slaughtered for human consumption or poultry products in commerce or holding such products.

See 381.175.

381.305 Producers of canned meat and poultry products.

See 318.305.

381.306 Producers of canned meat and poultry products.

To maintain processing and production records which contain the date of production; product name and style; container code; container size and type; and the process schedule, including the minimum initial temperature.

Retention period: For no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

381.307 Producers of canned meat and poultry products.

To maintain process, container closure, and distribution of products records.

Retention period: For no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

381.308 Producers of canned meat and poultry products.

To maintain full records regarding the handling of each process deviation. Such records shall include, at a minimum, the appropriate processing and production records, a full description of the corrective actions taken, the evaluation procedures and results, and the disposition of the affected product.

Retention period: See 381.307.

381.309 Producers of canned meat and poultry products.

To maintain records on incubation checks.

Retention period: See 381.307.

NUCLEAR REGULATORY COMMISSION

10 CFR

25.23 Licensees or requesting organizations employing individual approved for personnel security access authorization.

To maintain records of grant of access authorization notification.

Retention period: One year after the access authorization has been terminated by the NRC Division of Security.

34.11 Licensees utilizing sealed sources of byproduct material for radiography.

To maintain (a) records of performance of internal inspections at intervals not to exceed three months; (b) records of the results of dates of calibration for each radiation survey instrument possessed by the licensee; (c) records of the results of leak tests of sealed sources; (d) records of quarterly physical inventories of all sealed sources received and possessed under the license; (e) current utilization logs showing for each sealed source a description of the radiographer exposure device or storage container, the identity of the radiographer to whom assigned, and the plant or site where used and dates of use; (f) records of inspection and maintenance of radiographic exposure devices, storage containers and source changers at intervals not to exceed three months prior to first use thereafter; (g) records of alarm system tested at intervals not to exceed three months prior to first use thereafter; (h) records radiographers and radiographers assistants of training, including copies of written tests, dates of oral tests and field examinations; (i) records of daily pocket dosimeter exposure readings and reports of periodic check (not to exceed one year) of film badge of thermoluminescence dosimeter; (j) records of physical radiation storage surveys.

Retention period: (a) For two years; (b) for two years after the date of each calibration; (c) for six months after performance of the required leak test or until transfer or disposal of the sealed source; (d) for two years after the date of each inventory; (e) for two years after the date of each recorded event; (f) for two years; (g) for two years; (h) for three years; (i) until disposal is authorized by the Commission; (j) 3 years when that survey is the last one performed in the work day.

34.43 Licensees utilizing sealed sources of byproduct material for radiography.

See 34.11.

35.14 Licensees for certain groups of medical uses of byproduct material. [Revised, 1986; new amendment contained no record retention requirements]

35.21 Licensees for certain groups of medical uses of byproduct material. [Revised, 1986; new amendment contained no record retention requirements]

35.22 Licensees for certain groups of medical uses of byproduct material. [Revised, 1986; new amendment contained no record retention requirements]

35.23 Licensees for certain groups of medical uses of byproduct material. [Revised, 1986; new amendment contained no record retention requirements]

35.24 Licensees for certain groups of medical uses of byproduct material. [Removed, 1986]

35.25 Licensees for certain groups of medical uses of byproduct material.

To maintain records of the individual's use of byproduct material.

Retention period: Not specified.

35.26 Licensees for certain groups of medical uses of byproduct material. [Removed, 1986]

35.27 Licensees for certain groups of medical uses of byproduct material.

To maintain records on visiting authorized user documentation.

Retention period: 2 years.

35.29 Licensees for mobile nuclear medicine services using byproduct material.

To retain letters signed by the management of each client for which services were rendered that authorized use of byproduct material at the client's address of use.

Retention period: 2 years after the last provision of service.

35.31 Licensees for certain groups of medical uses of byproduct material.

To maintain records of radiation safety program changes.

Retention period: Until the license has been renewed or terminated.

35.33 Licensees for certain groups of medical uses of byproduct material.

To maintain records of misadministrations involving any therapy procedures.

Retention period: 10 years.

35.44 Licensees reporting misadministration of byproduct material under general license. [Removed, 1986]

35.50 Licensees for certain groups of medical uses of byproduct material.

To retain a record of each check of and test of dose calibrators.

Retention period: 2 years unless directed otherwise.

35.51 Licensees for certain groups of medical uses of byproduct material.

To retain a record of each survey instrument calibration.

Retention period: 2 years.

35.59 Licensees in possession of any sealed source or brochytherapy source.

(a) To maintain records on leakage test and quarterly physical inventory of all sources in its possession.

Retention period: 5 years.

(b) To maintain records of the survey measuring the ambient dose rates quarterly in all areas where sources are stored.

Retention period: 2 years.

35.70 Licensees for certain groups of medical uses of byproduct material.

To keep records on the surveys for contamination and ambient radiation exposure rate.

Retention period: 2 years.

35.80 Licensees providing mobile nuclear medicine services.

To retain records of each survey of all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed.

Retention period: 2 years.

35.92 Licensees for certain groups of medical uses of byproduct material.

To maintain records of each disposal of byproduct material as ordinary trash.

Retention period: 2 years.

35.204 Licensees for certain groups of medical uses of byproduct material.

To maintain records of each measurement of molybdenum concentration.

Retention period: 2 years.

35.205 Licensees for certain groups of medical uses of byproduct material.

To maintain records on the controls of aerosols and gases, including the assumptions, measurements and calculations made of the amount of time needed after a radioactive gas spill to reduce the concentration in the room to the occupational limit listed in Appendix B to Part 20 of this chapter.

Retention period: Duration of use of the area.

35.310 Licensees for certain groups of medical uses of byproduct material.

To maintain a list of individuals receiving radiation safety instructions.

Retention period: 2 years.

35.315 Licensees for certain groups of medical uses of byproduct material.

To maintain record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured and the initials of the individual who made the measurements.

Retention period: Until the Commission authorizes disposition.

35.404 Licensees for certain groups of medical use of byproduct material.

To maintain a record of the radiation survey of patients.

Retention period: 2 years.

35.408 Licensees for certain groups of medical uses of byproduct material.

To maintain records of brachytherapy source use and radiation survey of the patients and the areas use to confirm that no sources have been misplaced.

Retention period: 2 years.

35.410 Licensees for certain groups of medical uses of byproduct material.

To maintain records of personnel caring for the patient undergoing implant therapy receiving radiation safety instruction.

Retention period: 2 years.

35.610 Licensees for certain groups of medical uses of byproduct material.

To maintain records of individuals who operate teletherapy units receiving safety instruction.

Retention period: 2 years.

35.615 Licensees for certain groups of medical uses of byproduct material.

To maintain records of the radiation monitor check for proper opertion each day before the teletherapy unit is used for treatment of patients.

Retention period: 2 years.

35.620 Licensees for certain groups of medical uses of byproduct material.

To maintain a record of each calibration, intercomparison, and comparison of dosimetry equipment.

Retention period: Duration of the license.

35.632 Licensees for certain groups of medical uses of byproduct material.

To maintain records of each full calibration measurements on each teletherapy unit.

Retention period: Duration of use of the teletherapy unit source.

35.634 Licensees for certain groups of medical uses of byproduct material.

To maintain records of each spot-check on each teletherapy unit and a copy of each notification of the results of each spot-check.

Retention period: 2 years.

35.636 Licensees for certain groups of medical uses of byproduct material.

To maintain records of the safety checks for teletherapy facilities.

Retention period: 2 years.

35.641 Licensees for certain groups of medical uses of byproduct material.

To maintain records of the radiation measurements made following installation of a teletherapy source.

Retention period: Duration of the license.

35.647 Licensees for certain groups of medical uses of byproduct material.

To keep records of the inspection and servicing of each teletherapy unit during replacement.

Retention period: Duration of the license.

39.35 Licensees using licensed radioactive materials in well logging. [Added]

If using a sealed source, to keep a record of leak test results in units of microcuries.

Retention period: 3 years after the leak test is performed.

39.37 Licensees using licensed radioactive materials in well logging. [Added]

To maintain physical inventory records which indicate the quantity and kind of licensed material, the location of the licensed material, the date of the inventory, and the name of the individual conducting the inventory.

Retention period: 3 years from the date of the inventory for inspection by the Commission.

39.39 Licensees using licensed radioactive materials in well logging. [Added]

To maintain records for each use of licensed material showing (a) the make, model number, and a serial number or a description of each sealed source used; (b) the identity of the logging supervisor who is responsible for the licensed material and the identity of logging assistants present; (c) the location and date of use of the licensed material; and (d) in the case of unsealed licensed material used for subsurface tracer studies, the radionuclide and quantity of activity used in a particular well and the disposition of any unused tracer material.

Retention period: 3 years from date of the recorded event.

39.61 Licensees using licensed radioactive materials in well logging. [Added]

To maintain a record of each logging supervisor's and logging assistant's training and annual safety review. The training records must include copies of written tests and the annual safety reviews must list the topics discussed.

Retention period: Training records—Until 3 years following termination of employment; annual safety review records—3 years.

39.65 Licensees using licensed radioactive materials in well logging. [Added]

To retain records of film badge, TLD and bioassay results of inspection.

Retention period: Until the Commission authorizes disposition of the records.

39.67 Licensees using licensed radioactive materials in well logging. [Added]

To retain radiation survey records.

Retention period: 3 years after they are made.

39.73 Licensees using licensed radioactive materials in well logging. [Added]

To maintain at the field station: (a) a copy of 10 CFR Parts 19, 20, and 39; (b) the license authorizing the use of licensed material; (c) operating and emergency procedures required by 10 CFR 39.63; (d) records of radioactive survey instrument calibrations; (e) records of leak test results; (f) physical inventory records; (g) utilization records; (h) records of inspection and maintenance; (i) training records; and (j) survey records.

Retention period: Not specified.

39.75 Licensees using licensed radioactive materials in well logging. [Added]

When conducting operations at a temporary jobsite, to maintain (a) operating and emergency procedures; (b) evidence of latest calibration of the radiation survey instruments in use at the site; (c) latest survey records; (d) shipping papers for the transportation of radioactive materials; and (e) when operating under reciprocity pursuant to 10 CFR 150.20, a copy of the Agreement State license authorizing use of licensed materials.

Retention period: Until the well logging operation is completed.

50.54 Licensees authorized to operate nuclear production and utilization facilities.

To maintain (a) records of changes to physical security plan made without prior Commission approval; (b) records of changes to safeguard contingency plan made without prior Commission approval; (c) records of periodic review and audit of safeguards contingency plan; (d) records of changes in the production or utilization facility as described in the safety analysis report made without prior Commission approval; (e) records of changes in facility procedures as described in the safety analysis report made without prior Commission approval; (f) records of tests or experiments not described in the safety analysis report and made without prior Commission approval; (g) records showing the results of a review of development, implementation, and revision of an emergency preparedness program. The records described in paragraphs (d), (e), and (f) of this section shall include written safety evaluations which provide the bases for the determination that the change, test or experiment does not involve an unreviewed safety question.

Retention period: (a) and (b) for 2 years after date of change; (c) for two years after each review and audit; (d) until date of termination of license; (e) for five years after each change in facility procedures; (f) for five years after each test or experiment; (g) for 5 years.

50.59 Licensees authorized to operate nuclear production and utilization facilities.

See 50.54.

50.71 Licensees and holders of construction permits.

To maintain (a) such records as may be required by conditions of the license or permit or by rules, regulations, and orders of the Commission including records of fracture toughness test results, qualifications of test personnel, and calibration of test equipment; (b) records of design, fabrication, erection, and testing of structures, systems, and components important to safety of a production or utilization facility; (c) quality assurance records sufficient to furnish evidence of activities affecting quality, including operating logs, records showing results of reviews, inspections, tests, audits, work performance monitoring and materials analyses, and records containing closely related data such as qualifications of personnel, procedures and equipment; (d) individual records of training of each brigade member, including drill critiques, which ensure that each member receives training in all parts of the training program.

Retention period: (a) If not otherwise specified by regulation, license condition or technical specification, until disposal is authorized by the Commission; (b) throughout life of facility; (c) not specified—to be established by applicant consistent with applicable regulatory requirements; (d) 3 years.

55.27 Individuals licensed as operators of production and utilization facilities. [Added]

To maintain the results of medical qualifications data, test results, and each operator's or senior operator's medical history for the current license period.

Retention period: While an individual performs the functions of an operator or senior operator.

55.45 Individuals licensed as operators or production and utilization facilities. [Added]

To maintain the results of the performance tests for approval and certification of simulation facilities.

Retention period: 4 years after submittal of application for and certification of simulation facilities.

55.59 Individuals licensed as operators of production and utilization facilities. [Added]

To maintain records documenting the participation of each licensed operator and senior operator in the requalification program.

Retention period: Until the operator's or senior operator's license is renewed.

61.80 Persons licensed to perform land disposal of radioactive waste activities. [Amended]

To keep records which are required by this part or by license condition.

Retention period: Until license termination.

70.58 Licensees acquiring, delivering, receiving, possessing, using, or transferring title to own special nuclear material. [Amended]

See 70.32.

73.57 Power reactor licensees granting individuals unescorted access to a nuclear power facility or access to safeguards information. [Added]

To maintain files and procedures for protection of the criminal history records and the personal information from unauthorized disclosure.

Retention period: 1 year after termination or denial of unescorted access to the nuclear power facility or access to safeguards information.

73.70 Licensees required to provide physical protection or safeguards for special nuclear material in transit and at fixed sites.

To maintain (a) records of names and addresses of all authorized personnel, records of visitors, vendors and other individuals not employed by the licensee pursuant to 10 CFR 73.46(d)(10), 73.55(d)(6), or 73.60 records of results of tests maintenance and inspections of protected areas and security-related material, record of each alarm intrusion or other security incident, record of shipments of special nuclear material including information to comply with requirements of this part, procedures for controlling access to protected areas; (b) records of results of review and audit of licensee safeguards contingency plan for special nuclear material at fixed sites;

(c) records of results of qualification and requalification of armed escorts and physical security personnel; (d) records documenting liaison with law enforcement authorities; (e) records of escort log and communications center personnel, for each spent fuel shipment, describing shipment and significant events that occur during the shipment.

Retention period: (a) Not specified; (b) two years from date of review and audit; (c) not specified; (d) not specified, 73.46(h)(2), (e) 1 year.

73.71 Licensees required to provide physical protection or safeguards for special nuclear material in transit and at fixed sites. [Added]

To maintain a current log of safeguard events recoded.

Retention period: 3 years after the last entry is made in each log.

95.33 Licensees and others who may require access to National Security Information and Restricted Data related to a license or application for a license.

To maintain records reflecting an individual's initial and refresher security orientations and security terminations.

Retention period: Not specified.

ENERGY DEPARTMENT

10 CFR

456.316 Covered utilities and home heating suppliers participating in the Residential Conservation Service Program. [Revised]

To maintain a copy of the data collected during each audit and a copy of the costs and savings presented to the customer receiving the audit.

Retention period: 5 years from the date of the audit.

456.1020 Covered utilities and home heating suppliers participating in the Residential Conservation Service Federal Standby Plan. [Revised]

To maintain a copy of the audit report.

Retention period: 5 years from the date of the audit.

458.314 Covered utilities and home heating suppliers participating in the commercial and apartment conservation service program. [Removed]

458.715 Covered utilities and home heating suppliers particpiating in the Commerical and Apartment Conservation Service Federal Standby Plan. [Removed]

FEDERAL ELECTION COMMISSION

11 CFR

102.9 Authorized committees of Presidential candidates seeking primary matching funds and general election public financing. [Amended]

To maintain records of contributions, expenditures and other receipts and transfers and other such records as are required to qualify for primary matching payments.

Retention period: 3 years from date report filed.

102.9 National committee of any political party entitled to convention financing. [Amended]

To maintain records of expenditures and accounts payable and other records required to be reported.

Retention period: 3 years from date report filed.

102.9 Political committees and other persons required to file reports or statements with the Commission. [Amended]

To maintain records with respect to receipts and disbursements required to be reported and to retain copies of the reports and statements.

Retention period: 3 years from date report filed.

106.2 Authorized committees of Presidential Primary Candidates seeking primary matching funds and general election public financing. [Added]

To retain records of all assumptions and supporting calculations for state allocation of expenditures for matching funds.

Retention period: 3 years.

9003.1 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required to be maintained under 11 CFR 9003.5, and other information as the Commission may request.

Retention period: 3 years.

9003.3 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To keep records on allowable contributions.

Retention period: 3 years.

9003.5 Authorized committees of Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related material documenting campaign receipts and disbursements.

Retention period: 3 years.

9033.1 Authorized committees of Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by section cited including those required to be maintained under 11 CFR 9033.11 and other information that the Commission may request.

Retention period: 3 years.

9033.11 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Revised]

To maintain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation materials, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements and other information as specified in section cited.

Retention period: 3 years.

9034.2 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain records on matching contributions.

Retention period: 3 years.

9034.5 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain a list of all capital assets in accordance with 11 CFR 9033.11(d).

Retention period: 3 years.

9034.8 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain records required under 11 CFR 9033.11 regarding fundraising disbursements.

Retention period: 3 years.

9035.1 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general public financing. [Added]

To maintain campaign expenditure limitation records.

Retention period: 3 years.

Part 9036 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain records required for review of submission and certification of matching fund payments.

Retention period: 3 years.

9039.1 Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To keep all books, records, and other information required under 11 CFR 9033.11, 9034.2 and Part 9036.

Retention period: 3 years.

TREASURY DEPARTMENT

Comptroller of the Currency

12 CFR

21.5 Security devices required in national banks. [Amended]

To maintain records of each robbery, burglary or nonemployee larceny committed or attempted at a banking office.

Retention period: As long as the bank continues to use security devices.

FEDERAL RESERVE SYSTEM

12 CFR

208.15 State members agricultural banks. [Added]

To maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations with respect to each asset subject to loss deferral under the program.

Retention period: Not specified.

FEDERAL HOME LOAN BANK BOARD

12 CFR

563.23-2 Institutions insured by the Federal Savings and Loan Insurance Corporation. [Removed]

564.2 Institutions insured by the Federal Savings and Loan Insurance Corporation.

The account records shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are invested and on which a claim for insurance coverage is founded.

Retention period: Not specified.

FARM CREDIT ADMINISTRATION

12 CFR

614.4442 Farm credit associations and banks. [Revised, 1986; record retention requirements now in 614.4444]

614.4444 Farm credit associations and banks.

To maintain complete file on all written requests for reviews, including the disposition of the review by the credit review committee, and other written inquiries concerning adverse credit actions.

Retention period: Not specified.

621.3 Farm credit associations and banks.

To maintain accurate and complete records of all business transactions as necessary to prepare financial statements in accordance with generally accepted accounting principles.

Retention period: Not specified.

SMALL BUSINESS ADMINISTRATION

13 CFR

Part 107 Small Business Investment Companies (SBICs) licensed by SBA including 301(d) licensees.

To maintain books and records including books of account, other records, and memoranda which support the entries in its books of accounts.

Retention period: At least 20 years.

108.5 Small business development companies.

To maintain financial records including books of accounts in accordance with generally accepted accounting principles.

Retention period: For the periods required by the Internal Revenue Service and generally accepted accounting practices.

108.5 State and local development companies.

To maintain, at the principal office, financial records including books of accounts, minutes of meetings of members, stockholders, directors, executive committees or other officials, and all documents and supporting material relating to a development copmpany's transactions.

Retention period: For the periods required by the IRS and generally accepted accounting practices.

108.503-3 503 companies.

To maintain records of all documents and materials relating to the loan applications submitted to SBA.

Retention period: Not specified.

108.505 Fiscal agents, transfer agents and selling groups issuing or selling debenture pool certificates (505 certificates).

To maintain all books, records and related materials associated with 504 Debentures or 505 Certificates.

Retention period: Not specified.

120.5 Subsection (b) lenders. [Removed, 1986]

120.5 Business loan policy. [Removed, 1986]

120.302-1 Small business lending companies.

(a)To maintain accurate and current financial records, including books of account. All financial records, minutes of meetings of stockholders, directors, executive committees, or other officials, and all documents and supporting materials relating to the said Lender's transactions shall be maintained at the principal business office, provided, however, that securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(b) To preserve, for the periods hereinafter specified and in a manner that permits the immediate location thereof, such documents which are the basis for financial statements required by section 120.303 (and of the accompanying independent public accountant's opinion), and shall:

(1) Preserve permanently—

(i) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes, books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(2) Preserve for a least six years following final disposition of the related loan—

(i) All applications for financing;

(ii) Lending, participation, and escrow agreements;

(iii) Financing instruments;

(iv) All other documents and supporting material relating to such loans, including correspondence.

Records and other documents referred to in paragraph (1)(i) may be preserved by reproduction; provided, however, that said Lender shall cause a duplicate to be made on a current basis and stored separately from the original fot the time required, and shall maintain at

all times facilities for the projection and reproduction of the records.

124.1-3 The Small Business and Capital Ownership Development Program. [Removed, 1986; record retention requirements now in 124.401]

124.401 Minority Small Business and Capital Ownership Development Program.

8(a) Concerns—advance payments. The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds.

124.403 Minority Small Business and Capital Ownership Development Program.

Section 8(a) Concerns—letter of credit. See 124.401.

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

14 CFR

91.173 Registered owners or operators of civil aircraft. [Amended]

To keep (a) records of maintenance, alterations, 100-hour, annual, and progressive inspections, and other required or approved inspections for each aircraft, and for each airframe, engine, propeller, rotor, and appliance of an aircraft including a description of the work performed, the date the work was completed, and signature and certificate number of the persons approving the aircraft for return to service and (b) records of total time in service of airframe; current status of life limited parts of each airframe, engine, propeller, rotor, and appliance; time since last overhaul of all items required to be overhauled on a specified time basis; identification of current inspection status of aircraft, including time since last inspection required by inspection program under which aircraft and its appliances are maintained, current status of applicable airworthiness directives, including method of compliance; and a list of current major alterations to each airframe, engine, propeller, rotor, and appliance.

Retention period: (a) Until the work is repeated or superseded by other work or for 1 year after the work is performed; (b) transferred with the aircraft at the time the aircraft is sold.

139.91 Operators of certificated airports. [Removed; record retention requirements now in 139.327]

139.207 Holders of airport operating certificates. [Added]

To maintain at least one complete and current copy of approved airport certification manual on the airport.

Retention period: Not specified.

139.215 Holders of limited airport certification specifications. [Added]

To maintain at least one complete and current copy of approved airport certification specifications.

Retention period: Not specified.

139.321 Airport certificate holders acting as cargo handling agents. [Added]

(a) To establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of any material regulated by the Hazardous Materials Regulations (49 CFR Part 171, et seq.), that is, or is intended to be, transported by air.

(b) To establish and maintain standards acceptable to the Administrator for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen (other than articles and materials that are or are intended to be, aircraft cargo) on the airport.

(c) To maintain records of the inspection of the physical facilities of each airport tenant fueling agent.

Retention period: (a) and (b) Not specified; (c) At least 12 months.

139.327 Airport certificate holders. [Added]

To prepare and maintain inspection records showing the conditions found and all corrective actions taken.

Retention period: At least 6 months.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR

1260.304 Grantees; cost-sharing.

To maintain records of all grant costs claimed as constituting part of its share.

Retention period: 3 years.

1260.406 NASA grants awarded to educational institutions or nonprofit agencies.

To maintain books and accounting records in accordance with the principles set forth in the documents listed in paragraph 405 of the NASA Grant and Cooperative Agreement Handbook.

Retention period: Financial records, supporting documents statistical records—3 years, or until all litigation, claims, or audit findings involving the records have been resolved. Nonexpendable property records—3 years.

1260.413 Grantees.

To maintain records of any accident involving death, disability injury, or substantial loss of property.

Retention period: Not specified.

1260.509 Grantees—property management.

To maintain property records accurately.

Retention period: Not specified.

COMMERCE DEPARTMENT

International Trade Administration

15 CFR

373.5 Exporters of donations for humanitarian projects under the Humanitarian license.

To maintain records of all shipments, the values of said shipments, the countries and beneficiaries to which the donations are sent, the validated Dept. of Commerce letter and narrative statement, and any other party charged with distributing the donations to the beneficiaries.

Retention period: 2 years.

Economic Analysis Bureau

15 CFR

801.2 Persons subject to the jurisdiction of the U.S. engaged in international trade in services.

To maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the International Investment and Trade in Services Act.

Retention period: Not specified.

National Oceanic and Atmospheric Administration

15 CFR

908.8 Persons engaged in weather modification or related activities. [Amended]

To maintain daily records of activities, name and address of person operating weather modification apparatus, and such other records as required by section cited.

Retention period: 3 years.

908.9 Persons engaged in weather modification or related activities. [Amended]

See 908.8.

908.11 Persons engaged in weather modification or related activities. [Amended]

To maintain records concerning the identities of purchasers or users of weather apparatus or materials, the quantities or numbers of items purchased, and the times of such purchases.

Retention period: 3 years.

931.95 Recipients of financial assistance under section 308 of the Coastal Zone Management Act of 1972, relating to the Coastal Energy Impact Program.

To keep detailed project control records reflecting acquisitions, work progress, expenditures, and commitments, indicating in each instance their relationship to estimated costs and schedules. To also keep full written financial records.

Retention period: 3 years after completion of the project, program, or other undertaking and submission of the final Financial Status Report, whichever is sooner and until an audit is completed and all questions arising from it are resolved.

FEDERAL TRADE COMMISSION

16 CFR

305.15 Manufacturers of a covered products. [Added]

To maintain test data records.

Retention period: 2 years after production of model has been terminated.

COMMODITY FUTURES TRADING COMMISSION

17 CFR

1.35 Contract markets.

To maintain a single record showing for each future or option trade the transaction date, time quantity, and as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floorbroker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and symbols indicating the buying and selling customer or option customer types.

Retention period: 5 years.[1]

1.35 Futures commission merchants, introducing brokers and clearing members.

To maintain trading card or other record showing purchases and sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market.

Retention period: 5 years.[1]

404.2 Registered government securities brokers and dealers. [Added]

To maintain records of non-resident registered government securities brokers and dealers with modifications. See also 17 CFR 240.17a-3.

404.3 Registered government securities brokers and dealers. [Added]

To maintain records in compliance with 17 CFR 240.17a-4.

404.4 Government securities brokers and dealers which are financial institutions. [Added]

(a) To maintain records required by 17 CFR 404.2 and 404.3 with exceptions.

(b) To maintain and keep current securities records or ledgers reflecting separately for each government security as of the settlement date all 'long' or 'short' positions (including government securities that are the subject of repurchase or reverse repurchase agreements) carried by such financial institutions for its own account or for the account of its customers or others and other such information as specified in section cited.

Retention period: Various.

405.2 Registered government securities brokers and dealers. [Added]

To maintain records to comply with the requirements of 17 CFR 240.17a-5 with modifications.

405.3 Certain registered government securities brokers and dealers. [Added]

To maintain records to comply with the requirements of 17 CFR 240.17a-11 with modifications.

405.4 Registered government securities brokers and dealers reporting currency and foreign transactions. [Added]

To maintain records in compliance with 31 CFR Part 103.

Retention period: Where 31 CFR Part 103 and 17 CFR 404.3 require the same records to be preserve for different periods of time, such records or reports shall be preserved for the longer period of time.

450.4 Depository institutions with custodial holdings of government securities. [Added]

To maintain separately and distinctly from other records, records of government securities held for customers.

Retention period: Not less than six years, the first two years in an easily accessible place.

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

18 CFR

225.3 Natural gas companies.

To maintain records as indicated in 18 CFR Part 225—Preservation of Records of Natural Gas Companies.

Retention period: Various.

277.210 Sellers and purchasers of natural gas.

To maintain all other documents created in the ordinary course of business which relate to the bona fide offers; right of first refusal provision.

Retention period: 3 years.

282.204 Owners or operators of an industrial boiler fuel facility. [Removed]

282.207 Natural gas suppliers. [Removed]

282.207 Owners or operators of industrial facilities. [Removed]

TREASURY DEPARTMENT

Customs Service

19 CFR

10.173 Importers of products from Caribbean and Central American designated as beneficiary countries.

To maintain in the files of the party which prepared and signed the Certificate of Origin, the information necessary for preparation of the declaration.

Retention period: 5 years.

24.24 Importers, exporters, applicants for admission of cargo into foreign trade zone, shippers and cruise vessel operators subject to harbor maintenance fees. [Added]

To maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance with the law.

Retention period: 5 years from the date of the calculation.

111.21 Licensed customs brokers.

To keep current records of account reflecting all their financial transactions as customhouse brokers, including a copy of each entry made with all supporting papers, except those documents they are required to file with Customs, powers of attorney, copies of

[1] After 3 years the person required to keep such books and records may at his option substitute photographic reproductions thereof on film, together with facilities for the projection of such film in a manner which will permit it to be readily inspected or examined. Under certain conditions, microfilm reproductions may immediately be substituted for hard copy.

all correspondence and other papers relating to customs business and, except for certain specified limitations, a record of transactions of licensed customhouse broker (Customs Form 3079) in addition to the regular records of account.

Retention period: At least 5 years after the date of entry. When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 5 years from the date of withdrawal. Powers of attorney shall be retained until revoked, and revoked powers of attorney and letters of revocation shall be retained for 5 years after the date of revocation. Records may be retained on microfilm pursuant to section cited.

111.22 Licensed customs brokers.

See 111.21.

111.23 Licensed customs brokers.

See 111.21.

151.13 Commercial gaugers and commercial laboratories. [Added]

To maintain records of the type normally kept in the ordinary cause of business. In addition, to maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, records on transaction, major instrument, gauging and analytical procedures, and gauging and laboratory analysis.

Retention period: 5 years in accordance with 19 CFR 162.1a through 162.1c.

LABOR DEPARTMENT

Employment and Training Administration

20 CFR

602.21 States administering the Unemployment Insurance Program. [Added]

To maintain records pertaining to the Quality Control (QC) Program and to make all such records available in a timely manner for inspection, examination, and audit by such Federal officials as the Secretary may designate or as may be required or authorized by law.

617.57 State agencies administering trade adjustment assistance for workers under the Trade Act of 1974.

To maintain records pertaining to the administration of the Act as the Secretary requires.

Retention period: Not specified.

655.102 Employers granted labor certifications for temporary employment of aliens in the United States (HA Workers) in agricultural and logging occupations. [Added]

To keep accurate and adequate records with respect to the workers' earnings including field tally records, supporting summary payroll records and records showing the nature and amount of work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly); if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions made from the worker's wages.

Retention period: Not less than 3 years after the completion of the work contract.

655.111 Employers granted labor certifications for temporary employment of aliens in the United States (H-2A workers) in agricultural and logging occupations. [Added]

To retain receipts and other cost records of meal charges for a representative pay period.

Retention period: 1 year.

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

21 CFR

58.35 Quality assurance unit monitoring nonclinical laboratory studies. [Added]

To maintain a copy of a master schedule sheet of all nonclinical laboratory studies conducted at the testing facility indexed by test article and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of study director.

Retention period: See 21 CFR 58.195(a) and (b).

58.195 Persons who conduct nonclinical laboratory studies. [Amended]

To maintain records specified in section which concern conduct and results of studies submitted to FDA in support of an application for a research or marketing permit.

Retention period: Not superseding other record retention requirements of 21 CFR, as applicable, either (a) 2 years after approval of application or (b) 5 years after submission of study results, or (c) 2 years after study is completed, terminated, or discontinued, whichever is shortest.

110.80 Manufacturers, processors, packers, and repackers of human foods. [Removed, 1986]

179.24 Persons treating food with low dose electron beam radiation. [Removed, 1986]

211.165 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain documentation on the accuracy, sensitivity, specificity and reproducibility of test methods employed by the firm.

Retention period: See 21 CFR 211.170.

211.182 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain equipment cleaning and use log.

Retention period: See 21 CFR 211.170.

211.184 Persons manufacturing, processing, or holding finished pharmaceuticals. [Added]

To maintain component, drug product container, closure, and labeling records.

Retention period: See 21 CFR 211.170.

211.186 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain production and control records.

Retention period: See 21 CFR 211.170.

211.188 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain batch production and control records.

Retention period: See 21 CFR 211.170.

211.196 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain disclosure records.

Retention period: See 21 CFR 211.170.

211.198 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Revised]

To maintain records on the written procedures describing the handling of all written and oral complaints regarding a drug product.

Retention period: See 21 CFR 211.170.

225.202 Manufacturers of medicated feed.

To maintain records identifying the formulation, date of mixing, and if not for own use, date of shipment.

Retention period: 1 year following date of last distribution.

310.305 Manufacturers, packers, and distributors of marketed prescription drugs for human use without approved new drug applications.

To establish and maintain records of all serious, unexpected adverse drug experiences and any significant increase in the frequency of a serious expected adverse drug experience.

Retention period: 10 years.

312.1 Sponsors, investigators, and shippers of new drugs and antibiotic drugs for investigational use; and investigational review committees. [Revised; record retention requirements now in 312.57, 312.58, and 312.62]

312.9 Sponsors, investigators, and shippers of new drugs and antibiotic drugs for investigational use; and investigational review casualties. [Revised; record retention requirements now in 312.57, 312.58, and 312.62]

312.10 Sponsors, investigators, and shippers of new drugs and antibiotic drugs for investigational use; and investigational review casualties. [Revised; record retention requirements now in 312.57, 312.58, and 312.62]

312.57 Sponsors of new drugs and antibiotic drugs for investigational use. [Added]

To maintain adequate records showing the receipt, shipment, or other disposition of the investigational drug. These records are required to include, as appropriate, the name of the investigator to whom the drug is shipped, and the date, quantity, and batch or code mark of each such shipment.

Retention period: 2 years after a marketing application is approved; or if an application is not approved for the drug, until 2 years after shipment and delivery is discontinued and FDA has been so notified.

312.58 Sponsors of investigational drugs. [Added]

See 21 CFR 312.57.

312.59 Sponsors of investigational drugs. [Added]

See 21 CFR 312.57.

312.62 Investigators of new drugs and antibiotic drugs for investigational use. [Added]

To maintain adequate records of the disposition of the drug, including dates, quantity, and use by subjects. To also maintain adequate and accurate case histories designated to record all observations and other data pertinent to the investigation on each individual treated with the investigational drug or employed as a control in the investigation.

Retention period: For a period of 2 years following the date a marketing application is approved for the drug for the indication for which it is being investigated; or if no application is to be filed or if the application is not approved for such indication, until 2 years after the investigation is discontinued and FDA is notified.

312.68 Investigators of new drugs and antibiotic drugs for investigational use. [Added]

See 21 CFR 312.62.

312.160 Shippers of drugs for investigational use in laboratory research animals or in vitro tests. [Added]

To maintain adequate records showing the name and post office address of the expert to whom the drug is shipped and the date, quantity, and batch or code mark of each shipment and delivery. To also maintain records of any alternative disposition of unused drugs.

Retention period: (a) Records of shipments of drugs intended solely for tests *in vitro* or in animals used only for laboratory research purposes—2 years after shipment. (b) Records and reports of shipments of biological products for investigational in vitro diagnostic use–in accordance with 21 CFR 312.57(b).

610.12 Manufacturers performing sterility tests on biological products.

To maintain records as required by 21 CFR 211.167, 211.194 and 600.12.

Retention period: Not specified.

680.3 Manufacturers of allergenic products. [Added]

To maintain records related to testing requirements in accordance with 21 CFR 211.165, 211.167, 211.188 and 211.194.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

200.182 Assisted housing owners or mortgagees under the National Housing Act.

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

201.19 Lenders of Title I Property Improvement and Manufactured Home Loans. [Added]

To maintain in the loan file for the refinanced loan, copies of all documents pertaining to the original loan.

Retention period: Not specified.

201.50 Lenders of Title I Property Improvement and Manufactured Home Loans. [Added]

To maintain documentation of its efforts to cure default before acceleration and foreclosure of repossession including placing in the file a copy of any modification agreements or any letter to the borrower reflecting an acceptable repayment plan.

Retention period: Not specified.

207.27 Project mortgagors under the National Housing Act.

To maintain records of all cost of any construction or other costs items not representing work under general contract.

Retention period: Not specified.

Office of Assistant Secretary for Community Planning and Development

24 CFR

510.52 Localities administering Section 312 Rehabilitation Loan Program. [Added]

To maintain records in sufficient detail to demonstrate compliance with the requirements of relocation displacement regulations.

Retention period: Not specified.

510.410 Local agencies participating in the Section 312 Rehabilitation Loan Program. [Added]

To keep copies of each lead-based paint inspection and/or test report.

Retention period: 3 years.

511.11 Grantees under the Rental Rehabilitation Grant Program. [Added]

To keep copies of each lead-based paint inspection and/or test report.

Retention period: 3 years.

570.457 Persons displaced by HUD-assisted community development projects who are not covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. [Added]

See 510.52.

570.608 Grantees under the Community Development Block Grant Programs. [Added]

To keep a copy of each lead-based inpsection and/or test report.

Retention period: 3 years.

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

812.5 Assisted housing responsible entities.

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

905.204 Indian Housing Authorities (IHAS).

To maintain documentation in its files for HUD review a copy of the determination where the provision of preference in Indian contracting, employment, and training is infeasible.

Retention period: 3 years.

912.5 Public housing agents (PHAs).

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

TREASURY DEPARTMENT

Internal Revenue Service

26 CFR

1.179-4 Persons electing additional first-year depreciation allowance for section 179 property. [Revised]

To maintain records which permit specific identification of each piece of "section 179 property" and reflect how and from whom such property was acquired and when such property was placed in service.

1.924(d)-1 Foreign Sales Corporations; foreign management and foreign economic possesses requirements. [Added]

To maintain records adequate to establish, with respect to each transaction or group of transactions, that the sale activity was performed and that the performance of such activity took place outside the United States if the FCS does not perform the activity itself. To also maintain records adequate to establish that the activities were actually performed and where the activities were performed.

1.144-5 Transferor of a U.S. property who is not a foreign person.

To retain a certificate of non-foreign status informing the transferee that withholding is not required.

Retention period: Until the end of the fifth taxable year following the taxable year in which the transfer takes place.

31.6053-4 Tipped employees; substantiation requirements.

To maintain sufficient evidence to establish the amount of tip income received during a taxable year. If the employee does not maintain a daily record, other evidence of the amount of tip income received during the year, such as documentary evidence shall constitute sufficient evidence, but only if such other evidence is as credible and as reliable as a daily record.

Retention period: At all time available for inspection by authorized Internal Revenue Officers of employees, and shall be retained so long as the contents thereof may become material in the administration of any Internal Revenue law.

31.6053-4T Tipped employees; substantiation requirements. [Removed; record retention requirements now in 31.6053-4]

48.4041-7 Allocation of diesel and special fuel from common tank for use in special equipment.

To maintain records that will support the allocation of liquid drawn from the same tank as the one supplying fuel for propulsion of a vehicle, and sold for use or used in a separate motor to operate special equipment.

48.4041-11 Persons registered to sell or purchase tax-free fuel for use in non-commercial aviation.

To maintain exemption certificates and proper supporting records such as invoices, order, etc. relative to tax-free sales.

48.4041-16 Liquid retailers.

To maintain adequate records and documentary evidence showing that article was so sold to establish exemption from tax in the case of a taxable article for export.

48.6421(a)-1 Allocation of gasoline for use in special equipment. [Removed, 1986]

TREASURY DEPARTMENT

Bureau of Alcohol, Tobacco and Firearms

27 CFR

19.750 Proprietors of distilled spirits plants.

To maintain records on the results of all alcohol contents and fill tests conducted.

Retention period: 3 years.

19.778 Proprietors of distilled spirits plants.

(a) To maintain separate accountings, in proof gallons, of Puerto Rican rum, other Puerto Rican spirits, and Virgin Island spirits received in the processing account for nonindustrial use.

(b) To maintain monthly reports on ATF Form 5110.28, showing separately the adjusted proof gallons of Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits received in processing.

Retention period: 3 years.

25.42 Brewers.

To keep records of testing of beer measuring devices.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.252 Brewers.

To keep records of the production of malt syrup, wort, and the removals of brewer's yeast, malt and other articles from the brewery.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.276 Operators of pilot brewing plants.

To maintain records which include information sufficient to account for the receipt, production, and disposition of all beer received or produced on the premises, and the receipt (and disposition, if removed) of all brewing materials.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.284 Brewers.

To keep records to support adjustments on the excise tax return in lieu of filing a claim.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.291 Brewers.

To maintain individual transaction forms, records, summaries, supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims, and copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.292 Brewers.

To maintain daily records of operations.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.293 Brewers.

To maintain records of ballings and alcohol content.

Retention period: 3 years. The regional director (compliance) may

require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.294 Brewers.

To maintain records of inventories of beer or cereal beverage.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.295 Brewers.

To maintain records of unsalable beer.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.296 Brewers producing concentrate or reconstitute beer.

To maintain daily records of beer concentrate.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.300 Brewers.

See 27 CFR 25.252, 25.276, 25.284, 25.291, 25.292, 25.294 and 25.296.

25.301 Brewers.

See 27 CFR 25.252, 25.276, 25.284, 25.291, 25.292, 25.294 and 25.296.

178.100 Licensed firearms manufacturers, importers, dealers, and collectors conducting business at gun shows.

To maintain firearms and armor-piercing ammunition records in the form and manner prescribed by 27 CFR Part 178, Subpart H.

Retention period: See 27 CFR 178.129.

178.122 Licensed importers of firearms.

To maintain records on importation or other acquisition; records on firearms and armor-piercing ammunition transferred to another licensee; and records on the sales or other disposition made of firearms and armor-piercing ammunition to nonlicensees.

Retention period: See 27 CFR 178.129.

178.123 Manufacturers of firearms.

See 178.122.

178.124 Licensed firearms importers, manufacturers, or dealers.

To maintain firearms transaction records.

Retention period: See 27 CFR 178.129.

178.125 Licensed firearms dealers and collectors.

To maintain (a) records on armor-piercing ammunition sales to nonlicensees and licensees; (b) commercial records of armor-piercing ammunition transactions; (c) records on firearms receipt and disposition by dealers and licensed collectors; (d) commercial records of firearms received; and (e) other such records as specified in section cited.

Retention period: See 27 CFR 178.129.

178.127 Licensed firearms manufacturers, importers, dealers, and collectors.

See 178.129.

178.171 Licensed manufacturers, licensed importers, and licensed dealers exporting firearms and armor-piercing ammunition.

(a) To maintain records showing the manufacture or acquisition of the firearms; the name and address of the foreign consignee of the firearms and armor-piercing ammunition; and the date the firearms and armor-piercing ammunition were exported.

Retention period: See 27 CFR 178.129.

245.110C Brewers. [Removed, 1986]

245.135 Brewers. [Removed, 1986]

245.136 Brewers. [Removed, 1986]

245.145 Brewers. [Removed, 1986]

245.146 Brewers. [Removed, 1986]

245.147 Brewers. [Removed, 1986]

245.148 Brewers. [Removed, 1986]

245.152 Brewers. [Removed, 1986]

245.153 Brewers. [Removed, 1986]

245.155 Brewers. [Removed, 1986]

245.156 Brewers. [Removed, 1986]

245.157 Brewers. [Removed, 1986]

245.158 Brewers. [Removed, 1986]

245.161 Brewers. [Removed, 1986]

245.205 Brewers. [Removed, 1986]

245.206 Brewers. [Removed, 1986]

245.207 Brewers. [Removed, 1986]

245.208 Brewers. [Removed, 1986]

245.215 Brewers. [Removed, 1986]

245.217 Brewers. [Removed, 1986]

245.225 Brewers. [Removed, 1986]

245.226 Brewers. [Removed, 1986]

245.227 Brewers. [Removed, 1986]

245.232 Brewers. [Removed, 1986]

245.245 Brewers. [Removed, 1986]

245.256 Proprietors of pilot brewing plants. [Removed, 1986]

250.174 Persons intending to file claims for drawback on eligible articles brought into the United States from Puerto Rico. [Added]

To maintain permanent records showing (a) the name, description, quantity, and formula number of each such article; (b) the alcohol content of each such article; (c) the name and address of the manufacturer and shipper, and the date of entry into the United States; and (d) evidence of taxpayment of distilled spirits.

Retention period: (a) All commercial invoices or shipping document and all bills of lading received evidencing receipt and tax determinations of the spirits—for a period of not less than 3 years. (b) A copy of each approved formula returned to the manufacturer of eligible articles—not less than 3 years from date last claim for drawback under formula was filed.

250.310 Persons intending to file claims for drawback on eligible articles brought into the United States from Puerto Rico. [Added]

See 27 CFR 250.174.

252.145 Brewers. [Revised, 1986; record retention requirements now in 252.146]

252.146 Brewers.

To keep copies of Form 1689 covering beer and beer concentrate withdrawn without payment of tax for exportation, use as supplies on vessels and aircraft, or transfer to a foreign-trade zone.

Retention period: 2 years.

252.150f Brewers. [Removed, 1986]

252.150g Brewers. [Removed, 1986]

252.150h Brewers. [Removed, 1986]

LABOR DEPARTMENT

Office of the Secretary

29 CFR

5.5 Contractors or subcontractors subject to labor standards provisions applicable to contracts covering federally financed and assisted construction (see 29 CFR 5.1 and 5.5).

(a) To keep payroll and basic records including name, address, and social security number of each laborer or mechanic, correct classification, rate of pay (including rates of contributions or costs anticipated for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship programs, or for other bona fide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid to all laborers and mechanics.

(b) In the case of unfunded plans or programs for fringe benefits listed in the Davis-Bacon Act, which are approved by the Department of Labor, to maintain records showing: (1) That the contractor's commitment is enforceable, (2) that it has been communicated in writing to laborers or mechanics employed by him, (3) that it is financially responsible, and (4) the costs anticipated or the actual cost incurred in providing such benefits.

(c) To furnish evidence of registration of an apprenticeship program and certification of trainee programs, the registration of apprentices and trainees, together with evidence of the appropriate ratios and wage rates prescribed in the applicable program.

Retention period: 3 years after termination of contract.

5.5 Contractors or subcontractors subject to labor standards provisions applicable to contracts subject only to the Contract Work Hours and Safety Standards Act.

To keep payrolls and records including name, address, social security number, correct classification, hourly rate of pay, daily and weekly number of hours worked, and deductions made and actual wages paid.

Retention period: 3 years from completion of contract.

Wage and Hour Division

29 CFR

Part 516 Employers subject to the Fair Labor Standards Act including special recordkeeping rules that apply to employers whose employees fall within various minimum wage and/or overtime pay exemptions in the Act. [Revised]

To maintain records as indicated in 29 CFR Part 516.

Retention period: Various.

516.1 Employers subject to any provisions of the Fair Labor Standards Act of 1938, as amended. [Added]

To maintain records containing the information and data required by specific sections of 29 CFR Part 516.

Retention period: Various.

516.2 Employers subject to Fair Labor Standards Act whose employees are subject to minimum wages and overtime provisions pursuant to section 6 or 7(a) of the Fair Labor Standards Act. [Revised]

To maintain and preserve payroll records; records of retroactive payments of wages; records on employees working on fixed schedules; and other such records as specified in section cited.

Retention period: (a) Payroll records and certificates, agreements, plans, notices, etc.—3 years; (b) basic employment and earning records and wage rate tables, order, shipping, and billing records and records of additions to or deductions from wages paid—2 years.

516.3 Employers subject to Fair Labor Standards Act employing bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees. [Revised]

To maintain and preserve records containing all the information and data required by 29 CFR 516.2(a) except paragraphs (a)(6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.

Retention period: 3 years.

516.5–516.9 Employers subject to Fair Labor Standards Act. [Revised]

See 29 CFR Part 516.

516.11 Employers subject to Fair Labor Standards Act whose employees are exempt from both minimum wage and overtime requirements under section 13(a)(2), (3), (4), (4), (8), (10), (12), or (13)(d) of the Act. [Revised]

See 29 CFR 516.2.

516.12 Employers subject to Fair Labor Standards Act whose employees are exempt from overtime pay requirements. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain information and data regarding the basis on which wages are paid (such as the monetary amount paid, expressed as earnings per hour, per day, per week, etc.)

Retention period: (a) 3 years; (b) 2 years.

516.13 Employers subject to Fair Labor Standards Act employing livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain records containing employment and earning information for each workweek in which the employee is employed both in agriculture and in connection with livestock operations.

Retention period: (a) 3 years; (b) 2 years.

516.14 Employers subject to Fair Labor Standards Act employing country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain records containing for each workweek, the names and occupations of all persons employed in the country elevator, whether or not covered by the Act, and information demonstrating that 'area of production' requirements of 29 CFR Part 536 are met.

Retention period: (a) 3 years; (b) 2 years.

516.15 Employers subject to Fair Labor Standards Act employing local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain records containing information and data on the basis on which wages are paid (such as the dollar amount paid per trip; the dollar amount of earnings per week plus 3 percent commission on all cases delivered and other such information as required in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.16 Retail or service establishment subject to Fair Labor Standards Act employing Commission employees exempt from overtime pay requirements pursuant to section 7(i). [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To also maintain other information as specified in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.17 Employers subject to Fair Labor Standards Act employing seamen exempt from overtime pay requirements pursuant to section 13 (b)(6) of the Act. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain other information as specified in section cited.

(a) 3 years; (b) 2 years.

516.18 Employers subject to Fair Labor Standards Act employing employees in certain tobacco, cotton, sugar care, or sugar beet services who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act. [Revised]

(a) See 516.2.

(b) To maintain and preserve a record of the daily and weekly overtime compensation paid. Also to note in the payroll records the beginning date of each workweek during which the establishment operates under the particular exemption.

Retention period: (a) 3 years; (b) 2 years.

516.19 Employers subject to Fair Labor Standards Act. [Removed]

516.20 Employers subject to Fair Labor Standards Act employing employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(1) or section 7(b)(2) of the Act. [Revised]

(a) See 516.2.

(b) To keep copies of collective bargaining agreement and National Labor Relations Board certifications as part of the record and a copy of each amendment or addition thereto. To also keep other records as specified in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.21 Employers subject to Fair Labor Standards Act employing bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) of the Act. [Revised]

(a) See 516.2(a).

(b) To maintain daily as well as the weekly overtime compensation records.

Retention period: (a) 3 years; (b) 2 years.

516.22 Employers subject to Fair Labor Standards Act employing employees engaged in charter activities for a street, suburban or interurban electric railway or local trolley or motorbus carrier pursuant to section 7(n) of the Act. [Revised]

(a) See 516.2(a).

(b) In addition, to maintain records of the hours worked each workweek in charter activities and a copy of the employment agreement or understanding.

Retention period: (a) 3 years; (b) 2 years.

516.23 Employers subject to Fair Labor Standards Act employing employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act. [Revised]

(a) See 516.2 with exceptions.

(b) To maintain records on time of day and day of week on which the employee's 14-day work period begins; hours worked each workday and total hours worked each 14-day work period; total straight-time wages paid for hours worked during the 14-day period; total overtime excess compensation paid for hours worked in excess of 8 in a workday and 80 in the work period; a copy of the agreement or understanding with respect to using the 14 day period for overtime pay computations and other such records as specified in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.24 Employers subject to Fair Labor Standards Act hiring employees under section 7(f) 'Belo' contracts. [Revised]

(a) To maintain and preserve payroll or other records containing all the information and data required by 29 CFR 516.2(a) with exceptions.

(b) To also maintain records on the total weekly guaranteed earning; total weekly compensation in excess of weekly guaranty; and a copy of the bona fide individual contract or the agreement made as a result of collective bargaining or where such contract or agreement is not in writing, a written memorandum summarizing its term.

Retention period: (a) 3 years; (b) 2 years.

516.25 Employers subject to Fair Labor Standards Act employing employees paid for overtime on the basis of 'applicable' rates provided in sections 7(g)(1) and 7 (g)(2) of the Act. [Revised]

To maintain and preserve records containing all the information and data required by 29 CFR 516.2(a) with some exceptions, and other such records as specified in section cited.

Retention period: 2 and 3 years.

516.26 Employers subject to Fair Labor Standards Act employing employees paid for overtime at premium rates computed on a 'basic' rate authorized in accordance with section 7(g)(3) of the Act. [Revised]

To maintain and preserve records containing all the information and data required by 29 CFR 516.2 with exceptions and other information as specified in section cited.

Retention period: 2 and 3 years.

516.27 Employers subject to Fair Labor Standards Act who make deductions from the wages of employees for 'board, lodging, or other facilities' under section 3 (m) of the Act. [Revised]

(a) See 29 CFR Part 516.

(b) To maintain and preserve records substantiating the cost of furnishing each class of facility with exceptions.

(c) To keep records on additional information as specified in cited section.

Retention period: 2 and 3 years.

516.28 Employers subject to Fair Labor Standards Act employing tipped employees. [Revised]

(a) To maintain and preserve payroll or other records containing all the information and data required in 29 CFR 516.2(a).

(b) To maintain records on additional information as specified in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.29 Private entities operating amusements or recreational establishments located in national parks or national forests or on lands in National Wildlife Systems employing employees who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act. [Revised]

To maintain and preserve records required in 29 CFR 516.2, except that the records of regular hourly rate of pay in 29 CFR 516.2(a)(6) shall be required only in a workweek when overtime compensation is due under section 13(b)(29).

Retention period: 2 and 3 years.

516.30 Employers of learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Fair Labor Standards Act. [Revised]

To maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations. In addition, each employer shall segregate on the payroll or pay records the names and required information and data with respect to those learners, apprentices, messengers, handicapped workers and students employed under Special Certificates.

Retention period: 2 and 3 years.

516.31 Employers of industrial homeworkers. [Revised]

To maintain and preserve payroll or other records containing the name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work or payroll records; home address, including zip code; date

of birth if under 19; date on which work is given out to worker, and amount of such work; and other information as specified in section cited.

Retention period: 2 and 3 years.

516.33 Employers subject to Fair Labor Standards Act employing employees in agriculture pursuant to section 13(a)(6) or 13(b)(12) of the Act. [Revised]

(a) To maintain and preserve all the information and data required by 29 CFR 516.2(a) with exceptions.

Retention period: For the entire year following a year in which the employer used more than 500 man-days of agricultural labor in any calendar year.

(b) To maintain and preserve records containing name in full, place where minor lives while employed. If the minor's permanent address is elsewhere, give both address; and date of birth if employing in agriculture any minor under 18 years of age on days where school is in session or on any day if the minor is employed in an occupation found to be hazardous by the Secretary.

Retention period: 2 and 3 years.

516.34 Employers of domestic service employees. [Removed]

553.21 Public agencies engaged in fire protection and law enforcement activities. [Revised; new provisions contained no record retention requirements]

553.50 Public agencies employees subject to the compensatory time and compensatory time off provisions of section 7(o) of the Fair Labor Standards Act. [Added]

To maintain and preserve records containing the basic information and data required in 29 CFR 516.2 and in addition, records on compensatory time.

Retention period: Not specified.

553.51 Public agencies employees paid pursuant to section 7(k) of the Fair Labor Standards Act. [Added]

To maintain and preserve records containing the information and data required by 29 CFR 553.50.

Retention period: Not specified.

800.165 Employers subject to Fair Labor Standards Act. [Removed]

Occupational Safety and Health Administration

29 CFR

1910.68 Employers subject to manlifts standards.

To maintain certification records of findings of manlift inspections.

Retention period: Not specified.

1910.120 Employers engaged in the hazardous waste operations and emergency response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et seq.).

To maintain records of the medical surveillance of (a) all employees who are or may be exposed to hazardous substances or health hazards at or above the established permissible exposure limits for these substances, without regard to the use of respirators, for 30 days or more a year; (b) all employees who wear a respirator; and (c) HAZMAT employees engaged in hazardous waste operations.

Retention period: As specified in 29 CFR 1910.20.

1910.157 Employers subject to fire protection standards.

To maintain evidence of the required hydrostatic testing or portable fire extinguishers.

Retention period: The lesser of until hydrostatically retesting at stated intervals or until taken out of service.

1910.179 Employers subject to materials handling and storage standards.

To maintain monthly maintenance and test inspection reports concerning rated load test results and ropes idle for a month or more.

Retention period: Not specified.

1910.180 Employers subject to crawler locomotive and truck cranes.

To maintain monthly certification inspection reports and records on critical items such as brakes, crane hooks, and ropes.

Ropes shall be kept readily available.

Retention period: Not specified.

1910.181 Employers subject to derrick standards.

To maintain monthly written report readily available on inspections of all running and idle ropes.

Retention period: Not specified.

1910.218 Employers subject to forging machine standards.

To maintain certification records of the periodic and regular maintenance safety checks.

Retention period: Not specified.

1910.252 Employers subject to welding, cutting and brazing standards.

To maintain periodic certification records of maintenance inspections.

Retention period: Not specified.

1910.268 Employers, telecommunications. [Amended]

To maintain on file certification records which include the identity of the person trained, the signature of the employer, or the person who conducted the training, and the date the training was completed.

Retention period: Duration of the employee's employment.

1910.272 Employers in grain handling facilities. [Added]

(a) To maintain on file hot work and entry into bins, silos, and tanks permits.

Retention period: Until completion of the hot work and entry operations.

(b) To maintain certification record of each equipment inspection containing the date of the inspection, the name of the person who performed the inspection and the serial number, or other identifier of the equipment inspected.

Retention period: Not specified.

1910.1001 Employers subject to asbestos, tremolite, anthophyllite, or actinolite standards.

(a) To keep accurate records of all employees exposure measurements.

Retention period: 30 years.

(b) To maintain accurate record of objective data reasonably relied upon in support of exempted operations.

Retention period: Duration of employer's reliance upon objective data.

(c) To maintain accurate record for each employee subject to medical surveillance.

Retention period: Duration of employment plus thirty years.

(d) To maintain all employee training records.

Retention period: 1 year beyond last date of employment of the employee.

1910.1028 Employers subject to benzene standards. [Added]

To maintain accurate employee exposure monitoring, measurement, and medical records.

Retention period: 30 years in accordance with 29 CFR 1910.20. All records shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

1910.1048 Employers subject to formaldehyde standards. [Added]

To maintain accurate employee medical surveillance records and accurate records for employees subject to negative pressure respirator fit testing.

Retention period: (a) Exposure records and determinations shall be kept for at least 30 years; (b) Medical records shall be kept for the duration of employment plus 30 years; (c) Respirator fit testing records shall be kept until replaced by a more recent record.

1910.1100 Employers subject to the asbestos standards.

To maintain medical records and records of any personal or environmental monitoring required by cited section.

Retention period: 20 years.

1910.1200 Employers subject to hazard communication standards. [Revised]

To maintain (a) a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals as well as of containers being shipped to other workplaces; (b) material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to laboratory employees; and (c) copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work areas. Material safety data sheets shall also be made readily available, upon request, to designated representatives and to the Assistant Secretary, in accordance with the requirements of 29 CFR 1910.20(e). The Director shall also be given access to material safety data sheets in the same manner.

1915.99 Employers subject to hazard communication standards. [Added]

See 29 CFR 1910.1200.

1915.113 Employers subject to shackles and hooks standards.

To maintain certification records of tests on all hooks for which no applicable manufacturer's recommendations are available before use.

Retention period: Not specified.

1915.172 Employers of maritime employees.

To maintain certification records of the hydrostatic pressure tests on portable unfired pressure vessels.

Retention period: Not specified.

1917.28 Employers subject to hazard communication standards. [Added]

See 29 CFR 1910.1200.

1918.90 Employers subject to hazard communication standards. [Added]

See 29 CFR 1910.1200.

1926.58 Employers subject to asbestos, tremolite, anthophyllite and actinolite standards.

See 1910.1001.

1926.59 Employers subject to hazard communication standards. [Added]

See 29 CFR 1910.1200.

1926.550 Employers subject to crane and derrick standards. [Amended]

To maintain on file the most recent certification records which include date the crane items were inspected; the signature of the person who inspected the crane items; and a serial number or other identifier, for the crane inspected.

Retention period: Until a new certification is prepared.

1926.552 Employers subject to material hoists, personnel hoists and elevators standards. [Amended]

To maintain on file the most recent certification records which include the date of the inspection and test of all functions and safety devices were performed; the signature of the person who performed the inspection and test; and a serial number, or other identifier, for the hoist that was inspected and tested.

Retention period: Not specified.

1926.903 Owners of trucks used for underground transportation of explosives. [Added]

To maintain on file the most recent certification records which include the date of the inspection; the signature of the person who performed the inspection; and a serial number or other identifier, of the truck inspected.

Retention period: Not specified.

Mine Safety and Health Administration

30 CFR

46.13 States receiving grants for advancement of health and safety in coal and other mines. [Removed]

57.22204 Operators of metal and nonmetal mines. [Added]

To maintain certifications of inspections and pressure recordings of main fan operations.

Retention period: 1 year.

57.22229 Operators of metal and nonmetal mines. [Added]

To maintain certifications of weekly examinations for methane and carbon monoxide and measurements of volume of air velocity in Subcategory 1–A mines.

Retention period: At least one year.

57.22301 Operators of metal and nonmetal mines. [Added]

To maintain certification of calibration tests on atmospheric monitoring systems.

Retention period: At least one year.

INTERIOR DEPARTMENT

Minerals Management Service

30 CFR

211.43 Prospectors or operators mining on Indian lands (except oil, gas, and geothermal). [Added]

To maintain records of all prospecting and mining operations conducted pursuant to a contract, including information on the type, grade or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Records shall be available for examination by the Secretary upon request and shall at all times be available for the purpose of an independent audit upon the request of the Secretary.

Retention period: Not specified.

212.51 Lessees, operators, revenue payors, or other persons holding offshore and onshore Federal and Indian oil and gas leases. [Removed]

212.200 Lessees, operators, revenue payors, or other persons holding offshore and onshore Federal and Indian oil and gas leases.

See 212.51.

TREASURY DEPARTMENT

Monetary Offices

31 CFR

103.22 Financial institutions granting exemptions from the Bank Secrecy Act reporting requirements. [Added]

To keep a record of each transaction granted and the reason therefore in a centralized list.

Retention period: 5 years.

103.32 Financial institutions granting exemptions from the Bank Secrecy Act reporting requirements. [Amended]

To retain statements signed by customer that describe the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption.

Retention period: As long as the customer is on the exempt list and for a period of 5 years following removal of the customer from the bank's exempt list.

103.33 All financial institutions. [Amended]

To maintain either the original or a copy of records of (a) extensions of credit exceeding $10,000, except those

secured by real property; and (b) advice, request, or instruction, received or given to another financial institution or person, regarding a transaction resulting in the transfer of more than $10,000 to a person, account, or place outside the United States.

Retention period: 5 years.

103.34 Banks. [Amended]

To maintain a record of the taxpayer identification number or social security number of persons who open deposit or share accounts after June 30, 1972 where a person is a nonresident alien, the bank shall also record the person's passport number, or a description of some other government document used to vberify identity; and to maintain such other records as indicated in section cited.

Retention period: 2 years for records needed to reconstruct a demand deposit account, or trace a check through the domestic processing system or to supply a description of a deposited check over $100; 5 years for all other records.

103.36 Casinos subject to the Bank Secrecy Act. [Added]

To maintain a record of social security number of the person involved when funds are deposited; account is opened or credit is extended; and other such records as specified in section cited.

Retention period: 5 years.

103.37 Currency dealers or exchangers subject to the Bank Secrecy Act. [Added]

To maintain a record of the tax payer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended and other records as specified in cited section.

Retention period: 5 years.

103.38 All financial institutions. [Added]

To keep records as specified in 31 CFR Part 103.

Retention period: 5 years.

Office of Foreign Assets Control

31 CFR

545.601 Persons engaged in transactions subject to the South Africa Transactions Regulations.

To keep a full record of each transaction subject to the provisions of 31 CFR Part 545, whether effected pursuant to license or not.

Retention period: 2 years after date of transaction.

550.601 Persons engaged in transactions subject to Libyan Sanctions Regulations.

To keep a full and accurate record of each transaction including any transaction effected pursuant to license or otherwise.

Retention period: 2 years after date of such transaction.

560.601 Persons engaged in transactions subject to Iranian Transactions Regulations. [Added]

To maintain full and accurate records of each transaction, regardless of whether such transaction is effected pursuant to license or otherwise.

Retention period: 2 years after the date of transaction.

EDUCATION DEPARTMENT

34 CFR

222.40 Assistance to local educational agencies in federally impacted areas receiving Federal assistance.

To maintain adequate written records to prove its entitlement to whatever amount of payment the LEA received for any fiscal year.

Retention period: Five years after end of each fiscal year for which funds were received or until resolution of all Federal audit or review and necessary adjustments to payments have been made.

222.41 Assistance to local educational agencies in federally impacted areas receiving Federal payment.

See 222.40.

668.12 Institutions of higher education or vocational schools participating in Title IV student financial assistance programs. [Revised; record retention requirements now in 668.18 and 668.23]

668.18 Institutions of higher education participating in Title IV, HEA programs. [Added]

To maintain all records regarding the student's eligibility for and receipt of Title IV, HEA program assistance.

Retention period: 5 years.

668.23 Institutions of higher education participating in Title IV, HEA programs. [Added]

(a) In addition to the records required under appropriate program regulations for each recipient of Title IV HEA Program assistance, and institution shall maintain on a current basis, records regarding:

(1) The student's admission to and enrollment status at, the institution; (2) the program and courses in which the student is enrolled; (3) whether the student is maintaining satisfactory progress in his or her course of study; (4) refunds due or paid the student; (5) job placement if the institution provides a placement service; and (6) student's receipt of financial aid; and (7) verification data.

(b) An institution shall maintain records regarding the educational qualifications of each regular student, whether or not the student receives Title IV HEA Program assistance.

(c) An institution at which only certain programs are eligible shall maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s) whether or not the student received Title IV HEA Program assistance.

Retention period: 5 years.

673.32 Institutions of higher education participating in the Income Contingent Loan Program. [Added]

(a) To maintain on a current basis financial records that reflect all program transaction; general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. (b) To maintain on file all ICL applications for those students it reports on the program and fiscal report. (c) To keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, includingall accounting records and original and supporting documents necessary to document how the funds are spent.

Retention period: (a) For an award year—5 years after it submits its program and fiscal report except for loan records and audit questions. (b) Loan records—repayment history for each borrower including cancellation and deferment requests for at least 5 years from the date of the loan's final repayment or cancellation. (c) Original promissory notes and repayment of schedules in a locked, fireproof container until the loan obligations are satisfied. (d) Audit questions—until resolution.

Note: An institutions may keep records on microfilm or in computer imput.

674.19 Institutions of higher education participating in the Perkins Loan Program. [Revised]

(a) To establish and maintain on a current basis (a) financial records that reflect all program transactions; (b) general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity; (c) program and fiscal records that (1) are reconciled at least monthly; (2) identify each student's account and status; (3) show the eligibility of each student

aided under the program; and (4) show how the need was met for each student; (d) to maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP); and (e) to maintain all records supporting its application for funds.

Retention period: (a) Except for loan, records and records of expenditures questioned in audits or Departmental program reviews, for an award year—5 years after it submits its FISAP. (b) Repayment records including cancellation and deferment requests—For at least 5 years from the date on which a loan is assigned to the Department of Education, cancelled or repaid. (c) Records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

674.47 Institutions of higher education participating in the Perkins Loan Program. [Added]

To maintain in files appropriate documentation to support the amount of collection costs charged to the Fund. The documentation must be maintained in accordance with 42 CFR 674.19.

676.19 Institutions of higher education participating in the Supplemental Educational Opportunity Grants (SEOG) Program. [Revised]

(a) To establish and maintain on a current basis financial records that reflect all program transactions. (b) To maintain general ledger control accounts and related subsidiary accounts that identify program transaction and separate those transactions from all other insitutional financial activity. (c) To maintain program and fiscal records that (1) are reconciled at least monthly; (2) identify each student's account and status; and (3) show how the need was met for each student. (d) To maintain all records supporting applications for funds.

Retention period: (a) Keep intact and accessible records of the application, the receipt,and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent. (b) Except for audit questions, keep records for an award year for five year after submittal of FISAP for that year. (c) Keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

682.211 Lenders participating in the Guaranteed Student Loan and Plus Programs.

To maintain evidence in the borrower's loan file that the forbearance has been agreed to by both the lender and the borrower.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write-off procedures.

682.405 Guarantee agencies having a reinsurance agreement for PLUS loans and GSLP loans under section 682.404 entering into a supplemental reinsurance agreement for one of the programs.

To maintain separate records for each program sufficient to enable the Secretary to determine the reinsurance percentage payable by the Secretary on reinsurance claims and the Secretary's equitable share of borrower payments.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write-off procedures.

682.406 Guarantee agencies. [Revised, 1986; new amendment contained no record retention requirements]

682.408 Guarantee agencies and participating lenders of low interest loans to students in post secondary schools. [Revised, 1986; new amendment contained no record retention requirements]

682.414 Guarantee agencies and participating lenders in the Guaranteed Student Loan and Plus Programs.

(a) *Guarantee Agencies.* To keep records required by cited section and such other records as are necessary to document fully the accuracy of reports and the right of the agency to receive or retain payment made by the Secretary.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write-off procedures.

(b) *Participating agencies.* To keep complete and accurate records of each loan that it holds permitting readily identification of the current status of each loan.

Retention period: Not less that 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. In particular cases, the Secretary or the guarantee agency may require the retention of records beyond this minimum period.

682.515 Lenders under the FISLP and Federal Plus Programs.

To keep complete and accurate records of each loan that it holds, including but not limited to the records described in section 682.414(a)(3)(ii).

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. In particular cases, the Secretary may require the retention of records beyond this minimum period.

682.519 Lenders under the Federal Insured Student Loan Program. [Revised, 1986; record retention requirements now in 682.515].

682.610 Schools participating in the Guaranteed Student Loan and Plus Program.

To maintain all necessary records as set forth in 34 CFR Parts 668 and 682.

Retention period: 5 years following the last day of the period for which the loan was intended.

682.612 Institutions of higher education participating in the Guarantee Student Loan Program. [Revised, 1986; record retention requirements now in 682.610]

683.35 Guarantee agencies participating in the PLUS program. [Removed, 1986]

683.37 Guarantee agencies. [Removed, 1986]

683.68 Lenders participating in the Federal PLUS Program. [Removed, 1986]

683.91 Participating schools in the Federal PLUS Program. [Removed, 1986]

690.82 Institutions of higher education participating in the Pell Grant Program. [Amended]

To maintain adequate records (including those related to verification) which include fiscal and accounting procedures, audits, Student Aid Reports, eligibility of each student, amount and date of each payment/overpayment, cost of attendance, enrollment status and enrollment period.

Retention period: 5 years after the award year has ended.

AGRICULTURE DEPARTMENT

Forest Service

36 CFR

215.5 Grantees operating Youth Adult Conservation Corps (YACC) Programs. [Removed]

223.48 Timber purchasers.

To maintain records of such transactions involving unprocessed timber.

Retention period: 3 years after the sale is terminated.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR

1206.92 Recipients of Federal grants for collecting and publishing historical documents.

To maintain accounting records relating to all expenditures for each projects in accordance with general accepted accounting practices.

Retention period: During grant period and for 3 years thereafter in accordance with OMB Circular A-110 and Federal Management Circular 74-7.

VETERANS ADMINISTRATION

38 CFR

17.51e Public or private institutions furnishing adult day health care. [Added]

To maintain individual client records which include a treatment plan, periodic reevaluation progress notes, discharges summaries, and other usual and customary information normally included in a client records.

Retention period: Not specified.

POSTAL SERVICE

39 CFR

Part 111 Second-class mailers.

To maintain records of requests for a publication which are obtained in conjunction with subscriptions or requests for another publication or other publications in such a manner that individual requests for the publications, by titles, can be substantiated and verified.

Retention period: Not specified, (incorporation by reference DMM 422.6).

Part 111 Second-class mailers.

To maintain records for subscriptions to publications which are obtained in conjunction with subscriptions to another publication or other publications in such a manner that individual subscriptions to each publication, by title, can be substantiated and verified.

Retention period: Not specified, (incorporation by reference DMM 422.221).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR

4.9 State agencies participating in relocation assistance program.

To maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this Part 4.

Retention period: 3 years after each owner of a property and each person displaced from the property receives final payment.

4.105 State agencies participating in relocation assistance programs. [Revised, 1986; record retention requirements now in 4.9].

51.102 States conducting public hearings on air pollution control implementation plans.

To maintain a record of each hearing. The record must contain, at a minimum, a list of witnesses together with the text of each presentation.

Retention period: Not specified.

60.49b Owners or operators of industrial-commercial-institutional steam generating facilities.

(a) If monitoring of steam generating unit operating condition plan is approved, to maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan

(b) To maintain records of the amounts of all fuels fired during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for each calendar year.

(c) To maintain records of the nitrogen content of the oil combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis.

(d) To maintain records of opacity for facilities subject to the opacity standard under 40 CFR 60.43b.

(e) To maintain records on the calendar date, the average hourly nitrogen oxides emission rates measured or predicted and other information as specified in section cited for each steam generating unit operating day for facilities subject to nitrogen oxide standards under 40 CFR 60.44(b).

Retention period: 2 years following date of record.

60.113a Owners or operators of volatile organic liquid storage vessels (including petroleum liquid storage vessels). [Added]

To maintain records of each gap measurement at the plant.

Retention period: At least 2 years following the date of measurement.

60.115b Owners or operators of volatile organic liquid storage vessels (including petroleum liquid storage vessels.) [Added]

(a) To maintain a record of each inspection performed identifying the storage vessel on which the inspection was performed; the date the vessel was inspected; and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

Retention period: At least 2 years.

(b) To keep a record of each gap measurement performed as required by 40 CFR 60.113(b).

Retention period: 2 years.

(c) After installing control equipment in accordance with 40 CFR 60.112b(a)(3) or (b)(1) (closed vent system and control device other than a flare), to keep a copy of the operating plan and record of the measured values of the parameters monitored in accordance with 40 CFR 60.113b(c)(2).

60.116b Owners or operators of volatile organic liquid storage vessels (including petroleum liquid storage vessels). [Added]

(a) To keep readily accessible records showing the dimension of the storage vessel and an analysis showing the capacity of the storage vessel.

Retention period: For the life of the source.

(b) To maintain a record of the VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period.

Retention period: At least 2 years.

60.343 Owners or operators of lime manufacturing plants. [Added]

To maintain records of any 6-month average that is in excess of the emissions specified in 40 CFR 60.342.

Retention period: Not specified.

60.344 Owners or operators of lime manufacturing plants. [Added]

See 40 CFR 60.343.

60.545 Owners or operators of undertread cementing operations, sidewall cementing operations, green tire spraying operations where organic solvent-sprays are used or Michelin-B operations that use carbon adsorbers. [Added]

To maintain continuous records of the organic concentration level of the carbon bed exhaust.

Retention period: 2 years.

60.545 Owners or operators of affected facilities that use catalytic incinerators in the rubber tire manufacturing industries. [Added]

To maintain continuous records of the temperature before and after the catalyst bed for catalytic incinerators.

Retention period: 2 years.

60.545 Owners or operators of affected facilities that use thermal incinerators in the rubber tire manufacturing industries. [Added]

To maintain continuous records of the thermal incinerator combustion temperature.

Retention period: 2 years.

60.545 Owners or operators of undertread cementing operations, sidewall cementing operations, green tires spraying operations where organic solvent-based sprays are used, Michelin-A operations, Michelin-B operations, or Michelin-C automatic operations seeking to comply with specified kg/mo uncontrolled VOC use limit. [Added]

To maintain records of monthly VOC use and the number of days in each compliance period.

Retention period: 2 years.

60.545 Owners or operators of affected facilities in the rubber tire manufacturing industries required to conduct monthly performance tests as required by 40 CFR 60.543(b)(1). [Added]

To maintain records of the results of the monthly tests.

Retention period: 2 years.

Part 60, Appendix F Owners or operators of any building, structure, facility, or installation emitting air pollutants. [Added]

To retain records of all measurements from the CEM as required by 40 CFR 60.7.

Retention period: At least 2 years.

61.55 Owners or operators of mercury-cell chlor-alkali plants. [Added]

(a) To maintain records of the results of the emission monitoring.

Retention period: 2 years.

(b) To maintain at the chlor-alkali plant records of the certifications and calibrations.

Retention period: Certification—For as long as the device is used for this purpose. Calibration—For a minimum of 2 years.

(c) To maintain daily records of all leaks and spills of mercury.

61.67 Owners or operators of plants which produce vinyl chloride.

To maintain records of emission test results and other data needed to determine emissions.

Retention period: 3 years.

61.70 Owners or operators of plants which produce vinyl chloride.

To maintain records of all data needed to determine average emissions.

Retention period: 3 years.

61.71 Owners or operators of plants which produce vinyl chloride.

To maintain records of: (a) The leaks detected by the vinyl chloride monitoring system; (b) leaks detected during routine monitoring with the portable hydrocarbon detector and the action taken to repair the leaks; and (c) emission monitoring. To also keep a daily operating record for each polyvinyl chloride reactor, including pressures and temperatures.

Retention period: 3 years.

61.165 Owners or operators of glass melting furnances that use commercial arsenic as raw materials.

To maintain records to meet the emission limit requirements.

Retention period: 2 years.

61.176 Owners or operators of copper converters.

To maintain records of the visual inspections, maintenance, and repairs performed on each secondary hood systems.

Retention period: 2 years.

61.185 Owners or operators of arsenic trioxide and metal arsenic production facilities.

To maintain records of all measurements, maintenance and repairs made to the continuous monitoring system or monitoring device, ambient concentrations at all sampling sites, other data needed to determine such concentrations and other information as specified in section cited.

Retention period: 2 years.

85.1507 Certificate holders importing nonconforming motor vehicles and motor vehicle engines into the U.S. [Added]

To maintain adequately organized and index records, correspondence and other documents relating to the certification, modification, test, purchase, sale, storage, registration and importation of that vehicle or engine, including but not limited to specified information required in section cited.

Retention period: 6 years from the date of entry of a nonconforming vehicle or engine imported by the certificate holder.

104.25 Manufacturers, importers and processors of 11-aminoun-decanoic acid. [Added]

To retain documentation of information contained in significant new use reports.

Retention period: 5 years from date of submission of the report.

157.36 Registrants of pesticide products required to be in child-resistant packagings.

To maintain records on description of the packages, copies of certification statements required by section 157.34, and other information as specified in the section.

Retention period: As long as the child-resistant packaging is in effect.

262.57 Primary exporters of hazardous waste.

To maintain copies of each notification of intent to export; each EPA Acknowledgement of Consent; each confirmation of delivery of the hazardous waste from consignee; and each annual report.

Retention period: 3 years.

264.71 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities (hazardous waste from a rail or water bulk shipment) transporter.

To keep a copy of each shipping paper and manifest signed by the owner or operator for shipments delivered by rail or water (bulk shipment).

Retention period: 3 years from date of delivery.

264.73 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities.

To keep a written operating record of the facility.

Retention period: Until at least closure of the facility; monitoring data at disposal facilities: Throughout the post-closure period; records for inspections: 3 years.

265.73 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities.

See 264.73.

704.33 Persons who manufacture, import or process P-tert-butylbenzoic acid (P-TBBA), p-tert-butyltoluene (P-TBT) and p-tert-butylbenzaldehyde (P-TBB).

To maintain documentation of information contained in report on data under section 8(a), including information on chemical identity and structure, production, use, exposure, disposal, and health and environmental effects.

Retention period: 5 years from the date of submission of the report.

704.105 Persons who propose to manufacture, import, or process hexafluoropropylene oxide (HFPO) for use as an intermediate in the manufacture of fluorinated substances in an enclosed process after Dec. 10, 1987. [Added]

To retain documentation of information in the Preliminary Assessment Information Manufacturer's Report.

Retention period: 5 years from date of submission of the reports.

710.37 Manufacturers and importers of certain substances included in the Toxic Substances Control Act (TSCA) inventory.

To maintain records that document any information reported to EPA. For substances that are manufactured or imported at less than 10,000 pounds annually, volume records must be maintained as evidence to support a decision not to submit a report.

Retention period: 4 years beginning with effective date of that reporting period.

720.78 Manufacturers and importers of new chemical substances subject to the provisions of the Toxic Substances Control Act.

(a) To maintain documentation of information reviewed and evaluated to determine the need to make any notification of risk.

Retention period: 5 years.

(b) To maintain documentation of the nature and method of notification concerning the health and environmental effect of a substance including copies of any labels or written notices used.

Retention period: 5 years.

(c) To maintain documentation of prudent laboratory practices used instead of notification and evaluation.

Retention period: 5 years.

(d) To maintain the names and addresses of any persons other than the manufacturer or importer to whom the substance is distributed, the identity of the substance to the extent known, the amount distributed and copies of notification required under section 720.36(c)(2).

Retention period: 5 years.

(e) Persons manufacturing or importing substance in quantities greater than 100 kilograms per year must maintain records of the identity of the substance to the extent known, the production volume of the substance, and the disposition of the substance.

Retention period: 5 years.

761.80 Processors and distributors of PCBs and PCB items.

To maintain records of activities.

Retention period: 5 years.

761.80 Processors and distributors of PCB in small quantities for research and development having class exemption.

To maintain records of PCB activities.

Retention period: 5 years.

761.125 Owners of spilled PCB's. [Added]

(a) At the completion of cleanup, to document the cleanup with records and certification of decontamination.

Retention period: 5 years.

(b) If cleanup is delayed because of adverse weather conditions, lack of access due to physical impossibility or emergency operating conditions, to maintain records documenting the fact that circumstances precluded rapid response.

Retention period: Not specified.

763.93 Local educational agencies identifying asbestos-containing materials in schools. [Added]

To maintain in its administrative office a complete updated copy of the management plan. In addition, to maintain records on response actions, operations and maintenance, and training and periodic surveillance as part of the management plan.

Retention period: 3 years.

763.94 Local educational agencies identifying asbestos-containing materials in schools. [Added]

To maintain records on response actions, operations and maintenance, training and periodic surveillance, and management plans.

Retention period: 3 years.

763.121 Employers of employees covered by the EPA asbestos abatement worker protection rule. [Revised]

(a) To maintain records of objective data for exempted data when relying on objective data that demonstrate that products made from or containing asbestos are not capable of releasing fibers of asbestos in concentrations at or above the action level under the expected conditions of processing, use, or handling to exempt such operations from the initial monitoring requirements.

Retention period: Duration of the employer's reliance upon such objective data.

(b) To maintain records of all measurements taken to monitor employee exposure to asbestos.

Retention period: At least 30 years.

(c) To maintain employee medical surveillance records.

Retention period: Duration of employee employment plus 30 years.

(d) To maintain all employee training records.

Retention period: 1 year beyond the last date of employment.

763.121 Appendix C Employers of employees covered by the EPA asbestos abatement worker protection rule. [Added]

To maintain summary of all qualitative fit test results.

Retention period: 3 years.

Part 763, Appendix A to Subpart E Laboratories which analyze asbestos bulk samples and asbestos air samples. [Added]

To maintain log of all pertinent sampling information and appropriate logs or records verifying compliance with the mandatory quality insurance procedures.

Retention period: Not specified.

Part 763, Appendix D to Subpart E Transporters of asbestos waste. [Added]

To maintain as evidence of receipt at the disposal site a copy of the chain of custody form signed by the disposal site operator.

Retention period: Not specified.

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

42 CFR

57.712 Public or nonprofit private schools of medicine or osteopathy receiving grants for physician assistance training programs. [Redesignated as 57.511 and amended]

To maintain records to meet the requirements of 45 CFR Part 74 and section 705 of the Public Health Service Act, as amended, concerning recordkeeping, audit, and inspection.

Retention period: 3 years or until resolution of all issues arising from claim, negotiation, audit, or other action.

60.35 Health Education Assistance Loan (HEAL) Program lenders. [Added]

In loan collection, to maintain in the borrower's file a record of each attempt to contact and each actual contact. To also maintain written documentation of all skip-tracing activities.

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower. In particular cases the Secretary may require the retention of records beyond the minimum period.

60.42 Health Education Assistance Loan (HEAL) Program lenders. [Amended]

To maintain complete and accurate records of each HEAL loan, organized in a way to permit ready identification of the current status of each loan. The required records include the loan application; the original promissory note; the repayment schedule agreement; evidence of each disbursement of loan proceeds; notices of changes in a borrower's address and status as a full-time student; evidence of the borrower's eligibility for a deferment; the borrower's signed statement describing his or her rights and responsibilities in connection with a HEAL loan; the documents required for the exercise of forbearance; documentation of the assignment of the loan; and other records as specified in the section cited.

Retention period: 5 years following the date the loan is repaid in full by the

borrower. In particular cases, the Secretary may require the retention of records beyond this minimum period.

60.51 HEAL schools. [Added]

To maintain in its general office records the criteria used to develop each standard student budget. To also maintain documentation in the borrower's record to support the basis for any adjustments to the standard student budget and the need analysis information.

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower. In particular cases, the Secretary may require the retention of records beyond the minimum period.

60.56 Schools participating in the HEAL program. [Amended]

To maintain an easily retrievable record on each student who has a HEAL loan containing the following information: Student's name, address, academic standing and period of attendance; name of the HEAL lender, amount of the loan, and the period for which the HEAL loan was intended; if a noncitizen, documentation of the student's alien registration status; amount and source of other financial assistance received by the student for the period for which the HEAL loan was made; date the school receives the HEAL check or draft and the date it either gives it to the student or returns it to the lender; date the school disburses the loan to a student; date the school signs the loan check or draft; amount of tuition, fees, and other charges paid by the student to the school for the academic period covered by the loan, the dates of payment and other records as specified in the cited section.

Retention period: 5 years following the date the student graduates, withdraws or fails to enroll as a full-time student.

60.61 HEAL schools. [Added]

To maintain documentation of the criteria used to develop the school's standard student budgets in the school's general records readily available for audit purposes. Also to maintain in each HEAL borrower's record a copy of the standard budget which was actually used in the determination of the maximum loan amount approved for the student as described in 42 CFR 60.51.

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower. In particular cases the Secretary may require the retention of records beyond the minimum period.

122.114 Grants to Health Systems Agencies. [Removed]

122.211 Grants to Health Systems Agencies. [Removed]

123.109 State Health Planning and Development Agencies. [Removed]

123.208 State Health Planning and Development Agencies receiving grants to assist in meeting operation costs. [Removed]

124.510 Certain public and private nonprofit health care facilities receiving Federal assistance under Title VI or XVI of PHS complying with reasonable volume of uncompensated services to persons unable to pay assurance. [Revised]

To maintain and make available for public inspection consistent with personal privacy and provide to the Secretary on request, any records necessary to document its compliance with the reasonable volume of uncompensated services to persons unable to pay requirements in any fiscal year including any documents from which the information required to be reported was obtained; accounts which clearly segregate uncompensated services from other accounts; and copies of written determinations of eligibility.

Retention period: 3 years after submission of the report required by 42 CFR 124.509(a)(1), except where a longer period is required by the Secretary, or until 180 days following the close of the Secretary's assessment investigation under 42 CFR 124.511(b), whichever is less.

Health Care Financing Administration

42 CFR

405.406 All providers of services (hospitals, skilled nursing facilities, home health agencies, and clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and/or speech pathology services) which have filed agreements to participate in the health insurance for the aged and disabled program. [Removed, 1986]

405.2133-405.2160 Suppliers of End-Stage Renal Disease (ESRD) services. [Amended]

To maintain the following: Personnel records on all employees including health status reports, resumé of training and experience, and job descriptions; records reflecting the content of, and attendance at, employee training sessions; written long-term programs and patient care plans for each patient; medical records on all patients (i.e., those receiving care within the facility and those self-care or home dialysis patients for whom the facility has assumed responsibility); records of equipment test results and maintenance; an emergency preparedness plan; and, in the case of renal dialysis facilities, documentation from a renal dialysis center to the effect that patients from the facility will be accepted and treated in emergencies.

Retention period: Medical records, for a period of time not less than that determined by the State statute governing records retention or statute of limitations; or in the absence of a State statute, 5 years from the date of discharge, or, in the case of a minor, 3 years after the patient becomes of age under State law, whichever is longer.

413.20 All providers of services (hospitals, skilled nursing facilities, home health agencies and clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and/or speech pathology services) which have filed agreements to participate in the health insurance for the aged and disabled program.

To maintain sufficient financial records and statistical data for proper determination of costs payable under the program. Such records shall include but not be limited to matters of provider ownership, organization, and operation; fiscal, medical, and other recordkeeping systems; Federal income tax status; asset acquisition, lease, sale or other actions; franchise or management arrangements; patient service charge schedules; matters pertaining to costs of operation; amounts of income received by source and purpose; and flow of funds and working capital.

Retention period: Not specified.

413.174 End-Stage Renal Disease (ESRD) facilities.

To keep adequate cost data and cost finding for outpatient maintenance dialysis.

Retention period: Not specified.

441.208 Medicaid agencies; limitation on Federal funds for abortions. [Added]

To maintain copies of the certifications and documentation as specified in 42 CFR 441.203.

Retention period: For 3 years under the recordkeeping requirements at 45 CFR 74.20.

447.333 State agencels administering plans for medical assistance. [Added]

To maintain data, mathematical or statistical computations, comparisons, and any other pertinent records to support its findings and assurances concerning payment methodology for prescription drugs.

Retention period: Not specified.

482.24 Hospitals participating in Medicare.

To maintain a medical record for each inpatient and outpatient.

Retention period: 5 years.

482.26 Hospitals participating in Medicare.

To maintain records of radiologic services.

Retention period: 5 years.

482.53 Hospitals participating in Medicare.

To maintain records on nuclear medicine services including copies of nuclear medicine reports and records of the receipt and disposition of radiopharmaceuticals.

Retention period: 5 years.

482.61 Psychiatric hospitals participating in Medicare.

To maintain special medical records which include development of assessment/diagnostic data, treatment plan, recording progress and discharge planning and discharge summary.

Retention period: 5 years.

491.10 Rural health clinics qualifying for reimbursement under Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Act). [Added]

For each patient receiving health care services to maintain records which include, as applicable, identification and social data, evidence of consent forms, pertinent medical history, assessment of the health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient; and other such records as specified in section cited.

Retention period: For at least 6 years from date of last entry and longer if required by State statute.

INTERIOR DEPARTMENT

Bureau of Land Management

43 CFR

3162.7-4 Operators on Federal and Indian (except Osage) oil and gas leases. [Amended]

(a) To maintain records of seal numbers used and which valves or connections, seals were used on as well as when seals were installed and removed during production and sale phases.

(b) To retain records of inspection of all leases, units, and communitized areas to determine site security and production volumes.

Retention period: (a) and (b) 6 years.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR

222.6 States implementing superfund cost sharing associated with the administration of temporary and permanent relocation activities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). [Added]

(a) To maintain documentation for all items related to the relocation that it plans to use as a matching contributions.

(b) To maintain documentation of the basis, by which the state determines the value of the match as part of the official record.

Retention period: 10 years.

361.8 States participating in the Earthquake Hazards Reduction Assistance Program. [Added]

(a) To maintain as part of the official record, a copy of the documentation of the basis by which the value of an in-kind was determined.

(b) To maintain all records pertaining to matching contributions.

Retention period: For a 3 year period after the date of submission of the final financial report required by the CCA or date of audit, whichever comes first.

HEALTH AND HUMAN SERVICES DEPARTMENT

Office of Family Assistance

45 CFR

205.60 State agencies administering medical assistance programs.

(a) To maintain records on applicants and recipients, program operation, fiscal and statistical information, and other records necessary for reporting and accountability.

Retention period: As prescribed by the Secretary.

(b) To maintain records on applicants and Office of Family Assistance recipients, program operation, fiscal and statistical information, and other records necessary for reporting and accountability.

Retention period: As prescribed by the Secretary.

LEGAL SERVICES CORPORATION

45 CFR

1612.11 Recipients of LSC funds. [Added]

To maintain separate records documenting the expenditure of funds for legislative activities. These records shall document the direct and indirect expenses, and the sources of the funds supporting all legislative activities, regardless of the sources of the funds employed.

Retention period: Not specified.

FEDERAL MARITIME COMMISSION

46 CFR

581.10 Ocean common carriers or conferences. [Added]

To maintain service contract records in an organized, readily accessible or retrievable manner.

Retention period: For a period of five years from the termination of each contract.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR

15.312 Holders of grants of authorization of perimeter protection system. [Added]

To maintain a list of all installations and records of measurements.

Retention period: Not specified.

21.201 Licensees of radio stations in the domestic public-fixed radio services. [Revised]

To maintain at the station the name, address and telephone number of the custodian of the station license if such license or authorization is not maintained at the station.

Retention period: Not specified.

22.117 Licensees in the public mobile radio services. [Added]

To retain as part of the records a copy of a completed table MOB III found in FCC Form 401.

Retention period: Not specified.

42.4 Communication common carriers.

To maintain at its operating company headquarters a master index of records. The master index shall identify the records retained, the related retention period, and the locations where the records are maintained.

Retention period: Various.

42.6 Communication common carriers.

To maintain telephone toll records.

Retention period: 18 months.

42.7 Communication common carriers.

To prepare, maintain and preserve records cited in 42.4 and 42.6 in such a manner that they are easily accessible, identified, located, and reproduced in readable form without loss of clarity.

Retention period: Various.

42.8 Communication common carriers. [Removed, 1986]

42.9 Communication common carriers. [Removed, 1986]

73.1225 Licensees of TV broadcast stations.

(a) All broadcast stations: Equipment performance measurements required by sections 73.1590 and 73.1690; written designations for chief operators and when applicable, the contracts for chief operators engaged on a contract basis; applications for modification of the transmissions systems; informal statements or drawings depicting any transmitter modifications; and stations logs and special technical records.

(b) Commercial and noncommercial AM stations: Copy of the most recent antenna or commonpoint impedance measurements; copy of the most recent field strength measurement made to establish performance of directional antennas; and copy of the partial directional antennas.

Retention period: Not specified.

73.3526 Permittees or licensees of AM, FM, or TV stations in the commercial broadcast services.

(a) To maintain copies of every application tendered for filing all exhibits, letters, and all amendments, all correspondence between FCC and applicants, every ownership report or supplemental ownership report and every annual employment record.

Retention period: Various.

(b) To maintain records concerning broadcasts by candidates for public office as required by section 73.1940.

Retention period: 2 years.

(c) To maintain a copy of the Public and Broadcasting—A Procedure Manual (see FCC 74-942, 39 FR 32288, September 5, 1974).

Retention period: Indefinitely.

(d) To maintain letters received from members of the public as required by section 73.1202.

Retention period: 3 years.

(e) To maintain a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period.

Retention period: Term of the license—5 and 7 years for TV and radio, respectively.

(f) To place in the station's local public inspection file a statement certifying compliance when applying for renewal of license.

Retention period: As long as the application to which it refers.

76.311 Operators of cable television systems. [Removed, 1986]

80.405 Licensees of radio stations in the maritime services.

To retain the most recently expired ship station license in the station records.

Retention period: Until the first Commission inspection after the expiration date.

80.409 Licensees of radio stations in the maritime services.

To maintain station logs.

Retention period: (1) 1 year from date of entry and when applicable for such additional periods as required by the following: (a) Logs relating to distress situation or disaster—3 years from date of entry; (b) logs involving an investigation by the Commission—until the licensee is specifically authorized in writing to destroy them; (c) logs relating to any claim or complaint—until the claim or complaint has been satisfied or barred by statute limiting the time for filing suits upon such claim; and (d) ship radiotelephone logs and applicable radiotelephone log entries—in their original form for at least 30 days from date of entry.

80.413 Licensee of on-board station in the maritime services.

To maintain equipment records which show the ship name and identification of the on—board station; the number and type of repeater and mobile units used on—board the vessel; and the date and type of equipment which is added or removed from the on—board station.

Retention period: Not specified.

81.115 Licensees of radio stations on land in the maritime services and Alaska fixed service. [Removed, 1986]

81.194 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed, 1986]

81.224 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed, 1986]

81.314 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed, 1986]

81.352 Licensees of limited coast stations or marine-utility stations used on shore. [Removed, 1986]

81.352 Licensees of limited coast stations and marine-utility stations. [Removed, 1986]

81.603 Licensees of fixed stations associated with the maritime mobile service marine fixed stations. [Removed, 1986]

81.704 Licensees of Alaska public fixed stations. [Removed, 1986]

83.111 Licensees of radio stations on shipboard in the maritime services. [Removed, 1986]

83.115 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.184 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.368 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.405 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.457 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.459 Licensees of ship radiotelegraph stations provided for compliance with part II, title III of the Communications Act or the radio provisions of the Safety Convention. [Removed, 1986]

83.462 Licensees of ship radiotelegraph stations provided for compliance with part II, title III of the Communications Act or the radio provisions of the Safety Convention. [Removed, 1986]

83.463 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.473 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.548 Licensed operators; radiotelephone installations provided for compliance with the Great Lakes Radio Agreement. [Removed, 1986]

83.819 Licensees of radio stations on shipboard on the maritime services authorized for use-of-on-board communications. [Removed, 1986]

GENERAL SERVICES ADMINISTRATION

48 CFR

52.222-4 Contractors subject to the Contract Work Hours and Safety Standards Act—Overtime Compensation—General contracts clause.

To maintain payroll and basic payroll records during the course of contract work.

Retention period: 3 years from contract completion.

DEFENSE DEPARTMENT

48 CFR

252.208-7000 Contractors with contracts containing the required sources for miniature and instrument ball bearings clause.

To maintain compliance records.

Retention period: 3 years from date of final payment.

252.208-7001 Contractors with contracts containing required sources for precision components for mechanical time devices clause.

To maintain compliance records.

Retention period: 3 years from the date of final payment.

252.208-7003 Contractors with contracts containing required sources for high carbon ferrochrome.

See 252.208-7000.

252.208-7005 Contractors with contracts containing required sources for forging and welded shipboard anchor chain items.

See 252.208-7000.

252.217-7103 Contractors with contracts containing the job orders and compensation clause.

To keep records showing the cost of performing work on a vessel.

Retention period: Not specified.

252.217-7104 Contractors with contracts containing inspection and manner of doing work clause.

To keep records of all inspection work.

Retention period: 90 days after completion of all work required by the job order.

252.222.7000 Contractors with fixed price contracts containing potential application of the Service Contract Act, as amended clause.

To maintain pertinent books, documents, papers, and records.

Retention period: 3 years after final payment

252.236-7005 Contractors subject to the salvage materials and equipment contracts clause.

To maintain adequate property control records for all materials or equipment specified to be salvaged.

Retention period: Not specified.

252.237-7415 Contractors subject to provisions of cost or pricing data—common carrier contracts clause.

To maintain such books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the direct and indirect cost which were the basis for the pricing of the CSA.

Retention period: 3 years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge or until the expiration of the period of contingent liability.

ENERGY DEPARTMENT

48 CFR

970.3102-7 Management and operating contractors-lobbying costs. [Revised]

To maintain and make available to the Government records and documents sufficient to identify the costs and clearly established the nature and purpose of the legislative liaison activity to which the costs relate.

Retention period: Not specified.

COMMERCE DEPARTMENT

48 CFR

1352.217-90 Contractors subject to the inspection and manner of doing work clause. [Added]

To maintain complete records of all inspection work.

Retention period: During the performance of the contract and for a period of 2 years after delivery of the vessel to the Government.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR

1852.222-4 Contractors having contracts with Contract Work Hour and Safety Standards Act-overtime compensation clause.

To maintain payroll and basic payroll records during the course of the contract work for all laborers and mechanics, including guards and watchmen, working on the contract work.

Retention period: 3 years from completion of the contract.

TRANSPORTATION DEPARTMENT

Office of the Secretary

49 CFR

24.9 State and local agencies participating in the uniform relocation assistance and real property acquisition Federal and federally assisted programs. [Added]

To maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with applicable regulations.

Retention period: For at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled.

Research and Special Programs Administration

49 CFR

192.225 Welders of steel materials to be used in pipelines.

To keep records of welding procedures that have been qualified under either section IX of the ASME Boiler and Pressure Vessel Code or section 2 of API Standard 1104.

Retention period: As long as procedure is used

195.214 Welders.

To maintain records in detail of the welding procedures, including the results of the qualifying tests.

Retention period: As long as procedures are used.

Coast Guard

49 CFR

421.30 Nonprofit firms or associations designated to certify containers for international transport under Customs seal. [Removed, 1986]

National Highway Traffic Safety Administration

49 CFR

585.6 Passenger car manufacturers.

To maintain records of the Vehicle Identification Number and type of automatic restraint for each passenger car which is reported under section 585.5.

Retention period: Until December 31, 1991.

INTERSTATE COMMERCE COMMISSION

49 CFR

1249.5 Motor carriers of property. [Added]

To retain books, records, and carrier operating documents as prescribed in 49 CFR Part 1220, Preservation of Records.

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

50 CFR

301.13 Operators of vessels five (5) net tons or greater engaged in fishing for Pacific halibut. [Revised]

To keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

Retention period: 2 years.

301.14 Persons purchasing or receiving Pacific halibut. [Added]

To maintain records of each such purchase or receipt on State or Provincial fish tickets, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

Retention period: 2 years from the date the fish tickets are made.

611.70 Operators of foreign fishing vessels.

To maintain such records as daily catch, daily receipt, transfer, and daily cumulative receipts logs and/or any other reports required in this section.

Retention period: Not specified.

611.80 Operators of foreign fishing vessels. [Amended]

In addition to maintaining records as required by 50 CFR 611.4 and 611.9, to maintain accurate data relating to fishing operations as specified in cited section.

611.81 Operators of foreign fishing vessels.

In addition to the recordkeeping requirements of 611.9, to keep a daily log containing following information: The number of each species caught and retained, the number of each species caught and released, the number of each species released alive, and the number of hooks set by type of bait.

Retention: See 611.9.

611.82 Operators of foreign fishing vessels. [Amended]

See 611.80.

611.90 Operators of foreign fishing vessels. [Revised]

In addition to maintaining records as required by 50 CFR 611.9, to maintain records on catch and effort statistics.

Retention period: See 611.9.

611.92 Operators of foreign fishing vessels. [Amended]

See 611.4 and 611.9.

630.5 Owners or operators of vessels of the United States who have been issued a permit to fish for or land swordfish.

To maintain daily fishing records on forms provided by the Center Director according to instructions.

Retention period: Monthly.

641.5 Headboat owners and operators fishing for or landing reef fish in the Gulf of Mexico EEZ or in adjoining States waters. [Added]

To maintain fishing records for each trip, or a portion of such trips as specified by the Centeer Director, on forms provided by the Center Director or his designee.

Retention period: Not specified.

651.22 Persons holding Federal groundfish permits in the Northwest Atlantic participating in the optional settlement program. [Revised]

To record all fish landed during the participation period.

Retention period: Throughout the participation period.

653.5 Owners or operators of vessels fishing in the non-directed commercial red drum fisheries.

To maintain logbook containing the name and address of owner or operator; name and official number of vessel and vessel's home port; port and time of departure and arrival; pounds of red drum landed; and other information as specified in cited section.

Retention period: Not specified.

681.5 Operators of vessels engaged in commercial fishing for Western Pacific spiny lobsters. [Amended]

To maintain an accurate and complete NMFS Daily Lobster Catch Report in English and NMFS Trip Processing and Sales Report.

Retention period: Not specified.

BILLING CODE 1505-02-T

Federal Register

Friday
February 5, 1988

Part III

Department of Education

34 CFR Part 305

Regional Resource and Federal Centers; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 305

Regional Resource and Federal Centers

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Regional Resource and Federal Centers program. These final regulations are needed to implement the amendments to section 621 of Part C of the Education of the Handicapped Act made by the Education of the Handicapped Act Amendments of 1986. As currently authorized, section 621 supports Regional Resource Centers that assist State educational agencies, and through those agencies, other State agencies and local educational agencies in developing quality programs and services for children with handicapping conditions. These final regulations include provisions describing who is eligible to apply under the program and what new services are to be provided by Regional Resource Centers.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Gardner, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3618—MES 3511-2313), Washington, DC 20202; Telephone: (202) 732-1026.

SUPPLEMENTARY INFORMATION: The Regional Resource and Federal Centers program was established under Pub. L. 91-230 on April 13, 1970, and is currently authorized by section 621 of Part C of the Education of the Handicapped Act (20 U.S.C. 1421; 34 CFR Part 305).

These final regulations implement the amendments to section 621 of the Act made by the Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457, which chiefly expanded eligibility for awards to include public agencies, and require Regional Resource Centers to: (1) Disseminate information to and train agencies, institutions, and organizations regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under Parts C through G of the Act; (2) provide assistance to State agencies through State educational agencies for early intervention services; and (3) provide services that are consistent with the priority needs identified by the States and with the Department's findings in monitoring reports.

Section 305.12 has been deleted from the regulations. The focus of the new Federal coordinating technical assistance center in the statutory amendments (*see* § 305.1(a) of these proposed amendments to the regulations) is different from the current coordinating center which provides direct technical assistance to any combination of the regions, States, or territories. The functions of the new coordinating technical assistance center will be carried out through a single contract awarded in accordance with the Federal Acquisition Regulation (*see* Title 48 of the Code of Federal Regulations).

Section 305.11(f) has been amended to reflect changes in the status of the entities formerly constituting the Trust Territory of the Pacific Islands. These changes are made by the Compact of Free Association Act of 1985, Pub L. 99-239, administered by the Department of the Interior. Pursuant to their approval of the compact, the Federated States of Micronesia and the Republic of the Marshall Islands became freely associated States. The Republic of Palau remains subject to a trusteeship agreement with the United States pending implementation of its compact. These three entities are substituted for the Trust Territory for Federal grant purposes.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

These regulations affect only institutions of higher education that compete for awards under this program and State educational agencies. State educational agencies are not defined as "small entities" in the Regulatory Flexibility Act, and there are very few institutions of higher education that submit applications under this program. Therefore, there would not be a substantial number of small entities that would be affected. Furthermore, these regulations impose a minimal burden and would not have a significant economic impact on any of the small entities participating in the program.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since the changes made in these regulations merely incorporate statutory changes into existing regulations and do not themselves establish new substantive policy, public comment could have no effect on the contents of these amendments. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these amendments is unnecessary and contrary to the public interest.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on its review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 305

Education, Education of handicapped, Grant programs—education.

(Catalog of Federal Domestic Assistance Number 84.028; Handicapped Regional Resource and Federal Centers)

Dated: December 9, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 305 of Title 34 of the Code of Federal Regulations as follows:

1. The part heading, Regional Resource Centers, is revised to read as follows:

PART 305—REGIONAL RESOURCE AND FEDERAL CENTERS

2. The authority citation for Part 305 is revised to read as follows:

Authority: 20 U.S.C. 1421, unless otherwise noted.

3. Section 305.1 is revised to read as follows:

§ 305.1 What are the Regional Resource and Federal Centers?

(a) This program supports the establishment and operation of Regional Resource Centers that provide consultation, technical assistance, and training to State educational agencies, and through those State educational agencies, to local educational agencies and to other State agencies providing early intervention services. The purpose of this assistance is to aid these agencies in providing early intervention, special education, and related services to handicapped infants, toddlers, children, and youth, and their families.

(b) This program also supports the establishment and operation of a Federal Center that provides assistance to the Regional Resource Centers in the delivery of technical assistance focusing on national priorities established by the Secretary.

(Authority: 20 U.S.C. 1421)

4. Section 305.2 is revised to read as follows:

§ 305.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this part through a grant to, or cooperative agreement or contract with—

(a) Institutions of higher education;
(b) Private nonprofit organizations;
(c) State educational agencies;
(d) Public agencies; or
(e) Combinations of these agencies and institutions, such as combinations including one or more local educational agencies within particular regions of the United States.

(Authority: 20 U.S.C. 1421)

5. Section 305.3 is revised to read as follows:

§ 305.3 What regulations apply to this program?

(a) The following regulations apply to grants and cooperative agreements for Regional Resource Centers:

(1) The regulations in this Part 305.

(2) The Education Department General Administrative Regulations (EDGAR) at Title 34 of the Code of Federal Regulations in—

(i) Part 74 (Administration of Grants);
(ii) Part 75 (Direct Grant Programs);
(iii) Part 77 (Definitions that Apply to Department Regulations);
(iv) Part 78 (Education Appeal Board); and
(v) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34 apply to contracts for Regional Resource and Federal Centers.

(Authority: 20 U.S.C. 1421)

6. Section 305.10 is revised to read as follows:

§ 305.10 What kinds of services are required under this part?

Each Regional Resource Center shall—

(a) Assist State educational agencies, through services such as consultation, technical assistance, and training, to provide more effectively special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(b) Assist in identifying and solving persistent problems in providing quality special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(c) Assist in developing, identifying, and replicating successful programs and practices that will improve special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(d) Gather and disseminate information to all State educational agencies in the region and coordinate activities with other Regional Resource Centers and with other relevant projects conducted by the Department;

(e) Assist in the improvement of information dissemination to, and training activities for, professionals and parents of handicapped infants, toddlers, children, and youth; and

(f) Provide information to and training for agencies, institutions, and organizations regarding techniques and approaches for submitting applications for grants and cooperative agreements under this part and Parts D through G of the Act.

(Authority: 20 U.S.C. 1421)

* * * * *

7. Section 305.11 is amended by revising paragraph (f) to read as follows:

§ 305.11 What is the composition of the regions?

* * * * *

(f) *Region 6:* Oregon, Idaho, Washington, Alaska, California, Arizona, Nevada, the Republic of Palau, the Republic of the Marhsall Islands, the Federated States of Micronesia, Guam, American Samoa, Hawaii, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1421)

§ 305.12 [Removed]

8. Section 305.12 is removed.

9. The heading of Subpart E is revised to read as follows:

Subpart E—What Conditions Must Be Met by the Recipient of an Award?

10. In § 305.40, the introductory text is revised, paragraph (c) is added, and the authority citation for the section is revised to read as follows:

§ 305.40 What additional activities must each Regional Resource Center perform?

Each Regional Resource Center shall—

* * * * *

(c) Assure that the services provided are consistent with the priority needs identified by the States served by the center, and with the findings of the Secretary in monitoring reports prepared by the Secretary under section 617 of the Act.

(Authority: 20 U.S.C. 1421)

[FR Doc. 88-2325 Filed 2-4-88; 8:45 am]
BILLING CODE 4000-01-M

Federal Register

Friday
February 5, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of an Airport Radar Service Area; Nebraska; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-1]

Proposed Establishment of an Airport Radar Service Area; Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Lincoln Municipal Airport, NE. This location is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of an ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at the affected location would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before May 6, 1988. The informal airspace meeting date is April 6, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204]. Airspace Docket No. 88-AWA-1, 800 Independence Avenue SW., Washington, DC 20591.

The informal airspace meeting place is as follows:

Lincoln Municipal Airport, NE, ARSA.

Time: 7:00 p.m.

Location: Duncan Aviation Inc., Second Floor Meeting Room, Lincoln Municipal Airport, Lincoln, NE 68524

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves one location. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWA-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting for the proposed ARSA location in order to receive additional input with respect to the proposal. The date, time, and place for this meeting is listed above. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at this meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures.
FAA Presentation of Proposal.
Public Presentations and Discussion.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR

No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 98 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's. This notice proposes ARSA designation at one of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register.**

The Current Situation at the Proposed ARSA Location

A TRSA is currently in effect at Lincoln Municipal Airport. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to operate within those restrictions. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR 91.87 highlight potential inadequacies of the TRSA identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of this additional ARSA site. The major findings of that evaluation are summarized below. The evaluation is available in the regulatory docket.

a. *Costs*

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the additional ARSA site proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation in radar services at this location is already quite high, and the separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and this facility already operates the necessary radar equipment, the FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA site in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA site proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic with both efficiency and increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of an ARSA at the site proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA location proposed in this notice will only be temporary, and that once established, the ARSA will result in efficient terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition, establishment of the proposed ARSA site will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA site proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately

burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at these airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish an ARSA at Lincoln Municipal Airport, NE. The above location is a public airport at which a nonregulatory TRSA is currently in effect. The proposed location is depicted on the chart to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from that primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, § 71.14 and § 71.501, and Part 91, § 91.1 and § 91.88.

The FAA has determined that this proposed regulation is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, for the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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.

2. Section 71.501 is amended as follows:

Lincoln Municipal Airport, NE [Added]

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Lincoln Municipal Airport (lat. 40 51'03"N., long. 96'45'32"W.) and that airspace extending upward from 2,700 feet MSL to 5,200 feet MSL within a 10-mile radius of the Lincoln Municipal Airport.

Issued in Washington, DC, on February 1, 1988.

Shelomo Wugalter,

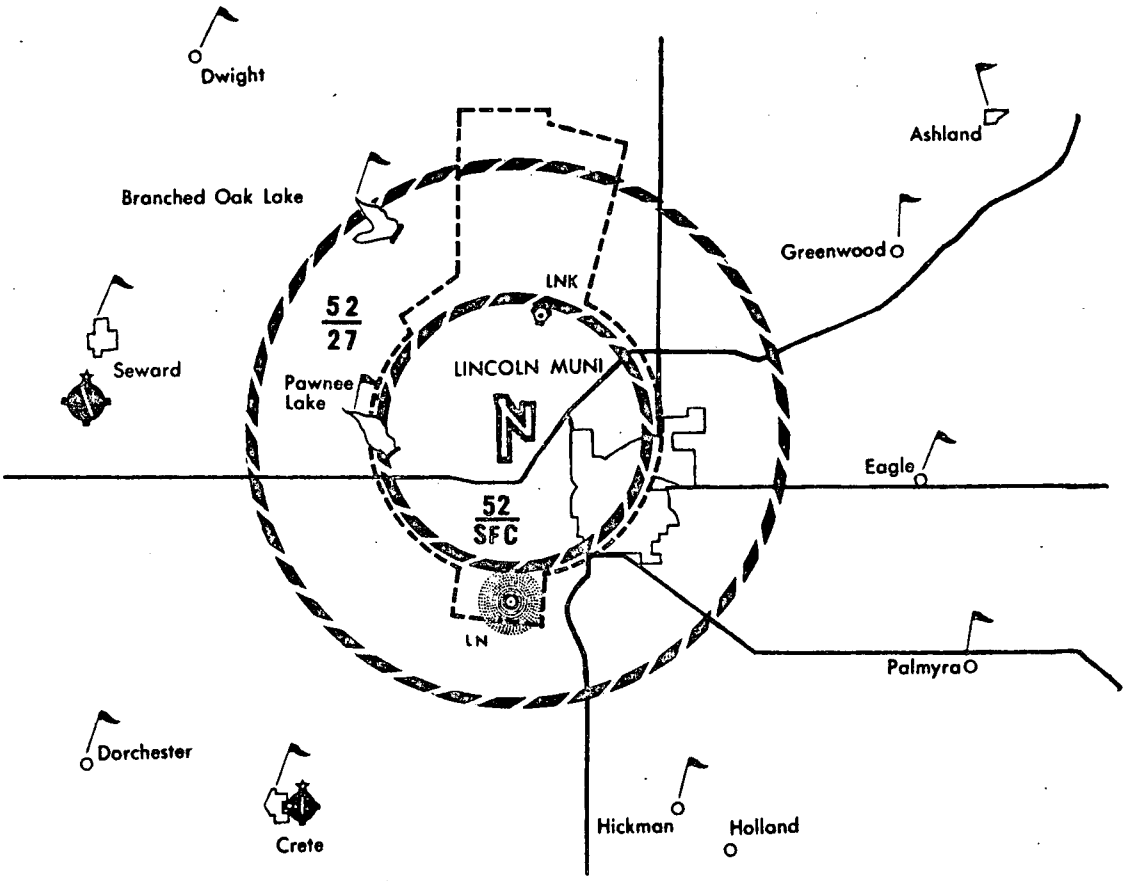
Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

LINCOLN, NEBRASKA
LINCOLN MUNI AIRPORT
FIELD ELEV. 1214' MSL



LEGEND

VFR CHECK POINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

[FR Doc. 88-2372 Filed 2-4-88 8:45 am]

BILLING CODE 4910-13-C

Federal Register

Friday
February 5, 1988

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 36

Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 24929; Amdt. Nos. 21-61 and 36-14]

Final Rule for Noise Standards for Helicopters in the Normal, Transport and Restricted Categories

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Final rule.

SUMMARY: This final rule adds to the Federal Aviation Regulations noise certification standards applicable to helicopters. This rule applies to civil helicopters in the normal, transport, and restricted categories and provides noise level limits and test procedures for the issuance of original and amended type certificates. The rule prohibits changes in type design of helicopters that may increase noise levels beyond certain limits. This rule does not limit further manufacturing of existing helicopter types. This rule provides for commonality between U.S. standards and those adopted by the International Civil Aviation Organization (ICAO). In addition, the rule contains the technical noise measurement and procedures for conducting and evaluating helicopter noise tests. This rule is necessary to provide current and future relief and protection of the public health and welfare from helicopter noise.

DATES: Effective date of this amendment is February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Albersheim, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3553.

SUPPLEMENTARY INFORMATION: The purpose of this revision is to amend portions of the Federal Aviation Regulations (14 CFR Part 36) and amend references to specific rules of Part 36 in other parts (14 CFR Parts 21 and 25). This amendment is based on Notice No. 86-3 (51 FR 7878; March 6, 1986; Docket No. 24929) in which comments were invited. All comments received were fully considered in the issuance of this Final Rule.

Synopsis of the Proposal

Part 36 of the Federal Aviation Regulations (14 CFR Part 36) contains noise standards for aircraft type and airworthiness certification. As the Part is currently organized, Subparts B and C and Appendices A, B, and C apply to transport category, large airplanes and subsonic turbojet powered airplanes regardless of type certification category. Appendix F contains the provisions applicable to propeller-driven small airplanes. This amendment prescribes noise levels and test procedures for civil helicopters certificated in the normal, transport, and restricted categories; included are rules governing the issuance of original and amended type certificates for helicopters for which application is made on or after the adoption date of this amendment. The rule prohibits certain growth, or other design changes, if the changes are likely to result in noise levels above prescribed limits. The rule prescribes test conditions and procedures for conducting helicopter noise tests to demonstrate compliance with the prescribed noise levels, including the technical noise measurement and evaluation specifications, employing Effective Perceived Noise Level (EPNL) as the evaluation unit. The helicopter noise standards have the following effects:

A. Certification Procedures Provisions

FAR Part 21, as amended, prescribes the procedural requirements for noise certification of civil helicopters certificated in the normal, transport, and restricted categories. These amendments apply to issuance of new type certificates in the normal, transport, or restricted categories for which application was made on or after the publication date of Notice 86-3. The effect of these provisions is to prohibit issuance of the affected certificates after the effective date of the amendments for helicopters which have not been shown to comply with the applicable noise requirements of Part 36. Thus, newly type certificated helicopters (except those for which application was made before the publication date of Notice 86-3) are required to comply with Part 36 noise standards. Further, the "acoustical change" provisions prescribe requirements that must be met to obtain approval of certain changes in type design of helicopters that may increase noise levels.

Appropriate references to Part 36 acoustical change requirements are contained in Part 21. The acoustical change rules for helicopters apply to any type design change, including operational limitations, that the Administrator determines may increase noise levels of that helicopter, such as changes in rotor size or trim, rpm, number of blades, weight or power. Under this amendment to Part 36, test procedures, conditions, and noise limits for acoustical changes are now prescribed.

B. Noise Standard Provisions

FAR Part 36 is amended to prescribe noise standards for civil helicopters certificated in the normal, transport, and restricted categories. These provisions are similar to those currently applicable to other aircraft under Part 36 and are summarized as follows:

1. General

The general provisions of Part 36, Subpart A, are amended to provide applicability, definitional, and acoustical change provisions covering civil helicopter noise certification. For example, the work "aircraft" is substituted for "airplane" in those provisions where the applicability simply would be expanded to include helicopters. Under this proposal, definitions identify two "stages" or levels of helicopter noise, "Stage 1" and "Stage 2". Stage 2 helicopters are those which have been shown to comply with the State 2 noise levels. Stage 1 helicopters are those which have not been shown to comply with Stage 2 levels.

A new section is added to prescribe noise requirements for those changes in type design defined as "acoustical changes" under FAR Part 21. Those provisions apply to acoustical change approvals applied for on and after the publication date of Notice 86-3. Specifically, no increase in any noise level (takeoff, flyover, or approach) is allowed after a change in the type design of a Stage 1 helicopter. For acoustical changes of Stage 1 helicopters, the tradeoff provisions can not be used to increase any Stage 1 notice level. A Stage 2 helicopter before a change in type design may not be a Stage 1 helicopter after the design change. It should be noted that the ICAO Annex 16 accoustical change standards applicable to Stage 1 helicopters are more stringent than those proposed herein that all helicopters must meet the complete Stage 2 limits after such a change.

The helicopter noise standards apply to all helicopters, as defined under FAR Part 1, except those configurations designated *exclusively* for agricultural operations, the dispensing of fire fighting materials, or the transport of external loads. This exception is similar to the one for small propeller-driven airplanes, but is especially important for helicopters since nearly every type has provisions for at least occasionally carrying external loads. Such loads

would make it extremely difficult to meet either the weight or performance requirements; thus, the noise standards only apply to internal load configurations. On the other hand, an exclusion of all helicopters with external load capability would defeat the entire purpose of the regulation. It should be noted that these standards are applicable to type certification actions for which applications are received on or after the publication date of Notice 86-3.

2. Manuals, Markings, and Placards

The Part 36 provisions regarding requirements for operating limitations in manuals, marking, and placards under current Subpart G is redesignated as Subpart O and amended to extend their applicability by including approved Rotorcraft Flight Manuals, manual materials, or placards, as appropriate.

3. Helicopter Noise Rule

A new Subpart H to Part 36 prescribes the basic requirements for demonstrating compliance with the helicopter noise rules. The technical standards, conditions, and procedures for conducting noise tests and the helicopter noise limits are presented in the Appendix H.

4. Noise Measurement and Evaluation

The new Subpart H to Part 36 is a stand-alone document containing, among other things, the technical specifications for conducting and evaluating helicopter noise tests. With exceptions necessary to account for the unique operating characteristics of helicopters, the rule applies the specifications currently applicable to tests of transport category large airplanes and turbojet-powered airplanes under Appendices A and B of Part 36 (as amended by FAR Amendment 36-9; 43 FR 873, March 2, 1978, and as proposed in Notice 85-2, 50 FR 4172, January 29, 1985).

Highlights of the differences for helicopter noise test under Appendix H and the requirements of Appendices A and B are summarized as follows:

a. Three noise test series are used; takeoff, flyover, and approach. Simultaneous noise measurements are made for each test series at a measuring station under the flight track and at two sideline measuring stations with one on each side of the flight track.

b. Helicopter height and lateral position from the noise measuring station are measured relative to the referenced flight path.

c. The approach angle for the helicopter approach noise test is 6°(±0.5°) rather than the 3.0°±0.5° used for fixed wing aircraft.

d. Symbols and units appropriate to helicopter noise certification have been substituted for fixed wing aircraft noise symbols in § A36.7 "Flight Profile Identification Positions" and "Distance-Unit-Meaning" descriptors used in Part 36.

5. Noise Levels

The new Appendix H to Part 36 contains helicopter noise levels for which compliance must be shown by actual flight tests. These levels include:

(1) "Stage 1" and "Stage 2" noise limits for each test series which are related to the maximum certificated takeoff weight of the helicopter;

(2) Tradeoff provisions which govern limited "exceedances" of noise levels for one or two tests series when such exceedances are offset by reductions in the noise levels of the other test series; and

(3) Separate test conditions for each of the three noise test series including airspeed, altitude, and operational profile over the noise measuring station, power, and helicopter position relative to the flight-track noise measuring station.

"Stage 1" noise limits include prohibition of noise level increases prescribed for "acoustical changes" of those helicopters which cannot achieve Stage 2 noise limits. These limits are prescribed separately for the takeoff, flyover, and approach tests series. Depending upon maximum certificated weights of the helicopter, maximum allowable noise levels are between 88 and 108 EPNdB for flyover, 90 and 100 EPNdB for approaches and 89 and 109 EPNdB for takeoff. The highest noise limit applies to maximum weights of 176,370 pounds or more. The noise limit is then reduced by 3.01 EPNdB for each halving of the maximum weight down to a maximum weight of 1,764 pounds.

Tradeoffs of any "exceedances" are limited to a sum not greater than 4 EPNdB with no single exceedances greater than 3 EPNdB; this is consistent with the ICAO standard. (For turbojet powered airplanes, the numbers are 3 and 2 EPNdB respectively.) The exceedances must be completely offset by noise levels below those required at the other two points.

The noise level limits apply to helicopters of all weights, just as the noise level limits for other categories of aircraft are applied. However, no United States civil helicopters currently have maximum weights above 50,000 pounds.

This rule allows the first civil derivative of a military helicopter, including those operated by the U.S. Coast Guard, to be treated as though the military "parent" were a Stage 1 civil helicopter the noise levels of which are more than two dB decibels above the Stage 2 noise level limit. This has the effect of removing noise data requirement from the parent aircraft. Among the reasons for instituting this area: (1) lack of availability of noise level data for military aircraft and; (2) the costs associated with performing test on both versions.

6. Applicability to current production types

As noted earlier, the rule is not applicable to helicopter types currently in production as long as an "acoustical change" is not made that may increase noise levels.

Regulatory History

On December 28, 1973, the FAA published an Advanced Notice of Proposed Rulemaking (ANPRM) (Notice No. 73-32; 38 FR 35487) in which it announced that it was considering proposing noise standards for aircraft that were expected to be developed for efficient short stage length operations. It was anticipated that such a class of aircraft, referred to as "short-haul", would include aircraft having short, reduced, vertical or near vertical takeoff and landing capabilities. Since the noise technologies appropriate to those aircraft as a separate class required further study, original FAR Part 36 in 1969 did not prescribe separate rules for those aircraft; some, such as helicopters, were not covered by any regulation. Notice No. 73-32 (ANPRM) was issued as part of an additional study to invite early public participation in the identification and selection of a course, or alternative courses, of action to develop noise standards which would provide additional relief and protection to the public health and welfare from aircraft noise. On July 9, 1979, a Notice of Proposed Rulemaking (NPRM) Notice No. 79-13; (44 FR 42410) was published by the FAA. This notice proposed helicopter noise certification standards and limits on further production of older, noisier helicopter types. The procedures proposed for noise testing in NPRM 79-13 were similar, although not identical, to those proposed in Notice 86-3; however, the proposed noise level limits were significantly more stringent. Information submitted to the Docket indicated that the economic impact on the industry of limiting future production of existing helicopter types might be several hundred million dollars, due to the general unavailability of the noise abatement technology needed to meet

the specified noise levels. After careful consideration of the economic impacts of the proposed rule and of the Docket comments on the effects of those impacts, Notice No. 79–13 was withdrawn (December 17, 1981; 46 FR 61486). At the time of withdrawal, the FAA stated that the action neither precluded consideration of similar proposals in the future nor committed the agency to any further or future course of action on this subject.

During the time since Notice No. 79–13 was withdrawn, the FAA has continued to study issues surrounding noise level certification of helicopters. One of such issue is the ICAO rule, contained in Annex 16, Chapter 8. The United States has been an active participant in modifications to that rule, including raising the allowable noise levels, with the aim of better balancing costs and environmental benefits.

As noted before the FAA has been studying issues surrounding noise level certification of helicopters since 1973. On March 6, 1986, a Notice of Proposed Rulemaking (NPRM) [Notice No. 86–3, 51 FR 7878] was published by the FAA, based on the comments and issues raised during this period. In addition, the NPRM provided for a commonality between U.S. standards and those adopted by ICAO. This rule revises portions of FAR 14 CFR Part 36 and amends references to Part 36 in other parts (14 CFR Part 21 and 25) with the purpose of better balancing the economic costs and the environmental benefits.

Aircraft Noise Rules

Public Laws 90–411 and 92–574 were enacted to provide the statutory basis, under the Federal Aviation Act of 1958 (the Act), for relief and protection of the public health and welfare from noise and sonic boom from civil aircraft. Under the Act, the Administrator of the Federal Aviation Administration, after consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, is responsible for the adoption and amendment of rules which prescribe the necessary standards and regulations. On November 3, 1969, the Administrator adopted FAR Part 36 entitled "Noise Standards: Aircraft Type Certification" (34 FR 18355; November 18, 1969). That regulation initiated the FAA noise abatement regulatory program under the new statutory authority by prescribing noise type certification standards for subsonic turbojet powered airplanes regardless of category. Part 36 also prescribed the technical specifications for illustrating compliance with the noise level limits.

In promulgating proposals and amendments under the authority of § 611 of the Act, factors which the FAA must consider include the following:

1. Available data relating to aircraft noise, including results of research, development, testing, and related evaluation activities.
2. The appropriate views and position of other Federal, state and interstate agencies.
3. Whether the proposed regulations are consistent with safety in air commerce and air transportation and the public interest.
4. Whether proposed regulations are:
   a. Economically reasonable;
   b. Technologically practicable; and
   c. Appropriate for the particular type of aircraft, aircraft engines, appliances, or certificates to which they would apply.
5. The extent to which the proposed regulations contribute to providing protection to the public health and welfare by carrying out the purposes of § 611 of the Act. The overall environmental impacts of the regulations including environmental factors other than noise must be addressed in accordance with the National Environmental Policy Act of 1969, and implementing Federal guidelines and directives.

Need For Regulation

FAA data of the active rotorcraft fleet for 1985 shows 2,221 U.S. helicopter operators in the United States utilizing an active fleet of 6,412 helicopters. U.S. corporate/executive use of helicopters accounted for 1,391 aircraft and U.S. commercial helicopters accounted for 4,244 aircraft. The remainder of the fleet are comprised of emergency service aircraft. In 1984, there were 4,020 public use heliports and helistops in the United States. Approximately 9 percent of these heliports are rooftop facilities located in noise sensitive areas. The usage of helicopters is fully recognized in today's society.

For example, city ordinances in Chicago and Los Angeles require that buildings above a certain height be provided with rooftop emergency landing facilities for helicopters because modern fire-fighting apparatus cannot reach above eight floors. As other municipal governments recognize the need to provide increased protection for high-rise inhabitants, the number of heliports for both routine and emergency uses may increase significantly.

The growth of the civil helicopter fleet caused by the increased and more diversified use of helicopters, has intensified the demand for additional heliports. However, environmental concerns are imposing restrictions on heliport operations at an increasing rate. Environmental pressure has also forced closing of heliports with the resultant loss of helicopter services at those locations. The FAA believes that the adoption of appropriate helicopter noise standards will help protect the public by reducing helicopter noise and thereby maintain the benefits of their services in the air transportation system.

One of the key issues in the withdrawal of Notice 79–13 was the lack of effective noise abatement technology. To develop this technology, an accelerated joint research program was set up in 1982 by the National Aeronautics and Space Administration (NASA), the FAA, and American helicopter manufacturers. This National Rotorcraft Noise Research Program is a multi-year twenty-million dollar cooperative effort under the technical guidance of NASA and has two major goals: (1) development of noise abatement technology for reducing helicopter external noise levels and (2) the development of detailed parametric noise prediction techniques. This program is expected to furnish the techological basis for helicopter noise reduction into the twenty-first century and could significantly lower the cost of applications of that technology. At the conclusion of the program, the FAA will consider the appropriateness of lowering the certification noise levels for the helicopters; however, the FAA does not consider it appropriate, in light of the considerations listed in section 611 of the Act, to delay all rulemaking on noise standards for helicopters until the cooperative research program is completed.

The FAA has evaluated the helicopter as a noise source which affects persons and property and as a result concluded that it is now appropriate to adopt helicopter noise regulations necessary to protect the public health and welfare according to section 611 of the Act. This rule achieves that objective by preventing further escalation of helicopter noise levels and by laying the regulatory foundation for assuring that future helicopter types and eventually all newly produced helicopters of older type designs comply with realistic noise standards. The FAA has determined that sufficient noise control technology exists to meet the considerations of section 611(d) of the Act.

Economic aspects of this regulation are discussed in more detail in the rulemaking assessment prepared in conjunction with this rulemaking, and placed in the Docket. However, it should be noted that U.S. manufacturers of

rotorcraft are already subject to the ICAO noise certification standards for each helicopter type that they wish to export. Since exports account for approximately 40 percent of the civil sales of U.S. helicopter manufacturers and, since the standards in this rule (except for "acoustical changes" of older, State 1 aircraft) are nearly identical to those of ICAO, only minimal cost impacts are expected from this standard. Offsetting these minimal costs are savings which will accrue to American manufacturers by one-time certification in the U.S. rather than certificating in each foreign country as necessary.

Rule Structure

As part of this rulemaking, certain portions of the current Part 36 were recognized and restructed without any changes in their substance to improve their usefulness and understandability. The technical provisions of Appendices A & B, governing the measurement and evaluation of aircraft noise test data, which were referenced in Notice 86-3, were brought into Appendix H where appropriate. This was done in answer to several comments to the Docket citing confusion over the number and length of referenced sections.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket and also reviews the changes to Parts 21 and 36. The FAA determined that the rule is consistent with the objectives of Executive Order 12291 and does not impose an unnecessary or unreasonable regulatory burden on the private sector or on the public.

These amendments provide benefits that outweigh the costs of compliance. Specifically, the benefits are the greater acceptability of helicopters and heliports in urban environments and the attendant increased market for helicopters and helicopter their services. Thus, the economic benefits accrue not only to the manufacturers and operators, but to the general public as well. The environmental benefits would accrue mainly to those working or residing near heliports, although some noise level improvements can be expected near helicopter flight corridors.

Costs result from increased development and certification expenses and are originally borne by the manufacturers but are expected to be passed on to helicopter operators and eventually to the public. These costs are mitigated by two factors: (1) the National Aeronautics and Space Administration has underway a joint helicopter noise reduction technology program with U.S. manufacturers and the FAA to improve the state-of-the-art and to lower the cost of application and (2) all helicopter models for export are required to comply with ICAO noise standards even if the U.S. were not to adopt the requirements contained in this rule.

Regulatory Flexibility Determination

As detailed in the evaluation, the only cost associated with the changes to FAR Part 36 will be the cost to manufacturers related to the noise certification test. However, no domestic helicopter manufacturer is considered a small entity as is currently defined. Therefore, it is certified that the rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to the Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), the FAA has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment. The amendment has the effect of limiting the growth of noise from new helicopter types and derivatives of existing types. This will reduce noise levels around heliports and, to some extent, under helicopter flight corridors, when compared to unconstrained growth. Little noticeable short-term general effect is expected, since it is estimated that it will take at least five years after adoption of the rule before a significant number of affected aircraft enter the nation's fleets. However, some helicopter operations and heliports are expected to be designed based upon the lower noise capabilities of newer aircraft, making site-specific improvements in the noise environment. Therefore, no environmental assessment or environmental impact statement was prepared.

Trade Impact Analysis

There will be little or no impact on U.S. or foreign trade from this rulemaking. Absent the rule, U.S. helicopter exports would have been placed at comparative cost disadvantage since each helicopter model still would be required to meet ICAO standards. The cost of multiple certifications would have resulted in either higher selling prices or lower profits to U.S. manufacturers.

Discussion of Comments

Interested persons were afforded the opportunity to participate in development of this rulemaking by submitting written comments to the public regulatory docket on or before June 5, 1986. All comments received have been reviewed and duly considered in promulgating this amendment.

Sixteen public comments were received in response to the notice (Docket No. 24929). All of the commenters supported promulgation of noise certification standards for helicopters; however, each commenter also had specific suggestions about one or more of the FAA's proposed amendments.

The comments received in public Docket No. 24929 are discussed below. They are grouped by broad categories of issues.

1. Flight Procedures

Notice 86-3 proposed both flight test procedures and flight reference procedures. The first of these procedures gives instructions to the pilots so that the helicopters can be flown allowing realistic variations in weather, piloting techniques, and aircraft performance. The second specifies uniform flight path profiles so that the measured data may be compared to the standard. Several comments were received concerning the amount of variation in flight test techniques that the regulation should allow. Commenters explicitly stated that the rule should allow the helicopter operator to use a "normal" approach during the noise certification test. In addition, some comments claimed that noise data measured during normal approach differs significantly from noise measured under the constant six degree glide slope approach. They further stated that the certification flight test procedures should be used based upon practical "real-world" flight procedures rather than rigidly-prescribed procedures which are seldom used in service.

Much of the concern with flight procedures lies with their effect on the generation of the distinctive helicopter blade slap. Helicopter noise levels vary between models for different glide slopes. In 1979, the ICAO Committee on Aircraft Noise considered adding a blade slap correction to the calculation of EPNdB for helicopters. However, after extensive investigation, it was determined that the six degree approach would not unduly penalize any particular helicopter type.

Regarding the commenters' position, the development of alternative procedures was pursued by the FAA and the Helicopter Association International which was represented by both operators and manufacturers. However, experience showed that the versatility of helicopters was so great that there was often no single "real-world" approach procedure. Conversely, redefining the procedures to allow applicants to choose any normal approach between three and nine degrees would result in an undesirable decrease in the stringency of the standard, unless the noise level limits were adjusted.

Further, it is noted that § 36.801 specifically allows certification noise measurements to be made using an FAA-approved equivalent procedure. This provision is intended to prevent hardships occuring as the result of the application of an inappropriate certification process.

Lastly, the FAA notes that the six degree approach glide slope has been adopted by ICAO in its helicopter noise certification standard and that both foreign and domestic manufacturers will have to certificate using six degrees, whether or not the United States adopts that procedure. The economic costs of developing and using a separate flight procedure specification that does not conform to the international standard are unjustified.

For the above mentioned reasons, the FAA is adopting the test and reference flight procedures as proposed.

2. No-Correction Window

The FAA solicited comments on the need for a "no-correction window", i.e., combinations of test and weather conditions that are so close to the standard reference conditions that no corrections to the measured test data are necessary. In response, several commenters expressed the opinion that the rule should have a "no correction window". Their opinion was that a practical test "window" would limit the cost and complexity of the helicopter certification process.

The FAA believes that since most of the measurements have to be made either to make the corrections or to determine which measurements are inside the "window", it serves little purpose to avoid making appropriate corrections. Cost savings, if any, would be negligible and would be far outweighed by the quality of the data available to the applicant. However, it is noted that the ICAO standard does not require corrections of reported noise levels for small variations from the reference conditions of flight path, airspeed, weight, ambient temperature, relative humidity, and rotor rpm for the takeoff and approach tests. Only the level flyover test does not have such a no-correction window. Because it would be unfair to require American helicopter manufacturers to bear disproportionately high costs, the FAA has determined to follow the lead of ICAO and allow small no-correction windows for takeoff and approach tests.

3. Upper Bound Weight Limit

The FAA requested comments with regard to establishing an appropriate upper bound to the noise versus weight standards. There are currently no American civil helicopters which have maximum weights above 50,000 pounds. Under Notice 86–3, the noise level limits for takeoff, approach, and sideline would vary with maximum takeoff gross weight. An earlier industry proposal would have the noise limits end at an upper weight of 56,000 pounds.

There were no comments in support of the 56,000 lb. limit. The manufacturers reported that there was no need for such a restriction at this time. One commenter objected to the proposal on the basis that it violated the ICAO agreements. The FAA has determined that there is no valid reason to enact a rule which would have the effect of creating a unique class of unregulated helicopters that would be at a distinct disadvantage on the export market. Therefore, this rule does not contain an upper weight limitation.

4. Applicability to Current Production

Notice 86–3 proposed establishing noise limits for new and derivative helicopter types, but did not propose to require compliance with the new noise standards as a condition for further production of current helicopter types. The FAA solicited comments on the appropriateness of this exclusion.

One commenter indicated that the industry had over seven years of notice of this rule. The commenter further indicated that industry consistently opposed the rule, even to the point of successfully arguing for the withdrawal of the original NPRM in 1982. He observed that all helicopters now in production meet the Stage 2 noise limit and, therefore, there is reason to establish a Stage 2 rule for all helicopters in production. This would assure that no Stage 1 helicopters would be produced. Another commenter recommended that the regulation be revised to set a date beyond which Stage 1 helicopters may no longer be introduced into the U.S. fleet. He was concerned that the rule almost ensures that excessively noisy helicopters will continue to be introduced into the fleet.

The FAA recognizes that most, if not all, the civil helicopters in production were derived from military aircraft. The FAA believes that it would create an undue economic burden on the industry for requiring lower noise levels for which the military helicopters were originally designed. However, the FAA has a statutory responsibility to ensure that economically reasonable and technologically practicable noise limits are applied fairly and uniformly. The rules prohibit noise level increases from those helicopters which already cannot achieve Stage 2 noise levels before a change in type design. The rule would not allow a Stage 1 helicopter the noise levels of which exceed the Stage 2 noise limits by more than 2 EPNdB to grow in noise after the change in type design. Those Stage 1 helicopters the noise levels of which do not exceed the Stage 2 noise limits by more than 2 EPNdB may "grow up" to the plus 2 EPNdB limit. The FAA believes that this limited growth does not place undue restrictions on industry, but provides a realistic "cap" on the growth of helicopter noise impacts. Even though the rule allows helicopters currently in production to continue to be produced and added to the fleet, the fact still remains that all of the helicopters currently being produced meet Stage 2 limits. The FAA reserves the right to propose a new production rule that would restrict production to Stage 2 helicopters if and when it is warranted.

5. Stringency

One of the key issues in the public Docket was the stringency of the proposed noise level standards. Several commenters stated their belief that the noise level limits were not stringent enough and noted that the noise level standards were higher than those proposed in Notice 79–13 for both new helicopter types and derivatives. It was also noted that all helicopters currently in production would meet the standard, even though little or no effort had been made by their manufacturers to lower their noise levels. The opinion was expressed that the proposed rule would provide no real protection to the public.

The FAA generally agrees with the comments as far as they go. However, there is more to the issue of stringency than just the noise levels of current helicopters. After all, a certification regulation is actually applied to future aircraft types and to changes in existing types, not to aircraft already in service In this case, the helicopters for which the regulation is intended are the next

generation of high speed, high performance aircraft that will be introduced into service in the late 1980's and beyond. Current civil helicopters are largely derived from military versions. Accordingly, the missions for which they were designed have limited civilian application. However, the new helicopters are being designed for the speed and productivity demanded by a business-oriented economy.

From a technical point of view, new helicopters pose a greater noise control design challenge because the characteristics that would make a helicopter successful in the open market will also make it noisier. For instance, the increased speed and payload capabilities are largely the result of modern, high speed rotor design. As the rotor speed increases, the noise increases even more. As the payload increases, the rotor loading also increases and so does noise. Thus, the noise level limits will cap the noise to ensure that helicopters do not get noisier as new technology is introduced.

Some have suggested that the FAA should now place a cap on the noise levels with the intention to lower the permissible noise by 3 to 5 decibels in a specific time, possibly five years. The FAA believes that such a suggestion is premature, as NASA and the U.S. industry have an extensive research program under way to provide the tools needed to design and evaluate effective noise abatement technology for new type design helicopters. At the conclusion of the NASA program, the FAA will consider the appropriateness of lowering the noise certification levels of helicopters. Lastly, the standards in this rule are identical to ICAO's standards which industry must meet to maintain its export market and which foreign-made helicopters must also meet.

6. Test Costs

Several commenters were of the opinion that the complexity of the rule, especially the requirement for correcting the data if the test is performed outside of the "no correction window," is too costly. For certain helicopter models, the sales are in such small quantities and at such irregular intervals, that a requirement to perform extensive and costly noise certification testing could lead to discontinuing the sales, despite the fact that the helicopter as measured by the FAA meets the noise limits. A commenter stated that because fewer commercial helicopters are being manufactured, the cost of any design modification must be absorbed by these few, increasing the per-unit cost, which is ultimately passed on to the consumer. If sales decrease substantially, the per unit cost becomes so high as to be totally impractical and the design is no longer profitable. One commenter indicated that the cost of certificating a helicopter to the noise standards in the rule would be approximately $500,000, which exceeds the costs of some helicopters by as much as a factor of ten.

The cost as cited above is unsubstantiated and the FAA estimates the costs to range between $5,000 to $50,000, depending largely on the manner in which the helicopter flight time was billed. Standardization of the FAA and ICAO test procedures should provide further savings. The issue of the complexity of the rule regarding a "no correction window" resulting in extra cost is not supported. As indicated previously, the manufacturer would be required to make most of the measurements anyway to determine whether the data had to be corrected. The extra cost to adjust the data to a given standard is negligible with today's microcomputers.

7. Other Issues

Commenters to the Docket raised a number of other technical and editorial issues. One industry group observed that the rule as proposed in Notice 86-3 was difficult to follow because it repeatedly referenced other sections of FAR Part 36. This was especially noted in those sections which specified acoustical and meteorological instrumentation and correction procedures. Several comments were also received about the organization of Appendix H and about the perceived need to reorganize it more along functional lines. The FAA agrees with these suggestions and has brought into Appendix H most of the materials that were referenced in the Notice. The one major exception to this process is that the definition of the noise metric, Effective Perceived Noise Level (EPNL) and the procedures for computing it, remain solely in Appendix B. This arrangement will ensure that the EPNL used for each aircraft category remains consistent with that used for any other category. Any modifications to the basic formulations will automatically apply to all categories.

The contents of Appendix H have been reorganized to make them clearer and easier to follow. The new Table of Contents is at the beginning of the appendix. Typographical mistakes that appeared in the Notice have been corrected. In addition, several minor changes to the test specifications have been made to incorporate test tolerances that correspond to ICAO values and to incorporate metric equivalents where they had been inadvertently omitted.

List of Subjects

14 CFR Part 21

Aircraft certification, Helicopters, Accoustical change.

14 CFR Part 36

Noise standards, Noise limits, Aircraft noise measurement, Test conditions, Helicopters.

The Amendment

Accordingly, the Federal Aviation Administration amends Parts 21 and 36 of the Federal Aviation Regulations (14 CFR Parts 21 and 36) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. In § 21.93 the introductory text of paragraph (b) is revised, and a new paragraph (b)(4) is added:

§ 21.93 Classification of changes in type design.

* * * * *

(b) For the purpose of complying with Part 36 of this chapter, and except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, any voluntary change in the type design of an aircraft that may increase the noise levels of that aircraft is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following aircraft:

* * * * *

(4) Helicopters, (except for those helicopters that are designated exclusively for "agricultural aircraft operations", as defined in § 137.3 of this chapter, as effective on January 1, 1966, for dispensing fire fighting materials, or for carrying external loads, as defined in § 133.1(b) of this chapter, as effective on December 20, 1976). For helicopters to which this paragraph applies, "acoustical changes" include the following type design changes:

(i) Any changes to, or removal of, a muffler or other component designed for noise control.

(ii) Any other design or configuration change (including a change in the operating limitations of the aircraft) that, based on FAA-approved analytical or test data, the Administrator determines may result in an increase in noise level.

3. Section 21.115(a) is amended by removing "§§ 36.7 and 36.9 of this chapter" and substituting "§§ 36.7, 36.9, or 36.11 of this chapter".

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for Part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et seq.; Sec. 124 of Pub. L. 08–473; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 36.1 [Amended]

2. Section 36.1 Applicability and definitions is amended as follows:

a. By adding a new paragraph (a)(4) to read as follows:

(a) * * *

(4) Type certificates, and changes to those certificates, for helicopters except those helicopters that are designated exclusively for "argicultural aircraft operations" (as defined in § 137.3 of this chapter, as effective on January 1, 1966), for dispensing fire fighting materials, or for carrying external loads (as defined in § 133.1(b) of this chapter, as effective on December 20, 1976).

* * * * *

b. By amending paragraph (c):

(1) By removing the word "airplane" and substituting for it the word "aircraft"; and

(2) By removing "the applicable provisions of § 36.7 or § 36.9 of this part" and substituting "the applicable provisions of § 36.7, 36.9, or 36.11 of this part".

c. By adding a new paragraph (g) to read as follows:

* * * * *

(g) For the purpose of showing compliance with this part, of helicopters in the normal, transport, and restricted categories, the following terms have the specified meanings:

(1) A "Stage 1 noise level" means a takeoff, flyover, or approach noise level greater than the Stage 2 noise limits prescribed in § H36.305 of Appendix H of this part.

(2) A "Stage 1 helicopter" means a helicopter that has not been shown under this part to comply with the takeoff, flyover, and approach noise levels required for Stage 2 helicopters.

(3) A "Stage 2 noise level" means a takeoff, flyover, or approach noise level at or below the Stage 2 noise limits prescribed in § H36.305 of Appendix H of this part.

(4) A "Stage 2 helicopter" means a helicopter that has been shown under this part to comply with Stage 2 noise levels (including applicable tradeoffs) prescribed in § H36.305 of Appendix H of this part.

§ 36.2 [Amended]

3. Section 36.2(a) is revised to read as follows:

(a) Notwithstanding § 21.17 of this chapter, each person who applies for a type certificate:

(1) For an airplane covered by this part, irrespective of the date of application for the type certificate, or

(2) For a helicopter covered by this part, on or after March 6, 1986,

must show compliance with the applicable provisions of this part.

§ 36.3 [Amended]

4. Section 36.3 is amended by removing the word "airplane" wherever it appears and substituting for it the word "aircraft".

5. Subpart A is amended by adding a new § 36.11 to read as follows:

§ 36.11 Acoustical change: helicopters.

This section applies to all helicopters in the normal, transport, and restricted categories for which an acoustical change approval is applied under § 21.93(b) of this chapter on or after March 6, 1986.

(a) *General requirements.* Except as otherwise provided, for helicopters covered by this section, the acoustical change approval requirements are as follows:

(1) In showing compliance, noise levels must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in Parts B and C of Appendix H of this Part.

(2) Compliance with the noise levels prescribed in Section H36.305 of Appendix H must be shown in accordance with the applicable provisions of Part D of Appendix H of this part.

(b) *Stage 1 helicopters.* Except as provided in § 36.805(c), for each Stage 1 helicopter prior to the change in type design, the helicopter noise levels may not, after the change in type design, exceed the noise levels specified in Section H36.305(a)(1). The tradeoff provisions under § H36.305(b) may not be used to increase any Stage 1 noise level beyond these limits.

(c) *Stage 2 helicopters.* For each Stage 2 helicopter prior to the change in type design, the helicopter must be a Stage 2 helicopter after the change in type design.

Subpart G—[Redesignated as Subpart O]

6. Subpart G is redesignated as "Subpart O—Operating Limitations and Information" and Subparts G, I, J, K, L, M, and N are reserved.

§ 36.1581 [Amended]

a. By amending paragraph (a) after the words "Airplane Flight Manual" in each place where those words appear by adding the words "or Rotorcraft Flight Manual."

b. By amending paragraph (b) in the prescribed statement by deleting the word "airplane" and substituting for it the word "aircraft."

c. By redesignating paragraph (e) as "paragraph (f)" and revising it to read as follows:

* * * * *

(f) Except as provided in paragraph (c), (d), and (e) of this section, no operating limitations are furnished under this part.

d. By adding a new paragraph (e) to read as follows:

* * * * *

(e) For normal, transport, and restricted category helicopters, if the weight used in meeting the takeoff, flyover, or approach noise requirements of this part is less than the certificated maximum takeoff weight, established under either § 27.25(a) or 29.25(a) of this chapter, that lesser weight must be furnished, as an operating limitation, in the operating limitations section of the Rotorcraft Flight Manual, in FAA-approved manual material, or on an FAA-approved placard.

* * * * *

8. A new Subpart H is added to read as follows:

Subpart H—Helicopters

Sec.
36.801 Noise Measurement.
36.803 Noise evaluation and calculation.
36.805 Noise limits.

Subpart H—Helicopters

§ 36.801 Noise measurement.

For normal, transport, and restricted category helicopters, the noise generated by the helicopter must be measured at the noise measuring points and under the test conditions prescribed in Part B of Appendix H of this part or under an FAA-FAA-approved equivalent procedure.

§ 36.803 Noise evaluation and calculation.

The noise measurement data obtained under § 36.801 must be corrected to the reference conditions and evaluated under Part C of Appendix H of this part

or an FAA-FAA-approved equivalent procedure.

§ 36.805 Noise limits.

(a) Compliance with the noise levels prescribed under Part D of Appendix H of this part must be shown for helicopters for which application for issuance of a type certificate in the normal, transport, or restricted category is made on or after March 6, 1986.

(b) For helicopters covered by this section, except as provided in paragraph (c), it must be shown, in accordance with this subpart, that the noise levels of the helicopter are no greater than the applicable limits prescribed under § H36.305 of Appendix H of this part.

(c) For helicopters for which application for issuance of an original type certificate in the normal, transport or restricted category is made on or after March 6, 1986, and which the FAA finds to be the first civil version of a helicopter which was designed and constructed for, and accepted for operational use by, an Armed Force of the U.S. or the U.S. Coast Guard on or before March 6, 1986, it must be shown that the noise levels of the helicopter are no greater than the noise limits for a change in type design as specified in § H36.305(a)(1)(ii). Subsequent civil versions must meet the Stage 2 requirements.

9. By amending Appendix B of Part 36; section B36.1 at the end of the first sentence by removing "under § 36.103" and substituting "under §§ 36.103 and 36.803".

10. By adding a new Appendix G and marking it reserved.

11. By adding a new Appendix H to read as follows:

Appendix H—Noise Requirements For Helicopters Under Subpart H

Sec.

Part A—Reference Conditions

H36.1 *General.*
H36.3 *Reference Test Conditions.*
H36.5 *Symbols and Units.*

Part B—Noise Measurement Under § 36.801

H36.101 *Noise certification test and measurement conditions.*
H36.103 *Takeoff test conditions.*
H36.105 *Flyover test conditions.*
H36.107 *Approach test conditions.*
H36.109 *Measurement of helicopter noise received on the ground.*
H36.111 *Reporting and correcting measured data.*
H36.113 *Atmospheric attenuation of sound.*

Part C—Noise Evaluation and Calculation Under § 36.803

H36.201 *Noise evaluation in EPNdB.*
H36.203 *Calculation of noise levels.*
H36.205 *Detailed data correction procedures.*

Part D—Noise Limits Under § 36.805

H36.301 *Noise measurement, evaluation, and calculation.*
H36.303 *(Reserved).*
H36.305 *Noise levels.*

Part A—Reference Conditions

Section H36.1 *General.* This appendix prescribes noise requirements for helicopters specified under § 36.1, including:

(a) The conditions under which helicopter noise certification tests under Part H must be conducted and the measurement procedures that must be used under § 36.801 to measure helicopter noise during each test;

(b) The procedures which must be used under § 36.803 to correct the measured data to the reference conditions and to calculate the noise evaluation quantity designated as Effective Perceived Noise Level (EPNL); and

(c) The noise limits for which compliance must be shown under § 36.805.

Section H36.3 *Reference Test Conditions.*

(a) *Meteorological conditions.* Aircraft position, performance data and noise measurements must be corrected to the following noise certification reference atmospheric conditions which shall be assumed to exist from the surface to the aircraft altitude:

(i) Sea level pressure of 2116 psf (76 cm mercury).

(ii) Ambient temperature of 77 degrees F (25 degrees C).

(iii) Relative humidity of 70 percent.

(iv) Zero wind.

(b) *Reference test site.* The reference test site is flat and without line-of-sight obstructions across the flight path that encompasses the 10 dB down points.

(c) *Takeoff reference profile.* (1) Figure H1 illustrates a typical takeoff profile, including reference conditions.

(2) The reference flight path is defined as a straight line segment inclined from the starting point (1640 feet prior to the center microphone location at 65 feet above ground level) at an angle β defined by the certificated best rate of climb and V_y for minimum engine performance. The constant climb angle β is derived from the manufacturer's data (FAA-approved by the FAA) to define the flight profile for the reference conditions. The constant climb angle β is drawn through C_r and continues, crossing over station A, to the position corresponding to the end of the type certification takeoff path represented by position I_r.

(d) *Level flyover reference profile.* The beginning of the level flyover reference profile is represented by helicopter position D (Figure H2). The helicopter approaches position D in level flight 492 feet above ground level as measured at station A. Airspeed is stabilized at either 0.9 V_H or 0.45 V_H + 65 knots (0.45 V_H + 120 km/hr), whichever speed is less. Rotor speed is stablized at the maximum continuous RPM throughout the 10 dB down time period. The helicopter crosses station A in level flight and proceeds to position J.

(e) For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the minimum specification engine torque corresponding to maximum continuous power available for sea level, 25° C ambient conditions at the relevant maximum certificated weight. The value of V_H thus defined must be listed in the Rotorcraft Flight Manual.

(e) *Approach reference profile.* (1) Figure H3 illustrates approach profile, including reference conditions.

(i) The beginning of the approach profile is represented by helicopter position E. The position of the helicopter is recorded for a sufficient distance (EK) to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of Maximum Tone Corrected Perceived Noise Level (PNLTM), as required. EK represents a stable flight condition in terms of torque, rpm, indicated airspeed, and rate of descent resulting in a 6° ± 0.5° approach angle.

(ii) The approach profile is defined by the approach angle β passing directly over the station A at a height of AH, to position K, which terminates the approach noise certification profile.

(2) The helicopter approaches position H along a constant 6° approach slope throughout the 10 dB down time period. The helicopter crosses position E and proceeds along the approach slope crossing over station A until it reaches position K.

Section H36.5 *Symbols and units.* The following symbols and units as used in this appendix for helicopter noise certification have the following meanings.

FLIGHT PROFILE IDENTIFICATION—POSITIONS

Position	Description
A	Location of the noise measuring point at the flight-track noise measuring station vertically below the reference (takeoff, flyover, or approach) flight path.
C	Start of noise certification takeoff flight path.
C_r	Start of noise certification reference takeoff flight path.
D	Start of noise certification flyover flight path.
D_r	Start of noise certification reference flyover path.
E	Start of noise certification approach flight path.
E_r	Start of noise certification reference approach flight path.
F	Position on takeoff flight path directly above noise measuring station A.
G	Position on flyover flight path directly above noise measuring station A.
H	Position on approach flight path directly above noise measuring station A.
I	End of noise type certification takeoff flight path.
I_r	End of noise type certification reference takeoff flight path.
J	End of noise type certification flyover flight path.
J_r	End of noise type certification reference flyover flight path.
K	End of noise certification approach type flight path.
K_r	End of noise type certification reference approach flight path.
L	Position on measured takeoff flight path corresponding to PNLTM at station A.

FLIGHT PROFILE IDENTIFICATION—POSITIONS—Continued

Position	Description
L_r	Position on reference takeoff flight path corresponding to PNLTM of station A.
M	Position on measured flyover flight path corresponding to PNLTM of station A.
M_r	Position on reference flyover flight path corresponding to PNLTM of station A.
N.	Position on measured approach flight path corresponding to PNLTM at station A.
N_r	Position on reference approach flight path corresponding to PNLTM at station A.
S	Position on measured approach path nearest to station A.
S_r	Position on reference approach path nearest to station A.
T	Position on measured takeoff path nearest to station A.
T_r	Position on reference takeoff path nearest to station A.

FLIGHT PROFILE DISTANCES

Distance	Unit	Meaning
AF	Feet	*Takeoff Height.* The vertical distance between helicopter and station A.
AG	Feet	*Flyover Height.* The vertical distance between the helicopter and station A.
AH	Feet	*Approach Height.* The vertical distance between the helicopter and station A.
AL	Feet	*Measured Takeoff Noise Path.* The distance from station A to the measured helicopter position L.
AL_r	Feet	*Reference Takeoff Noise Path.* The distance from station A to the reference helicopter position L_r.
AM	Feet	*Measured Flyover Noise Path.* The distance from station A to the measured helicopter position M.
AM_r	Feet	*Reference Flyover Noise Path.* The distance from station A to helicopter position M_r on the reference flyover flight path.
AN	Feet	*Measured Approach Noise Path.* The distance from station A to the measured helicopter noise position N.
AN_r	Feet	*Reference Approach Noise Path.* The distance from station A to the reference helicopter position N_r.
AS	Feet	*Measured Approach Minimum Distance.* The distance from station A to the position S on the measured approach flight path.
AS_r	Feet	*Reference Approach Minimum Distance.* The distance from station A to the position S_r on the reference approach flight path.

FLIGHT PROFILE DISTANCES—Continued

Distance	Unit	Meaning
AT	Feet	*Measured Takeoff Minimum Distance.* The distance from station A to the position T on the measured takeoff flight path.
AT_r	Feet	*Reference Takeoff Minimum Distance.* The distance from station A to the position T_r on the reference takeoff flight path.
CI	Feet	*Takeoff Flight Path Distance.* The distance from position C at which the helicopter establishes a constant climb angle on the takeoff flight path passing over station A and continuing to position I at which the position of the helicopter need no longer be recorded.
DJ	Feet	*Flyover Flight Path Distance.* The distance from position D at which the helicopter is established on the flyover flight path passing over station A and continuing to position J at which the position of the helicopter need no longer be recorded.
EK	Feet	*Approach Flight Path Distance.* The distance from position E at which the helicopter establishes a constant angle on the approach flight path passing over station A and continuing to position K at which the position of the helicopter need no longer be recorded.

Part B—Noise Measurement Under § 36.801

Section H36.101 *Noise certification test and measurement conditions.*

(a) *General.* This section prescribes the conditions under which aircraft noise certification tests must be conducted and the measurement procedures that must be used to measure helicopter noise during each test.

(b) *Test site requirements.* (1) Tests to show compliance with established helicopter noise certification levels must consist of a series of takeoffs, level flyovers, and approaches during which measurement must be taken at noise measuring station located at the measuring points prescribed in this section.

(2) Each takeoff test, flyover test, and approach test includes simultaneous measurements at the flight-track noise measuring station vertically below the reference flight path and at two sideline noise measuring stations, one on each side of the reference flight track 492 feet (150m) from, and on a line perpendicular to, the flight track of the noise measuring station.

(3) The difference between the elevation of either sideline noise measuring station may not differ from the flight-track noise measuring station by more than 20 feet.

(4) Each noise measuring station must be surrounded by terrain having no excessive sound absorption characteristics, such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas.

(5) During the period when the takeoff, flyover, or approach noise/time record indicates the noise measurement is within 10 dB of PNLTM, no obstruction that significantly influences the sound field from the aircraft may exist—

(i) For any flight-track or sideline noise measuring station, within a conical space above the measuring position (the point on the ground vertically below the microphone) the cone being defined by an axis normal to the ground and by half-angle 80° from this axis; and

(ii) For any sideline noise measuring station, above the line of sight between the microphone and the helicopter.

(6) If a takeoff or flyover test series is conducted at weights other than the maximum takeoff weight for which noise certification is requested, the following additional requirements apply:

(i) At least one takeoff test must be conducted at a weight at, or above, the maximum certification weight.

(ii) Each test weight must be within +5 percent or −10 percent of the maximum certification weight.

(iii) FAA-approved data must be used to determine the variation of EPNL with weight for takeoff test conditions.

(7) Each approach test must be conducted with the aircraft stabilized and following a 6.0 degree ±0.5 degree approach angle and must meet the requirements of § H36.107 of this Part.

(8) If an approach test series is conducted at weights other than the maximum landing weight for which certification is requested, the following additional requirements apply:

(i) At least one approach test must be conducted at a weight at, or above, the maximum landing weight.

(ii) Each test weight must exceed 90 percent of the maximum landing weight.

(iii) FAA-approved data must be used to determine the variation of EPNL with weight for approach test conditions.

(9) Aircraft performance data sufficient to make the corrections required under § H36.205 of this appendix must be recorded at a FAA-approved sampling rate using FAA approved equipment.

(c) *Weather restrictions.* The test must be conducted under the following atmospheric conditions:

(1) No rain or other precipitation.

(2) Ambient air temperature between 36 F and 95 F (2.2 C and 35 C), inclusively, over that portion of the sound propagation path between the aircraft and a point 10 meters above the ground at the noise measuring station. The temperature and relative humidity measured at aircraft altitude and at 10 meters above ground shall be averaged and used to adjust for propagation path absorption.

(3) Relative humidity and ambient temperature over the portion of the sound propagation path between the aircraft and a point 10 meters above the ground at the noise measuring station is such that the sound attenuation in the one-third octave band centered at 8 kHz is not greater than 12 dB/100 meters and the relative humidity is

between 20 percent and 95 percent, inclusively.

(4) Wind velocity as measured at 10 meters above ground does not exceed 10 knots (19 km/h) and the crosswind component does not exceed 5 knots (9 km/h). The wind shall be determined using a continuous thirty-second averaging period spanning the 10dB down time interval.

(5) No anomalous wind conditions (including turbulence) which will significantly affect the noise level of the aircraft when the noise is recorded at each noise measuring station.

(6) The wind velocity, temperature, and relative humidity measurements required under the appendix must be measured in the vicinity of noise measuring stations 10 meters above the ground. The location of the meterological measurements must be approved by the FAA as representative of those atmospheric conditions existing near the surface over the geographical area which aircraft noise measurements are made. In some cases, a fixed meteorological station (such as those found at airports or other facilities) may meet this requirement.

(7) Temperature and relative humidity measurements must be obtained within 25 minutes of each noise test measurement. Meteorological data must be interpolated to actual times of each noise measurement.

(d) *Aircraft testing procedures.* (1) The aircraft testing procedures and noise measurements must be conducted and processed in a manner which yields the noise evaluation measure designated as Effective Perceived Noise Level (EPNL) in units of EPNdB, as prescribed in Appendix B of this Part.

(2) The aircraft height and lateral position relative to the centerline of the reference flight-track (which passes through the noise measuring point) must be determined by an FAA approved method which is independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, or photographic scaling techniques.

(3) The aircraft position along the flight path must be related to the noise recorded at the noise measuring stations by means of synchronizing signals at an approved sampling rate. The position of the aircraft must be recorded relative to the runway during the entire time period in which the recorded signal is within 10 dB of PNLTM. Measuring and sampling equipment must be approved by the FAA.

Section H36.103 *Takeoff test conditions.*

(a) This section, in addition to the applicable requirements of sections H36.101 and H36.205(b) of this appendix, applies to all takeoff noise tests conducted under this appendix to show compliance with Part 36.

(b) A test series must consist of at least six flights over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations) as follows:

(1) An airspeed of either $V_y \pm 5$ knots or the lowest approved speed ± 5 knots for the climb after takeoff, whichever speed is greater, must be established during the horizontal portion of each test flight and maintained during the remainder of the test flight.

(2) The horizontal portion of each test flight must be conducted at an altitude of 65 feet (20 meters) above the ground level at the flight-track noise measuring station.

(3) Upon reaching a point 1,640 feet (500 meters) from the noise measuring station, the helicopter shall be stabilized at:

(i) The torque used to establish the takeoff distance for an ambient temperature at sea level of 25° C for helicopters for which the determination of takeoff performance is required by airworthiness regulations; or

(ii) The torque corresponding to minimum installed power available for an ambient temperature at sea level of 25° C for all other helicopters.

(4) The helicopter shall be maintained throughout the takeoff reference procedure at:

(i) The speed used ± 5 knots to establish takeoff distance for an ambient temperature at sea level of 25° C for helicopters for which the determination of takeoff performance is required by airworthiness regulations; or

(ii) The best rate of climb speed $V_y \pm 5$ knots, or the lowest approved speed for climb after takeoff, whichever is greater, for an ambient temperature at sea level of 25° C for all other helicopters.

(5) The rotor speed must be stabilized at the normal operating RPM ($\pm 1\%$) during the entire period of the test flight when the measured helicopter noise level is within 10 dB of PNLTM.

(6) The helicopter must pass over the flight-track noise measuring station within $\pm 10°$ from the zenith.

Section H36.105 *Flyover test conditions.*

(a) This section, in addition to the applicable requirements of sections H36.101 and H36.205(c) of this appendix, applies to all flyover noise tests conducted under this appendix to show compliance with Part 36.

(b) A test series must consist of at least six flights (three in each direction) over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations)—

(1) In level flight;

(2) At a height of 492 feet ± 30 feet (150 ± 9 meters) above the ground level at the flight-track noise measuring station; and

(3) Within $\pm 5°$ from the zenith.

(c) Each flyover noise test must be conducted—

(1) At a speed of 0.9 V_H or 0.45 $V_H + 120$ km/hr (0.45 $V_H + 65$ kt), whichever is less, maintained throughout the measured portion of the flyover;

(2) At rotor speed stabilized at the normal operating rotor RPM (± 1 percent); and

(3) With the power stabilized during the period when the measured helicopter noise level is within 10 dB of PNLTM.

(d) The airspeed shall not vary from the reference airspeed by more than ± 5 knots (9 km/hr).

Section H36.107 *Approach test conditions.*

(a) This section, in addition to the requirements of sections H36.101 and H36.205(d) of this appendix, applies to all approach tests conducted under this appendix to show compliance with Part 36.

(b) A test series must consist of at least six flights over the flight-track noise measuring station (with simultaneous measurements at the three noise measuring stations)—

(1) On an approach slope of $6° \pm 0.5°$;

(2) At a height of 394 ± 30 feet (120 ± 9 meters) above the ground level at the flight-track noise measuring station;

(3) Within $\pm 10°$ of the zenith;

(4) At stabilized airspeed equal to the certificated best rate of climb V_y, or the lowest approved speed for approach, whichever is greater, with power stabilized during the approach and over the flight path reference point, and continued to a normal touchdown; and

(5) At rotor speed stabilized at the maximum normal operating rotor RPM (± 1 percent).

(c) The airspeed shall not vary from the reference airspeed by more than ± 5 knots (± 9 km/hr).

Section H36.109 *Measurement of helicopter noise received on the ground.*

(a) *General.* (1) The measurements prescribed in this section provide the data needed to determine the one-third octave band noise produced by an aircraft during testing, at specific noise measuring stations, as a function of time.

(2) Sound pressure level data for aircraft noise certification purposes must be obtained with FAA-approved acoustical equipment and measurement practices.

(3) Paragraphs (b), (c), and (d) of this section prescribe the required equipment specifications. Paragraphs (e) and (f) prescribe the calibration and measurement procedures required for each certification test series.

(b) *Measurement system.* The acoustical measurement system must consist of FAA-approved equipment equivalent to the following:

(1) A microphone system with frequency response and directivity which are compatible with the measurement and analysis system accuracy prescribed in paragraph (c) of this section.

(2) Tripods or similar microphone mountings that minimize interference with the sound energy being measured.

(3) Recording and reproducing equipment the characteristics, frequency response, and dynamic range of which are compatible with the response and accuracy requirements of paragraph (c) of this section.

(4) Calibrators using sine wave, or pink noise, of known levels. When pink noise (defined in paragraph (e)(1) of this section) is used, the signal must be described in terms of its root-mean-square (rms) value.

(5) Analysis equipment with the response and accuracy which meets or exceeds the requirements of paragraph (d) of this section.

(6) Attenuators used for range changing in sensing, recording, reproducing, or analyzing aircraft sound must be capable of being operated in equal-interval decibel steps with no error between any two settings which exceeds 0.2 dB.

(c) *Sensing, recording, and reproducing equipment.* (1) The sound produced by the aircraft must be recorded in such a way that the complete information, including time history, is retained. A magnetic tape recorder is acceptable.

(2) The microphone must be a pressure-sensitive capacitive type, or its FAA-

approved equivalent, such as a free-field type with incidence corrector.

(i) The variation of microphone and preamplifier system sensitivity within an angle of ±30 degrees of grazing (60–120 degrees from the normal to the diaphragm) must not exceed the following values:

Frequency (Hz)	Change in sensitivity (dB)
45 to 1,120	1
1,120 to 2,240	1.5
2,240 to 4,500	2.5
4,500 to 7,100	4
7,100 to 11,200	5

With the windscreen in place, the sensitivity variation in the plane of the microphone diaphragm shall not exceed 1.0 dB over the frequency range 45 to 11,200 Hz.

(ii) The overall free-field frequency response at 90 degrees (grazing incidence) of the combined microphone (including incidence corrector, if applicable) preamplifier, and windscreen must be determined by using either (A) an electrostatic calibrator in combination with manufacturer-provided corrections, or (B) an anechoic free-field facility. The calibration unit must include pure tones at each preferred one-third octave frequency from 50 Hz to 10,000 Hz. The frequency response (after corrections based on that determination) must be flat and within the following tolerances:

44–3,549 Hz ..... ±0.25 dB
3,550–7,099 Hz ..... ±0.5 dB
7,100–11,200 Hz ..... ±1.0 dB

(iii) Specifications concerning sensitivity to environmental factors such as temperature, relative humidity, and vibration must be in conformity with the recommendations of International Electrotechnical Commission (IEC) Publication No. 179, entitled "Pecision Sound Level Meters", as incorporated by reference under § 36.6 of this Part.

(iv) If the wind speed exceeds 6 knots, a windscreen must be employed with the microphone during each measurement of aircraft noise. Correction for any insertion loss produced by the windscreen, as a function of frequency, must be applied to the measured data and any correction applied must be reported.

(3) If a magnetic tape recorder is used to store data for subsequent analysis, the record/replay system (including tape) must conform to the following:

(i) The electric background noise produced by the system in each one-third octave must be at least 35 dB below the standard recording level, which is defined as the level that is either 10 dB below the 3 percent harmonic distortion level for direct recording or ±40 percent deviation for frequency modulation (FM) recording.

(ii) At the standard recording level, the corrected frequency response in each selected one-third octave band between 44 Hz and 180 Hz must be flat and within ±0.75 dB, and in each band between 180 Hz and 11,200 Hz must be flat and within ±0.25 dB.

(iii) If the overall system satisfies the requirements of paragraph (c)(2)(ii) of this section, and if the limitations of the dynamic range of the equipment are insufficient to obtain adequate spectral information, high frequency pre-emphasis may be added to the recording channel with the converse de-emphasis on playback. If pre-emphasis is added, the instantaneously recorded sound-pressure level between 800 Hz and 11,200 Hz of the maximum measured noise signal must not vary more than 20 dB between the levels of the maximum and minimum one-third octave bands.

(d) *Analysis equipment.* (1) A frequency analysis of the acoustic signal must be performed using one-third octave filters which conform to the recommendations of International Electrotechnical Commission (IEC) Publication No. 225, entitled "Octave, Half-Octave, and Third-Octave Band Filters Intended for Analysis of Sound and Vibrations," as incorporated by reference under §36.6 of this Part.

(2) A set of 24 consecutive one-third octave filters must be used. The first filter of the set must be centered at a geometric mean frequency of 50 Hz and the last filter at 10,000 Hz. The output of each filter must contain less than 0.5 dB ripple.

(3) The analyzer indicating device may be either analog or digital, or a combination of both. The preferred sequence of signal processing is:

(i) Squaring the one-third octave filter outputs;

(ii) Averaging or integrating; and

(iii) Converting linear formulation to logarithmic.

(4) Each detector must operate over a minimum dynamic range of 60 dB and perform as a root-mean-square device for sinusoidal tone bursts having crest factors of at least 3 over the following dynamic range:

(i) Up to 30 dB below full-scale reading must be accurate within ±0.5 dB;

(ii) Between 30 dB and 40 dB below full-scale reading must be accurate within ±1.0 dB; and

(iii) In excess of 40 dB below full-scale reading must be accurate within ±2.5 dB.

(5) The averaging properties of the integrator must be tested as follows:

(i) White noise must be passed through the 200 Hz one-third octave band filter and the output fed in turn to each detector/integrator. The standard deviation of the measured levels must then be determined from a statistically significant number of samples of the filtered white noise taken at intervals of not less than 5 seconds. The value of the standard deviation must be within the interval 0.48±0.06 dB for a probability limit of 95 percent. An approved equivalent method may be substituted for this test on those analyzers where the test signal cannot readily be fed directly to each detector/integrator.

(ii) For each detector/integrator, the response to a sudden onset or interruption of a constant amplitude sinusoidal signal at the respective one-third octave band center frequency must be measured at sampling times 0.5, 1.0, 1.5, and 2.0 seconds after the onset or interruption. The rising responses must be in the following amounts before the steady-state level:

0.5 seconds, 4.0±1.0 dB
1.0 seconds, 1.75±0.5 dB
1.5 seconds, 1.0±0.5 dB
2.0 seconds, 0.6±0.25 dB

(iii) The falling response must be such that the sum of the decibel readings below the initial steady-state level, and the corresponding rising response reading is 6.5± 1.0 dB, at both 0.5 and 1.0 seconds and, on subsequent records, the sum of the onset plus decay must be greater than 7.5 decibels.

Note 1.—For analyzers with linear detection, an approximation of this response would be given by:

$$SPL(i,k) = 10 \log \ldots [0.17\,(10^{0.1\,(L_{i,\,k-3})}) + 0.21\,(10^{0.1\,(L_{i,\,k-2})}) + 0.24\,(10^{0.1\,(L_{i,\,k-1})}) + 0.33\,(10^{0.1\,(L_{i,\,k})})]$$

When this approximation is used, the calibration signal should be established without this weighting.

Note 2.—Some analyzers have been shown to have signal sampling rates that are insufficiently accurate to detect signals with crest factor ratios greater than three which is common to helicopter noise. Preferably, such analyzers should not be used for helicopter certification. Use of analysis systems with high signal sampling rates (greater than 40KHz) or those with analog detectors prior to digitization at the output of each one-third octave filter is encouraged.

(iv) Analyzers using true integration cannot meet the requirements of (i), (ii), and (iii) directly, because their overall average time is greater than the sampling interval. For these analyzers, compliance must be demonstrated in terms of the equivalent output of the data processor. Further, in cases where readout and resetting require a dead-time during acquisition, the percentage loss of the total data must not exceed one percent.

(6) The sampling interval between successive readouts shall not exceed 500 milliseconds and its precise value must be known to within ±1 one percent. The instant in time by which a readout is characterized shall be the midpoint of the average period where the averaging period is defined as twice the effective time constant of the analyzer.

(7) The amplitude resolution of the analyzer must be at least 0.25 dB.

(8) After all systematic errors have been eliminated, each output level from the analyzer must be accurate within ±1.0 dB of the level of the input signal. The total systematic errors for each of the output levels must not exceed ±3.0 dB. For contiguous filter systems, the systematic corrections between adjacent one-third octave channels must not exceed 4.0 dB.

(9) The dynamic range capability of the analyzer to display a single aircraft noise event, in terms of the difference between full-scale output level and the maximum noise level of the analyzer equipment, must be at least 60 dB.

(e) *Calibrations.* (1) Within five days prior to beginning each test series, the complete electronic system, as installed in field including cables, must be electronically calibrated for frequency and amplitude by the use of a pink noise signal of known

amplitudes covering the range of signal levels furnished by the microphone. For purposes of this section, "pink noise" means a noise whose noise-power/unit-frequency is inversely proportional to frequency at frequencies within the range of 44 Hz to 11,200 Hz. The signal used must be described in terms of its average root-mean-square (rms) values for a nonoverload signal level. This system calibration must be repeated within five days of the end of each test series, or as required by the FAA.

(2) Immediately before and after each day's testing, a recorded acoustic calibration of the system must be made in the field with an acoustic calibrator to check the system sensitivity and provide an acoustic reference level for the sound level data analysis. The performance of equipment in the system will be considered satisfactory if, during each day's testing, the variation in the calibration value does not exceed 0.5 dB.

(3) A normal incidence pressure calibration of the combined microphone/preamplifier must be performed with pure tones at each preferred one-third octave frequency from 50 Hz to 10,000 Hz. This calibration must be completed within 90 days prior to the beginning of each test series.

(4) Each reel of magnetic tape must:

(i) Be pistonphone calibrated; and

(ii) At its beginning and end, carry a calibration signal consisting of at least a 15 second burst of pink noise, as defined in paragraph (e)(1) of this section.

(5) Data obtained from tape recorded signals are not considered reliable if the difference between the pink noise signal levels, before and after the tests in each one-third octave band, exceeds 0.75 dB.

(6) The one-third octave filters must have been demonstrated to be in conformity with the recommendations of IEC Publication 225 as incorporated by reference under § 36.6 of this Part, during the six calendar months preceding the beginning of each test series. However, the correction for effective bandwidth relative to the center frequency response may be determined for each filter by:

(i) Measuring the filter response to sinusoidal signals at a minimum of twenty frequencies equally spaced between the two adjacent preferred one-third octave frequencies; or

(ii) Using an FAA approved equivalent technique.

(7) A performance calibration analysis of each piece of calibration equipment, including pistonphones, reference microphones, and voltage insert devices, must have been made during the six calendar months preceding the beginning of each day's test series. Each calibration must be traceable to the National Bureau of Standards.

(f) *Noise measurement procedures.* (1) Each microphone must be oriented so that the diaphragm is substantially in the plane defined by the flight path of the aircraft and the measuring station. The microphone located at each noise measuring station must be placed so that its sensing element is approximately 4 feet above ground.

(2) Immediately before and immediately after each series of test runs and each day's testing, acoustic calibrations of the system prescribed in this section of this appendix must be recorded in the field to check the acoustic reference level for the analysis of the sound level data. Ambient noise must be recorded for at least 10 seconds and be representative of the acoustical background, including system noise, that exists during the flyover test run. During that recorded period, each component of the system must be set at the gain-levels used for aircraft noise measurement.

(3) The mean background noise spectrum must contain the sound pressure levels, which, in each preferred third octave band in the range of 50 Hz to 10,000 Hz, are the averages of the energy of the sound pressure levels in every preferred third octave. When analyzed in PNL, the resulting mean background noise level must be at least 20 PNdB below the maximum PNL of the helicopter.

(4) Corrections for recorded levels of background noise are allowed, within the limits prescribed in § H36.111(c)(3) of this appendix.

Section H36.111 Reporting and correcting measured data

(a) *General.* Data representing physical measurements, and corrections to measured data, including corrections to measurements for equipment response deviations, must be recorded in permanent form and appended to the record. Each correction must be reported and is subject to FAA approval. An estimate must be made of each individual error inherent in each of the operations employed in obtaining the final data.

(b) *Data reporting.* (1) Measured and corrected sound pressure levels must be presented in one-third octave band levels obtained with equipment conforming to the standards prescribed in § H36.109 of this appendix.

(2) The type of equipment used for measurement and analysis of all acoustic, aircraft performance, and meteorological data must be reported.

(3) The atmospheric environmental data required to demonstrate compliance with this appendix, measured throughout the test period, must be reported.

(4) Conditions of local topography, ground cover, or events which may interfere with sound recording must be reported.

(5) The following aircraft information must be reported:

(i) Type, model, and serial numbers, if any, of aircraft engines and rotors

(ii) Gross dimensions of aircraft and location of engines.

(iii) Aircraft gross weight for each test run.

(iv) Aircraft configuration, including landing gear positions.

(v) Airspeed in knots.

(vi) Helicopter engine performance as determined from aircraft instruments and manufacturer's data.

(vii) Aircraft flight path, above ground level in feet, determined by an FAA approved method which is independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, or photographic scaling techniques.

(6) Aircraft speed, and position, and engine performance parameters must be recorded at an approved sampling rate sufficient to correct to the noise certification reference test conditions prescribed in § H36.3 of this appendix. Lateral position relative to the reference flight-track must be reported.

(c) *Data corrections.* (1) Aircraft position, performance data and noise measurement must be corrected to the noise certification reference conditions as prescribed in sections H36.3 and H36.205 Appendix.

(2) The measured flight path must be corrected by an amount equal to the difference between the applicant's predicted flight path for the certification reference conditions and the measured flight path at the test conditions. Necessary corrections relating to aircraft flight path or performance may be derived from FAA-approved data for the difference between measured and reference engine conditions, together with appropriate allowances for sound attenuation with distance. The Effective Perceived Noise Level (EPNL) correction must be less than 2.0 EPNdB for any combination of the following:

(i) The aircraft's not passing vertically above the measuring station.

(ii) Any difference between the reference flight-track and the actual minimum distance of the aircraft's ILS antenna from the approach measuring station.

(iii) Any difference between the actual approach angle and the noise certification reference approach flight path.

(iv) Any correction of the measured level flyover noise levels which accounts for any difference between the test engine thrust or power and the reference engine thrust or power.

Detailed correction requirements are prescribed in § H36.205 of this appendix.

(3) Aircraft sound pressure levels within the 10 dB-down points must exceed the mean background sound pressure levels determined under § A36.3(f)(3) by at least 5 dB in each one-third octave band or be corrected under an FAA approved method to be included in the computation of the overall noise level of the aircraft. An EPNL may not be computed or reported from data from which more than four one-third octave bands in any spectrum within the 10 dB-down points have been excluded under this paragraph.

(d) *Validity of results.* (1) The test results must produce three average EPNL values within the 90 percent confidence limits, each value consisting of the arithmetic average of the corrected noise measurements for all valid test runs at the takeoff, level flyovers, and approach conditions. The 90 percent confidence limit applies separately to takeoff, flyover, and approach.

(2) The minimum sample size acceptable for each takeoff, approach, and flyover certification measurements is six. The number of samples must be large enough to establish statistically for each of the three average noise certification levels a 90 percent confidence limit which does not exceed ±1.5 EPNdB. No test result may be omitted from the averaging process, unless otherwise specified by the FAA.

(3) To comply with this appendix, a minimum of six takeoffs, six approaches, and six level flyovers is required. To be counted toward this requirement, each flight event

must be validly recorded at all three noise measuring stations.

(4) The approved values of V_H and V_y used in calculating test and reference conditions and flight profiles must be reported along with measured and corrected sound pressure levels.

Section H36.113 Atmospheric attenuation of sound.

(a) The values of the one-third octave band spectra measured during helicopter noise certification tests under this appendix must conform, or be corrected, to the reference conditions prescribed in section H36.3(a). Each correction must account for any differences in the atmospheric attenuation of sound between the test-day conditions and the reference-day conditions along the sound propagation path between the aircraft and the microphone. Unless the meteorological conditions are within the test window prescribed in this appendix, the test data are not acceptable.

(b) *Attenuation rates.* The atmospheric attenuation rates of sound with distance for each one-third octave band from 50 Hz to 10,000 Hz must be determined in accordance with the formulations and tabulations of SAE ARP 866A, entitled "Standard Values of Atmospheric Absorption as a Function of Temperatures and Humidity for Use in Evaluating Aircraft Flyover Noise", as incorporated by reference under § 36.6 of this Part.

(c) *Correction for atmospheric attenuation.* (1) EPNL values calculated for measured data must be corrected whenever—

(i) The ambient atmospheric conditions of temperature and relative humidity do not conform to the reference conditions, 77 °F and 70%, respectively, or

(ii) The measured flight paths do not conform to the reference flight paths.

(2) The temperature and relative humidity measured at aircraft altitude and at 10 meters above the ground shall be averaged and used to adjust for propagation path absorption.

(iii) The mean attenuation rate over the complete sound propagation path from the aircraft to the microphone must be computed for each one-third octave band from 50 Hz to 10,000 Hz. These rates must be used in computing the corrections required in section H36.111(d) of this appendix.

PART C—NOISE EVALUATION AND CALCULATION UNDER § 36.803

Section H36.201 Noise Evaluation in EPNdB.

(a) Effective Perceived Noise Level (EPNL), in units of effective perceived noise decibels (EPNdB), shall be used for evaluating noise level values under § 36.803 of Part 36. Except as provided in paragraph (b) of this section, the procedures in Appendix B of Part 36 must be used for computing EPNL. Appendix B includes requirements governing determination of noise values, including calculations of:

(1) Instantaneous perceived noise levels;

(2) Corrections for spectral irregularities;

(3) Tone corrections;

(4) Duration corrections;

(5) Effective perceived noise levels; and

(6) Mathematical formulation of noy tables.

(b) Notwithstanding the provisions of section B36.5(a), for helicopter noise certification, corrections for spectral irregularities shall start with the corrected sound pressure level in the 50 Hz one-third octave band.

Section H36.203 Calculation of noise levels.

(a) To demonstrate compliance with the noise level limits of section H36.305, the noise values measured simultaneously at the three noise measuring points must be arithmetically averaged to obtain a single EPNdB value for each flight.

(b) The calculated noise level for each noise test series, i.e., takeoff, flyover, or approach must be the numerical average of at least six separate flight EPNdB values. The 90 percent confidence limit for all valid test runs under section H36.111(d) of this appendix applies separately to the EPNdB values for each noise test series.

Section H36.205 Detailed data correction procedures

(a) *General.* If the test conditions do not conform to those prescribed as noise certification reference conditions under § H36.305 of this appendix, the following correction procedure shall apply:

(1) If a positive value results from any difference between reference and test conditions, an appropriate positive correction must be made to the EPNL calculated from the measured data. Conditions which can result in a positive value include:

(i) Atmospheric absorption of sound under test conditions which is greater than the reference;

(ii) Test flight path at an altitude which is higher than the reference; or

(iii) Test weight which is less than maximum certification weight.

(2) If a negative value results from any difference between reference and test conditions, no correction may be made to the EPNL calculated from the measured data, unless the difference results from:

(i) An atmospheric absorption of sound under test conditions which is less than the reference; or

(ii) A test flight path at an altitude which is lower than the reference.

(3) The following correction procedures may produce one or more possible correction values which must be added algebraically to the calculated EPNL to bring it to reference conditions:

(i) The flight profiles must be determined for both reference and test conditions. The procedures require noise and flight path recording with a synchronized time signal from which the test profile can be delineated, including the aircraft position for which PNLTM is observed at the noise measuring station. For takeoff, the flight profile corrected to reference conditions may be derived from FAA approved manufacturer's data.

(ii) The sound propagation paths to the microphone from the aircraft position corresponding to PNLTM are determined for both the test and reference profiles. The SPL values in the spectrum of PNLTM must then be corrected for the effects of—

(A) Change in atmospheric sound absorption;

(B) Atmospheric sound absorption on the linear difference between the two sound path lengths; and

(C) Inverse square law on the difference in sound propagation path length. The corrected values of SPL are then converted to PNLTM from which PNLTM must be substracted. The resulting difference represents the correction which must be added algebraically to the EPNL calculated from the measured data.

(iii) The minimum distances from both the test and reference profiles to the noise measuring station must be calculated and used to determine a noise duration correction due to any change in the altitude of aircraft flyover. The duration correction must be added algebraically to the EPNL calculated from the measured data.

(iv) From FAA approved data in the form of curves or tables giving the variation of EPNL with rotor rpm and test speed, corrections are determined and must be added to the EPNL, which is calculated from the measured data to account for noise level changes due to differences between test conditions and reference conditions.

(v) From FAA approved data in the form of curves or tables giving the variation of EPNL with approach angle, corrections are determined and must be added algebraically to the EPNL, which is calculated from measured data, to account for noise level changes due to differences between the 6 degree and the test approach angle.

(b) *Takeoff profiles.* (1) Figure H1 illustrates a typical takeoff profile, including reference conditions.

(i) The reference takeoff flight path is described in § H36.3(c).

(ii) The test parameters are functions of the helicopter's performance and weight and the atmospheric conditions of temperature, pressure, wind velocity and direction.

(2) For the actual takeoff, the helicopter approaches position C in level flight at 65 feet (20 meters) above ground level at the flight track noise measuring station and at either $V_y \pm 5$ knots (± 9 km/hr) or the maximum speed of the curve tangential at the ordinate of the height-speed envelope plus 3.0 knots (± 5 knots), whichever speed is greater. Rotor speed is stabilized at the normal operating RPM (± 1 percent), specified in the flight manual. The helicopter is stabilized in level flight at the speed for best rate of climb using minimum engine specifications (power or torque and rpm) along a path starting from a point located 1640 feet (500 meters) forward of the flight-track noise measuring station and 65 feet (20 meters) above the ground. Starting at point B, the helicopter climbs through point C to the end of the noise certification takeoff flight path represented by position I. The position of point C may vary within limits allowed by the FAA. The position of the helicopter shall be recorded for a distance (CI) sufficient to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of PNLTM, as requird by this rule. Station A is the flight-track noise measuring station. The relationships between the measured and corrected takeoff flight profiles can be used to determine the corrections

which must be applied to the EPNL calculated from the measured data.

(3) Figure H1 also illustrates the significant geometrical relationships influencing sound propagation. Position L represents the helicopter location on the measured takeoff flight path from which PNLTM is observed at station A and L_r is the corresponding position on the reference sound propagation path AL and AL_r, both form the angle θ with their respective flight paths. Position T represents the point on the measured takeoff flight path nearest station A, and T_r is the corresponding position on the reference flight path. The minimum distance to the measured and reference flight paths are indicated by the lines AT and AT_r, respectively, which are normal to their flight paths.

(c) *Level flyover profiles.* (1) The noise type certification level flyover profile is shown in Figure H2. Airspeed must be stabilized within ±5 knots of the reference airspeed given in H36.3(d). For each run, the difference between airspeed and ground speed shall not exceed 10 knots between the 10 dB down points. Rotor speed must be stabilized at the maximum continuous RPM within one percent, throughout the 10 dB down time period. If the test requirements are otherwise met, flight direction may be reversed for each subsequent flyover, to obtain three test runs in each direction.

BILLING CODE 4910-13-M

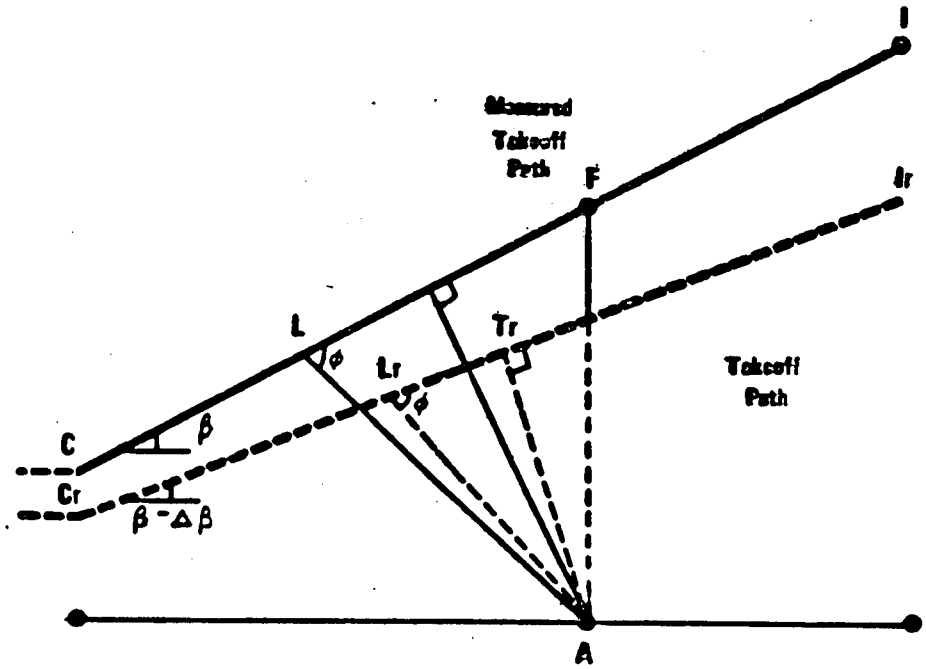


Figure H1. COMPARISON OF MEASURED AND CORRECTED TAKEOFF PROFILES

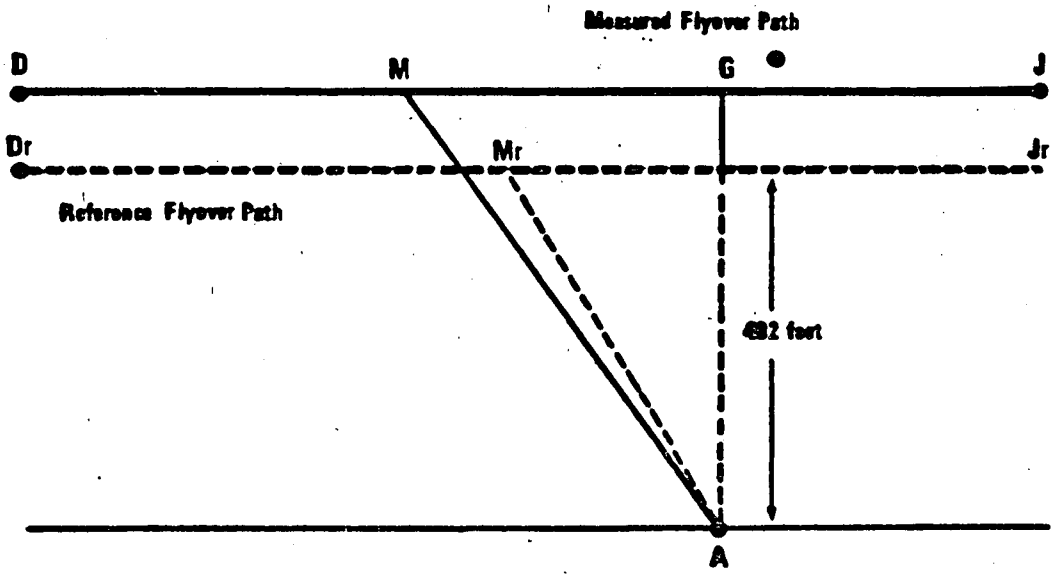


Figure H2. COMPARISON OF MEASURED AND CORRECTED FLYOVER PROFILES

BILLING CODE 4910-13-C

(2) Figure H2 illustrates comparative flyover profiles when test conditions do not conform to prescribed reference conditions. The position of the helicopter shall be recorded for a distance (DJ) sufficient to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of PNLTM, as required. The flyover profile is defined by the height AG which is a function of the operating conditions controlled by the pilot. Position M represents the helicopter location on the measured flyover flight path for which PNLTM is observed at station A and M, is the corresponding position on the reference flight path.

(d) *Approach profiles.* (1) Figure H3 illustrates a typical approach profile, including reference conditions.

(2) The helicopter approaches position H along a 6° (±0.5°) average approach slope throughout the 10 dB down period. The approach procedure shall be acceptable to the FAA and shall be included in the Flight Manual.

(3) Figure H3 illustrates portions of the measured and reference approach flight paths including the significant geometrical relationships influencing sound propagation. EK represents the measured approach path with approach angle η and E_r and K_r represent the reference approach angle of 6°. Position N represents the helicopter location on the measured approach flight path for which PNLTM is observed at station

BILLING CODE 4910-13-M

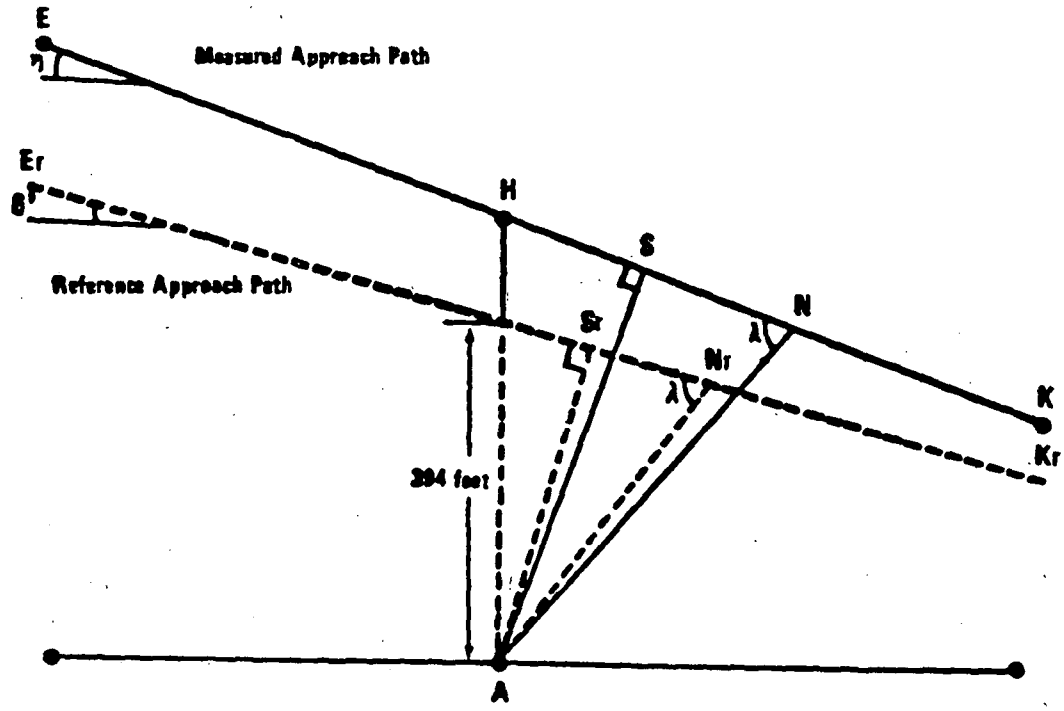


Figure H3. COMPARISON OF MEASURED AND CORRECTED APPROACH PROFILES

BILLING CODE 4910-13-C

A and N_r corresponding position on the reference approach flight path. The measured and corrected noise propagation paths are AN and An_r, respectively, both of which form the same angle with their flight paths. Position S represents the point on the measured approach flight path nearest station A and S_r is the corresponding point on the reference approach flight path. The minimum distance to the measured and reference flight paths are indicated by the lines AS and AS_r, respectively, which are normal to their flight paths.

(e) *Correction of noise at source during level flyover.* (1) For level overflight, if any combination of the following three factors, 1) airspeed deviation from reference, 2) rotor speed deviation from reference, and 3) temperature deviation from reference, results in an advancing blade tip Mach number which deviates from the reference Mach value, then source noise adjustments shall be determined. This adjustment shall be determined from the manufacturer supplied data approved by the FAA.

(2) Off-reference tip Mach number adjustments shall be based upon a sensitivity curve of PNLTM versus advancing blade tip Mach number, deduced from overflights carried out at different airspeeds around the reference airspeed. If the test aircraft is unable to attain the reference value, then an extrapolation of the sensitivity curve is permitted if data cover at least a range of 0.3 Mach units. The advancing blade tip Mach number shall be computed using true airspeed, onboard outside air temperature, and rotor speed. A separate PNLTM versus advancing blade tip Mach number function shall be derived for each of the three certification microphone locations, i.e., centerline, sideline left, and sideline right. Sideline left and right are defined relative to the direction of the flight on each run. PNLTM adjustments are to be applied to each microphone datum using the appropriate PNLTM function.

f. *PNLT corrections.* If the ambient atmospheric conditions of temperature and relative humidity are not those prescribed as reference conditions under this appendix (77 degrees F and 70 percent, respectively), corrections to the EPNL values must be calculated from the measured data under paragraph (a) of this section as follows:

(1) *Takeoff flight path.* For the takeoff flight path shown in Figure H1, the spectrum of PNLTM observed at station A for the aircraft at position L_r is decomposed into its individual SPLi values.

(i) Step 1. A set of corrected values are then computed as follows:

$$SPlic = SPLi + (\alpha\ i - \alpha\ io)AL + (\alpha\ io)AL - ALr) + 20\log(AL/ALr)$$

where SPLi and SPLic are the measured and corrected sound pressure levels, respectively, in the i-th one-third octave band. The first correction term accounts for the effects of change in atmospheric sound absorption where ai and aio are the sound absorption coefficients for the test and reference atmospheric conditions, respectively, for the - ith one-third octave band and L_rA is the measured takeoff sound propagation path. The second correction term accounts for the effects of atmospheric sound absorption on the change in the sound propagation path length where L_rA_c is the corrected takeoff sound propagation path. The third correction term accounts for the effects of the inverse square law on the change in the sound propagation path length.

(ii) Step 2. The corrected values of the SPLic are then converted to PNLT and a correction term calculated as follows:

$$\Delta_1 = PNLT - PNLTM$$

which represents the correction to be added algebraically to the EPNL calculated from the measured data.

(2) *Approach flight path.*

(i) The procedure described in paragraph (f)(1) of this section for takeoff flight paths is also used for the approach flight path, except that the value for SPLic relate to the approach sound propagation paths shown in Figure H3 as follows:

$$SPLic = SPLi + (\alpha - \alpha io)\ AM + \alpha(AM - AMr) + 20\log(AM/AMr)$$

where the lines NS and N_rS_r are the measured and referenced approach sound propagation paths, respectively.

(ii) The remainder of the procedure is the same as that prescribed in paragraph (d)(1)(ii) of this section, regarding takeoff flight path.

(3) *Sideline microphones.* The procedure prescribed in paragraph (f)(1) of this section for takeoff flight paths is also used for the propagation to the sideline microphones, except that the values of SPLic relate only in the measured sideline sound propagation path as follows:

$$SPLic\text{-}SPLi + (\alpha io - \alpha + io)KX + \alpha io\ (KX - KXr) + 20\log(KX/KXr)$$

K is the sideline measuring station where

X=L and Xr=Ln for take off
X=M and Xr=Mn for approach
X=N and Xr=Nr for fly-over

(4) *Level flyover flight path.* The procedure prescribed in paragraph (f)(i) of this section for takeoff flight paths is also used for the level flyover flight path, except that the values of SPLic relate only to the flyover sound propagation paths as follows:

$$SPLic = SPLi + (\alpha - \alpha io)\ AN + \alpha io\ (AN - ANr) + 20\log(AN/ANr)$$

(g) *Duration corrections.*

(1) If the measured takeoff and approach flight paths do not conform to those prescribed as the corrected and reference flight paths, respectively, under § A36.5(d)(2) it will be necessary to apply duration corrections to the EPNL values calculated from the measured data. Such corrections must be calculated as follows:

(a) Takeoff flight path. For the takeoff flight path shown in Figure H1, the correction term is calculated using the formula—

$$\Delta_2 = -10\log(AT/ATr) + 10\log(V/Vr)$$

which represents the correction which must be added algebraically to the EPNL calculated from the measured data. The lengths AT and ATr are the measured and corrected takeoff minimum distances from the noise measuring station A to the measured and the corrected flight paths, respectively. A negative sign indicates that, for the particular case of a duration correction, the EPNL calculated from the measured data must be reduced if the measured flight path is at greater altitude than the corrected flight path.

(b) Approach flight path. For the approach flight path shown in Figure H3, the correction term is calculated using the formula—

$$\Delta 2 = -10\log(AS/ASr) + 10\log(V/Vr)$$

where AS is the measured approach minimum distance from the noise measuring station A to the measured flight path and 394 feet is the minimum distance from station A to the reference flight path.

(c) Sideline microphones. For the sideline flight path, the correction term is calculated using formula—

$$\Delta_2 = -10\log(KX/KXr) + 10\log(V/Vr)$$

K is the sideline measuring station

where X=T and Xr=Tr for takeoff
where X=S and Xr=Sr for approach
where X=G and Xr=Gr for flyover

(d) *Level flyover flight paths.* For the level flyover flight path, the correction term is calculated using the formula—

$$\Delta_2 = -10\log(AG/AGr) + 10\log(V/Vr)$$

where AG is the measured flyover altitude over the noise measuring station A.

(2) The adjustment procedure described in this section shall apply to the sideline microphones in the take-off, overflight, and approach cases. Although the noise emission is strongly dependent on the directivity pattern, variable from one helicopter type to another, the propagation angle θ shall be the same for test and reference flight paths. The elevation angle ψ shall not be constrained but must be determined and reported. The certification authority shall specify the acceptable limitations on ψ. Corrections to data obtained when these limits are exceeded shall be applied using FAA approved procedures.

PART D—NOISE LIMITS UNDER § 36.805

Section H36.301 Noise measurement, evaluation, and calculation

Compliance with this part of this appendix must be shown with noise levels measured, evaluated, and calculated as prescribed under Parts B and C of this appendix.

Section H36.303 [Reserved]

Section H36.305 Noise levels

(a) *Limits.* For compliance with this appendix, it must be shown by flight test that the calculated noise levels of the helicopter, at the measuring points described in § H36.101 of this appendix, do not exceed the following, with appropriate interpolation between weights:

(1) *Stage 1* noise limits for acoustical changes for helicopters are as follows:

(i) For takeoff, flyover, and approach calculated noise levels, the noise levels of each Stage 1 helicopter that exceed the Stage 2 noise limits plus 2 EPNdB may not, after a change in type design, exceed the noise levels created prior to the change in type design.

(ii) For takeoff, flyover, and approach calculated noise levels, the noise levels of each Stage 1 helicopter that do not exceed the Stage 2 noise limits plus 2 EPNdB may not, after the change in type design, exceed the Stage 2 noise limits plus 2 EPNdB.

(2) *Stage 2* noise limits are as follows:

(i) *For takeoff calculated noise levels*—109 EPNdB for maximum takeoff weights of

176,370 pounds or more, reduced by 3.01 EPNdB per halving of the weight down to 89 EPNdB for maximum weights of 1,764 pounds or less.

(ii) *For flyover calculated noise levels*—108 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the weight down to 88 EPNdB for maximum weights of 1,764 pounds or less.

(iii) *For approach calculated noise levels*—110 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the weight down 90 EPNdB for maximum weight of 1,764 pounds or less.

(b) *Tradeoffs.* Except to the extent limited under § 36.11(b) of Part 36, the noise limits prescribed in paragraph (a) of this section may be exceeded by one or two of the takeoff, flyover, or approach calculated noise levels determined under § H36.203 of this appendix if

(1) The sum of the exceedances is not greater than 4 EPNdB;

(2) No exceedance is greater than 3 EPNdB; and

(3) The exceedances are completely offset by reduction in the other required calculated noise levels.

Note.—For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) involves a proposed regulation which is not major under Executive Order 12291, (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, as promulgated, will not have a significant impact on a substantial number of small entities. In addition, this rule will 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 in Washington, DC, on January 21, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-2118 Filed 2-4-88; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
February 5, 1988

Part VI

Department of Health and Human Services

Centers for Disease Control

Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention and Surveillance Projects Program Announcement and Availability of Funds for Fiscal Year 1988; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention and Surveillance Projects Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 for cooperative agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention and Surveillance Projects. This announcement consolidates the surveillance program with the prevention program for current recipients of funds for both activities.

Authority

These projects are authorized under the Public Health Service Act; section 301(a) [42 U.S.C. 241(a)], as amended; section 304(a) [42 U.S.C. 242b(a)]; section 306(b) [42 U.S.C. 242k(b)]; section 308(d) [42 U.S.C. 242m(d)]; section 311(b) [42 U.S.C. 243(b)]; and section 318 [42 U.S.C. 247c], as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Eligible Applicants

Eligible applicants are the official public health agencies of States, and the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. Local public health agencies which are current AIDS prevention project recipients (Los Angeles, New York City, and San Francisco) are eligible for AIDS Prevention and Surveillance Projects. Other local public health agencies which are current surveillance project recipients (Baltimore, Boston, Chicago, Denver, and Philadelphia) will be eligible for only surveillance assistance. Eligibility for the ongoing seroprevalence studies is limited to State/local public health agencies representing the 30 Standard Metropolitan Statistical Areas (SMSA) now participating as follows: Albuquerque, NM; Atlanta, GA; Baltimore, MD; Boston, MA; Chicago, IL; Cleveland, OH; Dallas, TX; Denver, CO; Detroit, MI; Honolulu, HI; Houston, TX; Jacksonville, FL; Kansas City, MO; Los Angeles, CA; Memphis, TN; Miami, FL; Minneapolis, MN; New Haven, CT; New Orleans, LA; Newark, NJ; New York City, NY; Phoenix, AZ; Richmond, VA; Rochester, NY; Salt Lake City; UT; San Francisco, CA; San Juan, PR; Seattle, WA; St. Louis, MO; and Washington, DC. Eligibility for statewide neonatal screening is limited to the District of Columbia, the Commonwealth of Puerto Rico and the 23 State public health agencies representing the 30 SMSA identified above.

Purpose

The purpose of these awards is to assist State and local public health departments in detecting and preventing the further spread of Human Immunodeficiency Virus (HIV) infection through (1) resource assessment; (2) active surveillance and selected epidemiologic investigations; (3) seroprevalence survey; (4) laboratory services; (5) knowledge, attitudes, and behavior (KAB) studies/assessments; (6) public information campaigns; (7) health education and risk reduction (HE/RR) activities; (8) counseling, testing, and partner notification; (9) involvement and participation of community based organizations, particularly those representing or serving minorities; (10) school health education collaboration; and (11) evaluation of all activities. Throughout all these program activities, a special emphasis will be placed on active surveillance and prevention of AIDS and HIV infection in minority populations, particularly black, Hispanic, Asian, and American Indian/Alaskan Native minority populations; and other populations in which the risk of AIDS is especially high.

National Program Goals

1. To establish and strengthen effective AIDS prevention and surveillance programs at all levels throughout the United States and its territories.

2. To effect, maintain, and measure behavioral change among members of the general population and specific groups (e.g., homosexual and bisexual men, IV drug abusers, women of reproductive age, etc.) which will reduce their risk of HIV infection.

3. To develop effective and culturally relevant programs to inform and educate the general public, particularly members of minority communities, in order to gain broad support for reasonable and effective AIDS prevention program efforts throughout the United States and its territories.

Cooperative Activities

1. *Required Recipient Activities*—The following activities should be planned and conducted in collaboration and coordination with local health departments and with the participation of AIDS service organizations; community groups/organizations, especially those with a minority membership and focus; and service delivery programs, institutions diagnosing and treating patients with AIDS, and organizations that serve persons at increased risk of AIDS (e.g., drug abuse treatment, family planning, and maternal and infant care projects; hemophilia treatment centers; State and local medical associations, etc.). Evidence of collaboration, such as AIDS prevention plans submitted by local health departments in major metropolitan areas, AIDS service associations, minority groups, and service delivery programs, should be included.

A. Resource Assessment

Establish an on-going assessment process to examine current and projected resource requirements for all AIDS prevention and active surveillance activities, including laboratory services and activities directed at minority populations, and determine areas and/or population groups where there is need for additional program effort.

B. Surveillance and Epidemiologic Investigations

Design, implement, and maintain active surveillance programs for AIDS cases meeting the national surveillance definition and conduct associated epidemiologic investigations to determine trends in incidence of AIDS and to identify risk groups and risk factors in accordance with CDC guidelines and recommendations. In those jurisdictions which encourage or require reporting of diseases other than AIDS associated with HIV infection, the CDC classification system for HIV infection for such reporting should be used (MMWR, Vol. 35, #20, pp.334–339, 5/23/86). Special emphasis should be placed on conducting activities which will define more clearly the extent of the problem of HIV infection and AIDS among minority populations and on disseminating surveillance information at the local level as a means of gaining support for local prevention efforts, for identifying patterns of infection, for formulating and targeting prevention strategies, and for projecting trends and health care costs.

Specific surveillance components to be addressed:

(1) Design and conduct surveillance activities directed at improving the reporting of all AIDS cases (including pediatric cases) diagnosed in the public health agency's geographic jurisdiction

(2) Establish systems with physicians, hospitals or clinics, cancer registries, laboratories, hemophilia treatment centers, death certificate registries, and other public health agencies for identifying and reporting cases.

(3) Develop and maintain a central registry of all reported cases which includes epidemiologic and clinical information for individual cases, and which allows for rapid, uniform updates and retrieval of case information for regular and special tabulations of data for analysis. The case registry must be of limited access and have procedures in existence to insure confidentiality of patient records.

(4) Conduct epidemiologic investigations of cases that have no identified risk factors, including possible blood transfusion-related cases and their donors (as indicated) and other cases of epidemiologic importance.

(5) Evaluate the effectiveness of surveillance approaches through at least one ongoing survey to validate overall reporting completeness and timeliness.

(6) Analyze, present, and publish the results of surveillance activities and epidemiologic investigations in consultation with CDC.

C. Seroprevalence Surveys and Studies

Conduct ongoing sentinel surveillance, in 30 selected SMSA, of target populations, including newborns and individuals in selected hospitals and in STD, IV drug treatment, family planning, and TB clinics, to determine prevalence and incidence of HIV infection in these groups, to help target prevention activities, and to further assist in measuring progress toward reaching program outcome objectives. Also, pending availability of funds, conduct other seroprevalence surveys jointly agreed upon in order to measure the extent of the HIV problem or to measure the effectiveness of prevention programs.

Funds applied for should not be duplicative of HIV seroprevalence activities funded by other Federal agencies such as National Institutes of Health (neonatal screening) or National Institute on Drug Abuse (NIDA) (drug treatment centers).

D. Laboratory Services

Provide laboratory services, including screening, definitive procedures, and training of personnel necessary to support surveillance, seroprevalence surveys, and testing for HIV infection. Participate in a laboratory performance evaluation program for HIV testing. For consistency of HIV surveillance data from State to State, applicants should use a licensed Western Blot kit for supplemental testing of repeatedly reactive serum specimens which are part of the serologic surveys and studies supported by these agreements.

E. Knowledge, Attitude, and Behavior Studies/Assessments

Conduct periodic assessments of knowledge, attitudes, and behavior (KAB) that monitor changes among the general public, racial/ethnic minorities, health workers, and selected groups whose behaviors may put them at risk, to measure the success of program efforts toward meeting program objectives and for setting new objectives for future budget periods. Sampling methodologies and instruments should be culturally sensitive.

F. Public Information Campaigns

Based upon KAB assessments, conduct State and/or community-wide public information campaigns designed: to increase the awareness of all segments of the population, including minority communities, of the need to take action to eliminate or reduce the transmission of HIV; to stimulate individual and organization commitment to preventive action; and, to develop culturally sensitive media campaigns which reach diverse population and age groups. Plans should include use of electronic and print media and other channels for getting information to subpopulations, including minorities that are disproportionately affected by AIDS and HIV infection and minorities in whom the incidence and prevalence of infection is currently low. Plans should also address coordination with the CDC National Media Campaign.

G. Health Education/Risk Reduction (HE/RR)

In addition to public information campaigns and based upon KAB assessments, deliver basic AIDS education and risk reduction messages and/or services among the following groups to increase awareness of the risks of HIV infection and enlist their support in prevention activities:

(1) Groups whose behavior may place them at increased risk (e.g. homosexual/bisexual men, prostitutes, IV drug abusers, persons with sexually transmissible diseases, heterosexuals with multiple sex partners, and sex and needle-sharing partners of all individuals listed above); wherever they obtain medical or other professional services; prevention and education programs should be established at STD, drug treatment, and tuberculosis clinics; physicians' offices; hospitals and community clinics; and other service providers.

(2) All segments of minority communities (by establishing linkages with community-based or statewide, health and non-health related organizations);

(3) All sexually active women, especially minorities and teenagers, by establishing linkages with family planning, prenatal, and obstetric service providers and maternal and infant care projects;

(4) Health professionals (e.g., medical and dental health providers, mental health professionals, minority health and dental chapters and associations);

(5) School educators and administrators; and

(6) Administrators of correctional and other institutional facilities.

H. Counseling, Testing, and Partner Notification

(1) Routinely offer, on a voluntary basis, HIV counseling and laboratory testing services statewide in STD clinics, drug treatment centers, tuberculosis treatment clinics, and designated counseling and testing sites. Also, where appropriate, routinely offer HIV counseling and testing services to women of childbearing age at increased risk for HIV infection seen in family planning, obstetric, and prenatal clinics. Services should be offered at times and places convenient and accessible to target populations. In addition, laboratory testing services should be offered only in conjunction with pre- and post-test counseling.

(2) Establish standards and implement procedures for confidential notification of sex and needle-sharing partners of AIDS cases and HIV seropositive individuals.

(3) Establish and maintain a system for the referral of HIV seropositive individuals for additional counseling, medical evaluation, and, in the case of seropositive women, for counseling on contraceptive services.

(4) Determine the extent of HIV counseling and testing services offered by private practicing physicians, hospitals, and other private care providers; provide appropriate training in pretest and posttest counseling to such providers.

(5) Demonstrate coordination with the State/Territorial Drug Abuse Authority through the joint development of a program plan (which avoids duplicate funding by other Federal agencies such as NIDA) to establish HIV counseling, testing, and partner notification activities in all public drug treatment

facilities within the recipient's jurisdiction.

Counseling, testing, and partner notification should be conducted in a manner consistent with guidelines published in Morbidity and Mortality Weekly Report (MMWR) August 14, 1987, 36, 509–515.

I. Reaching Minorities at Risk

Develop systematic efforts in minority communities to engage individuals and organizations in activities to provide AIDS prevention education to minorities who may be at risk of HIV infection, including:

(1) Regular consultation with the leadership and/or representatives of community-based groups to discuss local AIDS-related issues, problems, strategies, and program plans, implementation, and evaluation;

(2) Providing direct financial assistance to community-based organizations, particularly those representing or serving minorities, through the dissemination of Requests for Contract Proposals, which includes detailed information and assistance on application procedures, to a wide range of eligible applicants;

(3) Providing technical assistance to community-based organizations in gathering baseline data to define the AIDS problem, establishing measurable education objectives, and designing activities. Assistance may include sponsoring various workshops at the local level on program planning and other relevant topics of interest for representatives of community-based organizations.

J. School Health Education Collaboration

Collaborate with State and local education agencies in conducting School Health Education to Prevent the Spread of AIDS programs. Participate in planning, implementing, and evaluating these programs, including (1) providing consultation and technical assistance during the planning and development phases of the program; (2) developing, selecting, and reviewing educational materials and curricula used by the program; (3) providing logistical and technical support to facilitate implementation and evaluation of the program (e.g., by arranging to have AIDS, sexually transmitted diseases, and substance abuse technical experts available for program workshops, meetings and conferences); and, (4) ensuring close coordination of this initiative with the State and local education agencies.

K. Evaluation

Monitor and evaluate the effectiveness of program activities, including special provisions to determine how these programs impact on minority communities, to ensure that State, local, and national goals will be achieved. Measures must be established to evaluate the achievement of all project objectives and elements under Required Recipient Activities.

Additional guidance on these activities can be obtained from the following documents:

Guidelines for AIDS Prevention Program Operations.

Public Health Service Guidelines for Counseling and Antibody Testing to Prevent HIV Infection and AIDS, MMWR 1987, 36, 509–515.

Revision of the CDC Surveillance Case Definition for Acquired Immunodeficiency Syndrome, MMWR 1987, 36, No. 1S.

Guidelines for Surveillance of Acquired Immunodeficiency Syndrome (AIDS), (August 1986, Draft).

Performance Evaluation Program: Testing for Human Immunodeficiency Virus Infection, MMWR 1987, 36, 614.

Protocol and Guidelines for Seroprevalence Surveys.

2. *Centers for Disease Control Activities:*

A. Provide consultation and technical assistance in planning, operating, and evaluating prevention and surveillance activities:

B. Provide training in program planning and management, the organization of community resources, pre- and posttest counseling, sex partner notification, and surveillance.

C. Provide up-to-date scientific information regarding the risk/protective factors for AIDS and HIV infection, and the program strategies for the prevention of HIV infection.

D. Provide a national performance evaluation system for laboratory procedures related to the ELISA and Western blot or other appropriate testing procedures and laboratory training that includes current scientific/technical information about the practical as well as the theoretical sensitivity and specificity of the different serological tests.

E. Develop, refine, and disseminate AIDS prevention and surveillance program information which describes effective methods to carry out activities or monitor progress.

F. Provide criteria for the surveillance definition of AIDS cases and case report forms, and assistance in establishing and maintaining the computerized AIDS Reporting System (ARS).

G. Particpate in the analysis of information and data gathered from program activities and facilitate the transfer of information and technology among all States and communities.

H. Assist in the evaluation of the overall effectiveness of program operations.

Availability of Funds

Approximately $120,000,000 is available in Fiscal Year 1988 for these awards. It is expected that the initial budget period for the AIDS Prevention and Surveillance Cooperative Agreements will be for 9 months beginning on May 1, 1988, and ending January 31, 1989, in a 1 to 5 year project period. Priority consideration will be given to areas with comparatively large numbers of reported AIDS cases, and/or evidence of increased risk among minorities. Funding estimates for the six components listed below may vary and are subject to change.

1. *Surveillance:* On a competitive basis, approximately $6,000,000 is available for up to 30 new programs and 37 existing programs ranging from $25,000 to $750,000 with an average award of $90,000.

2. *Seroprevalence Surveys:* On a competitive basis, approximately $27,000,000 is available to fund ongoing seroprevalence surveys in 30 SMSA and neonatal seroprevalence surveys in the District of Columbia, the Commonwealth of Puerto Rico, and the 23 States representing these SMSA.

3. *Public Information:* On a competitive basis, approximately $6,000,000 is available for up to 3 new programs and for expansion of 59 existing programs ranging from $10,000 to $325,000 with an average award of $95,000.

4. *HE/RR:* On a competitive basis, approximately $19,000,000 is available for up to 3 new programs and 59 existing programs from $25,000 to $1,500,000 with an average award of $300,000.

5. *Counseling, Testing, and Partner Notification:* On a competitive basis, approximately $50,000,000 is available for up to 3 new programs and 59 existing programs ranging from $80,000 to $4,500,000 with an average award of $800,000.

6. *Minority Initiative:* On a competitive basis, approximately $12,000,000 is available for up to 62 programs ranging from $10,000 to $500,000 with an average award of $190,000 to enhance ongoing prevention program activities for minority populations at risk of infection.

Use of Funds

Priority will be given to funding personnel, their training and travel, and supplies and services, including contractual services (i.e., contracts with community organizations) directly related to planning, organizing, and conducting the AIDS prevention and surveillance project described in this announcement.

Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies, and other forms of direct assistance will be considered.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaries or survey instruments, and educational group sessions related to AIDS risk reduction education efforts if approved in accordance with the guidance document titled *Content of AIDS-related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1988).* Funds from the project may not be spent for research activities, for surveys, or for questionnaires except as may be needed to meet the required recipient activities of this announcement.

This program has no statutory cost participation formula. Funds may not be used to supplant existing AIDS operations and services provided by a State or locality.

Confidentiality

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)), all information obtained in connection with the examination, care, or treatment provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide services to the individual or as may be required by a law of a State or political subdivision of a State. Information derived from any such program may be disclosed (A) in summary, statistical, or other form, or (B) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

Reporting Requirements

Subject to OMB clearance, summary statistical reports of counseling and testing activities which include demographic variables, type of site and risk variables, and quarterly progress reports for surveillance and prevention activities will be required. Annual financial status and performance reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

Other Requirements

Recipients must comply with the document titled: *Content of AIDS-related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1988).*

Applications

1. *Special Guidelines for Application Format*—A single application shall be submitted for the six components listed under the availability of funds section of this announcement. A separate narrative is required for requests for AIDS surveillance activities (includes seroprevalence surveys) and a separate narrative for requests for all prevention activities (includes public information; HE/RR; counseling, testing and partner notification; and special minority initiatives). Narratives should be concise (e.g., approximately 10 to 20 single spaced typewritten pages) and describe: (1) Background and need; (2) proposed objectives; (3) methods of operation; and (4) plan of evaluation. A separate budget and budget justification for the nine month budget period is required for each of the six components for which support is requested. A combined budget that delineates all components for which support is requested should also be submitted. Projected funding needs for the next four years should also be included; however, no details or justifications are required. Applications which do not contain separate narratives and budget requests as outlined above will not be evaluated and will be returned to the applicant. Award of funds will be on a consolidated basis.

2. *Compliance with Program Review Panel Requirement*—Applications which include support for written materials, pictorials, audiovisuals, or other activities governed by the guidance document titled *Content of AIDS-related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1988),* must comply with paragraph 2 of the document. Applicants for continued AIDS Prevention funding that have previously complied with this requirement need only include an assurance that the role of the Program Review Panel continues to be in accordance with paragraph 2.a of the document.

Review and Evaluation Criteria

Each component for which assistance is requested will be reviewed and evaluated on an individual basis according to the following criteria:

1. The need for support as documented in the background and need section of the narrative, including the extent to which progress has been made toward accomplishing the objectives of the previous budget period. (20 points)

2. The extent to which short term (budget period) and long term (project period) objectives are provided, and the extent to which they are realistic, measurable, time-phased, and related to the National Program Goals and Required Recipient Activities, and, with respect to the AIDS prevention and minority education components, reflect expected changes that program efforts will produce in relation to baseline levels of knowledge, attitudes, and behaviors among risk groups and the population as a whole. (15 points)

3. The quality of the applicant's plan for conducting appropriate Required Recipient Activities, and the overall potential effectiveness of the proposed methods in meeting the stated objectives. (20 points)

4. The extent to which groups disproportionately impacted by AIDS, including minority and other affected populations, have been involved in an assessment of program needs and in program planning; and the extent to which the applicant proposes, as evidenced by letters of support, to involve minority and other community groups in implementing and evaluating all program activities. (30 points—this criterion applies to prevention components only.)

5. The extent to which the evaluation plan clearly specifies the methods and instruments of measurement to be used and will evaluate accomplishments of objectives and activities. (15 points)

In addition, consideration will also be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable. Requests for computers, office equipment and furniture, and renting, leasing or renovating office space will be evaluated based on the extent to which they are justified as essential to program success.

Application and Submission Deadline

The original and two copies of the application must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces

Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, on or before February 29, 1988.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1. A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Lin Dixon, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6575.

Technical assistance for prevention and minority activities may be obtained from Willard Cates, M.D., M.P.H., Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 639-2552 or FTS 236-2552.

Technial assistance for surveillance activities may be obtained from David Collie, AIDS Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 639-3352 or FTS 236-3352.

Dated: February 1, 1988.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-4160-18 Filed 2-4-88; 8:45 am]

BILLING CODE 4160-18-M

federal register

Friday
February 5, 1988

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered or Threatened Status for Three Granite Outcrop Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines two plants, *Isoetes melanospora* (black-spored quillwort) and *Isoetes tegetiformans* (mat-forming quillwort), to be endangered species and one plant, *Amphianthus pusillus* (little amphianthus) to be threatened under the authority contained in the Endangered Species Act (Act) of 1973, as amended. These three species are restricted to granite outcrops in the Piedmont physiographic region in the Southeast and all have their center of distribution in Georgia. These species are jeopardized by the continuing destruction of granite outcrops from quarry operations, and habitat modification from dumping, their inclusion in pasture, and heavy recreational use. All three species have lost populations through such activities. This action will extend the Act's protection to these three granite outcrop endemics.

EFFECTIVE DATE: March 7, 1988.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell A. Neal at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Amphianthus pusillus, Isoetes melanospora, and *Isoetes tegetiformans* are endemic to granite outcrops in the Piedmont physiographic region of the southeastern U.S. *Amphianthus* is known from Alabama, Georgia, and South Carolina. *Isoetes melanospora* and *Isoetes tegetiformans* occur only in Georgia. These three taxa are the most restricted of the granite outcrop species (Bridges 1986a). Granite outcrops superficially resemble one another but may differ geologically as igneous, quartzitic, gneissic or porphyritic granite (Lester 1938, McVaugh 1943, Wharton 1978). Outcrops supporting populations of all three taxa occur as large isolated domes or as gently rolling "flatrocks." These communities are believed to have long served as active sites for speciation, as evidenced by a high degree of endemism. Speciation is accelerated on outcrops due to the scattered distribution of rock exposures and the harsh environmental conditions (high light intensities, extreme wet/dry periods) to which the species have become adapted (Murdy 1968). *Amphianthus* is the most common associate of *Isoetes melanospora* and *Isoetes tegetiformans*. Other plants which may occur in and around the pools include lichens (*Cladonia* sp.), *Diamorpha smallii, Arenaria uniflora, Arenaria glabra, Polytrichum commune, Isoetes piedmontana, Juncus georgianus, Agrostis* sp., *Lindernia monticola, Cyperus granitophilus, Andropogon scoparius,* and *Selaginella tortipila* (Garris 1980, Kral 1983, Rayner 1986). Two Federal candidate plant species (*Sedum pusillum* and *Draba aprica*) occur with *Amphianthus* and *Isoetes tegetiformans* at several sites in eastern Georgia.

A discussion of the three species proposed for listing herein follows:

Amphianthus pusillus is a diminutive fibrous-rooted annual. It has both floating and submerged leaves. The submerged leaves are lanceolate, less than 1 centimeter (cm) (0.4 inch) in length and appear to be arranged in a basal rosette. The floating leaves are ovate, 4–8 millimeters (mm)).16–0.32 inch) long, 3–5 mm (0.12–0.20 inch) wide, oppositely arranged, and attached to the stem near the submerged leaves by long, delicate stems. Its flowers are white, 4–4 mm (0.16–0.20 inch) in length, and borne in the axils of both types of leaves. Floating flowers are chasmogamous (open) and submerged flowers are cleistogamous (closed) except when exposed to air (Lunsford 1938, Rayner 1986). *Amphianthus* usually flowers in March or April (depending upon environmental conditions) and produces a capsule, 2–3 mm (0.08–0.12 inch) broad and 1 mm (0.04 inch) long. *Amphianthus* is ephemeral, usually completing its life cycle in a 3-to-4 week period (Garris 1980, Kral 1983, Rayner 1986).

This species was first collected by M.C. Leavenworth in 1836 in Newton County, Georgia (present-day Rockdale County) and later described by John Torrey in 1839 (Pennell 1935). *Amphianthus pusillus* is thought to be a relict species, representing a monotypic genus of doubtful placement in the family Scrophulariaceae (Pennell 1935, McVaugh 1943, Murdy 1968). It is most similar in flower morphology to *Gratiola* and *Bacopa* but differs from all other southern Scrophulariaceae by its dimorphic leaves and flowers (Pennell 1935, Kral 1983).

Optimal habitat for *Amphianthus* has been consistently described as pools surrounded by a rock rim several centimeters in height and sandy-silty soils 2–5 cm (0.8–2.0 inches) in depth with a low organic matter content (Lunsford 1938, McVaugh 1943, Garris 1980, Miller 1985, Rayner 1986). Most populations occur in such typical pools; however, Garris (1980) and Rayner (1986) have reported several populations from atypical habitats. Most of these atypical pools lacked an intact rim, others were in ecotonal zones or seepage areas.

Amphianthus primarily occurs in Georgia with peripheral populations in Alabama and South Carolina. Status surveys have been conducted throughout its range by Miller (1985) in Alabama, Garris (1980) in Georgia, and Rayner (1981, 1986) in South Carolina. Extensive surveys of granite outcrops in the Piedmont have been conducted by J. Allison since the 1970's (University of Georgia, pers. comm. 1986).

The acutal number of individual plants is difficult to determine since *Amphianthus* is an ephemeral annual whose population size and vigor is dependent upon weather conditions (sufficient moisture). This is further complicated by a seed bank of undetermined size and dormancy period (Rayner 1986).

Amphianthus was first reported from Alabama by Harper (1939) in Randolph County. However, this population has not been relocated in years and is believed extirpated. Currently, there are three extant populations in two counties of the State (Randolph and Chambers). All three areas contain limited populations of *Amphianthus*. Two of the sites have fewer than 50 plants confined to a single vernal pool, while the third population consists of several hundred plants in two to three pools (Miller 1985, Allison pers. comm. 1986).

Amphianthus is historically known from 50 sites in Georgia (McVaugh and Pyron 1937, Lunsford 1938, McVaugh 1943; Burbanck and Platt 1964); however, 11 of these populations have been destroyed (Garris 1980, Allison pers. comm. 1986, Jones, University of Georgia pers. comm., 1986). Currently, 39 populations are thought extant; 74 percent are "limited" populations (1–5 pools), with 45 percent of these limited to a single vernal pool; 13 percent are "moderate" populations (6–14 pools); and 13 percent are "extensive" populations (15–25 pools). Even though

Amphianthus is known from 17 counties, 12 of these counties (Rockdale, Walton, Douglas, Butts, Putnam, Oglethorpe, Harris, Meriwether, Henry, Pike, Newton, Gwinnett) support only limited populations of *Amphianthus* with eight of these county records confined to single sites. The remaining counties support one to two extensive populations of *Amphianthus* (DeKalb, Greene, Heard, Hancock, and Columbia). The number of individuals in the pools range from as few as a dozen to several thousand, with most pools containing several hundred plants when rainfall is adequate.

Amphianthus occurs at three sites in South Carolina, with seven pools in Lancaster County, one in Saluda County, and four in York County (Rayner 1981, 1986). According to Rayner (1986), during the 1983 or 1984 growing season, six pools supported extensive populations (>200 plants) and six has limited populations (<25 plants) of *Amphianthus*.

Isoetes melanospora was discovered on Stone Mountain in DeKalb County, Georgia, and later described by Englemann (1877). Distinguishing characters include a complete velum coverage, dark tuberculate megaspores and short (2–7 cm (0.8–2.8 inches) long), spiraled leaves (Boom 1979, 1982). Immature plants of *Isoetes melanospora* may have distichous leaves (Boom 1979, Rury 1978). It frequently hybridizes with *Isoetes piedmontana*, a more common granite outcrop quillwort, which has an incomplete velum coverage, white megaspores and longer leaves (7–15 cm (2.8–5.9 inches) long), in habitats which are ecologically intermediate between the two species' typical habitats. Hybrids are intermediate in the above characters (Matthews and Murdy 1969, Boom 1982). Rury (1978) proposed that *Isoetes melanospora* represented an arrested developmental stage of one polymorphic species encompassing *Isoetes melanospora* and *Isoetes piedmontana*. According to Boom (1982), such confusion regarding the taxonomic status of *Isoetes melanospora* stems from the above mentioned hybridization of the two *Isoetes* species and subsequent introgression. C. Taylor and N. Luebke (Milwaukee Public Museum, pers. comm. 1986) maintain that *Isoetes melanospora* and *Isoetes piedmontana* are distinct species. Both species have maintained their morphological distinctiveness while growing in uniform conditions for the last 6 years, and preliminary electrophoretic data determined the two *Isoetes* to have distinct enzyme profiles. Research by Boom (1980) and Luebke (pers. comm. 1986) demonstrates that reproductive barriers are weak in *Isoetes* and interspecific hybrids are produced readily. *Isoetes melanospora* has been maintained as a distinct taxon in all monographic treatments of the genus (Pfeiffer 1922, Reed 1965, Boom 1979, 1982). Although Evans (1978) synonymized *Isoetes melanospora* he now states that *Isoetes melanospora* will be maintained as a distinct taxon in his treatment of the pteridophytes for the upcoming "Vascular Flora of the Southeastern States" (Evans, University of Tennessee, pers. comm. 1986).

Isoetes melanospora is historically known from 12 sites in central Georgia and one site in South Carolina (Johnson 1938, McVaugh 1943, Lammers 1958, Burbanck and Platt 1964, Matthews and Murdy 1969, Allison, pers. comm. 1986). Currently, it is thought extant at only five sites in Georgia (DeKalb, Rockdale, and Gwinnett Counties) due to a 54 percent loss of Georgia populations from habitat destruction. Its status at the South Carolina site is unkown since it has not been observed there since its collection in 1969 (Boom 1979, Rayner, pers. comm. 1986).

Isoetes melanospora occurs with *Amphianthus* at four of its six extant sites in typical habitat as described for *Amphianthus*. At the sixth site, *Isoetes melanospora* is located in several remnant quarry pools. The largest population of *Isoetes melanospora* comprises plants in an estimated 12 pools. Other Georgia populations are confined to one to five pools each.

Isoetes tegetiformans is perhaps the most distinctive species in this genus (Boom 1982). A detailed description of its morphology and anatomy is given by Rury (1978). Distinguishing characters include its distichous, mat-forming growth habit (plants are "rhizomatously" connected), non-dichotomizing roots, and formation of numerous, cauline, adventious buds (Rury 1978, Boom 1979, 1982). Individual plants are most similar to distichous plants of *Isoetes melanospora* with respect to plant size, leaf arrangement and reproductive features (Rury 1978).

Isoetes tegetiformans was described by Rury (1978) from material he collected at Heggie's Rock Preserve in Columbia County, Georgia, from a single vernal pool. Since then, searches of over 120 granite outcrops by J. Allison have resulted in only 10 additional locations (Rury 1985, Allison, pers. comm. 1986). Ten of these 11 populations are extant in four Georgia counties (Columbia, Hancock, Greene and Putnam) and are confined to porphyritic granite outcrops (Allison, pers. comm. 1986, Rury 1986). Seventy percent of the extant sites have only one or two pools with *Isoetes tegetiformans*. At the remaining sites, it has been observed in four to eight pools. Individual pools may contain very few genetic indviduals since *Isoetes tegetiformans* is a colony-forming species (Bridges 1986a).

Many of the sites harboring populations of these three granite outcrop endemics have been adversely impacted or destroyed through quarrying, eutrophication from cattle, ORV's, trash dumping, and various forms of vandalism (Garris 1980, Miller 1985, Rayner 1986).

Most populations are on privately-owned lands, including one site managed by The Nature Conservancy. Four sites are located on public lands, including one owned by the State of Georgia and administered by the Stone Mountain Memorial Association, two owned by DeKalb County, Georgia, and one by the State of South Carolina (South Carolina Wildlife and Marine Resources Department).

Federal actions involving these species began with section 12 of the Endangered Species Act of 1973, 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 the report of the Smithsonian Institution 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. *Amphianthus pusillus* and *Isoetes melanospora* were included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-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 four other proposals that had expired. On December 15, 1980, the Service

published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Isoetes melanospora* was included as a Category-2 species (species for which data in the Service's possession indicate listing is probably appropriate, but for which additional biological information is needed to support a proposed rule); *Isoetes tegetiformans* and *Amphianthus pusillus* were included as Category-1 species (species for which data in the Service's possession indicate listing is warranted). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 notice of review. This supplement treated *Isoetes tegetiformans* as a Category-2 species. All three species were included in Category 2 in the September 27, 1985, revised notice of review of plants (50 FR 39526). Status survey reports compiled by Garris (1980), Miller (1985), and Rayner (1986), as well as extensive field searches by Allison (pers. comm. 1986), and pertinent literature (see "Reference Cited" below), now support all three species being listed as endangered or threatened. The data demonstrate low numbers of plants and continuing threats to the species.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Isoetes melanospora* and *Amphianthus pusillus* because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, and 1986, the Service found that the petitioned listing of these species was warranted, but that listing these species was precluded due to other higher priority listing actions. On February 19, 1987, the Service published in the **Federal Register** (52 FR 5150), a proposal to list *Isoetes melanospora* and *Isoetes tegetiformans* as endangered species and *Amphianthus pusillus* as a threatened species. The Service now determines *Isoetes melanospora* and *Isoetes tegetiformans* to be endangered species and *Amphianthus pusillus* to be a threatened species with the publication of this final rule.

Summary of Comments and Recommendations

In the February 19, 1987, proposed rule (52 FR 5150) 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 *Atlanta Constitution*, Atlanta Georgia, and in the *Columbia Record*, Columbia, South Carolina, on March 16, 1987. Three comments were received from private organizations and all expressed support for the proposal. No public hearing was requested or held.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available the Service has determined that *Isoetes melanospora* and *Isoetes tegetiformans* should be classified as endangered species and *Amphianthus pusillus* 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 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 *Amphianthus pusillus* Torrey (little amphianthus), *Isoetes melanospora* Engelmann (black-spored quillwort), and *Isoetes tegetiformans* Rury (mat-forming quillwort) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Amphianthus pusillus, Isoetes tegetiformans,* and *Isoetes melanospora* are restricted to granite outcrops in the Piedmont physiographic region (see "Background" section for specific distributions). The major threat to these species is the destruction and adverse modification of their habitat. Populations of all three taxa have been lost through quarrying (38 percent for *Isoetes melanospora*, 17 percent for *Amphianthus*, 9 percent for *Isoetes tegetiformans*) and the fate of several extant populations is tenuous since several areas are active quarry sites. Georgia is the world's largest granite producer (Wharton 1978), so the destruction of outcrops from quarrying is expected to continue. Quarrying companies owned 17.4 percent of those granite outcrops investigated for *Amphianthus* in Georgia (Garris 1980).

Granite outcrops are popular recreational sites and unfortunately such attention and overuse have resulted in damage to the geologic structures and vegetation (Garris 1980). Many of the pools supporting populations of these three taxa have been directly damaged by vehicular traffic. Vehicular traffic during these species' growing seasons poses a serious threat by uprooting/crushing live plants, hastening the erosion of the pools' rims and displacing soil from the pools (Bridges 1986a, Rayner 1986). ORV's have decreased the vigor of all the South Carolina *Amphianthus* populations (Rayner 1986) and destroyed one Alabama population (Miller 1985). Pools have been further impacted by such activities as fire building and littering (Rayner 1986, Garris 1980). Rearrangement of stones in two pools has caused a decline in two populations of *Amphianthus* and *Isoetes melanospora*.

Granite outcrops are often enclosed in pasture. A concentration of grazing animals on these areas has caused damage to vernal pool vegetation through trampling and has added nutrients to the water, which favors the growth of more competitive aquatics (Garris 1980, Bridges 1986b). Such eutrophication of vernal pools has eliminated *Amphianthus* from several pools at one site and caused the decline of *Amphianthus* and *Isoetes tegetiformans* at a second area.

Many of the smaller outcrops are used as local dumps or for storing equipment, and such land use has destroyed two populations of *Amphianthus* and one population of *Isoetes melanospora* in Georgia (Garris 1980, Allison, pers. comm. 1986). Flatrocks in the Southeast are being examined as possible repositories for nuclear waste, and this poses a potential threat to their habitat (Rayner 1986). Long term monitoring of all three taxa should be initiated in order to measure fluctuations in populations size and vigor. Such data would be helpful in determining the stability of populations as related to weather conditions and disturbance (Bridges 1986a, Rayner 1986).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Taking for these purposes may pose a threat to these species, especially *Isoetes melanospora* and *Isoetes tegetiformans*, which are extremely restricted in range and low in numbers. Publicity surrounding the lising of these species could increase interest in all three of these unique species, and the sites are easily accessible.

C. *Disease or predation.* These taxa are not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms. Amphianthus pusillus* and *Isoetes melanospora* are officially listed as endangered by the

Georgia Department of Natural Resources and are thereby afforded legal protection in the State under the Wildflower Preservation Act of 1973. *Isoetes tegetiformans* is not protected by Georgia law at the present time. Georgia legislation prohibits taking of plants from public lands (without a permit) and regulates the sale and transport of plants within the State. However, Georgia law does not provide protection against habitat destruction, the major threat to these species, and has been inadequate in preventing the further decline of *Isoetes melanospora* and *Amphianthus pusillus* populations at two publicly-owned sites in DeKalb County (Stone Mountain State Park and Mt. Arabia County Park).

Although these species are unofficially recognized as endangered or threatened components of their flora, South Carolina and Alabama have no State laws protecting them. The Nature Conservancy owns and manages Heggie's Rock Preserve in Columbia County, Georgia, which supports a moderate population (ten pools) of *Amphianthus* and a limited population (one pool) of *Isoetes tegetiformans*. *Amphianthus pusillus* is also protected at Forty-Acre Rock Preserve in Lancaster County, South Carolina, which is owned by the South Carolina Wildlife and Marine Resources Department. Both preserves have regulations restricting collecting and motorized vehicles. However, these regulations are difficult to enforce and the areas continue to be disturbed. The Act would enhance the existing protection, provide Federal protection (see "Available Conservation Measures" below), and encourage active management for these species.

E. *Other natural or manmade factors affecting its continued existence.* These taxa are rare and vulnerable due to the limited amount of potential habitat and specialized microhabitat requirements. Many of the populations consist of small numbers of individuals confined to only one or two pools (see "Background" section), so local extinction through natural causes is possible. *Amphianthus pusillus, Isoetes melanospora,* and *Isoetes tegetiformans* are susceptible to inadvertent destruction because the pools in which they occur are exposed, and thus unprotected from vehicular traffic. These outcrop endemics are not vigorous competitors (Rayner 1986, Luebke, pers. comm. 1986) and could be eliminated by overcrowding and shading (Lammers 1958, Kral 1983). One population of *Amphianthus* and one of *Isoetes melanospora* have been lost through succession (Allison, pers. comm. 1986); however, natural succession is usually too slow to be a significant problem, and new habitat is constantly being created (Burbanck and Platt 1964). A more serious threat is from accelerated succession caused by excessive siltation from disturbance upslope or from eutrophication of the pools from cattle droppings (Bridges 1986b).

Amphianthus is vulnerable due to its requirements for special environmental conditions (moisture, light) for germination and growth and an unknown dormancy period for the seeds (Lunsford 1938, Garris 1980, Rayner 1986). One factor believed to contribute to the rarity of *Amphianthus* is the lack of adaptation for seed dispersal (Lunsford 1938). Preliminary research by Randall (1986) suggests that the principal mode of reproduction in *Amphianthus* is agamospermy (production of seeds by asexual means) and that this asexual reproduction threatens its adaptive potential. The genetic integrity of *Isoetes melanospora* is threatened due to its frequent hybridization with *Isoetes piedmontana* and subsequent introgression. Hybrids may competitively displace *Isoetes melanospora*, which requires a more specialized type of microhabitat (Boom, pers. comm. 1986).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Isoetes tegetiformans* and *Isoetes melanospora* as endangered species and to list *Amphianthus pusillus* as a threatened species. *Isoetes melanospora* has been extirpated over most of its historic range (54 percent of populations destroyed). Furthermore, populations at four of the five remaining sites are confined to five or fewer pools and have significantly decreased in numbers and vigor at severeal of these areas. *Isoetes tegetiformans* is restricted to a particular type of outcrop (porphyritic granite) and presently receives no protection under Georgia's Wildflower Preservation Act of 1973. At most sites (80 percent), *Isoetes tegetiformans* occurs in only one or two pools and two of these areas are active quarry sites. These two plants are in danger of extinction throughout all or significant portions of their ranges and therefore qualify as endangered species under the Act.

Threatened status seems appropriate for *Amphianthus pusillus*, which has a wider geographic range and two populations in designated Nature Preserves. However, 21 percent of the populations of *Amphianthus* have been destroyed and 76 percent of the extant sites support only a limited population of this genus. Many of the populations face severe threats and *Amphianthus* could become endangered within the foreseeable future; thus it is a threatened species as defined by the Act. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. Publication of critical habitat descriptions and maps would increase public interest and possibly lead to additional threats for these species from collecting and vandalism (see threat factor "B" above). Distinctiveness of the outcrops increases their vulnerability since they tower above the surrounding vegetation and most are easily accessible. No benefit can be identified through critical habitat designation that would outweigh these potential threats. All State agencies and counties will be notified of the general location of the sites and of the importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for these species at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, 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 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)(4) 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. All presently known sites for these species are on private, State-owned, or county-owned land. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known that would affect these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 (for endangered), and 17.71 and 17.72 (for threatened) set forth a series of general trade prohibitions and exceptions that apply to all endangered or threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered and 50 CFR 17.71 for threatened apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered or threatened 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. 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 conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since these species are unknown in cultivation and are uncommon in the wild. Requests for copies of the regulations of plants and inquiries regarding them may be addressed to the Office of Management Authority, P.O. Box 27329, U.S. Fish and Wildlife Service, Washington, DC 20038-7329 (202/343-4955).

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

Bake, W.A. Jr. 1970. Georgia granite. Nat. Hist. 79:32-39.

Boom, B.M. 1979. Systematic studies of the genus *Isoetes* in the Southeastern United States. Ph.D. Dissertation, Univ. Tennessee, Knoxville. 119 pp.

Boom, B.M. 1980. Intersectional hybrids. in *Isoetes*. Amer. Fern Jour. 70:1-4.

Boom, B.M. 1982. Synopsis of *Isoetes* in the Southeastern United States. Castanea 47:38-59.

Bridges, E.L. 1986a. Population inventory and mapping and the establishment of a monitoring system for rare plant species at Heggie's Rock Preserve, Columbia County, Georgia. Unpublished report for The Nature Conservancy, Southeast Regional Office, Chapel Hill, North Carolina 62 pp. + attachments.

Bridges, E.L. 1986b. Stewardship abstract for *Amphianthus pusillus*. Prepared for The Nature Conservancy, Southeast Regional Office, Chapel Hill, North Carolina 7 pp.

Burbanck, MP., and R.B. Platt. 1964. Granite outcrop communities of the Piedmont Plateau in Georgia. Ecology 45:292-306.

Engelmann, G. 1877. The genus *Isoetes* in North America. Trans. St. Louis Acad. Sci. 4:358-390.

Evans, A.M. 1968. Isoetaceae, Pages 8-10, *In* A.E. Radford *et al.* (eds), Manual of the Vascular Flora of the Carolinas. The Univ. of North Carolina, Chapel Hill.

Garris, R.S. 1980. The endangered endemic, *Amphianthus pusillus:* a study of distribution and density. Georgia Dept. of Natural Resources, Protected Plants/ Natural Areas Program. Unpublished report. 20 pp. + attachments.

Harper, R.M. 1939. Granite outcrop vegetation in Alabama. Torreya 39:153-159.

Johnson, M. 1938. Studies in the life cycle of *Isoetes melanospora*. M.A. Thesis, Emory Univ., Atlanta, Georgia 39 pp.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA, Forest Service, Tech. Pub. R8-TP2. 1305 pp.

Lammers, W.T. 1958. A study of certain environmental and physiological factors influencing the adaptation of three granite outcrop endemics: *Amphianthus pusillus* Torr., *Isoetes melanospora* Engelm., and *Diamorpha cymosa* (Nutt.) Britton, Ph.D. Dissertation, Emory Univ., Atlanta, Georgia. 85 pp.

Lester, J.C. 1938. Geology of region around Stone Mountain, Georgia. Univ. of California Studies 26:88-91.

Lunsford, D.E. 1938. Studies in the life cycle of *Amphianthus pusillus* Torr. M.A. Thesis, Emory Univ., Atlanta, Georgia. 88 pp. + attachments.

Matthews, J.F., and W.H. Murdy. 1969. A study *Isoetes* common to the granite outcrops of the Southeastern Piedmont, United States. Bot. Gaz. 130:53-61.

McVaugh, R. 1943. The vegetation of the granite flatrocks of the Southeastern U.S. Ecol. Monog. 13:120-166.

McVaugh, R., and J.H. Pyron. 1937. The distribution of *Amphianthus* in Georgia. Castanea 2:104-105.

Miller, D.L. 1985. Report on a survey of *Amphianthus pusillus* (little amphianthus) in Alabama. Provided under contract to the U.S. Fish and Wildlife Service, Southeast Region, Atlanta, Georgia. 33 pp.

Murdy, W.H. 1968. Plant speciation associated with granite outcrop communities of the Southeastern Piedmont. Rhodora 70:394-407.

Pennell, F.W. 1935. The Scrophulariaceae of Eastern Temperate North America. Acad. Nat. Sci. of Physiology Monog. No. 1, Philadelphia. 635 pp.

Pfeiffer, N.F. 1922. Monograph of the Isoetaceae. Ann. Mo. Bot. Gard. 9:79-233.

Randall, R.R. 1986. Electrophoectic study of the genetic variation of *Amphianthus pusillus* Torr. Unpublished undergraduate research report, Emory University, Atlanta, Georgia. 20 pp. + attachments.

Rayner, D.A. 1981. Granite flatrock outcrops in South Carolina. Bull. South Carolina Acad. Sci. 43:106-107.

Rayner, D.A. 1986. Report on the status of *Amphianthus pusillus* in South Carolina. Provided under contract to the U.S. Fish and Wildlife Service, Southeast Region, Atlanta, Georgia. 33 pp.

Reed, C.F. 1965. *Isoetes* in the Southeastern United States. Phytologia 12:369-400.

Rury, P.M. 1978. A new and unique, mat-forming Merlin's grass (*Isoetes*) from Georgia. Amer. Fern Jour. 68:99-108.

Rury, P.M. 1985. New locations for *Isoetes tegetiformans* in Georgia. Amer. Fern Jour. 75:102-104.

Rury, P.M. 1986. February 16, 1986, letter to U.S. Fish and Wildlife Service.

Wharton, C.H. 1978. The Natural Environments of Georgia. Georgia Dept. of Natural Resources, Atlanta, Georgia. 227 pp.

Author

The primary author of this final rule is Cary Norquist (see **ADDRESSES** section) (601/965-4900 or FTS 490-4900).

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.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species: Scientific name	Species: Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	
Isoetaceae—Quillwort family:						
Isoetes melanospora	Black-sponsored quillwort	U.S.A. (GA,SC)	E	302	NA	NA
Isoetes tegetiformans	Mat-forming quillwort	U.S.A. (GA)	E	302	NA	NA
*	*	*	*	*	*	
Scrophulariaceae—	Snapdragon family:					
*	*	*	*	*	*	
Amphianthus pusillus	Little amphianthus	U.S.A. (AL, GA, SC)	T	302	NA	NA
*	*	*	*	*	*	

Dated: January 12, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-2468 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-55-M

---

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant "Trichilia triacantha" (Bariaco)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant *Trichilia triacantha* (common name: Bariaco) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Trichilia triacantha* is endemic to semideciduous dry forests on limestone in southwestern Puerto Rico. This small tree is threatened by woodcutting, flash-flooding, and its extremely low population size. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Trichilia triacantha*.

EFFECTIVE DATE: March 7, 1988.

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

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

SUPPLEMENTARY INFORMATION:

Background

Trichilia triacantha was described in 1899 by Ignatius Urban, who based his description on material collected several years earlier near Penuelas and Guanica in southwestern Puerto Rico. The species was not seen or collected again until the 1960's, when R.O. Woodbury found it in Guanica Commonwealth Forest and at Punta Guaniquilla, near Boqueron (Vivaldi and Woodbury 1981). In 1978, Woodbury located a single plant in the Guayanilla Hills near Penuelas. Since 1978, four additional populations have been found in Guanica Forest, but the Punta Guaniquilla and Guayanilla Hills plants have been extirpated by woodcutting and road construction. Presently, 18 individuals are known to exist at five sites within Guanica Commonwealth Forest (Fish and Wildlife Service, unpublished field data).

Trichilia triacantha is an evergreen shrub or small tree reaching 30 feet (9 meters) in height and 3 inches (8 centimeters) in diameter. The alternate leaves are shiny dark green, leathery, and clustered at the ends of twigs. Each compound leaf is 3- to 7-parted, with the leaflets appearing to be arranged palmately and bearing 3 stiff, sharp spines at their apex. The white flowers are symmetrical and bisexual; the fruit has not been described yet.

The species is endemic to low elevation semideciduous dry forests occurring on limestone in southwestern Puerto Rico. Within these forests, *Trichilia triacantha* is generally found along dry streambeds which carry water only during periodic torrential rains.

Deforestation for agriculture, grazing, and charcoal production has had a significant effect on the native flora of Puerto Rico. Some species have traditionally been selected for removal because of their utility (fenceposts, handicrafts, etc.). The wood of *Trichilia triacantha* has been sought (Hernandez Aquino 1977) for its hardness, durability, and color, factors which have undoubtedly contributed to the species' rarity. In addition, the species' presence in ravine habitats makes it vulnerable to destruction by flash-flooding during seasonally heavy rains.

Trichilia triacantha was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered for endangered or threatened status by the Fish and Wildlife Service as identified in the December 15, 1980, notice published in the **Federal Register** (45 FR 82479). The species was placed in category 1 (species for which the Service

has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) and was retained in this category in the November 28, 1983 (48 FR 53640), update of the 1980 notice and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)), as amended in 1982. The Service subsequently found on October 13, 1983; October 12, 1984; October 11, 1985; and October 10, 1986, that listing *Trichilia triacantha* was warranted but precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act. The Service proposed listing *Trichilia triacantha* as endangered on April 24, 1987 (52 FR 13790–13792).

Summary of Comments and Recommendations

In the April 24, 1987, proposed rule 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 agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the *San Juan Star* on May 23, 1987. Five letters of comment were received and are discussed below. A public hearing was neither requested nor held.

Comments were received from the Secretary of the Puerto Rico Department of Natural Resources, the Environmental Protection Agency, U.S. Corps of Engineers, U.S. Forest Service, and the Natural History Society of Puerto Rico.

The Secretary of the Puerto Rico Department of Natural Resources supported the proposed listing of *Trichilia triacantha* stating that the Guanica Commonwealth Forest is being managed strictly from a conservation standpoint. Administrators of the Environmental Protection Agency and the Corps of Engineers stated that they knew of no ongoing or proposed actions that would impact the species and that they had no information on its status. The Forest Service stated that the species does not occur in the Caribbean National Forest and that no action was anticipated that might affect the species. The Natural History Society of Puerto Rico supported the proposed listing.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Trichilia triacantha* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act 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 *Trichilia triacantha* Urban are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Most of the island of Puerto Rico has been deforested, and the forests where *Trichilia triacantha* is presently found are largely second growth. However, the species has traditionally been, and apparently continues to be, selectively taken for its wood. The known remaining plants are widely scattered and confined to Commonwealth Forest lands, and, thus, they are largely protected from cutting. The areas where additional individuals or populations are most likely to be extant are in the Guayanilla Hills, which are being rapidly developed. Undiscovered plants in these areas most likely will be destroyed before being discovered.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The taking of these trees for their wood (for use in fenceposts, home furniture, etc.) has undoubtedly contributed to the decline of this species, but it is not known to what extent this practice continues. The extreme rarity of *Trichilia triacantha* lessens susceptibility to woodcutting, but the possibility of extirpation by this means remains.

C. *Disease or predation.* Disease and predation from herbivores have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Trichilia triacantha* is not yet on the Commonwealth list. Federal listing would apply the recovery and protection provisions of the Act to this species.

E. *Other natural or manmade factors affecting its continued existence.* The known populations of *Trichilia triacantha* are confined to geographically small areas and thus are vulnerable to natural disturbance, particularly flash-flooding. In addition, with only 18 plants known to exist and little evidence of successful reproduction, the risk of extinction of this species is very high.

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

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. The distribution of *Trichilia triacantha* is sufficiently restricted that collecting or vandalism could seriously damage or eliminate the remaining individuals. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and known landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Trichilia triacantha* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The

Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being designated for *Trichilia triacantha*, as discussed above, and no Federal involvement is known or expected to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, P.O. Box 27329, U.S. Fish and Wildlife Service, Washington, DC 20038-7329 (202/343-4955).

National Environmental Policy Act

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

References Cited

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

Hernandez Aquino, L. 1977. Diccinario de Voces Indigenas de Puerto Rico. Editoral Cultural, Rio Piedras, Puerto Rico. 456 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Trichilia triacantha* Urban. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 34 pp.

Author

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

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order by the name of the family Meliaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*
Meliaceae—Mahogany family:						
Trichilia triacantha	Bariaco	U.S.A. (PR)	E	303	NA	NA
*	*	*	*	*	*	*

Dated: January 12, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-2469 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Endangered Status for the Louisiana Pearlshell "Margaritifera hembeli"

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Louisiana pearlshell (*Margaritifera hembeli*) to be an endangered species under the Endangered Species Act of 1973, as amended. This freshwater mussel is known to occur in 11 headwater streams of the Bayou Boeuf drainage in Rapides Parish, Louisiana. The preferred habitat is stable sand and gravel substrate in small, clear flowing

streams. The historic range of this species probably included most of the Bayou Boeuf headwater streams. The Louisiana pearlshell has been impacted by reservoir construction, silviculture practices, sedimentation, and domestic runoff. This determination implements the protection of the Endangered Species Act of 1973, as amended, for this freshwater mollusk.

EFFECTIVE DATE: March 7, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Stewart at the above address (601/695–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

The Louisiana pearlshell was described as *Unio hembeli* by Conrad in 1838. This species was placed in the genus *Margaron* by Lea (1870), then in *Margaritana* by Simpson (1900), and finally in *Margaritifera* by Athearn (1970). This mussel is about 100 millimeters (mm) (3.9 inches) long, 50 mm (2.0 inches) high, and 30 mm (1.2 inches) wide. The shell is generally elliptical with an angular posterior margin, obtuse undulations on the posterior slope, a dark brown to black periostracum, and white nacre. The species has been collected from only the Bayou Boeuf drainage in Rapides Parish, Louisiana. The Alabama population of earlier records is now considered a different species, the Alabama pearlshell, which was described as *Margaritifera marrianae* by Johnson in 1983. An extensive search of 39 streams in Rapides Parish by biologists from the Louisiana Natural Heritage Program (Louisiana Heritage 1985) found the Louisiana pearlshell in 11 streams. Nearly 90 percent of the population was in four streams: Long Branch, Bayou Clear, Loving Creek, and Little Loving Creek. Most individuals were in flowing water at depths ranging from 31 to 61 centimeters (12–20 inches) on sand and gravel substrates. The surrounding forest community is mixed hardwood-loblolly pine with a typical canopy closure of 75–100 percent (Louisiana Heritage 1985). Almost the entire known population of the Louisiana pearlshell occurs within areas administered by the U.S. Forest Service. The remaining range is within lands administered by the U.S. Air Force or is in private ownership.

The scattered occurrence of the Louisiana pearlshell in headwater streams of the Bayou Boeuf drainage suggests that the species once occurred throughout the drainage, if not in other drainages. The Heritage survey estimated a total population at approximately 10,000 individuals. Since the survey, at least one bed of mussels has been inundated by a beaver pond and apparently eliminated. The Service published a proposed rule to list this species as endangered in the **Federal Register** (52 FR13794) on April 24, 1987.

Summary of Comments and Recommendations

In the April 24, 1987, proposed rule (52 FR 13794) 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 that invited public comment were published in the *Baton Rouge State Times* and the *Baton Rouge Advocate* on May 20, 1987, and in the *Alexandria Daily Town Talk* on May 24, 1987. Comments were received from two Federal agencies, one State agency, and one professional biologist. In commenting on the proposed rule, the U.S. Forest Service described actions it is taking to protect this species, but did not take a position on the proposed rule. In earlier correspondence, this agency had requested the Service to expedite the listing to help it in protecting the species. On this basis it is evident that the Forest Service also supported the proposed rule. The U.S. Air Force and the other two commenters supported the proposed rule.

One commenter suggested that the Louisiana pearlshell historically occurred in drainages other than Bayou Boeuf based on information contained in museum notes but did not provide the information. The available data supports the current restriction of the Louisiana pearlshell to the Bayou Boeuf drainage. The historic occurrence of this species in other drainages would indicate an even greater range loss for the species and a more urgent need for this determination. Evidence of such historic occurrences is important to the recovery planning process.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Louisiana pearlshell (*Margaritifera hembeli*) 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 the Louisiana pearlshell (*Margaritifera hembeli*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The scattered occurrence of the species in headwater streams of the drainage suggests a historic range including most, if not all, of the Bayou Boeuf headwater systems, and that impoundments have eliminated populations in intervening areas. This suggested range is supported by a small population in Brown's Creek of the Bayou Rapides drainage. Bayou Rapides enters Bayou Boeuf several miles below any other known population of the Louisiana pearlshell. The species presently occurs in Mack Branch above Kincaid Reservoir but not in other streams contributing to this impoundment. Kincaid Reservoir impounds the uppermost headwaters of Bayou Boeuf. The known good populations occur in the unimpounded Caster Creek and Bayou Clear drainages, tributaries to Bayou Boeuf. Other impoundments of the Bayou Boeuf system that may have affected this species are Indian Creek Reservoir, Oden Lake, and Cotile Lake.

Inundation by beaver dams appears to be a significant threat. One population of about 1,000 individuals found in 1985 by the Louisiana Heritage survey was later inundated by a beaver pond. A 1986 Service survey of the site determined that this particular population of the Louisiana pearlshell had been eliminated. The small localized populations of this species are especially susceptible to beaver impoundments.

Freshwater mussels are adversely impacted by sediment and by unstable substrate. The Bayou Boeuf drainage includes a number of gravel pits on private lands that contribute to sedimentation, especially in the Indian Creek drainage. The sedimentation likely contributed to the elimination of Louisiana pearlshell populations that could have occurred in this drainage. Habitat within the Kisatchie National Forest is impacted by silviculture practices. Clear cutting, especially up to stream banks, increases erosion and runoff. In addition to the impacts of sedimentation from erosion, there are impacts from scouring of the substrate resulting from increased water velocity.

This scouring causes the substrate to shift and the mussels to be displaced. The known populations of this species occur in small, localized areas of stable sand and gravel substrate. Some adults are found in loose shifting sand, probably because of displacement. A field survey by a Service biologist found recruitment only in populations located in stable substrate containing some gravel. Adults may be able to survive a temporary shifting of the substrate where immature individuals cannot survive.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Collecting poses a significant threat to this species. This mussel occurs in very shallow, clear streams and generally has about one inch of the shell protruding from the substrate. The entire population of a small stream may occur in only several yards of stream length. This restricted distribution and high visibility makes collection of the species very easy. A single overzealous recreational or scientific collector could drastically reduce the population of any given stream in a few hours. The collecting impacts could easily reduce the population below levels necessary for reproduction.

C. *Disease or predation.* There is no evidence of threats from disease. The shallow stream habitat of this species makes it very vulnerable to predation by raccoons and muskrats.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal, State, or local laws or regulations specifically covering this species. Although U.S. Forest Service regulations prohibit the taking of sensitive species, such prohibitions are difficult to enforce.

E. *Other natural or manmade factors affecting its continued existence.* The fish host for the juvenile stage of this species is unknown; therefore, impacts on this aspect of the mussel's life cycle cannot be evaluated. There is some evidence that the Brown's Creek population is affected by domestic pollution from upstream houses and farms. The Louisiana pearlshell is threatened by its limited range and low numbers. Many of the streams where this species occurs are isolated from each other. This creates isolated gene pools that are vulnerable to loss of genetic variability. Because this species depends upon water currents to transport gametes from one individual to another, isolation and reduced density of populations decreases the likelihood of successful reproduction.

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 Louisiana pearlshell as endangered. Endangered status was chosen because of the very limited range, small population size, and vulnerability owing to small stream habitat of the species. Threatened status is not appropriate because the species is restricted to a few small streams in a single drainage and occurs in small areas within each stream. An entire stream's population is therefore vulnerable to a single catastrophic event. Critical habitat is not proposed for this species for reasons given in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate 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. The Louisiana pearlshell is the most southerly occurring member of the family *Margaritiferidae.* As such, it is sought by both scientific and amateur collectors. Publication of the exact location of populations could lead to excessive collection of this easily observed species. The U.S. Forest Service is the Federal agency most involved with this species and is already aware of the existing populations. All other involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Precise locality data are available to appropriate Federal agencies through the Service office described in **ADDRESSES** section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibition 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 of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) 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.

Federal involvement is expected to include U.S. Forest Service silviculture practices and U.S. Air Force activities on a practice bombing range. The U.S. Forest Service prepares sites, plants seedling trees, and harvests timber within the range of this species. The U.S. Air Force conducts combat training exercises for pilots on Claiborne Range. The above agencies may be required to consult with the Service on such activities to ensure that they are not likely to jeopardize the continued existence of this species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, 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.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

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

Athearn, H.D. 1970. Discussion of Dr. Heard's paper (Eastern freshwater mollusks, the south Atlantic and Gulf drainages). Pages 28–31 *in* A.H. Clarke (ed.); Papers on the rare and endangered mollusks of North America. Malacologia 20(1):1–56.

Conrad, T.A. 1838. Monography of the family *Unionidae*, or naiades of Lamarck (Freshwater bivalve shells) of North America 1:93–94, plate 51.

Johnson, R.E. 1983. *Margaritifera marrianae*, a new species of Unionacea (Bivalvia: Margaritiferidae) from Mobile-Alabama-Coosa and Escambia River systems, Alabama. Occasional Papers on Mollusks (Museum of Comparative Zoology, Harvard University) 4(62):299–304.

Lee, I. 1870. A synopsis of the family Unionidae, 4th edition. H.C. Lea, Philadelphia. 184 pp.

Louisiana Natural Heritage Program. 1985. Status of *Margaritifera hembeli* (Unionacea: Margaritiferidae) in Kisatchie National Forest, Evangeline Ranger District, Rapides Parish, Louisiana, November 1985. An unpublished report to the U.S. Forest Service, 20 pp.

Simpson, C.T. 1900. Synopsis of the naiades, or pearly fresh-water mussels. Proc. U.S. Natl. Mus. 22–679.

Author

The primary author of this final rule is James H. Stewart (see **ADDRESSES** section). Contact by telephone at 601/965–4900 or FTS 490–4900.

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.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
*	*	*	*	*	*	*	
Pearlshell, Louisiana	*Margaritifera hembeli*	U.S.A. (LA)	NA	E	304	NA	NA
*	*	*	*	*	*	*	

Dated: January 12, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–2470 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–55–M

Reader Aids

Federal Register

Vol. 53, No. 24

Friday, February 5, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data Base Services	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

2719-2816 1
2817-2994 2
2995-3182 3
3183-3324 4
3325-3570 5

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5763 2719
5764 2814
5765 3183
5766 3185
5767 3327

Executive Orders:
12301 (Revoked by EO 12625) 2812
12625 2812

Administrative Orders:
Memorandums:
January 28, 1988 2816
Presidential Determinations:
No. 88-5 of January 15, 1988 3325

7 CFR

272 2817
907 3329
910 3330
932 2823
945 3187
947 2995
966 3189
1403 3330

Proposed Rules:
52 ..... 3403, 3490
53 3025
54 3025
250 2846
318 3028
907 2849
908 2849
917 2851
925 2851
929 3036
948 3037
1421 2759
1823 2852
1930 2852
1933 2852
1942 2852
1944 2852
1948 2852
1980 2852
2054 3176

8 CFR

204 2824
214 3331

Proposed Rules:
212 3403

9 CFR

92 2853

Proposed Rules:
51 2759
71 3146
78 3146
85 3146
309 3146
310 3146
320 3146

10 CFR

Proposed Rules:
2 3404
31 2853

12 CFR

32 2997
207 2998
220 2998
221 2998
224 2998
226 3332
614 ..... 2825, 3191
620 ..... 3334, 3335
621 3335
795 3000

14 CFR

21 ..... 2721-2733, 3534
23 2721-2733
36 3534
39 ..... 2735-2737, 3001, 3002
71 3005-3008
73 3010
97 ..... 3011, 3012
1206 2738

Proposed Rules:
21 ..... 2761, 3040, 3042
23 2761
25 ..... 3040, 3042
39 ..... 2763-2765, 3044-3048
71 ..... 3049, 3528

15 CFR

Ch. III 3014
399 3490

16 CFR

1500 3014

Proposed Rules:
13 3214
453 2767

17 CFR

30 3338
239 3192
274 3192

Proposed Rules:
249 2854

18 CFR

37 ..... 3339, 3342
271 3019
389 3364

19 CFR

154 2826

270 ... 2826
271 ... 2826
273 ... 2826
375 ... 2826
381 ... 2826
1310 ... 2826
Proposed Rules:
101 ... 2767

20 CFR
200 ... 3198
346 ... 3200
355 ... 3200
359 ... 3200

21 CFR
1 ... 2827
Proposed Rules:
12 ... 2767
1308 ... 3292, 3314

23 CFR
645 ... 2829

24 CFR
200 ... 3201
201 ... 3364
203 ... 3364
232 ... 3365
234 ... 3364
235 ... 3365
247 ... 3366
886 ... 3366

26 CFR
1 ... 3118
Proposed Rules:
1 ... 3118

27 CFR
9 ... 2834
Proposed Rules:
9 ... 3214

28 CFR
42 ... 3203

29 CFR
1601 ... 3369
1627 ... 3370

30 CFR
934 ... 2837
Proposed Rules:
936 ... 3050

32 CFR
Proposed Rules:
169 ... 3218
171 ... 3218

33 CFR
4 ... 3370
117 ... 3206
126 ... 3370
127 ... 3370
203 ... 2841
230 ... 3120
325 ... 3120
Proposed Rules:
100 ... 3221
117 ... 2769

34 CFR
305 ... 3524
777 ... 3020
Proposed Rules:
669 ... 2918

36 CFR
222 ... 2978

37 CFR
201 ... 3118

38 CFR
3 ... 3206
21 ... 3207
36 ... 3207
Proposed Rules:
21 ... 2855

40 CFR
60 ... 2914
180 ... 3021-3023
721 ... 2842, 2845
799 ... 3382
Proposed Rules:
52 ... 3052
721 ... 2857

41 CFR
101-1 ... 2738

42 CFR
59 ... 2922

43 CFR
29 ... 3395
4100 ... 2984
Proposed Rules:
3160 ... 3158, 3168

44 CFR
5 ... 2739
64 ... 2741, 3208
67 ... 2743

45 CFR
2201 ... 3320
2202 ... 3321
Proposed Rules:
1180 ... 3405

47 CFR
2 ... 3210
22 ... 3210
73 ... 3024
76 ... 3212
90 ... 3210
Proposed Rules:
25 ... 3056
69 ... 3057
80 ... 3058

48 CFR
Proposed Rules:
1246 ... 3222
5215 ... 3225
5252 ... 3225

49 CFR
1011 ... 3400
1152 ... 3400
Proposed Rules:
1041 ... 3058
1048 ... 3058
1049 ... 3058

50 CFR
17 ... 3560-3567
301 ... 3213
611 ... 3401
642 ... 3401
Proposed Rules:
661 ... 3225
663 ... 3225

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988